

**A HUMAN RIGHTS ANALYSIS ON UGANDA POLICE USE OF FORCE IN THE
EXECUTION OF ITS ROLES.**

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DECLARATION

This dissertation is from my own findings and has never been produced by anybody else for any award in any institution.

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Signature. 

Date. 

DEDICATION

I dedicate this writing to my mother **ZUBEDA HABWOMUGISHA**, for her unconditional love and support.

I also dedicate this work to my father **MUBIRU KAKEBE FRANCIS**, your dedication and your support for me is so very much appreciated.

APPROVAL

This is to satisfy that this dissertation has been done under my supervision and submitted to the school of Law for examination with my approval.

MADAM KABAKALI CYNTHIA

(Supervisor)

Signature.....

Date.....

Handwritten signature
8th May 2018

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ABSTRACT

This study investigated law enforcement officers' perceptions of the legal, normative, and practical considerations that are implicit in their decisions when faced with using force alongside human rights perspective.

This report analyses the legal framework in place to protect and promote human rights related to the conduct of police force in public affairs.

This report focuses on police use of force and human rights violations through use of force by police like, freedoms of expression and assembly, the right to life, liberty and security of the person, and access to justice. Uganda is party to several key international and regional human rights instruments that safeguard these rights, most notably the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. These instruments have been domesticated in the Constitution of the Republic of Uganda, 1995. While in theory the government seems committed to protecting and promoting civil and political rights, in practice, a lack of procedural safeguards and political will to protect and promote these rights has resulted in a narrowing of civic space and meaningful citizen participation.

Law enforcement officers are supposed to observe and protect fundamental human rights. A significant problem, however, is that use of force is sometimes misused, impacting public confidence in police services. The study promotes positive social change by providing information that will enable police administrators and legislators to enhance on policing.

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LIST OF ACRONYMS

HR	Human Rights
AG	Attorney General
FHRI	Foundation of Human Rights Initiative
HRC	Human Rights Commission
UPF	Uganda Police Force
CPC	Criminal Procedure Cord Act
PPTA	Prevention and Prohibition of Torture Act
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convection against Torture
PSU	Professional Standings Unit
RRU	Rapid Response Unit
HRNJ	Human Rights Network for Journalists
ACHPR	African Charter on Human and People's Rights

CHAPTER ONE

INTRODUCTION

1.0 Introduction to the Study

The study starts with a discussion of the purpose of the police in the Republic of Uganda who use force to protect citizens against incidents of victimization. Some citizens may fear that this force will be abused in ways that are oppressive, undermine their freedoms, and deny basic human and civil rights.

Why some police officers use force in circumstances where it appears that no force was necessary, (**Byarugaba V Uganda (supra)**), inappropriate and/or unreasonable often varies, leaving citizens confused. This study examined several factors that contribute to the decisions by police officers to use force. It used conflict theory as its theoretical foundation and engaged with issues of traditional organizational culture, political concerns, officer disposition, and the influence of gender in use of force decision factors. Although, there is substantial contemporary research on police use of force in execution of its roles, there is also a gap in the research analyzing the decision differences of police officers that use force along human rights perspective.

1.1 Background of the Study

The association between the observance and protection of fundamental human rights and the application of physical force¹ by police has created a need for the research on police officers' use of force. This is especially true in the present day where the multicultural composition within local societies is increasing and the globalization of economics and justice issues are prevalent.²

The use of force and violence has been a topic of public and political interest, scrutiny, challenge and controversy throughout the history of modern policing.³

¹Sec. 1 of Prevention and Prohibition of Torture Act, 2012

²New Vision 'Crime Preventers are legal – General of Police Kayihura, 29th January 2016

³Uganda Police Force, Over a million Crime Preventers passed out, by Vision Reporter, 10th November, 2015

Decisions to employ use of force are made by individual police officers within situational circumstances wherein they choose to apply physically coercive measures, potentially including deadly force, and based on legal, normative and/or political perspectives (**Mohamood F.E Hassouna V AG, complaint UHRC No, 110/1998**). Male and female officers dealt with the stress of a policing environment in different ways. When given the opportunity to lead, women generally do things differently from the men, who does not mean that they are less successful in their accomplishments, but only that they do things differently. However, the essence of policing has been defined by male standards of performance that effectively set the goals and methods of achievements.

1.2 Problem Statement

The application of force during an arrest or in pursuit of a suspect is a decision specific to the profession of policing. The ease of abusing physical force is problematic because it's potential to impact public confidence in police services. If the ultimate goal in society is to reduce violence, including violence perpetrated by police officers, then the programs to affect this type of behavior needed to be very specific to what police officers do in their work and their training. How police officers talked about force or are critical of the use of force reflects how they responded to confrontational situations. There are also several factors that the officers consider and that impact the nature of their responses. Officers are impacted by legal, normative and practical considerations that I investigated. How police officers explained the various force considerations provided me with important information as to how they react in practical circumstances in the field.

The use of force is an area of the police role that makes citizens uneasy largely because it is so easy to misuse. A police service that causes injury⁴ to a citizen can result in significant public grief or criticism about the service (**Byarugaba V Uganda (supra), (Mwangi s/o Njoroge V R (1954) 21 EACA 377)**).

⁴Daily Monitor, 'Family demands police pays bills of shot student,' by Asuman Musobya, 25th February 2016, p.14

This study analyzed police officers' reasons for using force in the execution of their roles, an important venture that would impact the approach to use of force in the future.

My research responds to a gap in the literature on specific decision factors that both police men and women specifically respond to under confrontational conditions on duty. The research is very specific in stating that policewomen respond differently to work circumstances relative to their male colleagues. This study determined that those differences were significant; meaning that through additional research, changes to police recruitment, training, and organization policy on issues of force applications should change to reflect this new information.

1.3 Purpose of the Study

The primary purpose of this qualitative study was to examine data and create a theory that modeled gender differences in police decisions about use of force in the execution of their roles on human rights.

The study explored and discussed the decisions involved in police use of force behavior based on varying factors. It examined factors that contributed to the use of force decisions by police officers, including the role of gender. The concerns I had was that current decision factors based on principles of law or political considerations, organizational interests and culture, and traditional conflict management practices, did not reflect gender-based response preferences. Strategies that avoided the use of force were consistent with legal principles and public expectations. I also explored decision factors applied by police officers in situational circumstances that were confrontational. I analyzed these decisions for possible differences based on all factors including gender to determine the contributing factors relative to the differences in arriving at use of force decisions as well as decisions not to use force. The results enhanced my understanding about decision factors in police use of force that will empower organizational leaders and researchers in the field to promote constructive

changes in use of force strategies and their implementation considering the inherent rights of the citizens and non citizens in the republic of Uganda.⁵

1.4 Methodology

This report presents the findings of a 3 months inquiry carried out by me. It focuses on violations of the rights both derogable and non derogable like right to vote and to participate in public affairs, freedoms of expression and assembly; right to life, liberty and security of the person, and access to justice.

A review of the relevant international and regional human rights instruments as well as national laws, policies and guidelines was conducted to analyze the legal framework and human rights safeguards in place and the legal reforms that have taken place. In addition, a review of media reports, election observer reports and human rights reports of the 2006, 2011 and 2016 election periods provided further information on human rights violations during elections in Uganda.

