

**CONSTITUTIONALISM, THE RULE OF LAW AND PROTECTION OF HUMAN
RIGHTS IN UGANDA. A CASE STUDY OF KAMPALA CAPITAL CITY
AUTHORITY.**

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DECLARATION

I Kayaala – Kasiri Agrrey, hereby declare that this research or submission is my own work and that; to the best of my knowledge and belief; contains no material previously published or written by another person nor material which to a substantial extent has been accepted for the award of any other degree or diploma of the University or any other Institute of higher learning except where due acknowledgement has been made in the text.

SIGNED 
NAME KASIRI AGGREY
DATE 12-09-2013

DEDICATION

This book is dedicated to my beloved mother Egulansi Kayaala Mukyala, beloved aunt Nakayongo Zeulensi, Mr. Baganzi Ronald and Yobu Yolamu Kabbale all of Nabirumba – Bugabula North in Kamuli District, Kitimbo Magret c/o Kololo s.s.s Kampala, Kitimbo Rose Mary of Luzira Prisions, Mrs. Florence Osemwengie Secretary to the Nigerian High Commission and lastly Ms. Nabikoso Suzan c/o Centenary Bank – Mityana Branch who have always given me encouragement and moral support.

Her workship Agness Napio of Nakawa Chief Magisterial Area.

APPROVAL

This dissertation whose subject is **“An Assessment on Constitutionalism, the Rule of Law and Protection of Human Rights in Uganda, A Case Study of Kampala Capital City Authority Uganda”** is as a result of a research study carried out by Kayaala – Kasiri Aggrey under my supervision and it is now complete with my approval Supervisor: MS. KISUBI ESTHER Lecturer Department of law Kampala International University

Signed:

Date:15/10/2013.....

ACKNOWLEDGEMENT

The following people whose ideas or ideologies enabled me and who helped me in preparing this research book deserve my sincere acknowledgement and gratitude.

Special regards go to Hon. Justice G.W Kanyeihamba (Retired Judge of the Supreme Court and former chancellor Kampala International University), Counsel Ladislaus Kiiza Rwakafuzi (City Human Rights Advocate), Hon. Abdu Katuntu, Hon. Muwanga Kivumbi, Hon. Semuju Nganda, Hon. Betty Namboze Bakireke, Hon. Medard Segona Akalya Amagwa, the Katikiro of Buganda Charles Peter Maiga, Hon Paul Mwiru, Hon. Eria Lukwago the Lord Mayor KCCA), Mrs. Magret Sekajja, Miss Kisubi Esther (the research supervisor) Mr. Wandera Ogola, Mr. Peter Mukidi Walubiri, the Retired Bishop Zack Niringiye of the Civil Society, Mr. Chris Obore; the Revolutionary journalist and investigative editor of the Monitor Publication, Mr. Mugisha Rogers of the morning crew of the KFM radio and the entire staff of the Uganda Human Rights Commission plus all the respondents whom I interviewed to get the relevant information or data.

May the Almighty God bless them.

LIST OF STATUTES

The 1995 Constitution of the Republic of Uganda as Amended.

The Divorce Act Chapter Laws of Uganda.

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The Prevention and Prohibition of Torture Act 2012.

The Police Act Chapter 303 Laws of Uganda.

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ABBREVIATIONS

ALN	African Liberal Network
DHDRD/CS	District Human Rights Desks or Committees
D.P	Democratic Party
Dr.	Doctor
E.A	East Africa
EHANRDP	East and Horn of Africa Human Rights Defenders' Project
F.M	Frequency Modulation
FHRI	Foundation for Human Rights Initiative
HRW	Human Rights Watch
HRDA	Human Rights Based Approach
HRE	Human Rights Education
HON.	Honourable
I.G.P	Inspector General of Police
ICCPR	International Convention on Civil and Political Rights
KFM	Kampala Frequency Modulation
KCCA	Kampala Capital City Authority
NO.	Number
OHCHR	Office of the High Commissioner for Human Rights
UCC	Uganda Communications Commission
UDHR	Universal Declaration on Human Rights
UGSC	Supreme Court of Uganda
UPF	Uganda Police Force
NRM	National Resistance Movement
UNRNJ	Uganda Human Rights Network for Journalists

ABSTRACT

This research paper on Government policies, practices, promotion, protection and Human Rights Violations, a case study of Kampala Capital City Authority, covers the meaning of human rights and fundamental freedoms in the introduction, the conceptual and philosophical basis of human rights, the historical background of human rights, human rights in the pre-colonial societies, human rights during the colonial period, human rights in the post colonial Uganda, the Ten point programme by the NRM, human rights between 1989 to 1996.

Chapter two covers the literature review, chapter three critically explores and examines the different causes of human rights abuses in Kampala Capital City Authority.

Chapter four is the focal point of this research paper dealing with the various forms human rights violations and the way forward.

