

AN EVALUATON OF POLICE IN VIOLATION OF HUMAN RIGHTS IN UGANDA

A CASE STUDY OF KAMPALA DISTRICT

BY

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DECLARATION

I MULETWA GERSHUM a student of Kampala International University hereby declare that this work is my original work and based on my knowledge and that it has never been presented by any other person or institution for Academic award in or outside Kampala International University.

Signature.....



Date.....

14th - 07 - 2016 -

APPROVAL

This research has been duly supervised and submitted for examination with my approval as a University supervisor.

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Date..... 13/07/2016

DEDICATION

I dedicate this work to my beloved parents, wife, Brothers, Sisters and friends for helping me in the course of my studies.

ACKNOWLEDGEMENT

I feel so indebted to many people for the help, advice and support in as far as my education is concerned. I thank my Father Mr. Isakali Tambaki and my mother Mrs. Maliza Mabangi Irene Tambaki for their good parental care spiritually and morally and support throughout my life time.

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May God bless you all.

LIST OF ACRONYMS/ ABBREVIATIONS

UP	Uganda Police
OC	Officer In-Charge
HR	Human Rights
UHRC	Uganda Human Rights Commission
PC	Police Constable
IGP	Inspector General of Police
DPC	District Police Commander
Cap	Chapter
US	United States
UN	United Nations
CPA	Criminal Procedure Act
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
KCCA	Kampala Capital City Authority
CEDAW	Convention on Elimination of Discrimination Against Women
UDHR	Universal Declaration on Human Rights
PRDP	Peace Recovery and Development Plan

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ABSTRACT

The Constitution of the Republic of Uganda 1995 is the supreme law of the land and consequently no other law should be in contravention of the same. Chapter four of the Constitution of the Republic of Uganda 1995 pertains to protection and promotion of fundamental rights and freedoms. These rights are envisaged under Articles 20-50.

Article 23 of the Constitution of the Republic of Uganda 1995 provides a right to personal liberty which unfortunately is amongst the rights most violated by the Police. The Constitution under Article 59 establishes the Uganda National Human Rights Commission in which its mandate includes to promote the protection and observance of human rights in public and private institutions.

Controversy then arises when the police as the government body entrusted with maintaining law and order but instead of carrying out its role, most of the police officers are involved in what would be otherwise be termed as police brutality and police torture thus violation of Human Rights.

Due to this inhumane conduct of the police, most non-governmental organizations and human rights activists have come up to advocate for the rights of the victims of police brutality. Most of the people arrested by the police are detained without undue regard and many are those who are denied police bond as much as it's provided for by the Criminal Procedure Code Act Cap 116 that it should be automatic.

The research also intended to cover the findings and recommendations on how to deal with the acts leading to violation of Human Rights giving priority in consideration to the law of the land, the doctrine of the rule of law and the ambits of ensuring the protection of Human Rights.

CHAPTER ONE

1.0 Introduction

1.1 Background of the problem

The Police is a body organic to government empowered to enforce the law, protect peoples' property and reduce civil disorder. The Uganda Police Force is established under Article 211 of the Constitution of the Republic of Uganda 1995, and **Section 2 of the Police Act Cap 303 Laws of Uganda** which provides that;

"There shall be a police force to be known as Uganda Police Force and such other Police forces in Uganda as Parliament may by law prescribe."

The term Police is most commonly associated with the Police Services that are authorized to exercise the Police Power of a given community within a defined legal or territorial area of responsibility. Police forces are often organizations separate from military force or other security organizations. The Functions of the Uganda Police Force are provided for under **Article 212 of the Constitution of Republic of Uganda 1995** and includes; To protect life and property, to preserve law and order, to prevent and detect crimes, co-operate with civilian authorities and Security organs established under Constitution with the Population generally.

Article 51 of the Constitution of the Republic of Uganda 1995 establishes the Uganda Human Rights Commission whose functions are provided under **Article 52 of the Constitution of the Republic of Uganda 1995** provides that the Commission shall have the following functions;

- To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;
- To visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations;
- To establish a continuing program of research, education and information to enhance respect of human rights;
- To recommend to Parliament effective measures to promote human rights. Including provision of compensation to victims of violations of human rights, or their families;

- To create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda;
- To educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation.
- To formulate, implement and oversee programs intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;
- To monitor the Government's compliance with international treaty and convention obligations on human rights; and
- To perform such other functions as may be provided by law.
- Request the assistance of any department, bureau, office, agency or person in the performance of its functions; and to observe the rules of natural justice.

In case of Human Rights violations, the commission comes up with solutions.

The law generally allows a police officer to use force. Under **Section 28 of the Police Act Cap 303**, it empowers police officer to use force or fire arms in the following situations;

Against a person charged or convicted with a felony who escapes from lawful custody; against a person who uses force to rescue another from a lawful custody; against a person who through the use of force prevents lawful arrest of himself or herself or any other person.

This use of force is not violation of the Human Rights.

Under **Section 28(3) of the Police Act 303**, a police officer may also use reasonable force or a fire arm if he believes that he cannot otherwise prevent escape or otherwise effect arrest.

Where a police officer is to use force, he should first issue a warning to the offender but if the offender does not heed the warning and the police officer believes that he is in eminent danger of death or grievous bodily harm, he may resort to the use of force but only the force can be used in a reasonable circumstance. For example for the purpose of self-defence, defending property from unlawful act in effort to curtail crime

Article 2 of the Constitution of the Republic of Uganda 1995 provides the Constitution as the supreme law of the land and that any other law that is inconsistent therewith shall be considered

void to the extent of that inconsistency. Consequently, all laws whether domestic or international must be in conformity with the Constitution where any conflicts exist, the constitution prevails.

The following quote by Federal District Court Judge John Davies, the judge who presided over the **Rodney King officers' second trial**, helps in illustration of the problem.¹

"Where an officer's initial use of force is provoked and lawful, the line between a legal arrest and an unlawful deprivation of civil rights within the aggravated assault guidelines is relatively thin."

The line between use of reasonable force and criminal use of excessive force is thin indeed. There is no middle ground, no buffer zone; it's either reasonable or criminal. One extra baton strike, shove or control holds can make the difference between legality and illegality.

When it comes to explaining the use of force, both lethal and non-lethal, **James J. Fyfe** points out that many discussions of the topic fail to distinguish between police violence that is clearly extralegal and abusive, and violence that is the necessary result of police incompetence² He argues the distinction is important because the causes and motivations for the two vary greatly.

Extralegal violence involves the willful and wrongful use of force by police officers who knowingly exceed the bounds of their office. Unnecessary violence by contrast includes deadly force which occurs when, police officers prove incapable of dealing with the situations they encounter without needless or too hasty resort to use force. Suffice to note that regardless of the distinction above stated, extra-legal violence and unnecessary violence are both unacceptable, unconstitutional and a violation of human rights at the hands of the Police.

An example is what Fyfe refers to as the *"Split-Second syndrome."* These entail the placing of extraordinary burden upon the officer who must make a life or death decision under the most stressful and time-constrained conditions.³

¹US. v Koon, 833 F. Supp. 769 (1993).

² James A. Inciardi Criminal Justice, 4th Edition. Harcourt Brace College Publishers, 1993 pp 294

³ James J. Fyfe, The Split-second Syndrome and Other Determinants of Police Violence, New York: Basil Blackwell

In history of law enforcement, Police has been the governmental agency with most exposed opportunities of committing felony and misdemeanors and this involves violation of Human Rights.

Attempts have been made towards definition of the reasonableness standard. **The US Supreme Court in Graham v. Connor⁴** a1989 landmark case mandated that the determination of objective reasonableness must be judged from the perspective of the officer on the scene, allowing for the fact that force situations often call for split-second decisions, and must not be reviewed without regard to the officer's underlying intent or motivation.

The Court expressly understood and stated that "not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," is unreasonable in the final analysis if we are judging it through the eyes of the officer at the scene.

Force may be necessary when making arrests, though the offender may be justified in resisting when a police officer has used excessive force, as observed in the case of **Commonwealth v Moriera⁵** in the following words;

"...if an officer uses excessive or unnecessary force to subdue the arrestee, then regardless whether the arrest is lawful or unlawful, if the offender is resisting or evading the arrest, the police officer may defend himself by employing such force as reasonably appears to be necessary"

A **New York City Magistrate and former Police Commissioner Frank Moss** had emphasized on the gravity of the problem in 1903 by stating that⁶;

'for years, there has been through the courts and the streets a dreary procession of citizens with broken hands and bruised bodies against few of whom was the violence needed to effect the arrest. Many of them had done nothing to deserve the arrest. In a majority of such cases no complaint was made., the police are practically above the law.'

⁴ 490 U.S. 386 (1939)

⁵ Massachusetts Supreme Judicial court, 33 CRL (1983)

⁶ Cited by Albert J. Reiss Jr. police Brutality-Answers to key questions' Traits- Action pp 5 (1968)

According to the Concept of Human Rights, Human Rights are referred to as the entitlement that a human being deserves. **Chapter 4 of the Constitution of the Republic of Uganda 1995** establishes the concept of Human Rights and it provides that Human Rights are inherent in nature to all human beings whatsoever nationality, place of residence, sex, national or ethnic origin, colour, religion, language or any other status. **Article 21 of the Constitution of the Republic of Uganda 1995** provides that all people are equally entitled to Human Rights without discrimination; these rights are interrelated and indivisible.

By virtue of the Universal Declaration of Human Rights 1948, these rights are universal and inalienable. There has been numerous emphasis by various subsequent treaties for example 1993 Vienna World Conference on Human Rights noted the duty of the state to provide, to promote and protect all Human Rights and fundamental freedoms regardless of political, social, economic and cultural systems. **Article 20 of the Constitution of the Republic of Uganda 1995** provides that these fundamental rights and freedom of individuals are not granted but they are inherent and must be respected, promoted and upheld by all organs and agencies of government.

It is also important to note that Human Rights are said to consist of both rights and obligations. The state assumes obligations and the duty under international law to respect and fulfill Human Rights. The Obligation means the state should refrain from interfering with or curtailing the enjoyment of Human Rights. These obligations to respect require the state to protect individuals or groups against human abuses. The obligations to fulfill mean the state must take a positive action to facilitate the enjoyment of basic rights and freedoms. At individual level while one is entitled Human Rights, he or she should respect and promote rights and freedoms of others.

Respect of Human Rights is of essence in a civilized society. The bill of rights is applicable both vertically that is to the state, and horizontally that is in relation to private persons.⁷ This is because the bill of rights in which such rights are usually enshrined is binding as against individuals in their private affairs and also against the three organs of state above the supreme nature of the constitution.⁸

⁷ Ge Devenish, A commentary on the south African bill of rights, Butterworths, 1999 pp 24

⁸ Mutakha Kangu, Lecturer Moi University. The Application and Binding Effect of the Bill of Rights

Police officers have often been accused of perpetrating killings with impunity and making arrests without reasonable grounds thereby violating freedoms and rights of individuals. Such actions lead to an inevitable public perception that the police force is part of the problem of rising insecurity rather than part of the solution.

The Constitution of the Republic of Uganda, 1995 Under **Article 44** clearly states certain rights and freedoms that certain are inherent and non-derogable and these include; freedom from torture and cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; the right to fair hearing; the right to an order of habeas corpus.

Article 23 of The Constitution of the Republic of Uganda 1995 provides for the protection of the personal liberty of Individuals. Limitation of that right can however be effected by arrest where a person is reasonably suspected of criminal liability or possibility of committing a criminal offence under the laws of Uganda. **Section 2 of the Criminal Procedure Code Act 116** clearly indicates that an arrest involves the restraining the freedom of movement of a person.

In effecting the limitations to rights of individuals, 'a person arrested shall not be subjected to more restraint than is necessary to prevent his escape' as provided for under **Section 5 Criminal Procedure Code Act cap 116**.

On a large scale, when dealing with suspects, the police have always gone beyond what is reasonably necessary to arrest, detain, and acquire evidence from suspects. At times arrests and shootings by the police are made without sufficient grounds to do so therefore infringing the rights of individuals without good and justifiable cause.

A 2 year old baby in 2012, for instance was shot dead by police when KCCA was displacing people from its premises or quarters. This was in the process of evacuating people who had resist to vacate the quarters and police opened fire. The mother of the child sued government and in response, the Inspector General of Police, Gen. Kale Kayihura condemned the act and promises the matter to be settled.

This seeks to identify the place to draw the line between ensuring protection of rights of the public by commencing a procedure to ensure punishment of the offenders and the protection of

the innocent. This is only possible by following the correct procedure in the arrest and prosecution of suspects, ensuring a fair trial under **Articles 28 and 44 of the Constitution of the Republic of Uganda 1995**.

The right and freedoms guaranteed under the Constitution are not of an absolute nature. Most of the rights have exceptional clauses that allow limitation on reasonable suspicion of the commission of an offence. Arrest can be effected both by the police and citizens of a particular state. It is usually the police who arrest suspects. The police officers should only effect arrest on reasonable grounds and by use of reasonable force.

In **O'Hara v Chief Constable of the RUC**⁹ it was held that, for a police officer to have reasonable grounds to effect an arrest, the question is whether a reasonable person would be of that opinion, having regard to the information which the arresting officer was in possession of. The test is partly objective. Any Information acted on by the police officer does not necessarily need to be based on his own observations; rather he is entitled to form an assumption on the basis of what he has been told.

The test is compatible with **Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms** with regard to the right to liberty which though not applicable in Uganda states as follows;

“Everyone has the right to liberty and security of person...”

Uganda is not a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and therefore has not yet ratified to it.

1.2 Statement of the problem

The overall research problem addressed in the study is on the requisite due to process owed to persons by police officers while performing their duty and the observance of Human Rights. The research focuses on enforcement and protection of fundamental rights of persons and the violation of the same by the police by using unnecessary force while effecting arrest. The main

⁹ (1997) AC 286

issue is, what happens when excessive force has been used while arresting? Should the police be answerable or should the courts acquit the arrestee or should the court issue a warrant against the police? Also the research will probe into the knowledge gap among the people, the availability of such information and the role of the police in ensuring arrest or carrying out their duties while at the same time ensuring protection of human rights

1.3 Objectives of the study

The objectives of the study are to critically evaluate the adherence or non-adherence to due processes of law in regard to police in violation of human rights.

The research will also endeavor to probe on the practice in regard to use of force as a violation of Human Rights.

To evaluate the limitation of power of police by way of legislation.

The research is also aimed at providing appropriate remedies and recommendations on when, how and what should be done prior to the violation of Human Rights.

1.4 Research questions

The study is intended to evaluate the following questions;

- I. What are the possible violations of Human Rights that police commits during the scope of their duties and activities?
- II. Do the Constitutional provisions require a person to be informed of his or her rights when police are carrying out their duties and activities?
- III. Do the police forces intentionally neglect to inform the suspects of their Human Rights and why they are being curtailed or violated?
- IV. To what extent are the rules and procedures observed by the police in carrying out their duties in Kampala district?
- V. What are the challenges of ensuring the observance of rules and procedures by Police in carrying out their duties?