I read human rights reports written by different human rights organisations and watched interviewed individuals, including senior representatives from the Electoral Commission, Uganda Police Force, Uganda Communications Commission, political party members, presidential, parliamentary and mayoral election candidates, civil society, the media, academia and human rights victims on youtube.com.

1.5 Research Design and approach

Two primary research questions were used to guide this study:

RQ1. What were the different ways in which police officers explained the application of force as a strategy to maintaining social order?

⁵FHRI interview with Ms. Damalie Lwanga Director of Public Prosecutions on 1st November 2011

RQ2. What were the different ways in which police officers were critical of the applications of force?

Three secondary questions were used to help answer the primary research questions:

RQ3. What criteria do police officers identify in situations justifying the use of force as a police practice?

RQ4. What were the points of consensus among police officers on these matters generally, or do they display a significant variety of different viewpoints?

RQ5. What were the perceptions wherein the police officers on these matters generally, or do they display a significant variety of different viewpoints differed about using force?

1.6 Scope of the study.

This study covered the Geographical area of Kampala – Uganda following the previous events like age limit bill and many more, in evaluation of the Human Rights Perspective by the application of force by police. In attempt to answer the previous questions of the study the researcher considered, the 1995 constitution of the Republic of Uganda, Police Act cap 303, Criminal Procedure code Act, and others Statutes and relevant Articles and Journals and text books from authors who wrote about the topic of Research.

1.7 Literature Review

Introduction

Regarding on human rights analysis on police use of force in the republic of Uganda, the work that police officers engage in daily presents many opportunities for interactions with citizens, some of which have the potential to create an environment of conflict. This chapter offers comprehensive review questions of the literature on the theoretical and conceptual factors that influence police use of force decisions during an arrest or during a demonstration of citizen violence. The examined literature suggested that there are gender-based differences in police work decisions.

I examined the situational cases in use of force circumstances that impact decision factors regarding to use of force or not to use force for both policewomen and policemen. I further noted similarities and differences. My anticipation in this type of study was to determine the extent to which occupational socialization actually impacts officer behavior relative to gender. The impact may not be significant as police trainers and human resource specialists hope for. It might be that occupational socialization actually male and female officers differently meaning that in my study there to be a difference in the use of force decision factors. The research discussed here indicated that policewomen rely on style of policing that uses less force and are better at de-escalating confrontation with citizens. It would be reasonable to assume that police agencies would take advantage of the gender based skills to mitigate civil liability from excessive use of force events.

1.8 Conclusion

The range of considerations preceding the force applications vary. According to the literature, the gender of police officers is an important factor in arrest decisions. Policewomen do not use force as frequently and are subject of fewer liability cases emanating from excessive use of force complaints. **(Byarugaba v Uganda (supra)).**

CHAPTER TWO

ARREST PROCESS

2.0 Introduction

Arrest can be defined as 'the apprehension or detention of a person in order to be forthcoming to answer an alleged or suspected crime⁶. A fair trial must include a fair arrest process, which is consistent with the law and respects the rights of all individuals.

In this chapter, we examine the capacity of the Uganda Police Force to effectively execute this mandate in regard to the arrest process and the effect it has on the right to fair trial. This examination will include the right to being informed of one's charge, the right to be detained in an authorized location, respect for the 48 hour rule, and the right to a timely investigation process.

The Police Act, Cap.303, empowers police officers to effect an arrest: 'A police officer may, without a court order and without warrant, arrest a person if he or she has reasonable cause to suspect that a person has committed or is about to commit an offence.'⁷

2.1 Preventive Arrest

There are very few offences for which a police officer may arrest a person as a preventive action. These include, inter alia, crimes leading to physical injury or loss of property, offences against public decency, and inflicting suffering to a child.⁸ The Constitution, provides for preventive arrest and states that: 'one may be deprived of personal liberty if the arrest is for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence.'⁹ This effectively criminalizes

⁶Black's law dictionary, 9th ed.

⁷S.23 (1), the Police Act cap 303.

⁸S.24 (1) of the Police Act Cap303.

⁹Art. 230) (c) of the Constitution of the Republic of Uganda, 1995.

being about to commit an offence'. However, in order to be convicted, a case must be made showing beyond a reasonable doubt that the commission of the crime was imminent.

Following the walk to work protests in March 2011 in Uganda, Dr. Kizza Besigye, the former Forum for Democratic Change (FDC) President was arrested in October 2011 as he attempted to 'walk-to work'. Police spokesperson confirmed the arrest and is reported to have said that, 'we will keep him under preventive arrest and our personnel will not allow him to leave his house.

He will have to first renounce participating in violent activities and disrupting peace.¹⁰

The Grade 1 Magistrate at Kasangati Magistrates court having decided the case held that his detention was unlawful since he was not informed of the reasons for his arrest nor detained in a lawful detention facility.¹¹

The issue is, whether 'walking to work' would fall within the ambit of S. 24 of the Police Act as noted above.

2.2 Premature Arrest

The decision to arrest an individual has serious implications on the respect for the 48 hour rule provided under the Constitution.¹² Police has to strike an appropriate balance between protecting the rights of the suspect as well as the general public.

In contrast, it is often cited by police that early and quick arrests prevent lynching and mob justice, but this is not always the case. In some instances the police simply arrests without any indication of mob justice often resulting in suspects being detained unlawfully. A state attorney that preferred anonymity agrees. 'They rush to arrest before enquiries are done. After dumping someone in the cells, then they run; start gathering evidence and statements from witnesses. They take days while

¹⁰Daily Monitor, Thursday 27th October 2011

¹¹Daily Monitor, Besigye detention was unlawful says court 28th October 2011

¹²Art. 23 (4) b of the constitution of Uganda

suspects are in the cells. They cannot even bring a file for advice because evidence is not there.

Arresting an individual without sufficient evidence violates the presumption of innocence. A fair trial process requires that suspects should not be unfairly detained without sufficient evidence. Section 2.4 of this report discusses the 48 Hour Rule but it is important to note that problems of premature arrest arise when the 48 hour rule cannot be observed.

2.3 The right to be informed of one's charge

It is a constitutional requirement that, 'every person who is charged with a criminal offence shall be informed immediately, in a language that the person understands, of the nature of the offence. The suspect should be afforded protection from the time of arrest. Being informed of one's charge is critical to the right to fair trial because it allows a suspect to prepare his or her defense.

2.4 The right to identify an arresting officer

The Criminal Procedure Code Act, Cap.116 broadens the scope for arrests to include any one. The Deputy Police Commander, Gulu Police Station, agrees. 'Our laws mandate any person to effect arrest of any person who is committing or about to commit a crime. That is why some detectives do not need to wear uniforms.

The Public expects that arrests are to be executed by an officer in uniform however this is not always the case. Although wearing of uniform is not mandatory, it does not follow that it is a best practice. The anonymity of officers who do not disclose themselves during arrest infringes on the right to liberty of the person. There are several instances when suspects have been arrested by officers in plain clothes under use of force and not informed of reasons for the arrest.

