

Critical Analysis on the Role of the Police in the Criminal Justice System: A Case Study of Kampala District

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ABSTRACT

This article examines the role of the police in the criminal justice system of Uganda from Kampala district lens. The article revealed that the international and regional treaties are binding for States that have ratified them; Declarations and principles give guidance to States in implementing such obligations. A fundamental notion underlying international human rights standards is that States should enable the people living in their territory to seek redress if their rights have been violated. This right to remedy is essential in order to avoid impunity when State representatives violate internationally recognized human rights principles. The existence of the right to remedy means that States must establish a mechanism for receiving complaints, which must be investigated thoroughly and impartially. It is on this note that this article calls for the investigating officers to provide appropriate assistance to prosecutors and to provide courts with adequate information to determine the necessity for an accused to be detained pending trial in doing so the police will be helping prosecution in determining cases which have high chances of success when taken to court. More so, all role players, through court and cash flow management must endeavour to strengthen respect for human dignity, the achievement of equality and the advancement of human rights and freedoms. When a case flows steadily and smoothly from filing to termination and its life span is shortened, the community's trust and confidence in the criminal justice system will be maximised and bolstered.

Keywords: Courts, Criminal justice system, Police, Prisons, Treaties.

INTRODUCTION

Criminal justice is the system of practices and institutions of governments directed at upholding social control, deterring and mitigating crime, or sanctioning those who violate the law with criminal penalties and rehabilitation efforts[1]. The criminal justice system consists of three main parts: law enforcement (police); adjudication (courts); and corrections (prisons, probation and parole). In a criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society[2]. Those accused of crime enjoy some rights against abuse of investigatory and prosecution powers. In many jurisdictions within the Commonwealth and beyond, police are primarily concerned with keeping the peace and enforcing criminal law[3]. Uganda's independence constitution in 1962 reaffirmed the British policy of allowing the kingdoms of Buganda, Bunyoro, Toro, and Ankole to maintain local police forces, which were nominally accountable to Uganda's Inspector General of Police (IGP)[4]. When the 1967 Constitution abolished the federal states and Buganda's special status, the local police forces merged into the Uganda Police Force or became local constabularies' responsibilities to the district commissioner under the inspector general's authority. During the 1960s, the Uganda Police Force comprised a Uniform Branch, which was assigned mainly to urban duties; Special Branch and Criminal Investigation Department (CID); Special Constabulary; Special Force Units; Signals Branch; Railway Police Air Wing; Police Tracker Force; Police Band; and Canine Section. Four regional commanders directed police operations and assisted the inspector general [5]. The Police Council – composed of the inspector general, the permanent secretary of the Ministry of Internal Affairs and four other members appointed by the minister – recommended policies regarding recruitment and conditions of service. The Public Service Commission, in consultation with the inspector general, appointed senior police officers. The Police Training School in Kampala conducted initial training for new recruits. In-service training for non-commissioned officers and constables took place at the Uganda Police College at Naguru, and many officers studied in Australia,

