

POLICE BRUTALITY AND USE OF EXCESSIVE FORCE DURING ARREST: REVISITING UGANDA'S POLICE ACT

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I. Introduction

The Uganda Police Force is mandated under Section 4 of the Police Act to; protect the life, property and other rights of the individual, maintain security within Uganda, enforce the law, ensure public safety and order and detect and prevent crime in the society. In order to fulfill this mandate the Police is legally empowered to conduct arrests, searches and institute criminal proceedings. However, the in manner in which the Police has conducted numerous arrests over time, has left many Ugandans sceptical as to whether the Police is indeed a custodian of law and order.

The Police's power to limit individual liberties by conducting arrests is authorised in Art.23 of the Constitution, which states that a person may be deprived of their personal liberty for the purpose of bringing that person before a court or upon reasonable suspicion that he or she has committed or is about to commit a criminal offence under the laws of Uganda. This restraint of individual liberties can be exercised by Police with or without a warrant. Section 23 (1) of Police Act and Section 10 of the Criminal Procedure Code Act grants a police officer power to arrest without a warrant if he or she has reasonable cause to suspect that the person has committed or is about to commit an arrestable offence, a person has committed a breach of peace, obstructed a police officer while in the execution of his or her duty, or has escaped or attempts to escape from lawful custody.

Under Section 24 of the Police Act, the Police can arrest someone for preventive purposes where there is reasonable cause to believe that the arrest and detention is necessary to prevent that person from; causing physical injury to himself or herself or to any other person; suffering physical injury; causing loss or damage to property; committing an offence against public decency in a public place; causing unlawful obstruction on a highway or inflicting harm or undue suffering to a child or other vulnerable person. Any person detained for preventive purposes is supposed to be released once the peril, risk of loss, damage or injury or obstruction has been sufficiently removed; on the execution of a bond with or without surety where provision is made for him or her to appear at regular intervals before a senior police officer; or upon any other reasonable terms and conditions specified by the Inspector General in writing.

Of recent, the Public Order Management Act of 2013 has also been a basis for arrests of political figures during planned public rallies and assemblies. Section 5(1) of this Act requires that the Police be notified of any intention to hold a public meeting at least 3 days but not more than 15 days before the proposed date of the public meeting. Section 4 defines a public meeting as a gathering, assembly, procession or demonstration in a public place or premises held for purposes

of discussing, acting, petitioning or expressing views on a matter of public interest. Under Section 5(8) of the Act, an organiser of a public meeting commits an offence of disobedience of statutory duty under Section 116 of the Penal Code Act if he fails to notify police or once he or she has notified it, he or she changes the time, venue, or route of the meeting. Upon conviction the organiser or his/her agent is liable to two years imprisonment.

Many have witnessed brutal arrests of politicians, on television and in newspapers over time and even more recently when Police was dispersing people from political consultative sessions of presidential opposition candidates like Amama Mbabazi and Kiiza Besigye. The question that continues to linger is *how should these arrests be conducted under the law?*

II. Conducting Arrests

Section 2 of the Criminal Procedure Code Act, stipulates that, in making an arrest the police officer or other persons making it shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. This implies that if the person being arrested submits to the arrest, the police officer need not actually touch or confine his body. However, if a person forcibly resists or attempts to evade the arrest, the police officer or other person making the arrest may use all means necessary to effect it. This does not, however, justify the use of greater force than is reasonable or necessary in the circumstance for apprehension of the offender. In that case, the use of a fire arm on an unarmed suspect to secure their arrest may be disproportional for the purpose of apprehending him.

The Police is not allowed to use excessive force or fire arms during arrests unless a person through force, prevents or attempts to prevent the lawful arrest of himself or herself or of any other person and even then fire arms are not to be used unless a police officer has reasonable grounds to believe that he or she cannot otherwise effect the arrest; he has issued a warning to the offender that he or she is going to resort to the use of arms and the offender does not heed the warning; or the police officer has reasonable grounds to believe that he or she or any other person is in danger of grievous bodily harm if he or she does not resort to the use of arms. In such a case, the force used still has to be reasonable in the circumstances.