For example,

In the case of Asuman he states;

'I am a special hire driver in Mbale. I was arrested by plain clothed personnel on 9th February 2011 at my home in Mbale. During my arrest they kept asking me the whereabouts of the people I drove to Soroti

and I told them that my duty is to drive people to where they want to go and in most cases they are people I do not know and I could not trace them. They beat me telling me to disclose their whereabouts. They asked me for the money that I was paid by the men since it was stolen money. My wife had just given birth and they also beat and kicked her telling her to disclose the whereabouts of the money. After giving them money they left her and took me to Mbale central police station.¹³

Mago narrates a similar ordeal:

Mbazira, faults the practice as well. 'This is a problem because it makes it hard to distinguish between lawful arrests and illegal acts carried out by bandits or criminal gangs. Arresting officers must have some form of identification and this is an international standard. Relatives have to be informed of where and when a person is detained.¹⁴ Thomas Kasimo holds a similar view. He observes that, 'the person arrested should be detained in a gazetted place.¹⁵

Arrests by plain clothed officers often lead to further infringements that relate to the right to fair trial, such as being detained for prolonged periods of time before being brought to court. These types of arrests impact on an individual's right to a speedy trial. Such unlawful arrests impact adversely on the safety and security of the individual and may contribute to lawlessness.

2.5 Knowing the reason for the arrest

As noted above, Police are required to inform a suspect of the charge against him or her at the time of arrest as provided for in Article 28(3) (b) of the Constitution. Knowing the reason for the arrest justifies the restriction of the liberty of the offender. Asan Kasingye notes that this unfortunately is not always observed.⁴⁰

¹³ FHRI interview t Kigo Prison on 7th September 2011

¹⁴ FHRI Interview with Dr. Christopher Mbazira, Associate Professor, Makerere University Faculty of Law on 16th August 2011.

¹⁵ FHRI interview with Mr. Kasimo Thomas, Administrative Officer, PSU on 18th October 2011

Being held in police custody makes it impossible for one to refute the charge and this makes the suspect more susceptible to mistreatment. Birabwa agrees. 'Sometimes when police arrests you, they rough you up, throw you on a pick up, and rarely do they inform you of your rights! There are a lot of people in jail who tell you I am here and I do not know why. When I ask why I was being arrested they beat me up telling me I was resisting arrest.'¹⁶

Based on several accounts of suspects whom FHRI interviewed, informing suspects of the charge against them is rarely complied with; suspects are often not informed of the reasons of the arrest at the time of arrest, and some suspects are not informed even after spending many days at a police station of the charge against them.

For example,
Okure tearfully states:

I was arrested by police men under use of force and brought to Gulu Police station.. On arrest they never informed me the reasons for my arrest. It was at the police station then they told me that I was suspected of having murdered a neighbor.¹⁷

Being promptly informed of the reason for arrest is essential to realizing the right to fair trial. A failure to inform the suspect in a language he or she understands of the reason for the arrest could render the arrest unlawful.

2.6 The right to be detained in a place authorized by Law

The Constitution provides that, 'a person arrested, restricted or detained shall be kept in a place authorized by law.'¹⁸ Under the Criminal Procedure Code Act, Cap.116, 'Any private person who arrests any person without a warrant shall without unnecessary delay hand over the person so arrested to a police officer, or in the absence of a police officer shall take the person to the nearest police station.'⁴⁵ Research findings however show that non-adherence to this legal requirement is common. For example,

¹⁶FHRI interview with Ms. Christine Birabwa, National coordinator, Justice Centres (Uganda) on 23rd August 2011

¹⁷ FHRI interview at Gulu police station on 28th June 2011

¹⁸Art. 23 (2) of the Constitution of Uganda

Wetaka states:

'I was arrested on 28th February 2011 from industrial area here in Kampala by men in plain clothes. Prior to the arrest a friend of mine had been arrested in connection with a robbery. When they arrested me they kept asking me where my friend had gotten the gun from since I was working with Saracen (a security agency). They took me to the then Kireka Rapid Response Unit (RRU) for interrogation. I was forced to confess due to too much pain. They brought my friend and he told them that I knew nothing about the gun. I do not remember how long I spent at Kireka but it seemed like forever.¹⁹

Sekandi painfully states:

'I was arrested in May 2009 by RRU officials from Ndeeba as I left work. I was pushed into a vehicle. They started beating me all over my body using batons, beer bottles and a gun. I was taken to Kireka RRU or two weeks. While at Kireka, I was tortured and asked about the gun that I did not know about. I was even forced to make a statement while there.²⁰

2.7 Mob justice and police use of force.

'I was attacked by a mob accusing me of murdering a girl that I had met in a bar. We were together in a bar and I left her there. The next day on 30th April 2011, a mob of people came to my home to kill me. I was saved by police use of force.²¹

2.8 Conduct of Police during arrest

The investigation process can be a challenging undertaking. In trying to comply with the 48 hour rule, police may resort to irregular methods of securing statements and extracting confessions. Some suspects interviewed alleged that in several instances

¹⁹FHRI interview at Kigo prison on 31st September 2011

²⁰Ibid.

²¹FHRI interview at Kawempe police station on 26th May, 2011

confessions are obtained through coercion. Coercive methods may include physical violence and or torture of the accused, which adversely affects the accused's right to fair trial particularly if it results in a forced confession.

Masaba narrates his ordeal:

'I was brought here on Monday (May 23rd 2011) and since then I have not made a statement. At first when they brought me here, they took me to the Officer in Charge's offices and took my money. The police officers hit me with a baton. I still have wounds. I have seen them hurt another man every day. They beat and kick him profusely when they take him lunch.'²²

Senyonyi recounts his nasty experience:

'I was arrested by Police from Kabanga in Nakasongola District on 20th March 2011. At the time of my arrest, I was seated at my daughters shop in Nakasongola when I saw police men come towards me and I thought they had come to buy things from the shop. One of them asked me if am Senyonyi and they immediately started beating me. I asked them why they were beating me. They never answered and took me to Lwabiyata Gombolola for one night and then to Nakasongola police post where I was 4 days. When we reached Nakasongola they asked me if I knew Senyonyi's gun but I did not even know which Senyonyi they were talking about. They continued beating me with batons on the joints and on the head. I was later taken to the OC CID's office who asked me if I knew English but I told him that I never went far with education. He wrote a statement and asked me to sign. I told him that I cannot sign what I do not understand but he insisted and told me he will order the police to beat me again if am big headed. I and other people were brought to Kireka RRU offices for two weeks but we were not beaten at Kireka. We were remanded to Makindye barracks for an additional two weeks. On 13th April 2011 we were taken to court and remanded to Kigo up to 20th April 2011 although they took only Nantamu Christopher and Isabirye

²²FHRI with a suspect at Katwe Police Station on 26th June, 2011

William on that day. I have not been taken to court again and am not sure when I will be going back.²³

Sekandi says it all:

'I was arrested in May 2009 by Musa Sirima and two others (RRU officials) from Ndeeba as I left my work place. They started beating me using batons, beer bottles and a gun. I was taken to RRU Kireka for two weeks. While in Kireka, I was always called interrogated about the gun that I did not know about. I was even forced to make a statement while in Kireka but to my surprise the content of the statement on file is far different from the statement I made. I was then taken to Makindye barracks, detained for 4 months after which I was taken to court.'²⁴

Investigations are an important ingredient of the arrest process and if poorly handled can negate the right to a fair trial. Adherence to legal safeguards in effecting an arrest is a pre-condition to a lawful arrest.