Britain, Israel, and the United States [6]. By 1968 the Uganda Police Force was a multi-ethnic, non-political, armed constabulary of between 7,000 and 8,000 officers and constables. In addition to regular urban police activities, it undertook extensive paramilitary duties, provided honor guard detachments for visiting dignitaries, and performed most of the public prosecution in the criminal courts [7]. During the late 1960s, the government increased its use of the police, and in particular, the CID, to eliminate political dissent, some politicians complained that this emphasis allowed street crime to flourish. President Obote also created the General Service Department (GSD) outside the police organization to monitor the political climate and report disloyalty. Some GSD agents infiltrated other organizations to observe policies and record discussions. They reported directly to the president on political threats arising from other government agencies and the public [8]. Ugandans both ridiculed and feared GSD agents, whom they described as spies in their midst. During the 1970s, the force was practically moribund, but President Amin, like his predecessor, used a number of agencies to root out political dissent. More arrests were made for political crimes than for street crimes or corruption. Amin's government relied on the Military Police, the Public Safety Unit (PSU), and the State Research Bureau (SRB) to detect and eliminate political disloyalty. In 1971, Amin created the SRB as a military intelligence unit directly under the president's control. Its agents, who numbered about 3,000 reportedly kidnapped, tortured, and murdered suspects in their headquarters in Nakasero. Many SRB personnel were non-Ugandans; most had studied in police and military academies in Britain and the United States. Most served one-year tours of duty with the SRB and were then assigned to military duty, government service, or overseas embassy guard duty [9]. During the early years of the Amin regime, the PSU and the Military Police also acquired reputations as terrorist squads operating against their compatriots. In 1972 the PSU, which was created as an armed robbery investigative unit within the civil police organization, was equipped with sub machine guns. Amin ordered PSU agents to shoot robbers on sight, but in practice, he exerted almost no control over them, and PSU agents became known among many Ugandans as roving death squads [10]. In the early 1980s, the strength of the police force was only about 2,500 many whom were trained in Britain or North Korea. The heads of the four police departments administration, criminal investigation, operations, and training-reported to the Ministry of Internal affairs. The Special Branch of the CID assumed the responsibilities of the SRB. The Police Special Force, a paramilitary riot control unit, engaged in widespread atrocities against people who opposed the regime, especially in Buganda [11]. Although it is not possible for the police to eradicate crime from society completely but it can be controlled and reduced to a satisfactory stage. This study critically analyses the role of the police force in criminal justice administration of Kamapala City, Uganda.

Legal Framework for the Protection of Human Rights

Uganda's constitution [12], under chapter 4, provides for a strong framework for the protection of human rights (although it focuses more on civil and political rights than economic, social and cultural rights). Uganda is a dualist State, and although important bills for human rights have been passed through Parliament, there are still several instruments that need to be domesticated and national laws harmonized with international standards. Furthermore, important Acts that guarantee fundamental rights, such as the Access to Information Act, have not had their regulations enacted effectively hampering the realization of these rights. Policy wise, the principal document guiding government action is the NDP, complemented by sectoral policies. The Uganda Police Force is established under Article 211 of the Constitution of the Republic of Uganda, 1995 (As amended) [12]. Its functions are stipulated in Article 212 to include protection of life and property, preservation of law and order, prevention and detection of crime and cooperating with the civilian authority and other security organs established under the Constitution and with the population generally. The Police Act Cap 303 [13] also adds more functions of UPF to include the protection of other rights of the individual, maintaining security in Uganda, ensure public safety and order, and to perform services of a military force and to perform any other functions assigned to it under the Act. In Uganda the legislations which guide criminal offence process are the Constitution of the Republic of Uganda 1995, the Penal Code Act Cap 120, and the Trial on Indictment Act Cap 23, The Prison Act Cap 304, Magistrate Court Act Cap 6 and the Criminal Procedure Act among others. Articles 126 (2) of the Constitution provides for the adjudicating cases of both a civil and criminal and states that:

- (a) Justice shall be done to all irrespective of their social or economic status;
- (b) Justice shall not be delayed;
- (c) Adequate compensation shall be awarded to victims of wrongs;
- (d) Reconciliation between parties shall be promoted; and
- (e) Substantive justice shall be administered without undue regard to technicalities.

In the Penal Code Act [14], the joint offenders in prosecution of common purpose is provided for under section 20 which can be applied in the prosecution of mob justices offender. The Uganda Police Act, 2006 [13] establishes the Uganda Police Force, whose functions include protecting life and property; preserving law and order; preventing and detecting crime; and cooperating with the civilian authority and other security organs. Schedule one of the

Police Act establishes the code of conduct of police officers. Section 2 of the Police disciplinary code of conduct specifies that a member of the Force shall (among others):

- i. Not use the authority of his or her office for undue gain;
- ii. Not take away the liberty or rights of any person without reasonable cause;
- iii. Not convert property of any person or any property which comes into his or her custody by virtue of his or her office;
- iv. Not receive any undue gratification for services he or she is expected to render by virtue of his or her employment;
- v. Not compromise law enforcement on account of relationship, patronage or any other influence.