Lastly, chapter five deals with recommendations in regard to promotion, protection, observance of human rights and control of human rights abuses in Kampala Capital City Authority.

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CHAPTER ONE

1.0 Introduction

Human rights and fundamental freedoms are the birth rights of all human beings; their protection and promotion is the first responsibility of governments.¹

Human rights are alienable and inherent rights acquired by every human being at his or her birth meaning that such rights are not granted by a state instead they are promoted, protected and guaranteed by the constitution.

The period since the formation of the United Nations in 1945 has witnessed an unprecedented expansion in the internationally recognized rights of all people with acceptance of a human rights dimension to the quest for international peace and security.²

In a comparatively short period of time, the United Nations has styled itself as protector of the internationally proclaimed rights of all.³

“One man, one vote”, is meaningless unless accompanied by the principle of one man, one bread”,⁴

Freedom of speech and expression means nothing to a largely illiterate and ignorant society and similarly, the right to life has no relevance to a man who has no means of livelihood.⁵

The issue of human rights, especially its violation, has become topical in the past decade or so.

¹ The Vienna Declaration and Programme of Action 1993.

² International Human Rights by Rhona. K.M.Smith at Page 1.

³ Ibid.

⁴ Amnesty International, “Background paper on Ghana” (London: Mimeo, 1974) at Page 9.

⁵ Emerging Human Rights; The African Political Economy context; by George. W. Shepherd, Jr and Mark O.C.Anikpo at page 55.

The debate on the need for an appropriate definition or conceptualization of human rights has been quite intense.

In addition, the issue of whether it is necessary, in deed, inevitable, to trade political rights for socioeconomic and cultural rights has been a major aspect of the debate⁶

The argument is that under development and dependent conditions of the African continent generate contradictions, pressures and crises that enhance insecurity and violation of human rights by a state and its custodians⁷.

To be sure, our conceptualization of human rights encompasses rights such as freedom of speech, freedom of expression, right to life, right to a clean environment, right to food, the right to vote and be voted for, and freedom of movement proper analysis and understanding of human rights in any society can only be made by looking at the socioeconomic or material foundations of society.

Hence, political institutions processes, the existence of more than one political party, periodic elections, and constitutionally guaranteed rights mean very little because they all depend on the patterns of production and exchange, the relations among and within social classes, and location of social formations in the international division of labour.⁸

1.2. Statement of the Problem

Human rights violation in Kampala Capital City Authority remains a big threat or problem to curb or crack down in the sense of the applicability of the rule of law and constitutionalism generally.

⁶ Supra.

⁷ Ibid at pages 55 and 56.

⁸ Ibid at page 57.

The existence or observance of human rights, effective promotion and protection of human rights, government policies and practices, by the law enforcement agencies like the Uganda Human Rights Commission still remain a big problem in the operation of our legal system thus human rights violations in Kampala Capital City Authority.

Some policemen and women have not read the Constitution and the Penal Code Act which they are supposed to enforce.⁹

According to the fifteenth Annual Report by the Human Rights Commission, “when they go for field monitoring visits, they find Policemen without the Constitution or the Penal Code Act.

1.3. The Aims and Objectives of the Research

1. To critically analyze Government Policies, Practices, Promotion, Protection and Violation of Human Rights in Kampala Capital City Authority.
2. To identify Major Human Rights Violations Committed by Government Agencies like the police, the Prisons Wardens and the Army in Kampala Capital City Authority.
3. To explore or find out places where Human Rights Violations are Committed in Kampala Capital City Authority.
4. To come up with viable, suggestive ways, preventive measures and recommendations to curb the vice of human rights violations Kampala Capital City Authority.

⁹ Fifteen Human Rights Commission Report to Parliament of New vision Thursday April 4th, 2013.

1.4 Research questions

1. What are the major human rights abuses committed by the government agencies in Kampala Capital City Authority?
2. What Government agencies are involved in the violation of human rights in Kampala Capital City Authority?
3. Which places are notorious for human rights abuses in Kampala Capital City Authority?
4. What is the way forward?
5. What are the viable, suggestive, preventive measures and recommendative measures and recommendations to curb the vice of human rights abuses in Kampala Capital City Authority?

1.5. Justification of the research

As a student of Law, possessed with sufficient jurisprudence, knowledge and basis in Constitutionalism, and rule of the Law, it was so relevant to carryout a research on the violation of human rights and come up with viable, suggestive ways, preventive measures and recommendations to curb the menace in Kampala Capital City Authority.

The research principally studied observance of human rights, effective promotion, protection of human rights Government Policies and practices in Kampala Capital City Authority.

It is also worth while identifying particular Government Agencies that are involved in human rights violations most especially the Uganda Police, the Uganda Prisons and the Uganda Army.

This was found out by the Uganda Human Rights Annual Reports statistic at the Uganda Human Rights Commission along Buganda Road.