2.9 Towards lawful arrests

Part V of the Police Act, details a Code of Conduct for the police. The code of conduct provides for prohibited conduct to include neglect of duty, corruption, and unlawful or unnecessary exercise of authority.²⁵ To enforce these minimum standards, a Professional Standards Unit (PSU) was established in 2007 following a directive of the Inspector General of Police. PSU is an administrative mechanism designed to check on any errant conduct within the police force.²⁶ The PSU is a useful oversight mechanism that promotes adherence to institutional standards of the police force and ensures discipline within this state organ. Omara explains:

²³FHRI interview at Kigo prison on 7th September, 2011

²⁴Ibid.

²⁵ S.19, 23, 27 of the Police Act, cap 303

²⁶ Supra, note 39

'Our mandate is to receive complaints against the police from the public. If police are mismanaging a case, we find out. We fight corruption and misconduct — like torture, overstay abuse of office. We first suspend an officer and then investigate to make a report. It comes with recommendations; we mostly recommend that the perpetrators be prosecuted. The outcome is decided by the court.⁷⁵

While the establishment of the PSU is a commendable step, there are many cases before the PSU that hardly receive any significant redress. Ex 2010, 1540 no of complaints received, 414 complaints completed and pending were 1126.²⁷

2.10 Conclusion:

The arrest process constitutes the initial stage in the criminal justice system. From the time of arrest production in court, police is obliged to ensure that an individual's rights are respected. As noted above, this is not always the case.

There is a need for increased investment and further training of the Uganda Police Force and other security agencies to promote respect for human rights at all stages of the investigation and arrest process.

2.11 Recommendations:

2.12 To the Uganda Police Force:

1. An arresting officer should always be identifiable whether by uniform or should the officer be in plain clothes, by a badge.
2. Arrests should not be made until there is sufficient evidence to believe that a person has committed or is about to commit a crime.

²⁷Source Professional Standards Unit, Bukoto 2011

Officers in charge should consistently enforce compliance with the duty of an officer to inform a suspect of the charges against him or her. Non-compliance should be sanctioned

2.13 To Parliament:

3. Amend the Criminal Procedure Code Act, Cap.116 to clarify the scope of preventive arrest
4. Police should be trained to execute preventive arrest only where necessary to prevent a crime and where sufficient evidence has been obtained.
5. Amend the Criminal Procedure Code Act, Cap.116 to require police officers affecting an arrest to deliver suspects to police stations without unnecessary delay.
6. Legislation should be modified to ensure that searches without warrant are permissible only in extreme circumstances where there is a clear and present danger or imminent.

2.14 To Government:

7. Government should increase budgetary allowances to police to enable it improve training, transport and communication necessary for lawful arrest process.
8. Ensure that police bond is free for all as provided by the Police Act, Cap.303.
9. Expand the capacity and scope of the

2.15 To Uganda Law Reform Commission:

10. Review S.25 (2) of the Police Act, Cap.303 to promote strict adherence to the 48 hour rule as provided by the Constitution.

CHAPTER THREE

NON-DEROGABLE RIGHTS.

PROHIBITION AGAINST TORTURE, CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT.

3.0 Introduction

The Convention Against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (CAT) defines 'torture' to mean, 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed.. ..'²⁸

The Uganda Constitution guarantees freedom from torture, cruel, inhuman and degrading treatment or punishment and recognizes it as a non-derogable right.³¹¹ on 27th July 2012, the Prevention and Prohibition of Torture Act, 2012 was enacted. The Act criminalizes torture and provides for individual criminal liability of the perpetrators of torture.

3.1 Torture trends in Uganda

In its 14th Annual Report, the Uganda Human Rights Commission (UHRC) noted, that out of the 1,231 cases received in 2011, 428 cases were torture complaints, that is 34.8% of the total complaints received was a 55% increase in the number of complaints of torture registered from 276 in 2010 to 428 cases in 2011. All the complaints of torture registered were against the Uganda police Force. The UHRC also noted an increase in complaints of torture against the Uganda Prison Service from 30 in 2010 to 40 complaints in 2011.²⁹

Research findings indicate that compensation awards issued by the UHRC against the Attorney General (AG) are still outstanding.

Oduka also narrates his ordeal:

Was arrested on 31st May 2011 at my home in Najjanankumbi by men in plain clothes and taken to RRU Offices in Kireka. I was tortured in the car on the way

²⁸Art. 1 Convention Against Torture, Cruel, inhuman and degrading treatment, 1984

²⁹Recorded by UHRC

to Kireka but while in detention at Kireka. 1 was detained for three weeks after, which 1 was taken to the General Court martial at Makindye and charged with armed robbery.³⁰

For Alex, he was pepper sprayed:

'I was arrested on 23rd May 2011 around Bombo road in Wandegeya, a city suburb as I was driving a taxi. I was stopped by a traffic officer but as he was checking my car, a woman came claiming that she had dropped her bag in the taxi and that we had given her counterfeit money. I was arrested and taken to Wandegeya police station. At the police station the police officers started spraying me with teargas as they interrogated me. When the District Police Commander Wandegeya police station walked into the interrogation room, they stopped torturing me.³¹

For Ssebagala, the experience was traumatizing:

'I was arrested with 116 others while we were working on a building on Ben Kiwanuka Street, in Kampala for the murder of the late John Ariong, Assistant Inspector General of Police. The police arrested everyone who was on site including the owner of the building.

We were all taken to SIU in Kireka. I was beaten by the police using batons from the 4th floor to the truck and on the way to SIU but never while in detention at SIU. While on the truck, the police threatened to kill us if we did not disclose the person who threw the stone that killed their friend, John Ariong. Some of the people that were arrested got physical injuries and others internal pain due to severe kicks on the head and the chest.³²

³⁰Ibid

³¹FHRI interview with a suspect at Wandegeya Police Station on 24th May, 2011

³²FHRI interview with one of the builders arrested from Ben Kiwanuka Street, 26th March 2012.

3.2 Corporal Punishment

The Penal Code (Amendment) Act, 2007 that amended S. 125 of the Penal Code Act Cap.120 abolishes corporal punishment. The use of corporal punishment as a form of punishment by police has dramatically reduced.

3.3 Conclusion:

The enactment of the Prevention and Prohibition of Torture Act, 2012 provides an opportunity to upscale the campaign against torture in Uganda. What remains are regulations that should be formulated to operationalise the Act.

3.4 Recommendations:

3.5 To Government:

Formulate and adopt the regulations to the Prevention and Prohibition of Torture Act, 2012 in order to operationalise the Act;

Ratify the Optional Protocol to the United Nations Convention against Torture (UNCAT) to allow for independent inspections to places of detention.

RIGHT TO LIFE

"The right to life is the first among human rights."

H.H. Pope Francis.