- VI. What amounts to use of excessive force by Police when carrying out its duties thus constituting a violation of human rights?
- VII. Is the public aware of their rights provided by the law? If not, what possible procedures are there to educate them on their rights and freedoms?

1.5 Significance of the study

The purpose of the study is to evaluate the extent to which people's rights are violated by Police in various ways or aspects in Kampala district. This area was selected as being representative of how violations of Human Rights are done by Police in Uganda. It is also concerned with intention to elaborate on Human Rights bodies as far as Human Rights are violated by Police and the remedies available. Apart from being a source of intellectual growth to the researcher, it is also a topic that holds great interest and it is also centered in the avenue that will be explored later in the professional life of the researcher.

1.6 Scope of the study

The study was carried out in Kampala district as one of the 112 districts in Uganda as well as the capital city of Uganda. Kampala district is located in central Uganda. The boundaries of Kampala District are Mukono district in eastern, Luwero district north-eastern, Entebbe district south western, Wakiso in the North and North-western and Lake Victoria in the south. The study is carried out in a number of areas of Kampala including Nsambya Youth Sharing Centre, Kasangati, Makerere University, Nakivubo, Kyambogo University, Kisekka market, Nakasero market, City Centre and Old Taxi Park. These areas were chosen because they are where Human Rights violations are perceived to be rampant according to the reports of various Human Rights activists. These areas are also accessible to a researcher, so the cost of research would be minimized; some of these areas are located in the outskirts of Kampala city Centre.

The study is aimed at evaluating the Human Rights violations by police, assessing the rate at which it is increasing or reducing and suggest solutions against the said violations.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter examines some of the existing literature relating to police violations of Human Rights. It is based on assessment of various scholars, researchers and Human Rights activists who have studied this problem before and analyzed the accuracy and applicability of the findings, pointing out strong points that need emphasis and weak points which need to be revisited. The relevance of such existing literature will be critiqued to point out the gaps and emphasize how present research will contribute towards addressing them.

It is vital for the researcher to stress that due to the unfamiliarity and sporadic nature of the topic, there is an immense shortage of relevant literature in regard to the topic.

While a lot is written about violations by police, both within and outside Uganda, it is noted that there is no specific research done in Kampala district. This research will then look at selected writers on Human Rights violations by Police.

It is imperative that before getting into critiquing the relevant literature that an outlook of what is actually provided by the law be expounded first. The **Constitution of the Republic of Uganda 1995** stipulates that every person has the right to freedom and security which includes the right not to be subjected to torture in any manner whether physical or psychological. The same law goes on to stipulate under **Article 20 of the Constitution of the Republic of Uganda 1995** that every person has an inherent duty and the right to have their dignity respected and protected. **Article 23** stipulates that a person, who is detained, held in custody or imprisoned under the law, retains all the rights and freedoms under **Chapter 4 of the Constitution of Republic of Uganda 1995**.

Radically, different definitions and interpretations of Human Rights have been proposed and each claims the banner of Human Rights. Some definitions view rights as divine, moral or legal entitlements; this is in accordance with the jurist in the natural school of jurisprudence called Thomas Aquinas. The rights also have been viewed as validated by intuition, customs according

to Professor Von Savigny. The social contract theory as propounded by Roscoe Pound also recognizes Human Rights as rights for social control of the society and the principle of distributive justice by Aristotle is a prerequisite for happiness. These definitions are to whether Human Rights are to be broad or limited in number and content.

The rights have been described as fundamental rights, freedoms and protections. They are fundamental in the sense that society can hardly be conceived without them. Moreover the rights are seen to be the absolute minimum of rights, freedoms and protection the citizens must enjoy for a state or society to be a democratic one.

It has been noted by **Luis Hankins** in his book **The Age of Rights**¹⁰ that Human Rights are claims upon society. The claim may be derived from the moral principles governing relationship between persons but it is society that bears the obligation to satisfy these claims.

Individuals and the government are prevented from doing certain things against others and groups of citizens. Even the states enormous power is to ensure respect of Human Rights. The state may rightfully do or omit to do certain things in derogation of Human Rights and freedoms.

Civil liberties and political liberties are the core upon which all other rights are built. In light of the current uses of the concept of Human Rights, recognition has been made to the fact that the term seems to be fulfilling twofold though consistent functions.

Universal Declaration on Human Rights

The phrase Universal Human Rights was used to assert that universal norms of ancient ideals of universal justice and in medieval notions of natural law. On the other hand, the idea of Human Rights is used to affirm that all individuals, solely by reason of being human, have moral rights which no society or state should deny. This idea has its classic source in the seventeenth and eighteenth century theories of natural rights.¹¹

¹⁰ Mutaka Karagu, Moi University Lecturer, in a paper Basic Concepts of Human Rights

¹¹ Sidorsky, Contemporary Reinterpretation of the Concept of Human Rights (1979)

The earliest rules about standards of behavior among people prescribed or prohibited conduct that experience had proved was likely to lead to conflict. Great law makers including the major religions of the world such as Judaism, Hinduism, Christianity and Islam have all sought to establish comprehensive, coherent morals codes of conduct, and schemes of rights and duties.¹²

International instruments have made great contributions in the definition, recognition and enforcements of rights. **The Universal Declaration of Human Rights**¹³ was one of the first resolutions adopted by the **United Nations General Assembly in 1948**; though not binding in itself, the declaration was a universal standard of the achievement.

The preamble recognizes the inherent dignity and equal inalienable rights of members of Human family as a foundation of freedom, justice and peace in the world.

Article 1 of the UDHR provides that human beings are born free and equal in dignity and rights and are endowed with reason and conscience and should act towards another in the spirit of brotherhood.

Article 2 of the Universal Declaration of Human Rights provides that every person is entitled to these rights without distinction of any kind such as sex, race, colour, language, political or opinion, national or social origin, religion and culture.

Article 3 of the UDHR provides that everyone has a right to life and security of a person.

Article 4 further provides for freedom from slavery and servitude.

Article 5 provides for freedom from torture, cruel, inhuman or degrading treatment or punishment.

Article 6 provides for the right of equality before the law and article 10 provides for a right to a fair hearing.

¹² Moira Rayner, in his article History Of Universal Human Rights

¹³ International law and world order problems

Article 15 provides for the right to nationality, **articles 17 and 18** provides for the right to freedom of association, freedom of thought, conscience, religion, freedom of opinion and expression.

Article 20 further provides for the right to peaceful assembly.

It has maintained its place of honor in the Human Rights involvement. It's expressed in lean, eloquent language, the hopes and idealism of a world released from the grip of World War II. It has proceeded to work its subversive path through many rooted in doctrines of international law.¹⁴ Uganda ratified the **Universal Declaration of Human Rights on 20th July, 1998**.

International Covenant on Civil and Political Rights (ICCPR)

The other principal treaties are the International Covenant on Civil and Political Rights (ICCPR)¹⁵ and The International Covenant on Economic, Social and Cultural Rights (ICESCR) which made their ways through the drafting and amendment process in the Commission, the third committee and the General Assembly approved it only in 1966. The ICCPR was adopted by the United Nations General Assembly and was drafted in 1954; it became effective in March 1976. It has 74 signatories and 168 parties.

Part one (**Article 1**) recognizes the right of all people to self-determination.

Part two (**Articles 2-5**) obliges all parties to legislate where necessary to give effect to the rights recognized by the Covenant and provide effective legal remedy for any violation of these rights. It requires that the rights be recognized without discrimination of any kind such as colour, sex, language, religion, political opinion, nation or social origin, property, birth other status and ensure that these rights are enjoyed equally.

Part three (**Article 6, 7-11**) provides for procedural fairness in law in form of right to due process a fair hearing and impartial trial, the right to the presumption of the innocence (**Articles 14-16**) individual liberty in form of freedom of movement, thought or conscience, religion, speech,

¹⁴ Henry J. Steiner and Philip Alston, International Human Rights in Context, second editions (2000) Oxford University Press (2000) pp 45

¹⁵ A Convention that was adopted by the United Nations in the year 1966

association and assembly, Family rights, nationality rights and right to privacy (Articles 12, 13, 17 and 24).

Part five provides for inherent rights of people.

Uganda ratified the ICCPR on 21st June, 1995 and it came into force on 21st September, 1995. The ICCPR is monitored by the United Nations Human Rights Committee which is the separate body of the United Nations Human Rights Council.

International Convention on Economic, Social and Cultural Rights (ICESCR)

The International Convention on Economic, Social and Cultural Rights is another covenant that is aimed at protecting those rights. **Article 1 of the ICESCR** provides for the right self-determination, It also provides under **Article 5** provides that states should take reasonable steps including legislative steps to prohibit abuses. The ICESCR is also supplemented by optional protocols adopted in December 10th 2008 and another was on 5th May, 2013. Uganda ratified the ICESCR in 1987 and has not reported until now.

The African Charter on Human and People's Rights

The African Charter on Human and People's Rights was adopted by Uganda on 27th July, 1981 and entered into force on 21st October, 1986. It is a fundamental regional instrument in the promotion and protection of Human Rights and has its Headquarters in Banjul, Gambia.

The African Charter on Human and Peoples Rights recognizes and provides for protection and promotion of Human Rights. Under **Article 1 of the Charter**, it's provided that a state shall take legislative measures to incorporate and observe the provisions of the Charter.

Article 2 of the African Charter on Human and Peoples Rights provides that Human Rights shall be enjoyed without distinction, race, colour, origin, sex, political, religious, social, nation and other statuses.

Article 3 of the African Charter on Human and Peoples Rights provides for equality before the law and it states that every person must be equal before the law and must have equal protection of the law.

Article 4 provides that every person must have respect for life and integrity of his person.

Article 5 of African Charter on Human and Peoples Rights provides for respect for human dignity, inherent in human beings and recognition of legal status that is cruel, torture, inhumane degrading treatment or punishment.

Article 6 of African Charter on Human and Peoples Rights provides for liberty and security of persons.

Article 7 provides for the right for the fair hearing and the right to appeal to a competent regional organ against acts of violation of Human Rights as recognized and guaranteed under Conventions, Laws, regulations and customs in force.

Article 8 of African Charter on Human and Peoples Rights empowers every person to practice a religion of his/her choice and further provides that such person shall not be subjected to the law and order restricting his or her freedoms.

Convention on Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) is an international instrument that protects rights of women against discrimination. In 1985, Uganda committed itself to the CEDAW with any reservation and has been an active participant in international conference on women.¹⁶

Article 2 of the CEDAW provides that the state parties should condemn discrimination against women in all forms and agree to pursue all appropriate means and without delay, a policy of elimination of discrimination against women and to this end undertake to embody the principles

¹⁶Ssonko M. Sisterhood Advocacy by Gender focused Non-Government Organization and reality for women at grass root in Uganda

of equality of men and women. Legislative measures including sanction, legal protection, refrain from discrimination, eliminate it and repeal all national discriminations.

International Convention against Torture, Cruel, Inhuman degrading Treatment or Punishment

The International Convention against Torture, Cruel, Inhuman degrading Treatment or Punishment. This was adopted by Uganda on 10th December, 1994. Article 1 defines what torture means and provides that torture is any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for purposes of obtaining a confession or evidence from the suspect having committed an offense.

Article 2 of International Convention against Torture, Cruel, Inhuman Degrading treatment or Punishment provides that states shall take effective, legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever the state of war, threat of war, international political instabilities or any other public emergency maybe invoked for justification of torture. An order from the superior officer or public authority may not be invoked as a justification for torture.

Article 4 states that state parties should ensure that the acts of torture are offences under criminal law.

Article 3 of International Convention against Torture, Cruel, Inhuman Degrading treatment or Punishment provides for non-extradition of an offender with the view to torture him.

Article 10 states that each state party shall ensure training of law enforcement officers, military, personnel, medical public officers and other persons who may be involved in the custody of the law.

The United Nations Charter

The United Nations Charter was drafted by the General Assembly at its headquarters in New York (USA) on 19th August, 1941 and most countries in the world have ratified it. The UN Charter has 197 parties, (196 and one regional economic integration organization to the UN

framework convention on climate change).Uganda became a party to the United Nations Charter, signed and ratified in December 1982.

The abuse of Human Rights is not a recent phenomenon. It stems from the feudal society system; a period during which only the rulers, clergy and the nobility had rights. The merchants, peasants and artisans had only burdens and duties; however the proceeding ages of fundamental rights and the introduction of early bills of rights saw a move towards the enforcement of rights and freedoms of individuals for everyone.

A state and its organs are restrained from invading into individual's rights. The most important questions that arise are where the police as agents of the state need to draw the line in ensuring protection of society against criminal offenders. Regard should be taken to the major issue of insecurity and the importance of reduction in crime rate. However the abuse of Human Rights cannot be condoned in a civil and democratic society.

In the case of **Salvatori Abuki and Another v Attorney General (Constitutional Case No. 2 of 1997)**) [1997] UGCC 5 (13 June 1997) the right to life was regarded as very important and banishing the accused from his home for witchcraft was a denial of right to life.

The Public Order Management Act of 2013 is an indication of violation of people's right to Assembly and Association under **Article 29 of the 1995 Constitution of the Republic of Uganda**. In the case of **Foundation for Human Rights Initiative, Legal Aid, Human Rights Network (HURINET) and others v Attorney General (2013-14)** challenged the legality and constitutionality of the Public Order Management Act and its applicability.

On many occasions, Rtd. Col. Dr. Kizza Besigye and other opposition political heads or leaders have been brutally tortured on political grounds with the view of curtailing their rights to Assembly and Association with others thus violation of Human Rights of individuals.

According Black Monday, local newspaper publishers have reported many instances where police have violated the rights of people. At Sharing Youth Centre in Nsambya, area of Kampala while the youths were demonstrating and heading to American Embassy in a peaceful demonstration, they were intervened by Police and a journalist was beaten, his head was pulled

down on the gravel by around 4 police officers in the name of enforcing and containing the riot and this incident led to the transfer of DPC of Kabalagala Police station.

The DPC of Old Kampala police post, Afande Mwesige slapped a journalist in early August 2015 according to Red Pepper of August 2015 thus violating Human Rights of individuals. In Kisekka market, police have always deployed heavily to obstruct activities of those motor engineers and opposition politicians from conducting political rallies and assemblies thus violating the right to assembly and association under Article 29 of the Constitution of the Republic of Uganda, 1995.

In 2013, a staunch FDC woman leader Ingrid Turinawe was brutally deprived of her rights of privacy granted under **Article 27 of the Constitution laws of Uganda** was when her breasts were grabbed by one of the police officers in a bid to evacuate and stop a rally from going ahead.

In 2009, the Kabaka of Buganda's visit to Bugerere in Kayunga district, one of his areas of responsibility as a king was blocked by government and police as its organ which enforces the law. This was a violation of human rights and resulted into massive injuries and damage to property.

On many occasions during the past 18th February, 2016 presidential and parliamentary elections, the police interfered with the rights of the individuals including Rtd. Col. Dr. Kizza Besigye who was arrested on several occasions and detained at Naggalama post station and worse still put under house arrest at his home in Kasangati by Police hence violating his rights as a citizen. Many other opposition leaders in the same manner for example Ssemuju Nganda, Betty Namboze, Wafula Oguttu were detained under home arrest by police as the law enforcement agency in the view of enforcing criminal justice in Uganda and in particular Kampala. In doing so, police violated the rights of the people and yet it's supposed to be the custodian of these rights and the law as well.