Institutional Framework for the Protection of Human Rights

Human rights protection institutions in Uganda include Parliament, Inspectorate General of Government, the National Human Rights Commission and Equal Opportunities Commission, key ministries such as the Ministry of Gender, Labour and Social Development, Ministry of Justice and Constitutional Affairs and Ministry of Local Government. Uganda does not have a Ministry or secretariat solely dedicated to human rights issues. The Judiciary operates through its courts of judicature including the Supreme Court, the Court of Appeal, the High Court and other courts or tribunals established by Acts of Parliament. Judiciary operates through its courts of judicature including the Supreme Court, the Court of Appeal, the High Court and other courts or tribunals established by Acts of Parliament. The Justice Law & Order Sector (JLOS) brings together important government organs for the promotion and protection of human rights and aims to facilitate the reform process of the entire justice sector to address systemic weaknesses in the system^[15]. The UHRC of Uganda, established under the Constitution, is generally compliant with the Paris Principles. It faces multiple challenges in accomplishing its mandate however, including: lack of implementation by Government of the Commissioners' decisions; backlog of cases in the tribunal; gaps in capacity; inadequate financial and human resources; and insufficient geographical coverage. Furthermore, many question the full autonomy of the body and highlight that the last appointment process of the commissioners was fraught with delays that seriously constrained the work of the institution. The recently established Equal Opportunities Commission which could be an important institution to ensure equality and non-discrimination in Uganda suffers from similar constraints as the UHRC^[16]. Uganda has a wide range of civil society organizations working on human rights issues. Coordination remains a challenge and resource constraints make NGOs dependent on external sources of funding. Furthermore, the NGO Act in its current state puts heavy administrative constraints on NGOs, such as yearly burdensome registration obligations with the NGO Board. Also challenging is the fact that in order to operate at the local/village level, NGOs need to consult and seek prior permission of local government authorities, which makes their work vulnerable to political considerations and unclear limitations^[17].

Police and Crime prevention and detection in Uganda

Prevention and detection of crime is a key obligation of the State as part of its duty to protect the human rights of all who have become, or may become, the victims of a crime. At the same time, the exercise of powers by law enforcement officials investigating a crime may affect individuals' human rights^[18]. To effectively fulfill this obligation requires careful balancing of, on the one hand, the rights of the potential or actual victims as well as of society in general and, on the other hand, the rights of those who may be affected by law enforcement work. IHRL provides the legal framework for this balancing act. In particular, it sets out a number of guarantees and rights to be respected throughout the entire judicial process, starting from the very first stages of the investigation. At the center of these rights is the right to a fair trial, which is actually a set of rights that include the presumption of innocence, the right to be informed about the charges, the right to defense, legal counsel and unimpeded communication with the legal counsel, the right to be tried without undue delay, the right to an interpreter and the right not to be compelled to testify against oneself or to confess guilt^[19]. Almost every investigation result in one way or another in an invasion of the individual's private sphere, affecting the right to privacy. Thus, as with any other interference in individuals' rights, such actions must be permissible under domestic law, necessary and in proportion to the legitimate objective to be achieved. Law enforcement officials are required to carry out the investigation with utmost objectivity and impartiality. The whole process must be free from any discriminatory reasoning or bias.

Police and Public order maintenance in Uganda

The maintenance of public order is a core responsibility of law enforcement officials that calls for constant careful balancing of the rights and interests of all sections of the population. Strict compliance with the applicable legal framework is indispensable to ensure the success of this balancing act. The prevention of violence and avoidance of the need to resort to force should be guiding principles in the management of any public order situation^[20]. A precondition is the existence of a domestic legal framework that governs public order and, in particular, public assemblies in compliance with the State's obligations under International Human Rights Law. Within this legal framework, law enforcement officials are called upon to handle