Under international human rights law, derogation from the right to life is only permitted in execution of a death sentence carried out pursuant to a final judgment rendered by a competent court and only for the 'most serious' crimes.¹⁹⁴ The Constitution reinforces this. Article 22 of the Constitution guarantees the right to life except where a death sentence is passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence, and such conviction and sentence have been confirmed by the highest appellate court.

3.6 Extra Judicial Killings

Articles 4 and 6 of the ICCPR obliges state parties to prevent and punish criminal acts that lead to the deprivation of life including arbitrary killings by the state's own

security forces. In spite of these legal prohibitions, extra-judicial killings are reported to occur.

For example,

During the "walk to work" campaign in 2011, at least 15 people were reported killed and hundreds injured during the clashes between police and demonstrators in Kampala and other upcountry towns.³³ The deceased persons included both demonstrators and non-demonstrators. A two year Old girl, Juliana Nalwoga was also shot in the head by a police constable while dispersing protestors in Masaka district and she died.³⁴

'Five police men were arrested for allegedly shooting and killing 17 year old Issac Semugwe from Mabanda in Matugga. Those killed were trying to disperse a crowd that was blocking the arrest of a suspected robber. "The deceased died on the way to Mulago hospital."³⁵

3.7 Human rights and elections in Uganda (2016)

3.8 Trend since 2006

During the 2006 and 2011 elections, only one violation of the right to life was documented. On 15th February 2006, shortly before the 2006 elections, a Special Police Constable (SPC), Ramathan Magara, killed two and wounded a third when firing into a FDC rally at Bulange Mengo in Kampala. Magara was prosecuted and sentenced to 14 years imprisonment in June 2009.³⁶

The 'Walk to Work' protests following the 2011 elections resulted in further violations of the right to life. During April 2011, at least nine people were shot and killed by police seeking to quell demonstrations in Kampala, Gulu and Masaka, including a two-year old girl, Juliana Nalwoga, who was hit in the head by a stray-bullet when a police constable tried to disperse protestors in Masaka district.¹⁹⁷

³⁴Daily Monitor, Baby shot dead, Besigye jailed, Michael Salli, 22nd April 2011

³⁵The daily monitor, five police men arrested over boys shooting, Andrew bagala, 5th December 2011

³⁶Daily monitor, anger as Magara gets 14 years in jail for killing fdc supporters by Alfred Nyongesa and Lydia Mukisa, 25th June, 2009

3.9 Right to life during the 2016 election period

During the 2016 election period, there were a number of instances where police used lethal force to disperse rallies, resulting in the loss of life. For instance, on 15th February 2016 one person was killed in Kampala when police clashed with FDC supporters after

Besigye's rally was disrupted and Besigye was arrested for the second time that day. Chaos erupted after police blocked Dr Besigye from addressing his planned rallies in Kampala as it would disturb traffic flow. Police fired teargas to disperse the crowd and arrested Dr Besigye, and after a short detention at Kira Road Police Station drove him to his home. Besigye, however, drove back to town to address a scheduled rally at Makerere University. At Wandegaya police blocked and arrested him again. The violence that followed, resulted in the death of one person, identified as Emmanuel Musisi Nsubuga, and 22 others were injured.³⁷

"The police accepted that they killed him. They are the ones who carried him to his burial ground and even paid money for his burial to the family."³⁸

On the evening before Election Day, one person was killed and two others seriously injured when an army officer and his bodyguards opened fire at a group of supporters of the FDC in Bugweri County in Iganga district. The incident occurred after the FDC supporters clashed with Capt. Moses Kalera, who they accused of trying to help the NRM candidate, Dan Ibaale, bribing voters in the area.

On 19th February 2016, the day after elections, a 13-year-old boy, Muzamiru Kule, was shot dead by a police officer during a clash between FDC supporters and security personnel — both UPF and UPDF - at the Kasese district tallying centre. Bob Kagarura, Rwenzori East Police Commander, confirmed that Kule was shot as security officers dispersed rioting FDC supporters along the Kasese - Fort Portal road

³⁷Daily monitor, US condemns killing of Besigye supporter, by Frederic Musisi, 18th February 2016

³⁸FHRI interview with Ingrid Turinawe, fdc party secretary for mobilisation, on 22nd July 2016

and died on the way to Kilembe Hospital.³⁹ Hon. Winnie Kiiza, Kasese Woman MP, narrated this ordeal:

"On the election day of the President and Members of Parliament, there is a 13-year-old boy who was shot dead at a tally centre. He was called Muzamiru. Muzamiru was shot dead at a tally centre where the police did not want [people] to be closer to the tally centre to see how the declarations were made. They dispersed people with tear gas; beat them up badly, until they even commanded for firing of live ammunition. That is how this Muzamiru boy died."⁴⁰

According to AIGP Asan Kasingye, live bullets should only be used as a last resort, and never to kill:

"In public order management you use bullets as a last resort. Nobody should tell you that in public order management there is no section of live bullets. It is always there, but it is the last one. But even when you have to resort to use that, there is a way you use it, not directing fire to the people. Even when you do it, in our riot act, you tell them that live fire will be directed to disable you, not to kill."⁴¹

Non-lethal crowd control methods, however, seem to be lacking in the standard equipment provided to police officers. According to accepted policing procedures, "the provision of a firearm to law enforcement officials with no less-lethal alternative other than a baton is unacceptable".⁴² This calls for a need to equip police officers with sufficient non-lethal alternatives.

³⁹Uganda radio network, one killed in Kasese post elections, by Thembo Kahungu, 20th February 2016, retrieved from Ugandaradionetwork.com

⁴⁰FHRI interview with Hon. Winfred Kizza, woman mp Kasese district, on 15th April 2016

⁴¹FHRI interview with Asan Kasingye, assistant inspector general of police and director of Interpol Uganda, on 15th April 2016.

⁴²Uganda radio network, one killed in Kasese post election protests, by thembo kahungu, 20th February 2016, retrieved from ugandaradionetwork.com

3.10 Conclusion

Excessive use of force by security officers continues to result in incidental loss of life. The violence and loss of life in the days before Election Day, undoubtedly contributed to an environment of fear. Despite statements made by police that lethal crowd control methods are only used as a last resort, too often does the police resort to live bullets to disperse demonstrations. There is need to effectively investigate these and other killings to ensure perpetrators are held accountable. Furthermore, investigations in the violence and killings in the Rwenzori region are urgent to address the root causes behind the recurrent killings in this region and hold perpetrators accountable. Adequate and timely investigations of suspected unlawful or arbitrary killings are an important part of the state's obligation to protect, as a failure to do so amounts to a violation of the right to life itself.

CHAPTER FOUR

DEROGABLE RIGHTS

RIGHT TO EXPRESSION

"[P]rotection of the right to freedom of expression is of great significance to democracy. It is the bedrock of democratic governance. Meaningful participation of the governed in their governance, which is the hallmark of democracy, is only assured through optimal exercise of the freedom of expression."

**Hon. J.N Mulenga Supreme Court Justice-
Constitutional Appeal No.2 of 2002**

4.0 Introduction

The right to freedom of expression includes the freedom "to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The Constitution guarantees every person the right to 'Freedom of speech and expression which shall include freedom of the press and other media'. The Constitution further provides that "every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person".