At Makerere University, there have been various violations of Human Rights by police in the name of the state where they have administered tear-gas and beatings and canings of citizens including the University students during peaceful demonstrations.

At Nakivubo specifically Nakivubo stadium, police have halted very many gatherings including former Uganda's Premier, Amama Mbabazi, Rtd Col. Dr. Kizza Besigye with the suspicion that they will interfere with public order, security and peace thus violation of Human Rights by police.

In a South African case of **Mukwenyene v Attorney General (1978)**, the president of South Africa De Clerk observed the right to life and stated that it is unlawful and inhumane to take away the life of another person in cold blood with the view of criminal justice. Therefore, the above case serves to explain that rights of individuals must be protected and where police as a law enforcement organ of the state fails to administer their obligations, they should be held accountable for violation of Human Rights.

In march 2012, the Assistant Inspector of Police, John Michael Ariong was killed by angry civilians in Kampala, the Inspector General of Police, Gen. Kale Kayihura issued a directive/ command of "shoot to kill" in case the rioters turned against police. The public, the civil society and the opposition political parties condemned this directive and regarded it as a violation of people's rights since the laws cannot be taken in the hands of police moreover they are the custodians of the law.

In January 20th 2014, a police officer killed Rashid Ntale, a seventh day grade pupil whom they fired live bullets to stop the students' riot in Bugembe stadium in Jinja district.

On May 8th 2014, the authorities arrested two police officers for shooting and injuring Richard Ojulo, a suspected robber in Tororo district. These police officers were charged with attempted murder.

In Mityana district, police officer was alleged to have killed a one, Anatoli Kitembo as a result of **torture**.

The Independence Medico Legal Unit (ILMU), a Human Rights Non-Governmental Organization, reported that police officers killed 146 people in Kenya in 2005. Allegedly the killings were unlawful rights' violations which took place in police custody and showed evidence of torture.

According to Daily Monitor of 10th April, 2014, the UHRC (Uganda Human Rights Commission) report noted that police racked a number of violations against citizens of Uganda. Police has caused a lot of brutalities to individuals. Brutality is usually on two levels. First during arrest, secondly during detention where the police officers focus on extraction of information and confessions from suspects, by way of inflicting torture.

There has been rise in shooting and killing of suspects by police and resulting into threats of the masses especially after citizens' outcry of great need for security in Uganda. Such acts of police are performed with disregard to fundamental rights and freedoms of individuals which are clearly listed and elaborated in the Constitution.

Police officers are deemed qualified enough to act reasonably in the exercise of their duty to protect the public. They should be careful in ensuring that the balance between protection of the innocent and dealing with the guilty is maintained.

The Uganda Police Report on Human Practices that was released by the Bureau of Democracy Human Rights and Labour on March 8, 2006 reflected that disregard of fundamental rights is also prevalent in neighboring countries for example Kenya, Tanzania, Rwanda, Burundi and south Sudan.

Some of the issues identified include unlawful killings by police, police beatings and torture of detainees, arbitrary arrest and detention, and prolonged pretrial detention.

Cass Sunstein, Rights and their critics¹⁷ has mentioned six different categories of charges against rights. Including the rigidity of rights, and rights require responsibility. Rights have been viewed as rigid by having a strident and absolutist character thereby impoverishing political discourse. They do not leave room for competing considerations.

¹⁷ 70 Notre Dame L.E:v.727(1995), at 730

With regard to rights and responsibility, it's been argued that people insist on their rights too infrequently, they became dependent on the official institutions charged with safeguarding rights.¹⁸

Certain rights have been expressly guaranteed in various constitutions in various ways including The Constitution of The Republic of Uganda, 1995. Among them include the Civil and Political Rights that prohibit the state from invading individuals' freedom especially those of a suspect in criminal law.

The rights are not absolute in nature and must be adopted to meet the state's interests in protection of public safety, order and morals or national security.¹⁹ The ICCPR contains Articles that can be described as limitation clauses. In **Articles 21 and 22**, the limitation is phrased in terms of permitting restrictions on a right 'which are necessary in a democratic society.' **Article 29(2)** of the Universal Declaration of Human Rights has a broad provision that is not linked to a specific right which states as follows;

"in the exercise of these rights and freedoms, everyone shall be subject only to such limitation as determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare of a democratic society."

A fair trial should be accorded to every individual regardless of the offence of which he is suspected of having committed. It should be done by an independent and impartial court that is established by the law within reasonable time as per **Article 28 of the Constitution of the Republic of Uganda 1995**.

Uganda's legal system has evolved from the inheritance of the English Common Law tradition. The courts adhere to the principle of stare decisis, and like other common law countries, the legal

¹⁸ Henry Steiner, 'Securing Human Rights: The First Half-Century of the Universal Declaration, And Beyond', Harvard Magazine. September-October 1998.

¹⁹ Henry J. Steiner and Philip Alston, International Human Rights in Context, second editions (2000) Oxford University Press (2000) pp 144

system is adversarial in its procedure.²⁰ Theoretically, the suspect is presumed innocent until proven guilty. The presumption of innocence rule is also enshrined under **Article 28(3) (a) of the Constitution of the Republic of Uganda 1995**. In practice however, the burden of proof is often placed on the defendant.

The treatment accorded to suspects should therefore reflect the element of innocence rather than vindictive treatment by way of unnecessary harassment and brutality. Accused persons are entitled to an opportunity to defend themselves. It is done by informing them in detail and in a language by which they understand, the offence of which they are charged and be provided with adequate facilities to aid in the preparation of a defence.

An indigent person also has the right to be assigned criminal assistance in a criminal case as per **Article 14(3) (c) of the ICCPR**. The Convention highlights many rights like its forerunner the UDHR though in considerably greater details. The requirements of criminal trials are more expounded wider under **Articles 14 and 15 of the Convention** as compared to the analogous provisions in **Articles 10 and 11 of the UDHR**.

Historically, the right to life has been viewed as the most fundamental of the Human Rights and freedoms.²¹ Regrettably, in Uganda though the right is provided for, it can be derogated in the execution of a sentence of the court with respect to a criminal offence as provided for under **Article 22 of the Constitution of the Republic Uganda 1995**. Subsection (2) further states that;

“No person has the right to terminate the life of an unborn child except as authorized by law”

Death can be imposed when a person is convicted of crimes such as murder, treason, robbery with violence, attempted robbery with violence and aggravated defilement. Through the death penalty, the court can effectively, lawfully and constitutionally terminate the individual's right to life.

²⁰Obi N.J. Ebbe, World Fact book of Criminal Justice Systems Uganda, prepared from the Bureau of Justice statistics to the State University of New York (1993)

²¹ Kivutha Kibwana, You and the law, Fundamental Rights and Freedoms Kenya, 1990 Oxford University press.

Even with a defective Constitution, the few rights provided for are not effectively enforced. The state has distanced itself from the unlawful police activities including shootings and tortures by which lives are threatened and at times taken. Since the police act on behalf of the state, it should be held liable on the acts of the police.²² Any person found to be personally liable should also be charged with murder in case of death or with other offences under the Penal Code Act cap 120.

The term 'torture' is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such a purpose like that of obtaining from the accused a confession, punishing him for an act he has committed or is suspected of having committed.²³

Every individual is entitled to physical integrity. **The Constitution of the Republic of Uganda 1995** under **Article 24** provides that:

"No person shall be subject to torture or cruel, inhuman or degrading punishment or other treatment"

Under Customary International Law, the prohibition of torture is jus cogens a peremptory²⁴ norm that is non-derogable under the circumstances. It is binding on all nations. This elevated status within international law places torture at par with slavery and servitude under **Article 25 of the Constitution of the Republic of Uganda 1995**.

Nevertheless without agreement as to how torture can be distinguished from other permissible acts, the import of this special status is severely diminished.²⁵

For example in 1999 the Israeli Supreme Court issued a pivotal decision, **Public Committee against Torture in Israel v Israel**,²⁶ declaring a number of interrogation techniques to be illegal. The court studiously avoided calling these techniques torture. In fact the word torture did not seem to appear anywhere in its opinion.

²² In *Coker V. Georgia* it was held that if capital punishment did not control crime through incapacitation of the Criminal, beyond what can be achieved by life imprisonment — it would be 'nothing more than the purposeless and heedless imposition of pain and suffering; and thus as unconstitutional punishment'.

²³ Convention Against Torture and Other Cruel, Inhuman Treatment or Punishment

²⁴ Article 53 of the Vienna Convention on the Law of Treaties

²⁵ Gail H. Miller, *Defining Torture* Floersheimer Center for Democracy 2005 pp 3

²⁶ *Israel V Israel* 38 L.L.M. 147, HCJ 5100/94(1999)

Those techniques included subjecting individuals under interrogation to shaking, crouching, and cuffing with particularly small hand and ankle cuff. The most outstanding however was the 'shabach' method that included seating in a low chair, tilted forward in addition to covering the head with an opaque sack and powerfully loud music playing.

The court instead evaluated certain techniques and then summarily proclaimed each to be unlawful. The avoidance of labeling the illegal acts as torture illustrates the power attached to the term. Courts avoid using the term and governments do not want to be guilty of torture.

The court simply provided concluding statements in analyzing the methods such as;

"It harms the suspect's body, surpasses that which is necessary (and) does not serve any purpose inherent to interrogation....it is degrading and infringes upon an individual's human dignity..., it degrades him....causes the suffering....they impinge upon the suspect's dignity, his basic rights in an excessive manner(or beyond what is necessary)"²⁷

State functionaries for example the police should not breach **Article 24 of Constitution of the Republic of Uganda 1995** even where such action is likely to induce confessions, in circumstances where such action leads to death then the perpetrator is guilty of both torture and occasioning death. The government should proceed firmly against police officers found guilty of occasioning torture against suspects.²⁸ It's the duty of the government to ensure that police personnel get the message that torture as a peculiarity must be avoided.

The situation in the country has greatly been improved by the of **Section 24 of the Evidence Act**²⁹ a confession made by the accused person is irrelevant if the making of the confession appears to court having regard to the state of mind of the accused person and to all circumstances to have been caused by violence, force, threats, inducement or promise calculated in the opinion of the court to cause untrue confession to be made. **Section 26 of the Evidence Act Cap 6** provides that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under promise of secrecy or in consequence of deception practiced on the

²⁷ Public Committee Against Torture in Israel, at pp 24-30

²⁸ Supra note 30

²⁹ Cap 6 of the laws of Uganda

accused person for the purpose of obtaining it or when he or she is drunk or because it was made to answer questions which he or she was not made to answer.

However, it was virtually impossible for the accused to effectively present and prove before court that the evidence being presented before the court was reached by way occasioning pain and suffering to him. This partly contributed to the ignorance of the accused regarding the issue. Even when accused person was aware or represented by counsel, it is difficult to prove beyond doubt that the accused had been induced in an acceptable and unconstitutional manner to make a confession which was probably by force and made only to avoid further suffering.

Currently however, confessions or admissions of fact tending to the proof of guilt are generally inadmissible and cannot be proved as against such person unless made in court.³⁰

To enhance Respect for Human Rights, more needs to be done especially with reference to the enforcement of laws that curtail such rights. Recognition has been made under international law.

The African Charter on Human and People's rights under **Article 5** provides for the rights in the following words;

"Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status; all forms of exploitation and degradation of man particularly slavery, servitude, torture, cruel and inhuman or degradation punishment and treatment shall be prohibited."

Similar provisions have been made under **Article 7 of the International Convention on Civil and Political Rights** emphasizing the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment.

States should undertake to ensure that effective legislative, administrative and judicial measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances may be invoked as a justification for torture. Excuses such as the state being at war, threat of war or armed conflict; any other public emergencies are not acceptable. An order from superior

³⁰ Section 24 of the Evidence Act, Cap6 of the laws of Uganda

police officers or public authority may also not be involved as a justification.³¹ At the **United States Military Tribunal at Nuremberg, United States v. Wilhelm von Leeb et al. (1948) 11 TWC 462**³² the high ranking German soldiers were accused of violating the rules and customs of war during World War II. They pleaded the defence of acting under the command of the superior. The court held that the defence was inadmissible if the soldiers knew the acts were unlawful. This defence can only be admitted if the soldiers didn't know that acts were unlawful.

These reaffirm the importance universal recognition placed upon the right against torture by state and its organs like the Police.

Liberty oriented rights ensure an individual is physically unrestrained and therefore able to do the things that he chooses to do. **Article 23³³ of the Constitution of the Republic of Uganda 1995** attempted to ensure that an individual's right to liberty is not curtailed. Article 23 provides that the state shall ensure access to justice for all persons and it shall be reasonable not to impede access to justice. In other words, under **Article 126 (2)(e) of the Constitution of the Republic of Uganda 1995** provides that substantive justice shall be administered without undue regard to technicalities.

Kivutha Kibwana in his book *Fundamental Rights and Freedoms in Kenya* observes that next to the right to life, liberty is the most-dear to the individual, life devoid of the right to personal liberty borders on meaninglessness.

Under **Article 23(4) of the Constitution of the Republic of Uganda 1995**, it is provided that an offender can only lawfully be held for a maximum of 48 hours before presentation in court, excluding instances of capital offences. The rationale here is that capital offences require more time for investigations.³⁴

³¹ Article 2 of the Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment Entered into force on June 1987, in accordance with its article 27 (1)

³²(1948) 11 TWC 462

³³ The laws of Uganda

³⁴ Supra note (30)

Nevertheless on the ground, suspected offenders are remanded for longer periods of time by police usually under some form of torture. Arrest and detention is at times done not only without a warrant where it is required but in an arbitral manner. Police and prosecutors have resorted to unexplained illegal confinements, extortions to cover up for malpractice.³⁵

Arbitrary arrest and detention, pretrial detention and the use of excessive force constitutionally compromises the right to liberty. Attempts to instigate reforms have been made recently. The problem however persists in the light of recent General Tinyefuza (Sejjusa terror allegations) and the post 2016 elections violence associated with Kizza Besigye in Uganda.