The study therefore serves as an eye opener to all future researcher, policy makers, planners and implementers of the rule of law and constitutionalism

thus strict adherence to the observance, promotion and protection of human rights in Uganda.

The study also looked at the lacunas existent within the applicability of the rule of law, constitutionalism, strict adherence to the observance, promotion and protection of human rights; and the law enforcement agencies and the relevancy of all Institutions charged with the administration of the law.

The study also found out that there has been a sound public out any against the law enforcement agencies most especially the Police. That instead of promoting, protecting people's human rights, the police violate their rights contrary to the Constitution under chapter four the Bill of rights.

And this is because the Police live under poor standards of living, low pay, yet the cost of living is too High in Uganda today thus violating peoples' human rights.

All the above have finally built up the study to come up with all possible measures that can be taken in a bid to curb Human Rights Violations in Kampala Capital Authority.

1.6. Study Methodology

Introduction:

This sub-chapter discusses the methods which the researcher employed to collect data.

It mainly focuses on the research design, survey population, sample population, data collection and data analysis.

(a) Research design

The research design that was employed consisted of both quantitative and qualitative methods.

The purpose of the research was to explore about the Rule of Law and protection of human rights in Uganda; a case study of Kampala Capital City Authority.

Most of the data that was collected was got from a number of text books, statutes, international instruments Human Rights Annual Reports, journals, newspapers, journalists, city advocates, police officers, staff of the Uganda Human Rights Commission, civil society, judicial officers and case law.

The research was carried out in the business district of the Kampala metropolitan (KCCA) in the Central Division or the City Centre, Lubabga Division and Makindye i.e Nawumongo and the research took me approximately two months.

The tools and techniques employed for gathering data were; interviewing respondents, doctrinal methods of legal research, inquiry etc.

1.13 The scope of the research

(a) Geographical scope.

This research paper was a critical examination on the rule of law and protection of Human Rights in Kampala Capital City Authority. Kampala Capital City Authority is made up of five divisions namely Kampala Central Division, Makindye Division, Nakawa Division, Kawempe and Lubaga Divisions.

Most of my research study was conducted in Kamapla Central Division, Lubaga Division and Makidye Division.

(b) Content Scope

The research study mainly focused on protection, of human rights, human rights abuses.

The major human rights abuses were identified as threats to freedom of expression and the media, unlawful arrest and detention, violation of the freedom of movement, violation of the right to protection from torture, cruel and inhuman treatment etc.

(c) Theoretical scope

The research study covers recommendations in regard to the promotion, protection, observance of Human Rights and control of Human Rights abuses in Uganda, a case study of Kampala Capital City Authority.

a). Survey Population:

Since the research was conducted in a densely populated area and the city suburbs of Kampala Capital City Authority, the survey population ideal was deemed fit to enable me carry out the study successfully.

The Survey was carried out on the mixed sample of the entire population of Kampala Capital City Authority. This included Politicians, most especially honorable members of Parliament, journalists, court officials, and city dwellers, middle class residents, law students, lecturers and other unidentified categories of people.

The study further covered a cross section of people and more particularly the targeted sample of my respondents.

b).Sample Population:

During the study, information was collected with specificity.

This method was randomly selected.

This mainly pointed at how Government agencies or enforcement officers like the police, prisons and army officers which are directly involved in human rights violations.

Data Collection.

Data collection was employed with various approaches but on a local perception for example through interviewing different groups of targeted people, series of formal interview with journalists, politicians most especially honorable members of Parliament, officials at the Uganda Human Rights commission, practicing advocates, judicial officers, people along the streets of Kampala city etc, through conversations and discussions.

Conversations and discussions seemed the suitable method of extracting data from some people who had no specific answers to the questions that I put forward to them.

And at times, some people like the politicians were tightly scheduled so discussion and conversation seemed the easily employable method of getting information from them.

Data analysis

When analyzing data it was found out that enough and required data was got from various sources like books and the respondents I interviewed because they were so corporative whenever I put questions to them except a few who did not comply.

A good number of sample respondents were involved in the research process and a considerable number of those whom were approached and interviewed acted positively in the contribution of the research.

1.7. The Scope of the Study

This research paper was a critical examination on government policies, practices, promotion, protection and Human Rights Violation in Kampala Capital City Authority.

Kampala Capital City Authority is made up of five divisions which are Kampala Central, Makindye Division, Nakawa Division, Kawempe Division and Lubaga Division; but most of my research study was carried out in Kampala Central, Makindye Division, Lubaga Division and Nakawa Division.

The study further looked at the major Human Rights Violations Committed in the area of study, what specific reasons that are behind such violations, which were identified such as; threats to freedom of expression and the media, unlawful arrest and detention, violation of the freedom of movement, violation of the right to protection from torture, cruel and inhuman treatment etc.