4.1 Trend since 2006

Despite the liberalization of the media in Uganda and the constitutional guarantees to freedom of expression and freedom of the media, freedom of expression and independence and impartiality of the media have been under threat, especially during election periods.

4.2 Freedom of expression during the 2016 election period

Incidences of attacks on and harassment of journalists by police with use of force were reported throughout the election period. According to Robert Ssempera, Coordinator of Human Rights Network for Journalists (HRNJ-Uganda), "the environment is becoming more restrictive because during the 2011 elections overall cases recorded in that year were about 124, while between the period of October 2015 and February 2016 we recorded over 100 cases in a period of just a few months". These cases included destruction of tools, physical assault, and intimidation, closure of a media house and three shootings of reporters:

"One [journalist] was shot at while covering the arrest of the Lord Mayor, Isaac Kagonza with Delta TV, by police. That was in Wakaliga, when Lukwago was planning to walk to the Electoral Commission for nominations. This journalist was hit during that scuffle. Another one was Vincent Mukisa, who works with Radio One based in Jinja, who was shot at in Kakindu stadium when he was covering a rally by Kizza Besigye supporters. That time that day Kizza Besigye was detained at his home and the party members decided to convene at a designated venue but police came and dispersed them. In the process he was shot at as he tried to seek for safety on the side of the police. The other person was an NTV reporter based in Mityana, Matovu. Matovu was shot in the fracas where some NRM members were reported rigging elections in favor of the parliamentary candidates. He was there to cover, and was shot at during that fracas.

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According to HRNJ-Uganda, the majority of the victims were targeted while on duty reporting opposition related activities, and the main perpetrators of the violations were the police and NRM candidates.⁴⁴

⁴³ ibid

⁴⁴ Ibid

Shortly before the start of the electoral period, intolerance against journalists already manifested. Statements by the Inspector General of Police (IGP), Gen. Kale Kayihura attest to this:

"I want to warn you journalists especially NTV and NBS TV who are normally embedded in these convoys, I don't know for what reason ... I don't know whether you are being journalists in the ethical sense or you are being inducted in these parties; we are going to go against you."⁴⁵

As if to implement this threat, a day later, on 15th October 2015, the police attacked journalists who were covering the arrest of Hon. Ssemujju Nganda, Kyadondo East MP. HRNJ-U reports that there were various arrests and incidences of violence against journalists.

For instance,

"the shooting and injuring of Ivan Vincent Mukisa, a journalist with Radio One who was reporting a scuffle between the police and supporters of Dr Kizza Besigye in Jinja."⁴⁶

Alfred Ochwo, a journalist with the Observer Newspaper who was taking photographs the arrest of Hon. Ssemujju Nganda was also arrested on 15th October 2015. Alfred narrated that while he was doing his work covering Ssemujju's arrest, police officers ordered his arrest:"

"They ordered me to hand over my camera, which I did not. This enraged them. Two grabbed me and bundled me onto the back of the police patrol truck and drove off to Naggalama Police Station at a terrific speed. ... They [Naggalama police officers] ordered me to remove my shoes, but before I could ask

⁴⁵The observer, police holds Besigye, Ssemujju, scribes, by edris kiggudu and Justus lyatuu, 16th October 2015, p.3

⁴⁶Human rights network for journalists, police shoots detains journalist and assaults others covering opposition politicians, accessed on 28th October 2015, available at www.hrnjuganda.org

what my crime was, the officer in charge of the cells kicked me in the legs and forcefully removed my shoes, shouting: 'You want to disobey us here?'⁴⁷

Although Alfred was detained at Naggalama police station following the arrest, he was never requested to make a statement nor charged. Instead, he was later driven back to Kampala.⁴⁸

Police also assaulted journalists who were streaming live telecasts of the detention of Hon. Ssemujju Nganda at Kira Road Police Station in Kampala.

One of the journalists, Joseph Sabiiti narrated the ordeal:

"The police did not want us to cover the events. They confronted us and pushed us from the police premises all through across the road. They used force and body amours to push us. They wanted to destroy our gadgets and interfere with our live coverage. "⁴⁹

Robert Ssemपाला, National Coordinator of HRNJ-U, responded to the violence as follows:

"The uncalled-for and unsubstantiated accusations are intended to blackmail, criminalize and intimidate the media. The allegations are further aimed at instilling self-censorship among independent media houses and above all, to silence, stifle and suffocate freedom of expression. "⁵⁰

On 10th December 2015, journalists covering Kizza Besigye came under fire from police in Moroto under the command of DPC George Obio, leaving the equipment of the NTV crew destroyed. The NTV journalists were filming a roadblock that had been erected to prevent Dr Besigye from travelling to Tapac sub-county. DPC Obia argued that it was military equipment that could not be filmed without permission. He threatened the journalists to bring the cameras or "I am going to destroy everything", before he attacked the

⁴⁷The observer, 16th October 2015, p.3

⁴⁸ibid

⁴⁹ibid

⁵⁰The observer, police holds Besigye, Ssemujju, scribes, by edris kiggudu and Justus lyatuu, 16th October 2015, p.3

journalists and destroyed their camera. Moroto Regional Police Commander, Richard Aruk, apologized for his colleague's actions.⁵¹

On 27th February 2016, a group of journalists was arrested near Besigye's Kasangati home, as they waited to cover an anticipated visit by former Prime Minister Amama Mbabazi. The arrest was ordered by Kasangati DPC James Kawalya. NTV cameraman⁵²

Abubaker Zirabamuzaale and reporter Suhail Mugabi were bundled into a police van, before the cops attacked Daily Monitor's Eriasa Mukiibi and Abubaker Lubowa. According to The Observer's Nicholas Bamulanzeki, "He (Kaweesi) told us that they would not allow us to cover anything at Besigye's place because they had intelligence information that both Besigye and Mbabazi had a sinister plan". After about 40 minutes, Kaweesi released the journalists but warned them that the road leading to Besigye's residence is a "no go zone".⁵³

Remmy Bahati narrated her experience of covering events at Besigye's residence to FHRI:

"On 1st March 2016 I was deployed to cover General Mugisha Muntu, Ingrid Turinawe and Hon Cecilia Ogwal who had gone to see Besigye. So when we reached there, the police like it has always been did not want journalists to cover anything at Besigye's residence. So we insisted and camped somewhere, still they told us to go away but we did not. I was reporting the events live on TV. The police were targeting me because they wanted to stop the live broadcast. ... So they chased me and finally they caught up with me, overpowered me and arrested me. ... I was arrested together with Ingrid and they were basically torturing Ingrid and me. For Ingrid, her blouse was torn and she was virtually bare chest. They tortured us, those police officers in the van, by pulling our

⁵¹ Daily monitor, police attack on journalists on campaign trail, by Steven Ariong and eriasa mukiibi, 11th December 2015, p.4

hair, beating us and fondling our breasts. We stayed in the van for like an hour It was very hot. After, they took us to Kasangati Police Station"⁵⁴

She added that she was threatened at the police station:

'Kaweesi came for me from the cells and told me to go and stop reporting about the opposition, and if we insist, something bad might happen to us. He actually said I quote: "you journalists, we always tell you on several occasions to stop covering this because it is not good for the country, it intends to incite violence. So if you insist, journalists will start disappearing and no one will ever know your whereabouts. "

AIGP Asan Kasingye denies that the police actively target journalists, and condemned all acts of torture and physical attacks by police against journalists:

"In my own assessment, there is no targeted action by the police against journalists whatsoever. We do not target journalists. We actually give SOPs [Standard Operating Procedures] to our police officers on how they can work hand in hand with journalists, Now, you may have isolated incidences where a police officer, or police officers, target somebody. There was an incident in Old Kampala, where the DPC assaulted a journalist in a very bad way. We took him to court. So you cannot say it is the police that targeted, no Mutabazi targeted as an individual, as a DPC, and you must answer. He was in our uniform, but we never told him to do that. This is something that we need not only to handle during elections, but we need to start training our police officers that journalists are our friends. They have actually helped the police in law enforcement. We are partners. Where it happened, we are really very sorry about that. We need to continue sensitizing them, but I deny any accusation that says the police were targeting journalists. "⁵⁵

⁵⁴FHRI interview with Remmy Bahati, political reporter nbs TV, on 30th march 2016

⁵⁵FHRI interview with Asan Kasingye, Assistant Inspector of police and director of Interpol Uganda

Kasingye, however, also noted that journalists behave irresponsibly at times, and that they should follow police directives and go to court in cases where journalists' freedoms are being violated.

"If they [police] say you cannot cross this area and go to the other area. / think your duty is to report as it is: We reached at a certain point A, we wanted to point B, but security stopped us, so we cannot even see what is happening in point B. But you do not come and start fighting the police because you want to be in point B. I think also, therefore, journalists must work hand in hand with the police (? They must comply with police directives. They can ask why, but they should not be seen to fight security because they have to go to point B. No report that you have been told not to go there. We do not know why as journalists you are supposed to be there. Why? You can even sue by the way, and say why are they stopping us? But to fight, to be seen fighting, I don't think that is right. "

Geoffrey Wokulira Ssebagala, CEO of Unwanted Witness, however, is more sympathetic to the plight of journalists: "What do you expect if the individual knows that there is no fair justice? What do you expect to see if the individual is being inhumanly treated, yet you are expected to be independent? Who is independent? The person who is arresting is a police officer who is acting on orders. The person who has been harassed by a police officer is going to a judge who is a cadre judge. So what do you expect? I see a sign of a failing state because people are completely tired. They do not see independence because the entire three arms of government are facing the challenge of independence and credibility. The entire justice, law and order sector is not independent. So you will find people behaving the way they want because they are completely suffocated. "⁵⁶

RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Maintaining the freedom to assemble and express dissent remains an indicator of the democratic and political health of a country"

- Hon C.K. Byamugisha, Justice of Appeal Constitutional Petition

No. 9 of 2005

⁵⁶FHRI interview with Geoffrey Wokulira, CEO Un wanted Witness, on 16th may 2016

4.3 Introduction

The right to freedom of assembly is provided for under Article '29 of the Constitution which provides every person with the right to assemble and to demonstrate together with others peacefully and unarmed and to petition". The right to peaceful assembly is not an absolute right and can be restricted to ensure the rights and freedoms of others or the public interest, but not beyond what is acceptable and demonstrably in the Constitution. In a free and democratic society or what is provided for the Constitutional Court argued in 2008 that the power to prohibit the convening of an assembly or forming of a procession in a public place, for whatever reason, does not fall within the limit of Article 43 of the Constitution, but that it goes beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in the Constitution.

The Uganda Human Rights Commission (UHRC) further elaborated on the right to peaceful assembly in Uganda, noting that restricting the right requires an immediate and imminent threat to peace, and that public alarm, excitement or noise do not constitute a breach of peace. The UHRC further stated that the actions taken to restrict the right must be reasonable and proportionate.⁵⁷

4.4 Trend since 2006

With the return of the multi-party political system and the enactment of the Political Parties and Organizations Act, 2005 in November 2005, political parties became legal entities and are allowed to conduct political activities again, including public rallies. Yet, ever since the opening of the political space and return to multi-party politics, the right to freedom of assembly has been subject to abuse. During the 2006 election period, it was noted that the right to freedom of assembly was largely respected with presidential candidates able to organize political rallies, however intimidation, harassment and interference was widely reported, especially against the opposition. Opposition rallies were often dispersed security by forces that overtly displayed partisan tendencies.

During the years following the 2006 general elections, the right to freedom of assembly came under further threat, with many opposition gatherings being prevented or (violently) dispersed by use of force by police. The ruling by the Constitutional Court, declaring S. 32(2) Of the Police Act - giving police powers to prohibit assemblies - unconstitutional and hence null and void, in spite of being highly commendable, did not register improvements in the practice of the police in preventing and dispersing public gatherings of opposition politicians.

In response to the nullification of S. 32(2) of the Police Act, and in order to provide a comprehensive framework for regulating public gatherings, the Public Order Management Act was enacted in 2013. The Public Order Management Act, 2013 (POMA) does not provide adequate safeguards for the right to freedom of peaceful assembly. Section 8 provides the police with the power to "stop or prevent the holding of a public meeting where the public meeting is held contrary to this Act". This law gives the police powers to prohibit or disperse public gatherings on the mere basis of administrative faults (e.g. not being able to notify the police at least three days in advance). The POMA therefore does not comply with generally accepted practice, which provides that a notification system should not function as a de facto request for authorization, nor should the failure to notify authorities render an assembly unlawful or be used as a ground to disperse the assembly.⁵⁸

During the arrest, FDC woman activist Fatuma Naigaga reportedly publicly stripped. However, Gen. Kayihura argued that Naigaga stripped naked to blackmail the police, and that the footage aired on television was edited in such a way to conceal this. Nonetheless, he also noted that the police officers were put under investigation over the arrest of Naigaga, including Felix Kulayige, Rwizi Regional Police Commander.⁵⁹

On the same morning, police surrounded the house of Kyadondo East MP and FDC member Hon. Ssemuju Nganda. When Ssemujju left the house to take his children to school, he was blocked by police and ordered out of the car. After they failed to agree on a way forward, police officials allegedly beat him and dragged him

⁵⁸UN General Assembly, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly, submitted to the 31st session of the UN Human Rights Council, 4th February 2016pp-6-7

⁵⁹Kayihura faults officers over activists arrest, by Simon Masaba, 16th October 2015, p.5

forcefully to the police truck, drove him to Naggalama, and later transferred him to Kira road police station.

Gen. Kayihura explained that Dr Besigye and Hon. Ssemujju were arrested because they were disobeying the guidelines recently issued by the electoral commission, which bar campaigns before nominations.⁶⁰

RIGHT TO LIBERTY AND SECURITY OF THE PERSON

To deprive a man of his natural liberty and to deny to him the ordinary amenities of life is worse than starving the body; it is starvation of the soul, the dweller in the body."