³⁵ Ibid

CHAPTER THREE

METHODOLOGY

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

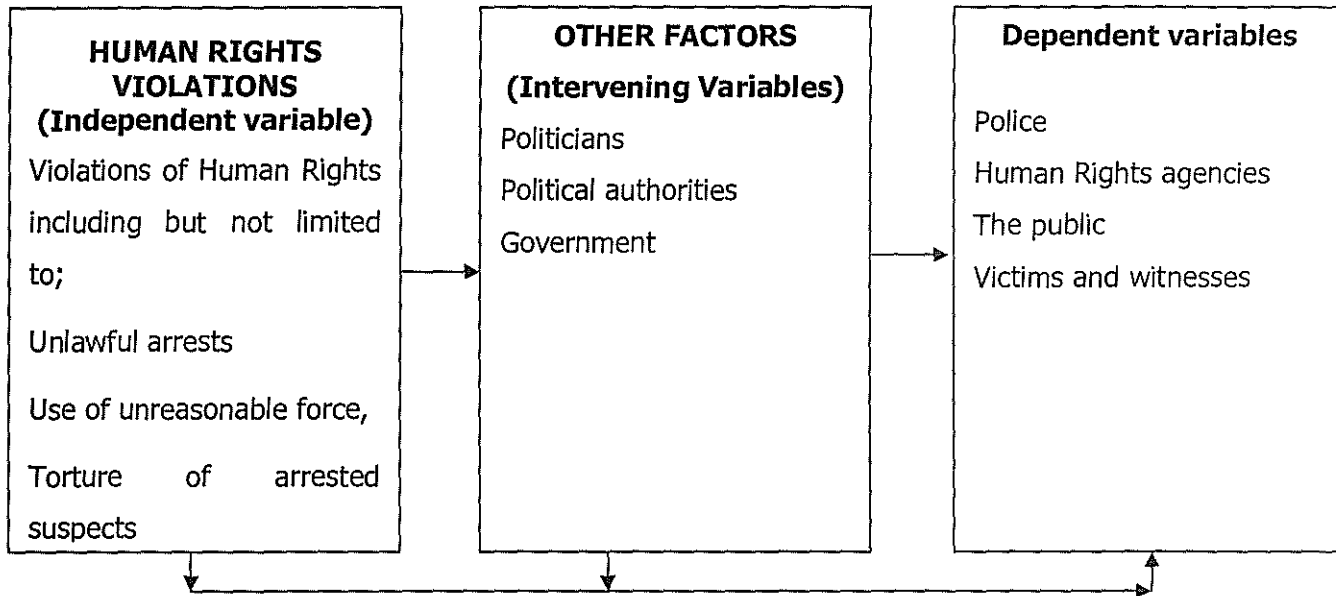
3.0 Introduction.

This chapter discusses the findings of the research based on data collected and analyzed in relation to violation of Human Rights by police in Uganda. As already indicated, particular reference was made to Nsambya Youth Sharing Centre, Kisekka market, Kasangati, Makerere University, Kyambogo University, Nakasero and the City Centre in Kampala district. The findings were sorted and presented based on study objectives. It evaluates aspects of conceptual framework, demographic characteristics (profile) of the respondent and violation of Human Rights in the area in which the research was conducted. It also looks at research design, study population, sampling techniques together with sample size and data analysis methods.

3.1 Conceptual Framework.

For the purpose of understanding the nature of Human Rights violation, different variables were used to spell out the details and the art of investigations. The study was carried out basing on the interrelationships between the variables in the research problem. It explored the connection between the independent variables (which in this case are the Human Rights Violations), dependent variables (The Techniques used to collect data) and other intervening variables. It was a concern of the researcher to conceptualize the human Rights violation at the scene.

Conceptual Framework



SOURCE: Researcher

The above diagram is an illustration of the conceptual framework in Human Rights violation and the theories applicable to them.

3.2 Types of information relevant to violation of Human Rights

It has been argued that that the police officers are supposed to be the custodians of law but the reverse is true or the opposite, for instance moral, illegal business and the notions along the borders are carried on onwards. Police is a real cause of criminality and violation of human rights. Police officials are nothing but a “gang of people.”

Raskin D.C, in his book “Psychological Methods in Criminal Investigation and Evidence,” states that; “The major problem for the police in conducting criminal investigations is determining the utility of the information (evidence) collected. While much information may be discovered or otherwise available to the police, only a small portion of it may be accurate,

complete, and relevant, and hence useful, in establishing the identity (and/or whereabouts) of the culprit.³⁶

This implies that not all types of information are equal in this regard; some types of evidence are usually more useful than others. However, some of the most important types of evidence or information include the following;

3.2.1 Information from Physical Evidence;

Physical evidence is evidence of a tangible nature relating directly to the rights violation. Physical evidence includes such items as photographs, video clips, weapons used by Police officers and those ones killed at the scene or whose rights are violated. Physical evidence is sometimes referred to as forensic or scientific evidence, implying that the evidence must be scientifically analyzed and the results interpreted in order to be useful. Physical evidence can serve at least two important functions in the investigative or judicial process.³⁷

First, physical evidence can help to establish the elements of a human rights violation. For example, pry marks left at the scene (physical evidence) may help to establish the occurrence of a violation. Secondly, physical evidence can associate or link victims to scene of violation, police to crime scenes, victims to victims, instruments to crime scenes, offenders to instruments, and so on. Most forensic or physical evidence submitted for analysis is intended to establish associations of offender with a human rights violation.³⁸ Typically, the identity of the police is developed in some other way and then physical evidence is used to help establish proof of guilt.

3.2.2 Information from people, victims and suspects.

Information from people; another major source of information in a human rights violation by police is people; namely witnesses and suspects or victims. Witnesses can be classified as either primary or secondary. Primary witnesses are individuals who have direct knowledge of the violation because they overheard or observed its occurrence. This classification would include

³⁶ Raskin, D. C. Psychological Methods in Criminal Investigation and Evidence Pg 77

³⁷ Peterson, J L.; "Forensic Evidence and the Police: The Effects of Scientific Evidence on Criminal Investigations". Washington, D.C.: U.S. Department Of Justice, 1984, pg. 118-121

³⁸ Peterson, J L, "Forensic Evidence and the Police: The Effects of Scientific Evidence on Criminal Investigations". Pg.61

violated victims who observed or who were otherwise involved in the human rights violation. Eyewitnesses would also be included here. Secondary witnesses possess information about related events before or after the violation. Informants (or street sources) and victims who did not observe the violation would be best classified as secondary witnesses.

Besides the basic information about the particulars of the human rights violation event and possibly the actions of the perpetrator, another important type of information often provided by witnesses is eyewitness descriptions and identifications. Such information is quite powerful in establishing proof for the police, prosecutor, judge, and jury but the problem is that eyewitness identifications are often quite inaccurate and unreliable (Lotus et al.).

Research has shown that many factors such as environmental conditions, physical and emotional conditions of the observer, expectancies of the observer, perceived significance of the event, and knowledge of the item or person being described can significantly influence the accuracy of eyewitness statements. In this study, the researcher noted that these two categories of witness are not orderly identified by the investigator. For example in Kisekka market, one respondent motor mechanic stated that to him, every person who is conversant with information relating to violation of Human Rights under investigation is a witness.³⁹ This perception affects the evaluation of evidence that may be strongly used in court to convict the police officers.

Interrogations; In contrast to interviews of witnesses, victims are interrogated. Interrogations of victims are often more accusatory in nature. "Usually interrogations are more of a process of testing already developed information than of actually developing information. The ultimate objective in an interrogation is to obtain true information."⁴⁰ For obvious reasons, police officers have great incentive to deceive investigators. Understanding this, there are several tools available to investigators who wish to separate truthful from deceptive information. First is the understanding of kinesics behavior, the use of body movement and posture to convey meanings.⁴¹ Although not admissible in court, information derived from an understanding and interpretation of body language can be quite useful in an investigation. The theory behind the

³⁹ November 8, 2010 10am

⁴⁰ Zutawski and Wcklander "Practical Aspects of Interview and Interrogation" Pg. 89

⁴¹ Walters

study of nonverbal behavior is that lying is stressful and individuals try to cope with this stress through body positioning and movement.

Finally, the general public is a potentially useful source of information in investigations of human rights violations. As defined here, the public consists of people who have information relating to a particular crime or violations but often cannot be identified through traditional methods (like a neighborhood canvass). Nelson says that in case of America, "Crime Solvers (or Crime Stoppers) tip lines and television shows such as 'America's Most Wanted' provide a method of disseminating information and encouraging individuals to come forward with information relating to particular crimes or Human Rights violations."⁴² Although once again, little systematic research has examined the actual effects of such strategies, information that has come from the general public through these sources has led to the solving of many crimes and Human Rights violations by police across the country.⁴³

3.2.3 Eye witness and identification.

The interview carried out with Human Rights violation victims⁴⁴ in Kampala area showed that, the victim was highly intimidated and threatened by the police officers to the extent that he could not manage to identify them despite clear light on the area of violation. On the other hand, the police officers were properly identified by their police attire reported by a man who was found by a researcher reporting a case on the same Human Rights agency premises.⁴⁵

The method used by police in extracting confessions from victims is coercive and illusive that there is a bad attitude. The bad attitude of the community toward police contributes to poor co-operation from the society. Police are considered to have no human feelings and the source of "every evils" that happens.⁴⁶ The truth of this was revealed during research where some of the

⁴² Nelson, Scott A. Crime Time Television. "pg. 1-9.

⁴³ Ibid

⁴⁴ November 15, 2010 11:20pm

⁴⁵ Action Aid November 15, 2010 2:40pm

⁴⁶ Daily monitor 14, 2006 P 12

witnesses and victims were not ready to give their evidence by fear of being suspected to participate in the commission of the abuse of Human Rights.⁴⁷

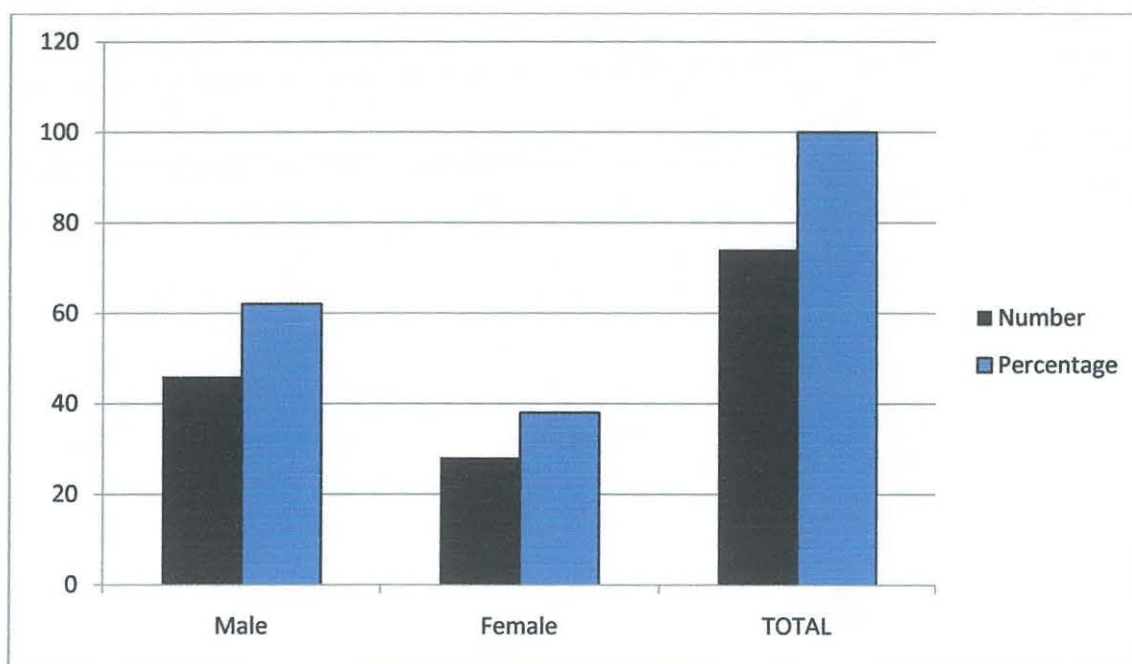
3.3 Demographic Characteristics (Profiles) of Respondents

This presents the classification or categorization of respondents on aspects such as age, sex or gender, in their respective numbers, frequencies and percentages.

The study covered 75 respondents randomly selected for the study. For reasons not known to the researcher, it was established that most respondents in the areas were males, so the number of male respondents was higher than that of females. Of all the respondents studied, 46 (61.3%) were male and 29 (38.7%) were female. Sixty nine (69) questionnaires were distributed to respondents and forty one (41) were filled and returned, which represented 59.4% response from questionnaires. All respondents were able to respond during interviews.

3.3.1 Gender Categories of Respondents

Figure 1: Gender of all respondents



⁴⁷ Suspects interviewed in Action Aid - November 4, 2010

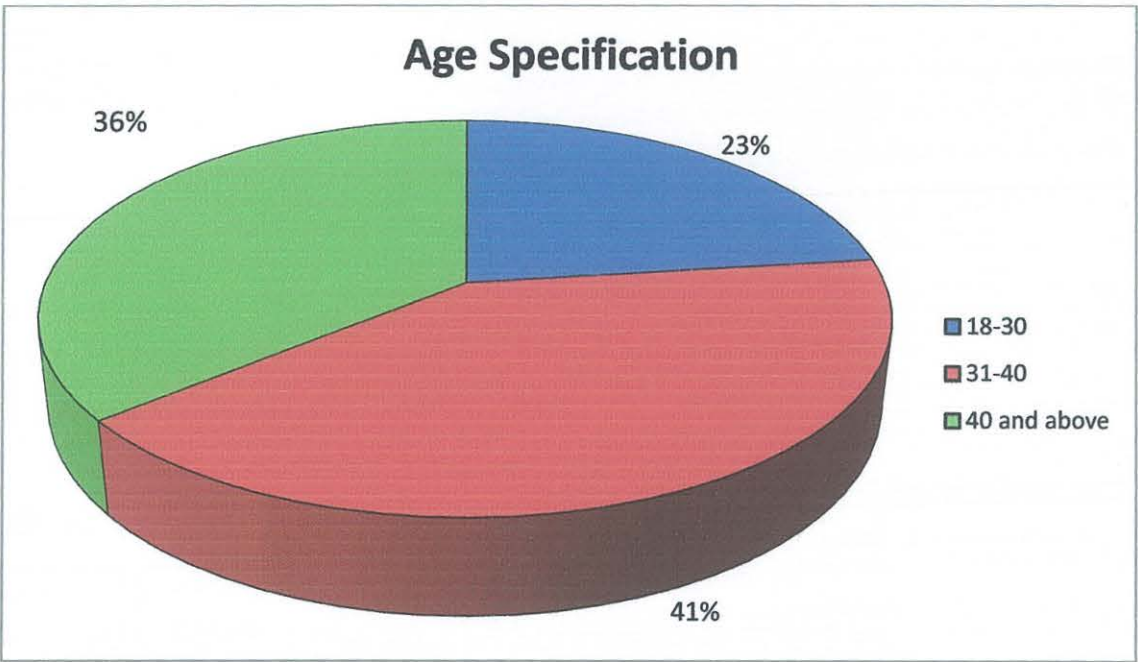
SOURCE: Researcher formulated

The above graph is an illustration of the respondents in this research segregated by gender.

3.3.2 Age Categories of the Respondents.

The age categories of the respondents were divided into three groups, that is; 30 years and below were 31 which represented (41.3%), 31-40 years were 27, representing (36%) and those aged 41yrs and above were 17, representing (22.7%) of the total number of the respondents.