The study also covers recommendations concerning protection, promotion and observance of human rights and control of human rights violations.

1.8. Limitations

During the research study, the following problems were faced inter alia; financial constraints, constraints in gathering data and other relevant information, language barrier because some street dwellers were not acquainted with English, lack of enough transport thus walking long distances for example to Namuwongo where K.F.M Radio is situated, non compliance, non transparency by interviewees, weather change and some respondents were not understanding Law concepts etc.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Most of the data during the research study was got from a number of writings. There was much literature on human rights promotion as envisaged in the 1995 Constitution of the Republic of Uganda.

The Constitution 1995 as amended provides much material on human rights promotion for example chapter four (the Bill of Rights) which provides for Protection and Promotion of Fundamental and other Human Rights and Freedoms hence; Fundamental and other human rights and Freedoms, Equality and Freedom from discrimination, protection of right to life, protection of personal liberty etc.

The 13th and 14th and Annual Report 2010 and 2011 respectively to the Parliament of the Republic of Uganda by the Uganda Human Rights Commission provided a number of Human Right violations namely; threat to freedom of expression and the media, unlawful arrest and detention, violation of freedom of movement and violation of the right to protection from torture, cruel and inhuman treatment, torture or cruelly inhuman and degrading treatment etc.

The Prevention and Prohibition of Torture Act, 2012 gives effect, in accordance with Articles 24 and 44(a) of the 1995 Constitution, to the respect of Human dignity and protection from inhuman treatment by prohibiting and preventing any form of torture or cruel, inhuman or degrading treatment or punishment.

It also provides for the crime of torture; to give effect to the obligations of Uganda as a state party to the United Nation's Convention against Torture and other cruel, inhuman or degrading treatment or punishment and other related matters.

The above Laws are supplemented by decided cases or precedents contained in Law reports and Constitutional petitions.

All these pieces of literature provide sufficient information for one to come up with a successful study on government policies, practices promotion, protection and violation of human rights in our country.

However, the above literature has not stood the test of time because the government Law Enforcement agencies and Government Policies puts much emphasis on ouster clauses or claw backs instead of promoting Human Rights.

To that effect, **Article 43** of the 1995 Constitution provides for the General Limitation on Fundamental and other Human Rights and Freedoms¹⁰.

Article 43(i) thereof, provides in part that, in the enjoyment of the Right and Freedoms prescribed in this Chapter, no person shall prejudice the Fundamental or other Human Rights and Freedoms of others or the public interest.

This is total disfranchisement of Fundamental and other Human Rights Freedoms of the masses and the Police have on a number of occasions dispersed political rallies under this article. Thus putting emphasis on the ouster clause or claw bark other than protecting and promoting Human Rights.

¹⁰ Article 43 of the 1995 Constitution of the Republic of Uganda

Further more the Police Act under section 32 thereof gives Power to the police to regulate assemblies and processions.

Section 33 also gives power to the police to stop and to order to disperse assemblies and processions and section 34 provides for unlawful assemblies¹¹.

However the case of **MUWANGA KIVUMBI Vs ATTORNEY GENERAL CONSTITUTIONAL**¹², the Constitutional Court declared section 32 of the Police Act Chapter 303 Laws of Uganda unconstitutional and echoed the importance of freedom of assembly as well as the restrictions attached to it.

The Honorable Court further observed that in a democratic and civilized society, the Police are supposed to keep law and order as well as to direct rallies and not to disperse.

The Public Order Bill, under clause 7 provides for notifying the Inspector General of Police of an intent to hold a public meeting and clause 6 defines a public meeting to mean a gathering of three people¹³.

And to that effect, Butambala Member of Parliament Muwanga Kivumbi has petitioned the Constitutional Court to pronounce itself on the validity of the clauses of the Bill.

The Prevention and Prohibition of Torture Act 2012 has not been implemented because the police still torture suspects when trying to extract evidence or confessions from suspects and I have never heard of any police charged, tried and sentenced under the Act.

¹¹ Sections 32,33 nd 34 of the Police Act chapter 303 Laws of Uganda.

¹² Constitutional Petition No. 9 of 2005 [2008] UGCC 4(27th May 2008)

¹³ The Public Order Management Bill (2011)

The Human Rights Commission has awarded awards to torture victims but most of them die before getting such awards from the government.

Therefore, all the above show a clear manifestation of disfranchisement of peoples rights and freedoms and thus promoting ouster clauses or claw backs by the government instead of promoting provisions that promote for peoples fundamental and others human rights and freedoms. Thus the above literature does has not stood the test of time.

The Official Secretes Act chapter 302 is an Act relating to state security. Section 2 thereof provides for acts prejudicial to the state.