Reasonable force must be proportionate and always at the most minimal level necessary.¹ For instance; the use of a fire arm to apprehend an armed person resisting arrest can be justified if such use is necessary in the circumstances. However, the use of a fire arm against unarmed or handcuffed men is unreasonable because the police are able to apprehend them without excessive force.² Binding or tying up a man who has already submitted to custody is considered unreasonable and unnecessary force if the man has willingly given in to his captors and made no

¹ Uganda Human Rights Commission, 'Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Uganda.'

² Byarugaba v Uganda [1973] 1 EA 234 (CAK)

attempt to escape.³ Use of a fire arm against a fleeing suspect who is already injured is also unreasonable as the suspect poses no threat to the lives of the police and it would not be difficult for them to arrest him.⁴

From the above cases it is clear that equally using live ammunition or tear gas on an already dispersing crowd of unarmed civilians or on peaceful demonstrators is unreasonable. The police is therefore, entitled to use only necessary force to apprehend a person and where the person being arrested does not resist the arrest, no force is necessary. Where force is used the question then is, could the arrest have been effected with less force? If so then the force used to effect it was unnecessary, unreasonable and disproportionate in the circumstances. However, it is also important to note that even assertions that classify reasonable or unreasonable force are in many cases subjective.

III. Practical Cases of Police Brutality During Arrests

Over the years, there have been questionable arrests of unarmed civilians by the police. Most of these have arisen from stopping demonstrations, dispersing assemblies, the enforcement of the Public Order Management Act of 2013, and ordinary day to day arrests. More recently, on 10th October 2015 Kiiza Besigye the Forum for Democratic Change (FDC) opposition leader's convoy was intercepted by the Police on its way to Rukungiri for electoral consultation meetings. Horrific scenes were shown on television, of the Police forcefully grabbing and throwing people atop their vehicles and the FDC party secretary for environment Zainabu Fatuma Naigaga was allegedly undressed in the process of effecting the arrests. The Inspector General of Police Kale Kayihura in an interview⁵ by Vision group on 19th October 2015 stated that Kiiza Besigye's convoy disobeyed a police order to stop, thereby forcing the police to conduct the arrests. He refuted the fact that the Police undressed Fatuma Zainabu and stated instead that her body parts were exposed in the process of carrying her to the police patrol where she reached and undressed herself and that the footage shown on television was doctored. He acknowledged however, that the Police acted unprofessionally during the arrest and that they could have used handcuffs in the arrest instead of lifting Zainabu Naigaga. Though there may be contradictory footage about this event, a common fact in all is that the lady was resisting arrest and that in an attempt to arrest her the Police manhandled her and exposed her body parts to the public.

The Police in this case was entitled to use force because Zainabu Naigaga resisted arrest, however less force would have sufficed to apprehend her. They had the option of handcuffing her or even holding her in a way that would prevent such exposure however they grabbed her in

³ Beard and another v Republic [1970] 1 EA 448 (HCK).

⁴ Msiwa and another v Republic (CAT) [1999] 2 EA 190 (CAT).

⁵ Uganda Election 2016, "We have capacity to deal with post-election events – Kayihura" 19th October 2015 <http://www.elections.co.ug/new-vision/election/1406776/capacity-deal-post-election-events-kayihura#sthash.qMPZN0Xm.dpuf>. Accessed on 7th November, 2015.

an unprofessional manner by her arms and legs. The police therefore used excessive and disproportionate force in conducting this arrest and the humiliating nature in which the arrest was conducted can actually be classified as inhuman and degrading treatment.

On 9th and 10th September, 2015, Police in the towns of Soroti and Jinja, fired teargas to disperse people who had gathered to listen to the presidential opposition candidate, Amama Mbabazi, even though there had been no violence. In some instances Police fired teargas canisters directly at individuals causing injury and aggravating the harmful effects of teargas on the skin, eyes, and breathing. In Jinja, the tear gas canisters were also thrown in a nearby primary school, thus harming school children. *Human Rights Watch* interviewed⁶ some of the victims of this incident and found that the gatherings had generally been peaceful and had barely begun when Police arrived and released tear gas. A number of people said they were injured by rubber bullets, tear gas and Police beatings. Several witnesses also reported that the Police gave no warning and there had been no disorder before Police arrival.