Figure 2: Age specification of respondents



SOURCE: Researcher formulated

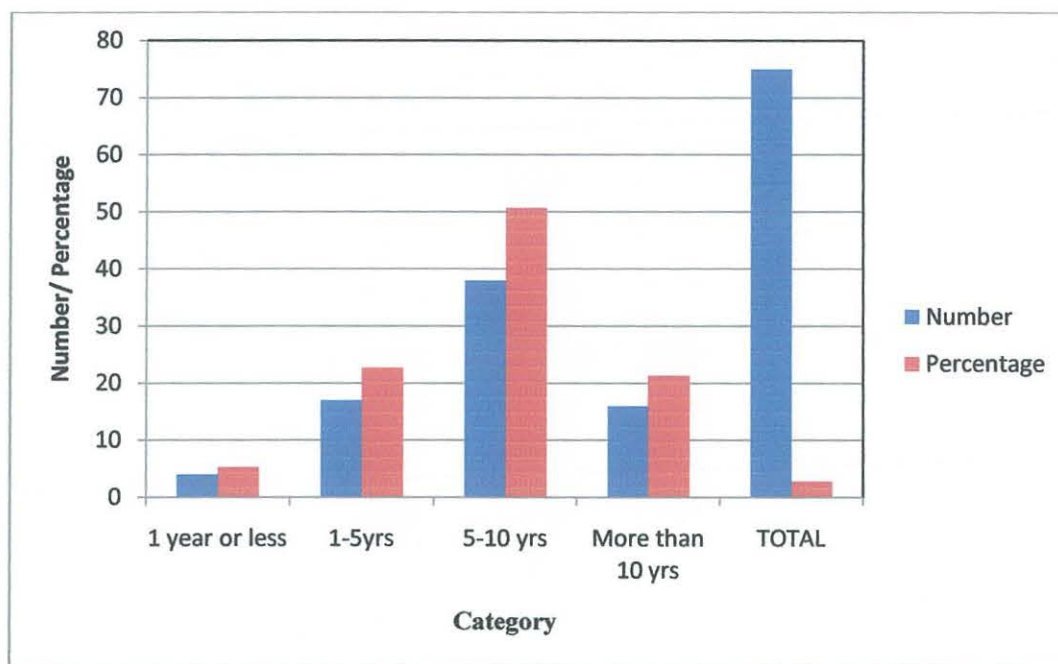
The above graph is an illustration of the respondents segregated by age.

3.3.3 Working Experience of the Respondents

It was also important to analyze the working experience of the respondents in the field of Human Rights violations, and for that matter, the information obtained from the respondents about their working experience is presented in categories as follows; According to the information obtained

from the field, 4 (representing 5.3%) of the respondents had worked in the Human Rights Watch for less than one year, 17 (22.7%) had been there for 1 — 5 years, 38 (50.7%) had been there for 5 — 10 years and the remaining 16 (21.3%) had been there for more than ten years.

Figure 3: Respondents' working experience with Human Rights Watch or Investigations



SOURCE: Researcher formulated

The above graph is an illustration of the working experience of the respondents in Human Rights area.

3.4 Human Rights violation profile of the area of study.

Kisekka market is one of the commercial centers in Kampala city where Human Rights violations by police are noted. According to Kampala Metropolitan Police, report in the Daily Monitor Newspaper⁴⁸ headed that “Central division tops Human Right violation in Kampala”, this is attributed the high population and vigilance of the traders. Another reason according the Lord Mayor of Kampala city is attributed to political reasons coupled with the nature of opposition ideology to the ruling government political party. The Human Rights Report of April-

⁴⁸ The Daily Monitor-Uganda August 12, 2010

04-2012, Kisekka market reported 86 cases of human rights violations ahead of Makerere University with 58 reported cases. This provides the justification as to why this research is based on the Human Rights Violation in Kampala in particular and Uganda as a whole.

3.5 Research Designs

The research took the form of a case study. The reason behind this is that there are Human Rights abuse concerns in the country Uganda and the world in general.

Since it would be very hard, costly, and time consuming to study the whole country, the study of Kampala district was intended to provide information that would be fairly representative of the entire country.

The study was both qualitative and quantitative. The quantitative data was obtained using structured questionnaires from different categories of people such as traders, elders, the youths and human rights activists, while the qualitative data was obtained from key informants through interviews and observations.

3.6 Research Population

The target population in this study was comprised of the victims of Human rights violations, traders, the youths, free lancers on the city streets and forensics department officers. The focus of this study was on the evaluation of police in violation of Human Rights because it is the police charged with duty of ensuring protection of Human Rights.

3.7 Sample Size

Due to the time and financial limitations, the researcher was not able to collect information from all the relevant people in the area of study. A sample was drawn consisting of 75 respondents from all areas of the study. They were chosen because of their vast knowledge of Human Rights violations around these areas, which make them the most relevant informants for the study.

3.8 Sampling Procedure/Techniques.

Purposive sampling was used in selecting the respondents as the areas from which the respondents were drawn. This was because these areas are best suited to provide relevant information on the problem of study. In selecting respondents from these areas, simple random sampling was used. In this method, lists of respondents and victims of the violations were obtained from these areas. Respondents were selected randomly, in a way that gave every respondent an equal chance of being chosen. This was important in helping to minimize bias when choosing the sample.

3.9 Study Instruments/Tools of Data Collection

The main methods of data collection included questionnaires, interviews, observation and library search, internet and newspapers.

3.9.1 Questionnaire

The researcher developed relevant questions and distributed them to selected respondents in the category of the victims; the respondents filled the questionnaires and returned them to the researcher.

3.9.2 Interviews

This involved the use of interview guides. The researcher held interview sessions with various selected respondents, direct questions were asked while recording responses from the respondents.

3.9.3 Observation

The researcher made visual observations of what took place in the area of study. Observations were carried out at the scenes of violation of Human Rights on collection, preservation and evaluation of the evidence. The activities of the subjects following the observation were check-listed against practice lists and any relevant information was recorded.

3.10 Data Control and Measurement.

The research instruments that the researcher used were questionnaires, interview guides and observation checklists developed by the researcher himself. The validity and reliability of these instruments were established by having them reviewed to ensure their effectiveness in the research and that the information they would generate will be appropriate and consistent.

Before proceeding with the study, the researcher also consulted various lecturers at Kampala International University (including his supervisor).

3.11 Data Processing and Analysis.

In analyzing the data, the quantitative data was edited, coded and tabulated manually by the researcher, while the qualitative data was analyzed thematically in numerical format and presented in graphs and charts.

3.12 Ethical considerations

Before carrying out the study, the researcher received permission from relevant authorities and sought the consent of the respondents before any interview was done. The researcher also presented an official letter of introduction/reference from the Faculty of Law of Kampala International University to the relevant authorities requesting them to help him gain access to the relevant information needed for the study. All respondents were assured that the data was for academic purposes only.

3.13 Study Limitations

In the course of carrying out the study, the researcher encountered the following limitations:

Official documents; one of the most important methods of data collection was literature search; this involved examining available documents. This method is however, not easily accessible because most of these documents are classified as confidential for example police investigations and not open to public examination.

Stationary and typesetting expenses; the researcher was limited by financial constraints. This is because many people (respondents) expected to be paid in exchange for their information. Yet this being an academic research, it was not affordable to the researcher. It affected the researcher in the collection of adequate information and also failed to reach remote areas of Kampala district, which were resourceful for this research.

Time limitations; Scheduling problems affected the researcher's ability to gather relevant information. Since all key respondents are always busy with their jobs, it was quite difficult to make appropriate schedules for proper information gathering.

Despite the above mentioned limitations, the researcher was able to get enough data to successfully complete the research. The findings of this study are reflected in the subsequent chapters of the report.

CHAPTER FOUR

STRUCTURE AND PRACTICES

THE UGANDA POLICE FORCE

4.0 Introduction

In Uganda, the origin of the Police is traced back to 1899 where the two prominent kingdoms that is; Bunyoro and Buganda Kingdoms had warriors to protect their boundaries. Buganda kingdom used its policing structure and the army/warriors to protect itself against her traditional enemy, Bunyoro kingdom. This policing structure was also used by the British Protectorate to extend its administration in other parts of Uganda. In 1900, Sir Harry Johnston increased the number of the Police in order to effectively control the whole protectorate. On 25th May, 1906 Capt. F. W. S Edward arrived in Uganda and became the first Inspector General of Police. In 1917, 750 Africans participated in the First World War and in 1939, police was organized in garrisons and a training school was established in Kibuli. By the 1950's, a revised development plan established 134 officers and Inspectors and other ranks were 2813. A police jubilee parade was held in Kampala in 1956. In 1962, Uganda became independent where the powers of the British Protectorate were handed over to Ugandans and independent Uganda Police was established.

According to the Uganda Human Rights Commission report of 2015, the number of Human Rights cases of violations reported increased in the past years with the Police and army being the top culprits.

According to the UHRC 17th Annual Report which was launched in Kampala, the commission received 895 complaints in that year compared to 720 recorded in 2013. For almost five years running, police is singled out with the highest complaints registered against them. Complaints recorded against police increased by 40% from 424 in 2013 to 772 in 2015.

According to UHRC Public Affairs Officer Justus Muhanguzi, the year's report gives special attention to Human Rights concerns to Ugandan fishing communities. It addresses access to essential health commodities and achievement of health related Millennium Development Goals.

The report addresses some of the Emerging Human Rights concerns like early warning in preparation of 2016 national elections and evictions by KCCA. The Uganda Police since 2010 has been a top respondent with a total of 2169 (42.1%) complaints registered against it out of the 5054 total complaints received by the UHRC.

The other Human Rights concerns in the report include lack of adequate food in the police cells, incarceration of children with adults and increased involvement of Crime preventers in the execution of work of law enforcement.

In 2006, Police made reforms and a Task Force was appointed on Police Reforms which was mandated to recommend policy and institutional reforms in line with the Police Strategic Plan. The Task Force addressed the very serious concerns of promoting a democratic police that is responsive to the interaction between the public and the police. The Task Force was also mandated to inquire into, and report on, among other things, “the policies and practices of the police relating to service delivery.”⁴⁹

In this report, the Task Force made a number of recommendations regarding police reforms and these include professionalizing police, accountability, human right policing and educating the public and police on policing and human rights related matters.

The status of policing and police reform in Uganda is addressed in CHRI’s 2014 regional report ‘**A Force for Good? Improving the Police in Kenya, Tanzania and Uganda**’ in 2006, CHRI published a seminal report on police accountability in Uganda: **The Police, The People, and The Politics: Police Accountability in Uganda**. The report outlines the situation of police accountability in Uganda, the reforms that need to take place and sets out a roadmap for achieving this reform. CHRI conducted research and fact finding missions in preparation for this report in the preceding years 2003-2005.

In 2006, CHRI also published a report on the policing budgets in Uganda; looking at the impact that funding has on police performance, crime management and community safety:

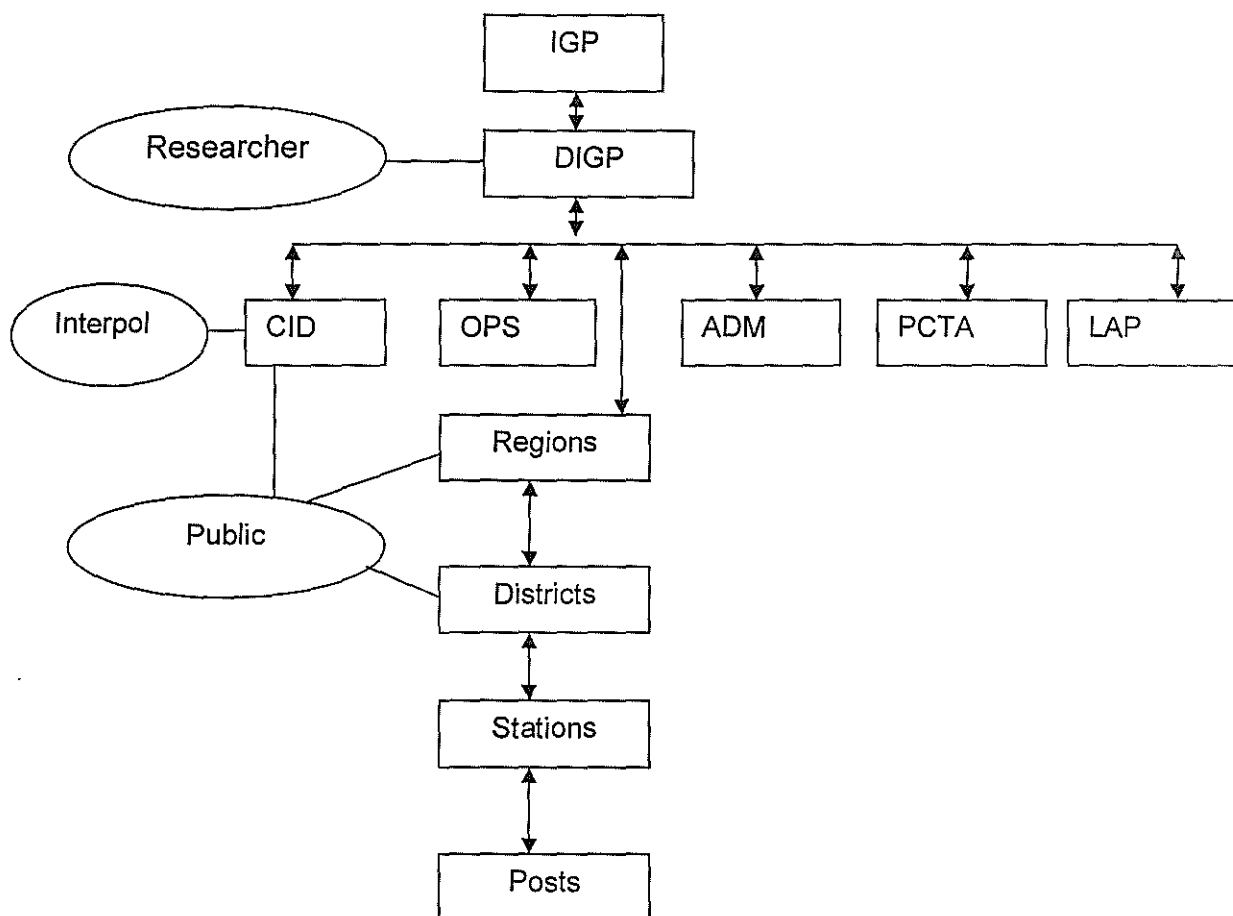
Consequently, the government in 2008, made several changes to the police force intended to reflect the spirit of the Task Force Report. However there has been failure of the police to subject

⁴⁹ See the Uganda Police Force, (2005) Strategic Plan 2005-2012, Administration Police Strategic plan 2005-2012.

police officers accused of violation to the due process⁵⁰ due to the ineptness of the internal oversights to conduct credible and conclusive investigations.

4.1 Structure and organization of the police force

Structure of the present Police information flow



At the top of the Uganda Police Force is the Inspector General of Police (IGP) who acts as Chief Administrative Officer and is stationed at Naguru Police Station Headquarters, Kataramwa Road in Kampala. The Inspector General of Police reports to the President of Uganda for orders.

The President can remove the Inspector General of Police at any time and replace him with any person of his own choice. The power of the President to appoint the Inspector General of Police is provided under Article 213(2) of the Constitution of the Republic of Uganda 1995. Other

⁵⁰ Supra note (48)

officers and ranks of the Uganda Police Force are; Deputy Inspector General of Police, Regional Police Commanders of Police, who are in charge of the Regional Police Headquarters, District Police Commanders who take care of the districts as well as Officers in Charge (OCs) at police posts.