That any person who, for any purpose prejudicial to the safety or interests of the territories of Uganda;-

- (a) approaches, inspects, passes, or is in the neighborhood of, or enters any prohibited place;
- (b) makes any sketch, plan or note that is calculated to be or might be or is intended to be directly useful to a foreign power;
- (c) obtains, collects, records, or publishes or communicates in whatever manner to any other person any secrete official code word, or password or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power, commits an offence under this Act¹⁴.

And section 4 thereof provides for wrongful communication, etc of information.

All the above is in total violation of the right of expression as envisaged under article 29 of the 1995 Constitution of Uganda as amended. This can be evidenced by the closure of media houses namely:- Daily Monitor, Red Paper,

¹⁴ Section 2 of the Official Secretes Act Chapter 302 Laws of Uganda.

KFM Radio and Dembe FM when they published Major General David Tinyefuza's letter.

CONCEPTUAL AND PHYLOSOPHICAL BASIS OF HUMAN RIGHTS.

Human rights are understood to be the law that governs the relationship between individuals and the state as far as individuals and groups rights are concerned.

They cover political and civil rights as well as economic, social and cultural rights.

They may also be defined as claims or entitlements against a state by individuals or groups because human rights applies to individuals as well as groups.

There are various sources of human rights law in Uganda to include the following:-

a).**International Treaties;** for example the International Covenant on Civil and Political Rights, the Universal Declaration on Human Rights, the International covenant on Economic, Social and Cultural Rights etc.

b).**Regional Treaties;** for example the African Charter on Human and Peoples' Rights, the European Convention on Human Rights and the American Convention on Human Rights.

c).**The 1995 Constitution of the Republic of Uganda as Amended;**

Chapter four of the constitution referred to as the Bill of Rights provides for protection and promotion of Fundamental and other Human Rights and Freedoms¹⁵, under **Articles 20 to 58** thereof.

¹⁵ Article 20 to 58 of the 1995 Constitution of the Republic of Uganda as Amended.

Under the law, the term right entails an interest possessed by an individual which is recognized and protected by the law.

The correlative of right is duty and in other words, if a person has a right, it is the duty of others not to violate it.

The question then arises as to what are fundamental rights?

The rights referred to as fundamental because in the first place, they are God given. Every human being is born with these rights, they are not conferred by the law but the law merely lights them. Life is not worth living without these rights.

However, as a constitutional principle, the idea that human beings have rights came from the theory of social contract and natural law.

The belief in the existence of natural law has its origins in the belief that there is God.

According to literal Lawyers, God governs the universe in accordance with external law through divine providence, all things participate in eternal law.

That since man is part of the Universe, man shares in the eternal law or natural law according to which man has a natural inclination to do good as opposed to bad.

That because natural law is opposed to any thing, that is not good for the preservation of man, any man made law must conform to natural law.

They include therefore that man made law which is contrary to natural law is not good and therefore invalid.

And this is because natural law is the standards to which any man made law must conform.

They top up their conclusion that government has no power to make law that is contrary to natural law and that if they do so they should be overthrown through a revolution and replaced.

The philosophical foundation of human rights have been articulated by different scholars prominent among which is the natural law and the positivist theory.

The natural law theory further propound that human rights are equally endowed alienable rights; for example the right to life and various political freedoms etc

It is this natural law theory which is the basis of the Universality of the Human Rights principle.

On the other hand, the positivists school of thought asserts that human rights just like other laws was seen not to be derived from some natural source but rather from a sovereign who may be a king or a ruler.

The positivists further propound that it is the sovereign who determines what is right or wrong.

According to them, unless law is reduced to some state of writing or statute, it not law.

To a large extent; these theories have been put in practice inter alia.

To American declaration of independence states among others, men are inalnably endowed with the right to life, liberty and pursuit to happiness.

That government is created to ensure God given rights, and whenever any form of government becomes destructive of those rights, it is the right of the people to alter and abolish that government and institute a new one.

Then, the new government must have its foundations laid upon principles and its power organized in such a way that it shall seem most likely to affect security and happiness.

And the American constitution which followed the declaration is mainly a qualification of natural law concepts.

It sets out the authority of government and guarantees the rights of individuals.

It is the American constitution that holds a large segment of natural law in the modern world.

The American Constitution Associates Natural Law with the idea of liberty and enshrines the Unique idea that natural law rights can be subjected to legal guarantees in the form of a “bill of rights”.

That bill of rights can be adjudicated upon like any other rights and duties.

In Uganda, the 1995 constitution of the Republic of Uganda as amended enshrines the Bill of Rights in chapter four which provides for protection and promotion of fundamental and other Human Rights and Freedoms.¹⁶

There has been much discussion in recent years over which rights constitute the most important human rights.

¹⁶ Supra

People argue that political and civil liberties form the true bedrock of human rights; including freedom of the press, and assembly; the right to vote and to petition the government; and entitlement to due process of law and other legal protection.¹⁷

These form what is sometimes called the traditional concept of human rights, and are reflected in large part in the International Covenant on Civil and political Rights.