The excessive use of tear gas to disperse assemblies and peaceful demonstrations is tantamount to cruel, inhuman and degrading treatment due to the harmful effects of the gas and it is an affront to the freedom of assembly. Tear gas should only be used as a riot-control method when necessary as a proportionate response to subdue violence. A riot is profoundly different from a peaceful demonstration or an assembly as the latter are peaceful while the former is geared towards violence.

Peaceful assemblies are authorised by law under Article 29(1) (d) of the Constitution, which bestows upon every Ugandan the right of freedom to assemble and to demonstrate together with others peacefully and unarmed. However, police has on occasion disrupted seemingly peaceful rallies in what it claims is a preventive measure based on having adequate knowledge and reason to believe they (peaceful rallies) could turn violent. Even though this right is not absolute and should not be enjoyed in prejudice of others' rights or public interest, the spirit of police's public interest argument remains debatable and more importantly, it stands a limitation to the right to freedom of assembly.

Limiting the freedom of assembly in public interest does not permit limitation of the right beyond what is acceptable and demonstrably justifiable in a free and democratic society. The constitutional court in the case of **Muwanga Kivumbi v Attorney General Constitutional petition No.9 of 2005** stated that in a free and democratic society the Police's paramount duty is to keep law and order and in case the Inspector General of police sees or anticipates any

⁶ Human Rights Watch, "Uganda: End Police Obstruction of Gatherings. Teargas, Brutality Threaten Free Assembly as Elections Loom" 18th October 2015. <https://www.hrw.org/news/2015/10/18/uganda-end-police-obstruction-gatherings>. Accessed on 7th November, 2015.

possibility of breach of peace at any assembly the Police should provide security and protection and not to curtail people's enshrined freedoms and liberties on mere anticipatory grounds which may turn out to be false. It is on that basis that the use of tear gas, on a crowd of people in lawful assembly contravenes the constitution and is an infringement on people's freedom of assembly and freedom from cruel, inhuman and degrading treatment.

According to the UN Basic principles on the use of force and firearms by law enforcement, even in dispersing unlawful non-violent assemblies, law enforcement officials should avoid the use of force or, where that is not practicable, they should restrict such force to the minimum extent necessary. Therefore, using tear gas in peaceful assemblies or in unlawful non-violent assemblies is a disproportionate use of force as the threat of violence posed by an assembly is much less compared to that posed by a riot. The UN basic principles further stipulate that the Police are expected to use discretion in crowd control tactics to ensure a proportionate response to any threat of violence and to avoid aggravating the situation. The act of throwing tear gas canisters in schools and at people in assemblies and peaceful demonstrations as was done on 9th and 10th September and has been done on numerous other occasions is not a proportionate response but rather a wanton and negligent one.

The instances stated above, are just a tip off the iceberg of the various questionable arrests and law enforcement techniques of the police force. The 2014 Uganda Human rights Commission report showed that the African Center for Treatment and Rehabilitation of Torture Victims (ACTV) registered 224 allegations of torture against the police and it noted that the excessive use of force during arrests and other law enforcement operations had resulted in many casualties. It also noted that in 2014, 110 journalists faced arbitrary arrest and detention; assault and torture and inhuman and degrading treatment.

IV. Liability for Police Brutality

In civil proceedings, the Government as master and employer of police officers is vicariously liable or responsible for acts of police officers done within the course of duty. In the case of **Muwonge Vs Attorney General [1967] EA 17**, the Government was sued in negligence through the Attorney General for acts of a Policeman who during a riot fired shots that killed the Appellant's father in his house. The court had to decide whether the Government was responsible for the police officer's acts. It was held that the firing of the shot was an act done within the exercise of the policeman's duty for which the Government of Uganda was liable as master even if it was wanton, unlawful and unjustified. The question to ask is whether the acts of the Policeman were committed in the course of the policeman's duty regardless of whether they were committed contrary to the master's general instructions. The Government is therefore liable for acts of a policeman done within the exercise of his duty even when the acts are done contrary to its orders, wantonly recklessly or even negligently. Therefore, for any person aggrieved by

the conduct of the Police and they believe that it has infringed upon or threatened their fundamental rights and freedoms, Article 50 entitles them to petition the High Court for enforcement of their rights. They can also institute a suit in negligence against the government for any harm occasioned by any negligent acts of the police.