In addition to the armed police forces, there is a huge internal security apparatus that includes the police's Criminal Investigation Department (CID), the National Security Intelligence Service, the General Service Unit, the Administration Police, and Crime Preventers.⁵¹

The CID investigates criminal activity and the National Security Intelligence Service collects intelligence and, monitors persons whom the State considers subversive. In an effort to improve the accountability of investigative services, Parliament passed and implemented laws that removed arrest authority from the National Security Intelligence Service and separated the organization from the CID department.

The General Service Unit (GSU) or Flying Squad is a mobile police force that is separately organized from the rest of the Uganda Police. It is a paramilitary police force used for the apprehension of dangerous, syndicated, or armed criminals (Syndicated criminals involve groups of criminals generally with a specialty crime such as drug smuggling. They are often located throughout several parts of the country and sometimes have international criminal dealings).

The Regular Uganda Police are the general duty police in charge of law enforcement and traffic control. The Administrative Police are mainly responsible for law and order in the rural areas where the Regular Police cannot reach⁵². Administrative Police Officers are recruited from the communities in which they serve and work under a District Police Commander, who is accountable to a Regional Police Commander.⁵³

While the Regular Police generally only carry batons, the GSU (Flying Squad) can carry pistols or rifles depending on the nature of the operation, and are always on standby.

⁵¹ Dr Robert Winslow, *Crime and Society: A Comparative Criminal Tour of the World*. As sourced from the website <http://www-rohan.sdas.edu>

⁵² Supra note (51)

⁵³ Section 67 of the Police Act Cap 303

The Uganda Police are prohibited from carrying out any other business other than police work under the Police Act as follows;

“No police officer other than a Reserve police officer shall engage himself in any trade, business or employment, or take part in any commercial or agricultural undertaking, outside the scope of his duties as an officer of the Force, except with the authority of the IGP.”

The Uganda Police Reserve shall consist of such persons resident in Uganda as, having attained the age of eighteen years,⁵⁴ volunteer for service in the Reserve and are enrolled as Reserve police officers. They may be employed in Uganda for assisting the Force.

4.2 Training and joining of the police force

Uganda Police recruits and officers are trained at Masindi Police Training College. Some specialized training for officers and noncommissioned officers (NCOs) are provided at institutions within and outside the police organizations. Some officers and NCOs are sent to Europe and⁵⁵ America for specialized and refresher courses.⁵⁶ In addition, the Criminal Investigations Department (CID) has a training school in Kibuli.

Once enlisted, they make an affirmation and sign it. It is to the effect that they shall preserve the peace, prevent offences against the peace and subject themselves to all acts, orders and regulations in force relating to the service. The oath is taken before some officer authorized by law to administer oaths or before the Inspector General of Police (IGP). The officer is then furnished with a Certificate of Appointment.⁵⁷

4.3 Accountability.

The Uganda Police Force is supervised by the Ministry of Internal Affairs and Inspector General of Police who is empowered to discipline corrupt police officers under **Section 44 of the Police Act Cap 303**. However, since the Uganda Police Force is a Public Service Commission, it is

⁵⁴ Section 64 of the Police Act Cap 303

⁵⁵ Schedule two of the Police Act

⁵⁶ Dr. Robert Winslow, Crime and society: a comparative criminal tour of the world. As per the website <http://www.rohan.sdsa.edu>

⁵⁷ Section 8 of the Police Act

composed of senior officers who are appointed by the President; disciplinary action is rarely taken against a delinquent police officer.

4.4 Functions of the police.

Under **Article 213 of Constitution of the Republic of Uganda 1995** provides for the functions of Police to include;

To protect life and property

To preserve law and order

To prevent and detect crime

To cooperate with civilian authorities or other security organs established under the Constitution and with population generally.

Section 5 of the Police Act Cap 303 provides for the same functions and also goes further to provide that police maintain security and public safety in Uganda and perform services of military force.

Police work suggests dramatic confrontations between police and law breakers, with victory going to those with the greater strength, power and resources. It suggests initiation of the process of justice, an enterprise bounded by the search for elusive clues, the investigation and chase, and the ultimate apprehension and arrest of suspected offenders.⁵⁸

The Police Act enjoins every police officer to preserve the public peace, prevent the commission of offences and apprehend all persons in respect of whom he holds a valid warrant of arrest.

Most police work is a peace keeping operation. In this capacity, it can include intervening in situations that may represent only potential threat to the public order. These include side walk agitators exercising their rights of free speech amidst a hostile crowd, street corner gatherings whose intentions seem questionable, belligerent drinkers who annoy or intimidate passersby.

⁵⁸ James A. Inciardi Criminal Justice, 4th Edition, Harcourt Brace College Publishers, 1993

It can also include the enforcement of civil ordinances whose violation can in no way be construed as criminal activity but is illegal nevertheless for example issuing citations for parking and minor traffic offences or failing to post certain certificates of authority to conduct business.

Peace keeping can also include more general areas of public service that are in no way related to the violation of the law; directing traffic, settling disputes, tracking technological gadgets stolen from civilians, locating missing children and providing directions to confused pedestrians.

Police work encompasses preventive and protective roles as well as patrols which lessens the opportunities to commit crime. In addition, prevention and protection roles can involve initiating programs to reduce ethical tensions, promote safe driving and reduce opportunities for crime victimization.

4.5 Arrests.

The apprehension of offenders fundamentally entails the arrest of suspects. An arrest entails the restriction of the freedom of movement of an individual. At common law, one requirement of an arrest is that one be informed of the reason for his arrest under **Article 23(3) of Constitution of the Republic of Uganda 1995**.

Section 5 of the Criminal Procedure Code Act Cap 116 provides that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape. A lot of emphasis is placed on the right to liberty. Arrest is therefore preferable where a warrant of arrest has been obtained by the police officer against the alleged offender. In exceptional circumstances however, arrests may be made without the backing of a warrant.

Any form of touch or confinement of the body of the person to be arrested is not required where there is a submission to custody by word or action. All means necessary to effect the arrest may be used if a person resists or attempts to evade the arrest. There are limitations as to the means of effecting the arrest and force that may be used. **Section 28 of the Police Act Cap 303** provides as follows;

“Nothing in this section shall justify the use of greater force than was reasonable in the particular circumstance in which it was employed or was necessary for the apprehension of the offender.”

It has been alleged that there is no distinction between the powers of the police and those of private persons, for it is the duty of every person to maintain law and order. Just like private persons, the police are not permitted to use unreasonable force to suppress a disturbance by any group of persons.⁵⁹

However, the peace keeping role is what separates the functions of the police and those of private citizens. This role contains a legitimate right to use of force under situations whose urgency requires it. The point is simply that modern democratic society severely restricts the right of private citizens to use force and urges them to resort to legal channels to work out their legal disputes. This restriction extends to virtually all cases except self defence, and even then one must show that all reasonable means of retreat were exhausted.⁶⁰

The law does recognize however that there are instances in which something has to be done immediately occasions in which resort to court or other mechanisms of dispute resolution would simply take too long and the damage would already be done.

It is for the handling of such occasions that there are police. This idea is based on the notion that it is better to have small groups of individuals (police) with a monopoly on the legitimate right to use force than to allow anyone with a club, gun, and knife, to use such force in such immediate demanding situations.⁶¹

The right to use force in situations that demand it is held by police in modern democratic and civilized society. It justifies their role in crime control, peace keeping, traffic control, and all other functions. It is the essence of the peace keeping role of the police. However unnecessary and unreasonable use of force by Police is strictly prohibited and a violation of human rights.

⁵⁹ *Sagia V R* (1973) E.A 538 (C.A.K)

⁶⁰ Section 28(3) of the Police Act Cap 303

⁶¹ *Ibid*

4.6 Operational practices of police

Every victim of police abuse faces a common risk. The police are not like most citizens. The difference is that in certain circumstances, police are sanctioned by the state to use deadly force in the course of their duties to achieve certain results.⁶²

Citizens and police do not always agree on what constitutes proper police practice. What citizens regard as police brutality is viewed in the police force as necessary for law enforcement.

While degrading epithets and abusive language may no longer be considered proper by police bosses and citizens, they often disagree about other practices related to law enforcement. For example, though many citizens see “stop and question,” “stop and search,” or swoops as harassment, police bosses usually regard them merely as “aggressive prevention” to curb crime.⁶³

What citizens object to and call “police brutality” is really the judgment that they have not been treated with the full rights and dignity,⁶⁴ owing to citizens in a democratic society. Any practice that degrades their status, restricts their freedom, annoys or harasses them, or that uses physical force is frequently seen as unnecessary and unwarranted. More often than not, they are probably right. In the use of force, police officers are prone to the influences discussed below.

4.7 Judgement of social value

In view of many law enforcement officers, certain categories of individuals have little or nothing to contribute to society, hence many Police office don't consider such people worth protecting⁶⁵ or they protect people using different norms other than those that guide the policing of other citizens. Suffice to say that when handling such people a lesser care is taken and ultimately this leads to a violation of their rights through unwarranted arrests on baseless suspicions, use of excessive force before and during the arrest and torture upon arrests.

⁶² Supra (note 48)

⁶³ Police Brutality in Uganda- answers to key questions, 23 January 2008 <http://www.marnbogani.com>. Wagalla massacre in the Northern Eastern region of Uganda is a good example of the police brutality which left over 20 people dead.

⁶⁴ Ibid

⁶⁵ Supra (note 59)

4.8 Rapid police decision making.

Police work requires police officers to make quick decisions, often on the basis of only fragmentary information. Police officers and their superiors defend the use of violence as a means of rapid problem solving. Shouting obscenities at a police officer for example may lead him to make irrational decisions causing gross physical and psychological harm to people. This has been witnessed on several occasions as the Uganda Police has acted with extreme measures and force against a group of people who simply talked back at them or voiced their dissatisfaction with the police services rendered.

4.9 Police discretion

To define police discretion in a single phrase or sentence would be difficult, for the term has come to mean different things to different people. In the broadest sense, discretion exists whenever a police or agency is free to choose among various alternatives to enforce the law and to do so selectively, to use force, to deal with others, to provide or not provide certain services, to train recruits in certain ways, to discipline officers differently and to deploy resources in a variety of forms and levels.⁶⁶

In carrying out their work, the police stand on the front lines of the Chief Justice process and must serve as chief interpreters of the law. Based on their knowledge of criminal codes, they must make immediate judgments whether a law is being violated, whether to invoke an arrest and in doing so whether to use force if it is necessary.

The process tends to be exceedingly complex especially because the laws are not written to take in consideration every situation. In addition, most police officers having only minimal if any legal training are not equipped to deal with the intricacies of law.

Section 23 of the Police Act Cap 303 empowers the police to arrest without a warrant and lists the circumstances under which the police may arrest without a warrant. One of these circumstances is committing a breach of the peace in his presence. Most arrests are made when

⁶⁶ Ibid

citizens report crimes in progress or when the crimes have already been committed and the identity of the offender is known.

While the police can arrest a suspect caught in the act, they can also arrest a person for “wandering” or loitering, especially after midnight. But the police in Uganda more so in Kampala, hardly adhere to any rules when making such arrests. This is primarily allowed because of the ignorance of the masses about their rights as citizens. The practice is in effort to adhere to the provisions of **Criminal Procedure Act Cap 116 (Section 10-11)** which states as follows;

‘any person whom he finds in a street or public place during the hours of darkness and whom he suspects upon reasonable grounds of being there for an illegal or disorderly purpose, or who is unable to give a satisfactory account of himself.’”

The section has been used abusively by police officers who make unnecessary arrests haphazardly. The probable cause requirement denotes that there must be some facts and circumstances that justify the arrest. There must be solid grounds to believe that the suspect really committed the crime or intends to commit a crime. This has been used by many Police officers to make arbitrary arrests without justifiable reasons hence an infringement of freedom of liberty.

Officers in charge of police stations shall report to the nearest magistrate within 24 hours the cases of all persons arrested without warrant within the limits of their respective stations, whether those persons have been admitted to bail or otherwise.⁶⁷

4.10 Circumstances under which police use unlawful force.

4.10.1 The use of fire arms.

In common law, police were authorized to use deadly force as a last resort to apprehend a fleeing felon. This common law rule dates back to the medieval ages. During a period when all felonies

⁶⁷ Section 18 of the Criminal Procedure Code

were punishable by death and thus the killing of the felon⁶⁸ resulted to no greater consequence than that authorized for punishment of the offence.

In the modern society, police brutality is considered as limited only to few sadistic officers. Recent commentaries suggest that the police violence is as a result of norms shared throughout a police department. It is best understood as an unfortunate consequence of the police role.

The current trend in Uganda reflects creeping back of attitudes of the middle ages. In September 2015 for instance, police dragged eight civilians at Mbabazi's presidential campaign rally in Ntungamo and shot them execution-style⁶⁹ in full public view.

A recent report by the Uganda Human Rights Commission on Human Rights makes a chilling record that 83 bodies had been dumped in various mortuaries by November 2015 in a span of 5 months.⁷⁰ Post mortem reports revealed gunshots at close range.

The deceased could have most likely have been victims of extrajudicial killings because the bodies taken had not been claimed in five months. The Inspector General of police linked the deaths to the police crackdown in Kampala.

Adherents commented that though the government had not been vocal in pursuing "Kifeesi" gangs in the preceding months, the crackdown may have continued quietly. The commission challenged the government to order independent investigations into the matter and incorporate Human Rights societies and other professionals to dig out the truth.

Police are given unrestricted right to the use of force in situations where their evaluation of the circumstances demands it. This mandate is not limited or defined. The police elicit working personality characteristic the feeling of constant pressure to perform along with the elements of authoritarianism, suspicion, hostility and cynicism. Police norms that emphasize solidarity and secrecy allow a structure which incidents of brutality will not draw condemnation from other officers.

⁶⁸ Supra (note 59) pg 291

⁶⁹ "Police shoot seven dead in cold blood," Red Paper, February 06, 2016.

⁷⁰ Bodies: Ugandans want to know the truth, Daily Monitor 4 November 2009.

Authority is both central and essential to the police role of enforcing law and keeping order. Persons who question or resist that authority represent a challenge to the officers, detectives or the organization they represent. Challenges are seen as barriers to effective policing.

Often police use intensive verbal coercion to establish authority. If it fails, some use force to elicit compliance. Certain elements lead the police to use force.

The words of **Justice Etyang in Rv Isaiah Muoki Musyoka & 2 others**⁷¹ shed some insight on the use of arms in the following manner;

‘the law, however, is not that where a person feels unsafe, unsure of the situation, fearful for his life, that he is entitled to use a firearm against an imaginary attacker. If this were the law, then all persons armed would be considered to have a license to shoot and kill at any time so long as they felt unsafe, unsure, fearful for their lives...nobody would be safe anymore from armed gunmen and police if this were to be the law...’

The gravity of the situation can be illustrated on a closer look at the facts in this case.