Others contend that a fundamental right to basic necessities for an adequate standard of living, including employment, nutrition, shelter, health care, and education, are more important, particularly for the poor.

These rights are similarly articulated in the International Covenant on Economic, Social, and Cultural Rights, as well as in the later Declaration on the Right to Development.¹⁸

This debate has been important to the extent that it reminded the world that all of the principles illuminated in the Original Declaration are important.

Unfortunately, however, public discourse on human rights and development too often ignores their fundamental two – way relationship.

The world now accepts that sustainable development is impossible without human rights.¹⁹

¹⁷ Development and Human Rights; The Role of the World Bank at page 2

¹⁸ Ibid

¹⁹ Ibid

2.2. Historical background of human rights.

Historically and philosophically speaking the genesis of human rights is essentially western.

Human rights have roots deep in the mists of time yet the term itself dates back barely sixty years to international discussions preceding the founding of the United Nations.

Since 1945, the scope of human rights has been elaborated and the concept now permeates the fabric of international society.²⁰

There are divergent views as to the origins of human rights; the existence of a body of basic rights can be traced back to the early thirteenth century in Europe and has featured in various predominantly European schools of thought since that time.²¹

In many respects, its origins lie in philosophical discourse with concepts such as liberty and even “rights”. It is linked to the constitutional concept of the rule of law; the inherent limitations on the exercise of absolute power by a sovereign or Parliament.

The rule of law in turn links to theories of natural law and religious doctrines.²²

Accordingly, one would argue that earlier religious scripts embodying rules and regulations governing the conduct of society are the foundation of human rights.

²⁰ International Human Rights, by Rhona R.M Smith at page 2

²¹ Ibid P.2

²² Ibid P.2

The basic tenets of all faith prescribe boundaries of conduct, often norms of religious law.²³

Many aspects of such laws are still applied today; the Sharia laws of many Islamic states, for example. Although such sources tend to emphasize duties, political and religious traditions world wide proclaimed certain rights” for people; thus, the right to expect their rulers to be fair and reasonable, with limited authority in respect of private lives and property of their subjects.²⁴

An example can be found in English the Magna Carta of 1215 enshrined a number of principles which now all within the broad ambit of human rights; including the principles of equality before the law, a right to property and an element of religious freedom, albeit such rights extended only to nobles.²⁵

The post –colonial African State is beset with numerous structural deficiency’s is its lack of national integration and a failure to build a workable constitutional framework that democratically accommodates and mediates the interests and identity of its diverse population.²⁶

Not only does its institutions and norms lack a foundation in culture, social values and historical traditions of its diverse population, but importantly, it fails to serve as a suitable framework for achieving a just and democratic society.

²³ Supra P.2

²⁴ Ibid P.2

²⁵ Ibid P.2

²⁶ Ethnicity, Human Rights and Constitutionalism in Africa, by Jimmy Carter at page 5

It is argued that Africa's post colonial nation-building is mainly inspired by the nation-state model and has been assimilations in its orientation and coercive in its operation.²⁷

2.3. Human Rights in Pre-colonial Societies

Pre-colonial societies recognized community as opposed to individual rights. In the case of Uganda, some of these societies were Kingdoms and other nomadic settings.

The concept of the state as we know it today was not known although in kingdom areas, kings and chiefs enjoyed the absolute power of their subjects.

There were no property rights, communal rights and women and children in some societies were owned communally.

The prevailing system operated by the concept of customary law which was based on traditional beliefs.

The human rights concept per se did not exist in pre-colonial societies. What was usually put forward as human rights was "obuntu".

This was the notion of human dignity which existed during the pre-colonial period.

And human rights in the Western perspective presupposes the existence of the state and individuals unlike the obuntu concept.

²⁷ Ibid P.5

2.4. Human Rights during the Colonial Period

The legacy of colonialism was entrenched by the position of a new legal framework where the colonial masters introduced and imposed a new legal order over the colonized people.

In Uganda, the first of such legal orders was the Buganda Agreement of 1900 which sought to limit the powers of the ruler and more of the Buganda monarchy as well as imposing the authority of His Majesty the Queen of Great Britain over Buganda.

The British also used this kind of, Agreement to create laws regulating the use of land hence the birth of crown and mailo land.²⁸

The other legal framework was the Uganda Order-in-Council of 1902 which introduced the English legal doctrines and principles of Equity and common law in Uganda.

The Uganda Order – in –Council of 1902 represented for the first time the imposition of the British colonial rule over Uganda.²⁹

There were several other laws such as the Removal of Undesirable Persons Ordinance of 1902, the Deportation Ordinance of 1951 and these laws enabled the colonial masters to deport at will any native who resisted or questioned colonial orders.