An aggrieved person who does not pursue civil court action may lodge a complaint with the Uganda Human Rights Commission which is mandated under Article 52 of the Constitution 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. The Commission may hear the complaint and order redress in terms of compensation or any other legal remedy.

Police officers can also be held personally liable through criminal proceedings for their reckless acts in law enforcement. The Police itself can open up investigations and commence criminal proceedings against its officers. In the case of **Byarugaba v Uganda [1973] 1 EA 234 (CAK)** a Police Inspector, was convicted of unlawfully wounding two men who had been arrested but not charged with any offence. He shot them on the allegation that they were attempting to escape from lawful custody and yet they were unarmed and hand-cuffed. The court held that he could have easily re-arrested them without the use of excessive force and he was thus convicted. The 2014 Uganda Human Rights Commission report also states that, on 20th January, 2014, Police in Jinja killed a one Rashid Ntale, a seventh-grade pupil, when they fired live bullets to stop a student riot in the Bugembe sports stadium. Consequently, on 24th February, authorities arrested two police officers, Patrick Nuwagaba and Constable Julian Mucunguzi, and were charged by a court in Jinja with murder. The case is still pending in court but it is evidence that police officers can be held personally liable for their actions.

V. Recommendations to Parliament

1. In the face of such flagrant abuses of fundamental rights, Parliament has an obligation to harmonise and amend the laws relating to arrests and use of force by the Police. The precursor to most of these questionable arrests is the laws that have given the Police extremely wide discretion in conducting arrests. The Police Act provides that once one resists arrest the police officer or other person making the arrest may use all means necessary to effect the arrest. While there's a provision on the fact that the force used ought to be proportional and necessary, the Act does not define what necessary force amounts to and the level of proportionality required. This leaves wide room for the Police to employ "all means necessary" to effect arrest. Parliament should therefore amend the Act and create more clarity in the law. Reasonable force from case law discussed above, is that force that is strictly necessary for the Police to apprehend a person during the arrest or to disperse a crowd during an assembly and this force should be proportionate to

the threat posed to the police officer or members of the public by the person being arrested.

2. Parliament should also consider incorporating some provisions from the UN basic principle on use of force and fire arms by law enforcement officials and the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa in the Act so as to better legislate on the matter of use of force during arrests and assemblies. These principles and guidelines are internationally accepted and are used by many states in law enforcement. They also have more robust provisions with regard to reasonableness and proportionality of force during arrests for instance on the issue of resort to lethal force while conducting an arrest, they provide that lethal force should be a last resort in a bid to save life in cases where less extreme means are insufficient and that Police should not only give a warning before resorting to use of lethal force as required under the Police Act, but also allow sufficient time for the warning to be observed unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.
3. There's also need for consolidation of the law on arrests. The procedure of arrest is not well enumerated. It is scattered over the Constitution, the Police Act and the Criminal Procedure Code Act. With harmony and consolidation of the laws the provisions on arrests will be more accessible and clear.
4. Parliament also needs to harmonise laws like the Presidential Elections Act with the Public Order Management Act so that the public understands what kind of authorisations one should get in order to carry out a consultative meeting or rally. This is even more pertinent in this upcoming election period.

VI. Conclusion

In conclusion, Police brutality infringes on Ugandans' fundamental right to be free from cruel, inhuman, degrading treatment as well as the right to peacefully assemble. Police needs to exercise its mandate with regard to principles of reasonableness and necessity. The overt displays of brutality and violence by the police are a misuse of its power in the Police Act. However, clear laws that define and limit the powers of the Police to what is absolutely necessary for it to perform its functions coupled with police training on the law, can result in less cases of Police brutality, more transparency and professionalism in effecting arrests.