On 28th August, 2004 a person who identified himself as Karungi Simeon reported over the police ‘hotline’ that he had witnessed the robbery of a motor vehicle whose license number he gave. The ‘flying squad’ branch of police reacted in haste and went on the lookout.

The three accused police officers spotted the apparently stolen vehicle while on patrol. They alerted the police communication control room which in turn put all police communication radios within the area in a position aiming to monitor the operations. The accused followed the vehicle to the junction of Katwe round about where they opened fire, aiming at the driver from behind.

He was hit by at least nine bullets leading to instant death. There was no passenger in the vehicle, no weapons were recovered, it turned out that no vehicle had been stolen and the deceased driver was in fact James Mubiru a University student lawfully driving his mother’s Land Rover

⁷¹ HC Criminal case No. 69 of 1998 (Nairobi) unreported case.

Discovery vehicle. The three policemen were charged with murder. In their defence, they alleged that they shot the student in self defence.

The law regarding the use of arms by police officers is clear. **Section 28 of the Police Act⁷² Cap 303** sets out the circumstances under which the police may use fire arms as follows;

- a) When any person in lawful custody and charged with or convicted of a felony is escaping or attempting to escape;
- b) When any person rescues or attempts to rescue another person by force from lawful custody;
- c) When any person forcefully prevents or attempts to prevent the lawful arrest of himself or any other person.

The use of fire arms in the instances is restricted by the same section in the following manner provided that arms shall not be used-

- (i) as authorized in paragraph (a), unless the officer has reasonable ground to believe that he cannot otherwise prevent the escape, and unless he gives warning to such person that he is about to use fire arms against him and the warning is unheeded;
- (ii) as authorized in paragraph (b) or paragraph (c), unless the officer has reasonable ground to believe that he or any other person is in eminent danger of death or grievous bodily harm or that he cannot otherwise prevent the rescue or, as the case may be to effect the arrest.

Police Act Cap 303 contains similar provisions for avoidance of doubt. The use of firearms is not intended to license the Uganda police officers to kill persons under the guise of eliminating dangerous suspects. The law has set the required degree of care as being reasonable ground to believe and not 'impulse and cowardice assumption'⁷³ that there is need to use a fire arm.

⁷² Cap 303 of the laws of Uganda.

⁷³ A license to kill in The Lawyer, March 2001

Any police officer who fails to exercise care and due diligence in the use of fire arms should be subjected to criminal proceedings and treated in the same way as any private citizen. If he is convicted, the appropriate punishment should follow as a matter thereto.

In **Gideon Miano v Republic**⁷⁴ a police corporal was in the company of a police reservist. They met three men while walking in Dandora estate and asked them to stop. The police questioned them on an alleged robbery and one of them started running away. The corporal without warning the man cocked his gun, aimed and pulled the trigger. The bullet went through the chest of the man and killed him instantly.

The court observed that the police officer did not attempt to run after the deceased, bearing in mind that the officer was experienced and therefore expected to know of the great risk entailed by his action. Etyang J in rejecting the defence that they acted in self defence stated that “a police officer may use all means necessary to effect arrest but nothing will justify the use of greater force than is reasonable in the particular circumstances in which it was employed or is necessary for his apprehension.”

Citing the case of **Palmer versus Reginam**⁷⁵ in which the court stated that the defence of self defence is a matter of commonsense and that it depends on circumstances and need no formula for application.

“If there is no attack then clearly there would have been no need for defence”

The case of **Beckford V Republic**⁷⁶ is also illustrative. The House of Lords in England held that the test of self defence was that a person could use such force in the defence of himself or another as was reasonable in the circumstances as he honestly believed to be.

Use of excessive force may cause unforeseeable hurdles. The unnecessary, negligent and random use of fire arms also captures occasions of injury or even death to passersby in the case of a shoot-out between police and suspects. Random bullets have mistakenly caught up with innocent citizens going about their business.

⁷⁴ Common Appeal No. 73 of 1999(Nairobi) unreported

⁷⁵ (1971) 1 A II ER 1077

⁷⁶ (1987) 3 A II ER 425

In *Stephen Iregi Njuguna v Attorney General*, the appellant was a widower of the deceased a certain Catherine Wangui. While she was walking along Kangudo road accompanied by her children, some police officers shot her occasioning bodily harm as a result of which she died.

Kuloba J was of the view that the deceased and her children had;

“Deliberately exposed themselves to danger and that they should have understood the danger in which the police were and which they themselves were in and lightened the police burden by getting out of the way.”

In setting the judgment aside and substituting it with a judgment on liability in favor of the applicant, the Court of Appeal noted that;

“as it is, there is no evidence on record to show that the people they were chasing were criminals and if they were, they were dangerous. It was all in the learned judge’s flight of imagination.”

4.10.2 Search and seizure

The right to privacy is protected even under international law. Arbitral searches of persons or property are violations of the rights of the person to privacy. The ICCPR under Article 17 provides as follows;

*“No person shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondenceeveryone has the right to the protection of the law against such interferences”.*⁷⁷

Field interrogation or the stop and frisk procedures can be a useful mechanism for police officers in areas where crime is prevalent and where the potential risk for crimes seems visibly present.⁷⁸ In fact, it is not uncommon for police to stop on the street persons whose behavior seems suspicious, to detain them briefly by questioning for identification purposes, and to frisk those whose answers or conduct criminal involvement or threaten police safety.

⁷⁷ Sub Article 6 of Article 17 of the ICCPR.

⁷⁸ Supra (note 59)

On the arrest of a person in the circumstance that he is not legally admitted to bail, the police officer to whom he makes over the person arrested may search that person and place him in custody. All articles other than necessary wearing apparel found upon him, it is provided under **Section 29 of the Police Act Cap 303 and Section 8 of the Criminal Procedure Code Act Cap 116** provides that whenever it is necessary to cause a woman to be searched, the search shall be conducted by another woman with strict regard to decency. In hand searches on persons, no warrants are required.

On the other hand when searching premises, a search warrant is of the essence. Police officers are permitted to use force where necessary to gain entry into the place they would like to search under **Section 69 and 70 of the Magistrates' Act Cap 16**.

4.10.3 Police in interrogations and confessions during detention.

The art of criminal investigation has not developed to a point where search for an examination of physical evidence will always or even in most cases reveal a clue to the identity of the perpetrator or provide the necessary proof of his guilty.⁷⁹

There are many instances in criminal investigation where physical clues are entirely absent. The only approach to a possible solution of the crime is the interrogation of the suspect or others who may possess significant information. A police interrogation may lead not only to the apprehension and conviction of the guilty but also to the innocent from well warranted sanction. A confession is defined under the **Evidence Act⁸⁰ under Section 23** as comprising;

Words or conduct, or a combination of words and conduct, from which, whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person making it has committed an offence.

Criminal offenders will not ordinarily admit guilt. They may only do so if caught in the act or questioned under condition of privacy and for a period of perhaps several hours. The Constitution of the Republic of Uganda 1995 provides that persons arrested or detained be

⁷⁹ Fread. E. police interrogation and practical necessity as sourced from the Modern Criminal Procedure 10th edition pg 42g.

⁸⁰ Section 23 of Evidence Act Cap 6

brought before a court within 48 hours, the **Penal Code Act Cap 120** specifically excludes weekends and holidays.

The law does not stipulate the period within which the trial of a charged suspect must begin; indicted suspects often are held on remand for months or years before being brought to court. The police take this as an advantage to unlawfully grill and force out confessions from suspected offenders by way of torture.

The incidence of Paul Kimani Wambiru is notable. He died on March 21, 2002 and had been arrested and tortured at the Nyeri Police Station for allegedly stealing U.S\$400. A postmortem examination concluded that Wambiru died from multiple injuries including a ruptured bladder and small intestines and crushed testicles. Police had left him on a roadside and claimed Wambiru was injured only after they released him for lack of evidence. Five policemen were arrested and charged of murder⁸¹ however, a pathologist hired by the policemen reported Wambiru died of “inflammation of the brain.”

The law as regard to the admission of confessions is well settled. **The Court of Appeal in Tuwamoi v Uganda**⁸² a case which formed the basis of the judgment “the present rule then as applied in East Africa in regard to retracted confession, is that as a matter of practice or prudence, the court should direct itself that it is dangerous to act upon a statement which has been retracted in the absence of corroboration in some material particular, but the court might do so if it is fully satisfied in the circumstances of the case that a confession must be true”

The judgment in the former case was to the effect that; “in the present case, the confessions made....were of such detail that it was obviously true”

The confessions were admitted before the Court and admission of the evidence was lawful at the time. Establishment of the Evidence Act was a move in the right direction towards reduction of the rate of Human Rights abuses in the police cells. The situation in the country has greatly improved however more need to be done.

⁸¹ A Human Rights Watch Paper Kenya's Unfinished Democracy A Human Rights Agenda for the New Government, December 2004 as obtained from the website <http://www.hrw.org>

⁸² (1967) EA 84 at pg 89

Section 24 of the Evidence Act Cap 6 provides that a confession made by the accused person is irrelevant if the making of the confession appears to the court having regard to the state of mind of the accused person and to all circumstances have been caused by any violence, force, threat, inducement or promise calculated in the opinion of the court to cause untrue confession to be made.

Section 24 has been a hurdle to any police officer intending to torture suspects with the intention of extracting confessions. **Section 23** is to the effect that a confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in the presence by a police officer of or above the rank of Assistant Inspector or a Magistrate. No person shall be convicted of an offence solely on the basis of the confession made under paragraph (b) of **Section 23 of the Evidence Act Cap 6** unless the confession is corroborated by other material evidence in support of the confession implicating the person.

The right against inhumane treatment must be observed even when a person is in lawful custody and not merely when he is free. Even when a person is arrested, imprisoned or detained without trial, security personnel should not subject him to inhumane or degrading treatment. Several reports of torture of suspects under Police custody in Kampala have been reported on radio and television broad casts however obtaining statements from the police to that effect proved futile and outright impossible.

4.11 Factors contributing to impunity.

The formation of a customer care desk at all police stations has improved the public image of the police.⁸³ Usually cases involving sexual assault and abuse of minors are reported and data is compiled for necessary action. So has the launching of the “community policing” a civil crimes prevention strategy, and the subsequent police reforms initiative emanating from a five year

⁸³ In 2002, the police Commissioner established a police complaints department to be situated to the police headquarter. Its mandate was to receive complaints against police officers and institute administrative and criminal prosecution. The department was also tasked with collecting data on the frequency and types of abuse complain filed nationwide.

strategic plan.⁸⁴ However, their shortcomings in dealing with accountability for misconduct in the police force; radical administrative reforms should be implemented to end the culture of impunity rather than risking judicial injunctive action.

It is imperative to note that, because of the inefficiency of the police oversight board to receive complaints against their fellow colleagues implicated in human rights abuses, only cases where there is public outcry and/or legal proceedings were reported. The police oversight unit conducts investigations; monitors police misconduct and evaluate how police officers relate with members of the public, and ensure the promotion and protection of Human Rights.

The oversight unit also receives and examines complaints of Human Rights abuses filed by citizens against police officers. This trend has proved ineffective and lacks fairness and accounts for the increase in cases of abuse. It's therefore important to establish an independent civilian oversight.

4.12 The major role of the police in investigations of such offences.

Investigations of Human Rights violation remain the responsibility of the police force rather than an independent body and this procedure is fraught with difficulties. For example, in order to file a complaint against the police, the alleged victim is required to obtain a P3 (medical report) form from the police. This form has then to be filled in by the doctor who examined the alleged victim and returned to the police, but this procedure is clearly not working effectively today.

The current procedure for the use of P3 forms is clearly failing to protect victims of Human Rights violations by the police. Thorough and impartial investigations into allegations of torture and ill-treatment and the bringing to justice of those responsible would send a clear message to law enforcement officials that excessive use of force or torture is unacceptable.⁸⁵

⁸⁴ On 13th April 2005, President Museveni appointed a 15 member Task Force on Police Reforms to recommend policy and institutional reforms as emanating from police strategic plans, and other relevant documents. The terms of Reference call for extensive review of institutional and organizational changes that would mobilize the Police Forces into world-class people friendly and responsive institutions that would make Uganda not only a secure country but an investment destination of choice.

⁸⁵ Amnesty International requested information regarding any investigations into these allegations and any subsequent prosecutions and in his response on 6 August 1997 the Attorney General indicated that in most cases raised there is no report of torture in police records.

Amnesty International has received numerous reports of victims either being threatened by the police not to report torture, too scared to go to the police station to obtain a P3 form, or refused a P3 form by the police. As a result, allegations of torture or ill-treatment often do not reach the courts.

The organization has also been informed that P3 forms⁸⁶ in the records of police do not always appear in the defendant's case file when the case reaches court and as a result, the issue of torture may not be raised unless the defendant has a lawyer who retained a copy of the P3 form. Thus, medical evidence, which is often crucial to determine whether or not the allegation of torture proven appears not always to be reaching the courts under the current legal system

4.13 Lack of information on Human Rights abuse by police officers

Police prosecutors have been accused of ineptness and lack of transparency and accountability⁸⁷ while dealing with cases involving officers accused of committing Human Rights violations when they appear in court facing charges resulting from torture, manslaughter, assault, rape or sexual assault.

There is no available statistic that is elaborate on prosecutorial decisions, or prosecutorial precedents in cases involving police officers. Without statistical information regarding the number of police officers on trial or those convicted, which information is not available at the prosecution office, it becomes impossible to track the quality of investigations conducted by the police against fellow officers accused of human rights abuses.

Another setback to accountability is the lack of flow of information about patterns, trends and prevalence of abuse by police officer and other law enforcement agents; lack of openness regarding the police forces' plans and actions to prevent brutality and to end the culture of impunity makes it impossible to instill accountability. In most instances where there is credible data implicating the police in abuse, there is lack of evidence showing action taken by the force to deter Human Rights violations and abuses.

⁸⁶ A report by Amnesty International Violations of human rights as; communications between Amnesty International and the Government. This information is gathered from the Amnesty International website <http://www.amnesty.org>

⁸⁷ Supra (note 48)

4.14 Not so democratic a police force.

Excessive use of force by the law enforcement officers, including torture, extra-judicial executions, arbitrary arrests and intimidation, is rampant in virtually all police stations in Uganda. The inability of the police force to make it possible for the perpetrators implicated in Human Rights violations in order to face the due process and be held accountable has been compromised by a rein of lawlessness and endemic corruption.⁸⁸ This trend is rapidly precipitating a state of moral negligence and ineptness in the entire police force.

A 'Democratic' police that guarantees protection and promotion of fundamental Human Rights of private citizens provides safeties for legal and administrative measures that deter impunity⁸⁹. In Uganda, a rogue police officer implicated in an offence that constitute a violation is shielded from prosecution and is allowed transfer to another station where he goes to commit the same offences. Lack of administrative and legal measures to punish those implicated in Human Rights violations and abuses virtually guarantees them impunity.

This gives stark evidence that police brutality is systematic and endemic in Uganda; that measures to deter impunity have failed to yield and meaningful solutions; and that, in each case reported to us, survivors of police abuses face enormous obstacles in seeking legal redress to present any criminal prosecution against vogue officers implicated in Human Rights violations.