There are certain characteristics that are common to each of these laws namely:

They primarily promoted the interests of the colonial masters to the detriment of the colonized people.

²⁸ The 1900 (B) Uganda Agreement – its provisions and significance

²⁹ The Uganda Order-in-Council of 1902

These laws did not promote or protect human rights.

The principles of human rights were conceptually absent in these laws as they were highly discriminative and racist in nature.

The colonized people had no rule; thus they did not participate in the making of these laws.

These laws were not made in a democratic or participatory manner (hence un democratic, repressive and unjust); they represented the authoritative character of the colonial masters.

The development of indigenous forms of government, culture and religion was rejected; in stead such was many times referred to as being repugnant.

In order to understand the impact of colonial legislation, one needs to examine the cases if that period.

For instance, in the case of **REPUBLIC Vs AMKEYO**,³⁰ the accused was charged with theft of skin of a goat and the only witness was his wife.

Amkeyo was married to her under customary law.

The issue was whether or not marriage under customary law was a marriage recognized under the laws of the protectorate.

Lord Hamilton stated inter alia; that a relationship entered into under an African nature with a woman of his tribe according to the African custom was a misnomer.

³⁰ (1914) KLR 14

The elements of a so –called marriage by natural custom so materially to form the ordinary accepted idea of what constitutes a recognized form of marriage in the first place, a woman is not a free contracting agent but is regarded in the nature of chattel for the purchase of which a bargain is entered into between the intending husband and father.

And in the second place, there is no limit as to the number of women that may be so purchased by one man.

Thirdly, that a man retains a disposition of power over a woman that he has purchased.

For these reasons therefore, Lord Hamilton held that the marriage law of the protectorate expressly omits natural unions from its view.

And according to the case of **MWENGE Vs MIGADDE**,³¹ the issue was whether or not the Butaka land would be subjected to a private sale.

It was held that the law does not recognized customary practices or laws, that certain land held under a peculiar customary tenure such as Butaka land can not be sold; such customary law or custom was repugnant and should be abrogated or destroyed.

Whereas in the case of: **RE BINAISA**³², he was arrested upon a warrant citing that he was the person against who in proceedings under the Deportation Ordinance were pending and remanded in custody.

³¹ (1933) U.L.R 98

³²

He applied for habeas corpus adsubciendum on grounds that detention was not met to be a reasonable time since he had been detained for twenty seven days.

In rejecting the application court held inter alia that the Deportation Ordinance authorized the detention of a person arrested with the view to deportation pending an inquiry and there is no limit for such an inquiry.

In conclusion therefore, the legal framework and policies of the colonial masters did not promote and protect the rights of the people colonized and it was so expressive.

This expression extended to the suppression of political and civil rights, the rights to movement, freedom of speech and assembly, participation in fair trial etc.

In addition, they neglected cultural rights and religious freedoms and they also deprived the colonized people of economic and social rights through exploitation of labour, taxation for example Hut tax and Gun tax and the imposition of foreign values.

The colonial policies and rules also negated the right to self determination and self rule which forced the colonized people to fight for independence and self rule.

2.5 Human Rights in the Post Colonial Uganda.

Human rights violation during the post Colonial period in Uganda can be traced from the time of the abrogation of the 1962 Constitution by Dr. Appollo Milton Obote the then Prime –Minister of Uganda where he abolished the Office of the president and rested all powers under the office of the Prime –Minister.

He also attached the Lubiri and the residence of the president and abolished kingdoms in Uganda thus violating the right to associate.

The two versions of the 1966 crisis, one was that the people in Mengo had acquired guns with the intention of overthrowing the then government of Uganda.

The other was that it was naked violation of the constitution by Dr. Appollo Milton Obote and the allegation that Mengo had acquired guns was false.

Following the 1966 crisis, a pigeon hole Constitution was passed and all the members of Parliament were required to vote for a new Constitution in their pigeon holes.

During this period, human rights especially civil and political rights were violated using repressive laws and detention laws such as the Detention Act of 1966 and 1967 and some of the victims of these laws were Grace Mangira and Matovu Micheal.

Between 1966 and 1971, emergency powers and detention laws were enacted to limit the freedom of movement of Ugandans.

Many people were arrested, imprisoned while others were exiled. Dr. Appollo Milton Obote was then overthrown after the beginning of the tyranny which led to rise of Idi Amin Dada to power in 1971 who gave eighteen reasons why he overthrew Obote's government among which was dictatorship and corruption.

That transition from Dr. A-M O. Obote's reign. During this period, there were unprecedented killings and disappearances orchestrated by the states and state agents.

During this period, all powers were vested and centralized in the president who ruled by way of decrees.

This tyranny was resisted by many Ugandans and as such Idi Amin Dada was overthrown by the Ugandan National Liberation Front (UNLF) led by Yusuf Lule with the help of the Tanzanian government.