public assemblies in a way that complies with the principles of legality, necessity, proportionality and accountability. The right choices in terms of equipment and weapons are equally crucial in that respect. The physical appearance of law enforcement officials should not be threatening or otherwise contribute to an atmosphere of hostility. This also applies to the use of firearms in situations of violence. In most situations their use will not contribute to re-establishing peace and order but run the risk of worsening an already chaotic situation. Firearms should therefore not be considered as a tactical tool for public order situations but remain the exceptional, ultimate resort in response to individual situations which threaten to cause death or serious injury, and are to be used only where all other means have failed [21]. Where public order is constantly threatened by demonstrations, rallies, riots and other situations of violence, authorities may decide to declare a state of emergency for the purpose of re establishing peace and order. In particular, they may take measures that derogate from certain human rights, provided that the country is in a situation of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" (ICCPR, Article 4)[22]. Such a declaration needs to be made by the institution or body empowered to do so under domestic law and it should acquaint the population with the exact material, territorial and temporal scope of the measure. The derogations made may not be discriminatory or affect non-derogable rights. In public emergencies, authorities may decide to entrust the maintenance of public order to military armed forces. They should, however, be aware of the risks and challenges involved. Military armed forces, which are normally tasked, trained and equipped to fight an enemy of their country, have to make a fundamental shift in their thinking in order to deal with people from their own country. The legal framework and the procedures governing their operations are also completely different. Training and equipment will have to be adapted accordingly and safeguards established to ensure that they do not resort to their usual way of operating, i.e. when conducting hostilities against an enemy. Where these precautions and safeguards cannot be established, authorities should refrain from deploying their military armed forces in law enforcement missions[23].

Providing protection and assistance for people in need

The provision of protection and assistance for people in need is the third pillar of law enforcement responsibilities. This responsibility becomes particularly relevant for vulnerable people, i.e. people who may be at an increased risk of being exposed to discrimination, abuse and exploitation, who do not have access to the basic means of survival and/or who are unable to look after themselves. It is important for law enforcement officials to be aware of groups with one or more of the above-mentioned characteristics within the society, the risks that they may face and their specific protection and assistance needs [18]. International and regional treaties are binding for States that have ratified them; declarations and principles give guidance to States in implementing such obligations. A fundamental notion underlying international human rights standards is that States should enable the people living in their territory to seek redress if their rights have been violated. This right to remedy is essential in order to avoid impunity when State representatives violate internationally recognized human rights principles[24]. The existence of the right to remedy means that States must establish a mechanism for receiving complaints, which must be investigated thoroughly and impartially. Also, it means that States must start investigations on their own initiative when there are grounds to believe that serious misconduct has occurred. It also means that wrongdoers must be punished and that victims can receive compensation[25]. International standards also give direction to police officers in carrying out their duties, also advising them on conduct to be avoided. They also enable both internal and external bodies,

CONCLUSION

International and regional treaties are binding for States that have ratified them; Declarations and principles give guidance to States in implementing such obligations. A fundamental notion underlying international human rights standards is that States should enable the people living in their territory to seek redress if their rights have been violated. This right to remedy is essential in order to avoid impunity when State representatives violate internationally recognized human rights principles. The existence of the right to remedy means that States must establish a mechanism for receiving complaints, which must be investigated thoroughly and impartially. Also, it means that States must start investigations on their own initiative when there are grounds to believe that serious misconduct has occurred. It also means that wrongdoers must be punished and that victims can receive compensation. International standards also give direction to police officers in carrying out their duties, also advising them on conduct to be avoided. They also enable both internal and external bodies, including individuals and groups, to monitor police actions with a view to enhancing their integrity.

Recommendations

This article calls for the investigating officers to provide appropriate assistance to prosecutors and to provide courts with adequate information to determine the necessity for an accused to be detained pending trial in doing so the police will be helping prosecution 111 determining cases which have high chances of success when taken to court. More so, all role players, through court and cash flow management must endeavour to strengthen respect for human dignity, the achievement of equality and the advancement of human rights and freedoms. When a

case flows steadily and smoothly from filing to termination and its life span is shortened, the community's trust and confidence in the criminal justice system will be maximised and bolstered.

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