4.15 The effect of a compromised judiciary.

Another major impediment to police accountability has been the lack of a transparent and an accountable judicial system to deal with police misconduct. Members of the public have expressed their concerns about the functioning of the judiciary while dealing with cases of police misconduct.⁹⁰

Perhaps the most difficult aspect of the functioning of the judiciary is the fact that the office of the police prosecutor refuses to cooperate with judicial officers in summoning the accused officers to appear in court. Unless they are first given a written assurance that at the time of the

⁸⁸ Supra (note 48)

⁸⁹ Ibid

⁹⁰ Supra (note 48)

trial, they are not considered suspects. Many proceedings and investigations are unnecessarily deterred because an application for information by the court to a police force is not responded to⁹¹ or is not responded to appropriately.

Police officers who refuse to cooperate with the courts allege that investigations conducted to establish the cause of serious injuries or deaths that may have resulted from excessive use of force discourages corroboration as it places the burden guilt on them. However, the refusal is based on arguments, which are based on the fact that the police officers share the same rights as members of the force and therefore cannot be compelled to judicial punishment without utilizing internal administrative mechanisms.⁹²

It is important to note that where an accused officer fails to turn up in court to give evidence or to take plea, he or she is therefore in violation of **the Police Act Cap 303**. The Police officer is also in contravention of the **Criminal Procedure Code Cap 116**, although the Police Act itself does not provide any mechanism for enforcing the law against the police officers who have refused to appear before an inquiry.

⁹¹ Ibid

⁹² See Observer 1st Sept 2006 Pg 29 "PRA Charged"

CHAPTER FIVE

CONCLUSION, CHALLENGES AND RECOMMENDATIONS

5.0 Introduction

This chapter presents the conclusions and recommendations of the research. It also highlights the major challenges found during the course of the research. The study used both qualitative and quantitative methods of analysis, with a view of making appropriate recommendations based on the findings of the research.

The nature of Human Rights violations and the relationship between the time of the occurrence and the time of a reporting person determine whether or not the event will be promptly investigated in any depth.

When the citizen is immediately violated at or near the scene of the violation, the limits of a preliminary investigation will be extended. If an extensive search for /and interview of a witness is needed, or if an intensive search of the violation scene for physical evidence is necessary, an investigation may take time.

5.1 Conclusion

The major role of the Police is crime control, detection and prevention. Nonetheless, Human Rights agencies activity is done by ensuring that all cases of violation by police are thoroughly followed and concluded judiciously. Successful research on rights violation followed depends on good training and personal talent of the researcher. On the other hand, students exposed to Human Rights activities are led to believe that police actions are rotten, plodding legwork requiring little training.⁹³ A belief has developed among many people both in and out of the field of Human Rights that all problems of Human Rights violations can be solved quite simply by Microscopic examination and laboratory analyses.

⁹³ NIEHAUS, JOE. "Investigative Forensic Hypnosis".1998, pg. 121-143

In the researcher's opinions, the truth lies somewhere among these points; Human Rights violation analysis involves a close relationship between innovative thinking and diligence of the researcher in the field and the researcher in the laboratory and library. Researchers, witnesses and Human Rights agencies should work together as a team, supplementing one another's theory and findings. They should both work patiently and thoroughly to reconstruct a violation from their noticed discoveries.

The joining of science with traditional way of violation follow-up techniques offers new horizons of efficiency in the Human Rights implementers. New perspectives in investigation bypass a total or a major reliance on informers and press and instead increasingly utilize a skilled scanning of the violation scene, physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court; either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing.⁹⁴ Such evidence may serve in lieu of, or as a collaboration of informers, the press and testimonial evidence of witnesses found and interviewed by Human Rights activists in an extension of their responsibility to seek out the truth of all the circumstances of the violation. An increasing certainty in solving Human Rights abuses is possible and will contribute to the major deterrent of violation, the certainty that a police officer violated rights may be discovered, arrested, prosecuted and convicted.

In Kampala district, this research observed that the researcher relied on informers, the press and Human Rights agencies. This technique has come into existence as favorable method due to lack of scientific equipment to carry out modern research. It was discovered that the evidence of the cases was highly collaborative in nature obtained through interviews, questionnaires and observation of the persons interviewed by the researcher.

This research has also shown that the techniques related to following the Human Rights abuses in Uganda are useful in articulating research. They conform in many cases with the standard legal principles of natural justice as applicable in many jurisdictions.

⁹⁴ Pinizzotto, Anthony. "Forensic Psychology: Criminal Personality Profiling." 1984, pg. 76-78.

In this research, as it has been pointed out above, some techniques are difficult to be implemented because of the forty-eight-hour rule⁹⁵ in relation to detention of the arrested persons. The Police perpetrators of the violations are often released after the 48 hours and follow up of the investigations become complicated then.

The researcher concluded that it is advisory to begin following violations immediately. Some violation actions require thorough vigilance. They normally would go undiscovered and unreported, except for a keen observation seeking knowledge of clandestine violations.⁹⁶

5.2 Challenges of Ensuring the Observation of Human Rights in Kampala district.

In the course of Human Rights research, the respondents interviewed pointed out many obstacles that make it hard to look out for Human Rights abuses. These include the following;

5.2.1 Ignorance of the law: Respondents stated that most violated victims and witnesses are ignorant of the law and are not cooperative with the researcher and Human Rights agencies. Most victims, according to the respondents, are not willing to answer the questions put to them. Others deliberately refuse to answer on suspicion that answering the questions may be used against them as a guilty plea.

5.2.2 Political interference: There are many cases which are not thoroughly observed according to the available mechanisms because a politician or a powerful personality in the country has an interest in the case. It may be a relative or even self-protecting the police. This, in most cases forces the Human Rights agencies/ researchers to suspend the follow up or even ignore it.

5.2.3 Lack of adequate logistical, technical and financial resources:

This is another major problem since violations follow up according to the available methods require expertise in order to exhaustively gather the evidence. Lack of technical expertise and facilities to carry out successful and conclusive follow up in most cases result into poor report formulation

⁹⁵ Art.23 (4) of the Constitution of Uganda

⁹⁶ MARX, GARY. "Undercover: Police Surveillance in America". Berkeley: 1988, pg. 97-99

5.3 Recommendations

5.3.1 Massive sensitization

The society is growing into unethical behavior of injustice. But the police should exercise powers given to them within the legal confines of the law and exercise it judiciously. Massive sensitization is required to educate people of the dangers of taking the law into their own hands. During the research, ignorance of the law in Police personnel on one hand and the victims and witnesses on the other hand, was one of the challenges to the Human Rights violation follow up. Some respondents from the masses seemed not to be aware of their Human Rights. It should be noted that most victims and witnesses were not co-operative in the process of giving the available information.

It is therefore recommended that, massive sensitization should be done to educate and inform public and police about the danger of taking law into their hands and avoid harassment of the citizens. Also police should be informed of the dangers of lynching or killing innocent people, and be discouraged from violation of Human Rights. This will help to ease the work of Human Rights agencies especially in crowded areas and communities where there are ethnic or clan hostilities. This will encourage the researcher to follow the techniques when carrying out research in Human Rights violations.

There should also be campaigns to improve community awareness of the role of the Police in community policing. People should be taught their role and their importance in detecting and reporting rights violations as well as non-interference with the work of the Police. In this way, cases of injustice, tampering with the area of rights' violation by police will be minimized. All stakeholders in Human Rights protection particularly Human Rights agencies, local government councils and politicians and government should take part in community sensitization to teach the masses how to have a good working relationship with the Police.

5.3.2 Inadequate funding

Inadequate funding is one of the challenges that a researcher encountered in establishing Human Rights violation and abuses. There was lack of adequate gadgets and financial resources.

Human Rights research operations should be well funded since it's the pillar of transparency in the country. The Human Rights teams should be provided with all the financial resources they need to effectively exercise their work. Failure to do so may lead them to ignore some procedures leading to discrediting of the results produced from their reports.

The government in cooperation with the Human rights agencies should take purposive concerns to equip the Human Rights activists with necessary equipment such as motor vehicles, motorcycles, cameras and smart devices. Donor support and funding could also be sought by the government to supplement the resources available to the government for accurate information gathering.

Local government councils also should use their resources to facilitate Human Rights agencies. They should assist the people in their localities to attend police stations for investigation purposes. They should also maintain records of police actions in their places of residence and report to police any suspicious person. NGO's with a base or knowledge in Human Rights should come out and assist local government in a process.

5.3.3 Training and regular refresher courses

Since protection and promotion of Human Rights is relatively one of functions of the police, it is necessary for police as a body enforcing rights to be acquainted with such knowledge in the field of Human Rights; therefore it is necessary to take police officers for training and refresher courses. This is done with the view of preventing police to violate the rights.

5.3.4 Poor remuneration

Employment motivation such as salary increment and promotions should be within the organization policies. Remuneration to police officers should be on time and reasonable to meet the life standards. Failure to fulfill their adages in time may result in unspoken acts of violations of Human Rights inclusive.

5.3.5 Review of laws relating to the Human Rights

One of the greatest challenges in relation to Human Rights violations is the use of force by police officers in the course of their operations and arrests. It is a trite law under the Constitution⁹⁷ as well as international law principles that unnecessary and unlawfully detention should be discouraged. In a developing country like Uganda, the rule might become inapplicable due to poor and insufficient investigation facilities.

This rule is also controversial where the police officer raises defence of self-defence, eminent danger of death and grievous bodily harm may not be simple to prove in the courts therefore the government's parliament and other law making authorities should revise. Such provisions and moderate Human Rights observance according to the principles of natural justice

5.4 Further Research

This study contributes to an understanding of the Human Rights violations and abuses in Uganda. Although research on Human Rights itself is abundant, research on the violations and abuses of Human Rights is inadequate. Therefore, there is more need for the researchers to carry out continued investigations and apprehend the police officers who are engaged in the abuse of Human Rights.

Further research is therefore recommended to explore the importance of observation methods used and how this can add on the strength and admissibility of the results produced. The researcher also notes that the ultimate challenge of integrating issues of diversity and variation with theoretical notions and generalizations which lies in balancing universalistic versus community specific aims of research, hence more specific research is recommended to cover a wider part of the country and if possible, compare it with other jurisdictions.

Understanding the relationship between methods used in Human Rights research and lawfulness or lack of it of a follow up not only informs theory and research but also affects intervention efforts in real World settings.

⁹⁷ Article 23 (4) of the Constitution of Republic of Uganda pg 95

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APPENDICES

APPENDIX I

Questionnaires for selected traders in Kisekka Market

Dear Respondent,

This questionnaire is designed to seek information from you in a research on “An Evaluation of Police in violation of Human Rights in Uganda: A case study of Kampala District”. It is carried out as a partial fulfillment of the requirements for the award of a Bachelor of Law of Kampala International University. Your contribution, opinions and experience will be highly appreciated.

Thank you very much for your cooperation.

Please tick (✓) in the bracket behind the most appropriate response and where explanation is required, use the space provided.

1. Gender: ☐ Male

☐ Female

2. Age: ☐ 18—28

☐ 29—38

☐ 39—48

☐ 49 and above

3. Education level: ☐ Secondary Level

☐ Bachelor's degree

☐ Master's Degree

Any other (please specify) _____

4. What do you sell in this market?

☐ Motor Spare Parts

☐ Clothes

☐ Grocery

Any other (please specify) _____

5. What position do you hold in this department?

☐ Manager

☐ Sales agent

☐ Seller

☐ Buyer

Any other (please specify) _____

6. For how long have you worked in this market?

☐ 1—5 years

☐ 5—10 years

☐ over 10 years

7. How do you describe the rate of success in your business?

☐ Excellent

☐ Very good

☐ Good

☐ Poor

☐ Very poor

8. What determines your capacity to observe Human Rights abuses?

(SA - Strongly Agree A - Agree D - Disagree SD - Strongly Disagree)

Determinants of success of a violation follow up	Responses			
	SA	A	D	SD
1. Personal brilliance of researcher				
2. Condition of the situation				
3. Personality of the perpetrator				
4. Support of the community				
5. Availability of witnesses				
6. Observing techniques during follow up				

9. (a) Are you conversant with the techniques that have been used during violation follow ups?

☐ Yes

☐ No

b) If so, Specify

10. How far do you observe the techniques during the follow up of the Human Rights violations?

☐ To the maximum

☐ Where necessary

☐ Not often

☐ Not at all

11. Does the observation of techniques during follow ups make results any stronger?

☐ Yes

☐ No

☐ Any other

12. Are there any circumstances where it is hard or even impossible to observe the methods during a follow up?

☐ Yes

☐ No

13. If yes, under what circumstances are these?

(SA - Strongly Agree A - Agree D - Disagree SD - Strongly Disagree)

Circumstances where techniques may not be observed	Responses			
1. When the situation is tampered with	SA	A	D	SD
2. When the required expertise is not available				
3. When the resources are not available				
4. When the workload is too much				
7. When the follow up has to be done very quickly				

14. What challenges do you face in trying to observe methods during violations follow ups?

☐ Gadget problems

☐ Technical incapacitation

☐ Financial constraints

☐ Political influence peddling

Any other (please specify) _____

15. How do you address these challenges?

☐ Maximum preparation

☐ Handling one case at a time

☐ Extensive mobilization of funds

Any other (please specify) _____

16. What do you expect from other stakeholders such as the community and the government?

☐ Moral and gadget support

☐ Provision of the required resources in time

☐ Ensuring the independence of the follow ups

Any other (please specify) _____

APPENDIX II

Interview Guide for Selected citizens in Kasangati Town Council

What is your age and sex?

What work do you do?

For how long have you worked here?

How do you measure the success of a follow ups?

What are the methods in your follow ups?

What is the rate of observation of these methods?

How does the observation of these methods help your success in presentation?

Under what circumstances are the methods ignored?

In the event of the above, how does it affect the outcome of your follow ups?

What challenges do you face in trying to observe the techniques used during follow up?

How do you address these challenges?

What is the role of the government and the community?

APPENDIX III

Observation Guide (Checklist)

Activity	Researcher's observation			
	Very insufficient	Insufficient	Satisfactory	Very satisfactory
Violation scene maintenance				
Information gathering				
Tracing of victims				
Apprehension of victims				
Questioning public				
Record of violation cases				

APPENDIX IV

Proposed budget for proposal and report writing

ITEM	QUANTITY	RATE	TOTAL COST
Ream of paper	2	14,000/=	28,000/=
Pens	5	500/=	2,500/=
Proposal Typing and Printing	2 copies	20,000/=	40,000/=
Transport	-	-	70,000/=
Research Assistants	3	20,000/=	60,000/=
Dissertation typing, printing and binding	4	40,000/=	160,000/=
Miscellaneous	-		50,000/=
TOTAL			410,500/=

APPENDIX V

TIME FRAME FOR RESEARCH REPORT

DURATION	ACTIVITY
Two weeks	Proposal
Four weeks	Data collection
Three weeks	Data editing and coding
Three weeks	Data analysis and presentation
THIRTEEN WEEKS	TOTAL TIME PERIOD