- Mahatma Gandhi -

4.5 Introduction

The right to liberty and security of the person is an internationally recognised human right that protects people from arbitrary arrests, detention or enforced disappearance. The Constitution provides that "a person arrested, restricted or detained shall be informed immediately, in a language that the person understands, of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice".⁶¹

4.6 Trend since 2006

During the 2006 election period, the arrest and prosecution of FDC leader, Dr Kizza Besigye, was the most prominent violation of the right to liberty impacting on the election process. Dr Besigye was arrested on 14th November 2005 on charges of treason, rape, terrorism and illegal possession of weapons. He was only released on 2nd January 2006, 52 days before the elections on 23rd February 2006. In addition, he had to appear 27 times in court, limiting his ability to campaign tremendously. His prosecution was widely regarded as designed to frustrate his presidential campaign.

⁶⁰The Observer, Police holds Besigye, Ssemujju, scribes, op.cit., p.3

⁶¹Art. 23(3) of the constitution of Uganda

Similarly, two FDC MPs were prosecuted for murder, limiting their ability to campaign and undermining their legitimacy as political leaders. Furthermore, there were instances of candidates being arrested for using malicious, false, abusive, insulting or derogatory statements during campaigns.⁶²

In the 2011 election period, the Uganda Human Rights Commission received several complaints regarding unlawful arrests during campaigns and on polling day. The EU Election Observation Mission noted that police was seemingly biased as arrests of opposition agents, politicians and supporters were widespread, yet the EU observers did not record any arrests of NRM agents, politicians and supporters.⁶³ Furthermore, Ms Anent Namwanga, responsible for arranging DP financial resources from abroad, was arrested on charges of terrorism and detained incommunicado for 16 days.²² After DP secured her release she was re-arrested. In addition, several civil society activists were arrested when carrying out voter sensitization.

Both in 2006 and 2011, cases of arbitrary arrests and detention of stakeholders in ungazetted 'safe houses' were reported.⁶⁴

4.7 Right to liberty and security of the person during the 2016 election period

Throughout the election period, there were widespread reports of arbitrary arrests, despite cautionary statements by the UHRC against arresting citizens before thorough investigations, and that preventive arrest infringes on the presumption of innocence.

For instance,

4.8 Arrests of presidential candidate Dr Kizza Besigye

One of the most prominent violations of the right to liberty during the 2016 election period was the repeated arrest of FDC presidential candidate Dr Kizza Besigye. Only

⁶²EU Election Observation mission, 2011, op. Cit. Pp. 15, 25

⁶³ibid

⁶⁴EU election observation mission, 2011, op. Cit., p7

in February 2016, Dr Besigye was arrested 9 times, denied entry to and exit from his own residence, denied free access to his lawyers and persistently blocked from visiting the party headquarters.⁶⁵

Dr Besigye was arrested just outside his gate. When the police barricaded the road, he intended to walk to the EC offices. The police then forced Besigye into a waiting police van to drive him to Naggalama Police Station. On the same day, Ms Turinawe was also arrested as she was driving from the FDC party headquarters to Naggalama where Dr Besigye was detained:

"I was driving out to go and check on him [Besigye] at Naggalama. It was about 3pm. When I reached the clock tower I saw the police van entering the lane in which I was driving. I became suspicious. I continued past Nsambya traffic lights and around Mukwano the van drove past me and blocked me and I was arrested. It was a terrible evening because I was detained from the car. They did not take me to any police station or park me anywhere. They drove the van from 3.30pm — the time I was arrested — up to 1am. They were driving me around the city, took me to Muyenga, Ntinda, Kiwatule, Kabalagala, industrial area, Wandegaya. They drove me until it got dark. They drove me everywhere until 1am when they parked at Kira Road Police Station. They gave me police bond and drove me back home at 2am. The bond they gave me was for an offence of attempting to commit a felony.⁶⁶

⁶⁵FDC- NEC statement on 2016 elections, 2nd march 2016

⁶⁶ FHRI interview with Ingrid Turinawe, FDC party secretary for mobilization, on 2nd April 2016

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSIONS.

5.0 Recommendations

5.1 To the Uganda Police Force:

- I. Refrain from selective implementation of the Public Order Management Act, 2013 and instead regulate and facilitate the enjoyment of the right to freedom of peaceful assembly in accordance with Article 29(1) (d) of the Constitution of the Republic of Uganda, 1995.
2. Refrain from using excessive force in regulating public gatherings and effecting arrests, and ensure that police officers are equipped with sufficient non-lethal crowd control equipment such as rubber bullets and tear gas, but even these should only be applied proportionately and only when absolutely necessary.
3. Ensure accountability for all police officers involved in human rights violations and partisan behavior recorded during the election period.
4. Provide for the regulatory framework for crime preventers, in particular relating to their recruitment, training, mandate and accountability.

5.2 To the Directorate of Public Prosecutions:

Prosecute all security officers involved in human rights violations including but not limited to excessive use of force, extrajudicial killings, and arbitrary arrests.

5.3 To the general public:

Refrain from engaging in unlawful behavior, including inciting or participating in violence.

5.4 Conclusion:

Violation of rights and freedoms of suspects by police using force to execute its roles in Uganda has had big effects on the Criminal Justice system such as; congestion in the prisons, abuse of rights of inmates and defilement of justice of these persons and other health related problems. These have dented the image of criminal justice system in Uganda among the public.

With the thorough analysis of the legal framework and practice relating to the force applied by the police and the results given from the field study, this research can be helpful to scholars, government agencies like courts of law, police and the Law Reform Commission in understanding the root cause of this violation of the rights and freedom and the effects this problem has and thereafter find possible solutions to end it with the help of the analysis of the legal framework analyzed.

5.5 References:

Geoffrey Matovu and others shoot dead by police in Arua. Jude Nasucho, the District Police Commander of Arua, explained to New Vision that his officers were pursuing a stolen vehicle from Kireka after getting information that the car was heading to Arua and had passed Pakwach at a breakneck speed. New Vision - 9 Dec 2017

Two Policemen Jailed for Killing Civilians in Self Defense...

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12 May 2008 · A policeman in Kamwenge district who shot and killed a local council officer has surrendered to Kyenjojo Police Station. SPC William Tibesigwa reportedly accidentally shot dead the LC1...

Mozey Mi - Watch Uganda police and Army killing Civilians...

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Watch Uganda police and Army killing Civilians by shooting live bullets at them.. It happened today 11/03/2016 in Kasese district.....

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23 Mar 2011 · (Kampala) - The Ugandan police Rapid Response Unit frequently operates outside the law, carrying out ... The unit's personnel typically operate in unmarked cars, wear civilian clothing with no

5.6 Cases and Legal References

(Ekodeu Peter and Ayupu George Francis v AG UHRC/SRT/24/2005)

(Sam Oyiguru v AG UHRC G/327/2003)

(Wagoli Annet v AG UHRC/SRT/221/2002)

(Chris Kamya v AG UHRC 208/2005)

(Mutwalib Mulempi v AG UHRC/JJA/122/2005)

(All above retrieved from HR Law Report by UHRC 2008-2011)

Others (Kityo V Uganda), (Byarugaba V Uganda (supra)

The 1995 Constitution of Uganda as amended.

The Police Act Cap 303

Criminal Procedure Cord Act

Magistrate Cord Act

The Prevention and Prohibition of Torture Act, 2012