In 1980 National elections were organized or held and rigged by the Uganda Peoples Congress (UPC) with the help of Muwanga Paul thus the return of Dr. A. M. Obote.

Dr. A.M. Obote's second term was very brutal because this reign was more repressive and the talk of the rule of law and human rights was not heard of.

This situation became worse and forced the National Resistance Army (NRA) to take up arms.

The basic reason for the rebellion was the rigging of the 1980 elections by the Uganda people Congress and lack of democracy.

As such, restoration of democracy was the key issue to the Ten point programme.³³

The following cases illustrate the human rights violations during that period.

a).UGANDA Vs COMMISSIONER GENERAL OF PRISONS, EX PARTE MATOVU,³⁴ where Matovu Micheal a Saza Chief was arrested on 22nd May 1966 and detained in Masindi Prison under the Deportation Ordinance.

³³ Sowing the Mustard seed; by Yoweri Kaguta Museveni at page 221

³⁴ (1966) E.A 514

He was transferred to Luzira in July and in August he was served with a detention order under the Emergency Powers Act signed by then Minister of Internal Affairs.

The Court considered three issues to wit:-

- a) Whether the Emergency Powers Act invoked to detain Matovu was ultravires.
- b) Whether the constitutional rights of a person detained under the Emergency powers Act were the violation of the provisions of the constitution.
- c) Whether the 1967 constitution was valid.

The learned Judges found that the series of events that took place in Uganda from February 1966 were not creating facts appropriately described in law as a revolution, that is to say there was an abrupt political change not contemplated by the existing constitution that destroyed the entire legal order and was superseded by a new constitution and an unelected government.

The Judges further held inter alia that the Emergency Powers Act of 1966 was not ultravires to the constitution and that the measures taken were justified and appropriate based on a subjective test.

They further held that the detention of Matovu Micheal under the Emergency Powers Act (EMA) was in accordance with the constitution except for the statement for grounds of this detention which was inadequate and that these grounds could be cured.

- (b) And in another landmark case of **GRACE IBINGIRA & OTHERS Vs UGANDA**.³⁵ Grace Ibingira and others at large were arrested and detained without trial. When the matter came before the High Court, it was dismissed and hence disappeared.

³⁵ (1966) EA 305, (1966) E.A 445

The appellants had been held in custody pending the decision by the Minister as to whether or not an order for the deportation could be made under the Deportation Ordinance.

He applied for a Writ of Habeas Corpus challenging their detention on grounds that the Deportation Ordinance was inconsistent with the provisions of the 1962 Constitution which provided that no person shall be deprived of his personal liberty save as in the execution of lawful orders.

The appeal was allowed and the court held inter alia; that the Deportation Ordinance was void and inconsistent with the provisions of the 1962 Constitution of the Republic of Uganda which guarantees the liberties of individuals.

Whereas in another case of **RWAKASIS Vs ATTORNEY GENERAL**³⁶, Rwakasisi the Minister of State in the former Uganda peoples' Congress government was arrested at Magamaga and detained.

We applied for a Writ of Habeas Corpus that his body should be produced before court and that the government show cause why he should not be released from detention.

When produced in court, the Officer in charge of the upper prison filled a return showing that the applicant had been served the detention order made under the Public Order and Security Act of 1967 and that he was being detained under that order.

Court held inter alia that the Public Order and Security Act of 1967 was never intended to make any illegal detention order served upon detainee after a period of fourteen days.

The law permitted them to keep a person in their custody legally for fourteen days while investigations were being carried out.

The detention order could not be regarded as being invalid for mere delay in serving the applicant within fourteen days.

That the applicant's remedy for the period in which he was illegally held after fourteen days had expired and before he had been served with the detention order lay in a civil court for award of compensation of unlawful detention. That the applicant had to prove that the order was served malafide.

2.6. The Ten –Point Programme of the National Resistance Movement

Background.

Over the five years of the protracted struggle from February 1981 to January 1986), the National Resistance Movement (NRM) together with the High Command and senior Officers of the National Resistance Army, under the Chairmanship of Yoweri Kaguta Museveni, worked out proposals for a political programme.

And this formed the basis for a national wide coalition of political and social forces which could usher in a better future for the long – suffering people of Uganda.

This programme is popularly known as the Ten – Point Programme of the National Resistance Movement.

The Ten Points include the following:-³⁷

1. Restoration of democracy.
2. Restoration of security of person and property.
3. Consolidation of national unity and elimination of all forms of sectarianism.
4. Defending and consolidating national independence.
5. Building an independent, integrated and self-sustaining national economy.
6. Restoration and improvement of social services and rehabilitation of war ravaged areas.
7. Elimination of corruption and misuse of power.
8. Redressing errors that have resulted in the dislocation of some sections of the population.
9. Co-operation with other African countries.
10. Following an economic strategy of a mixed economy.

Capturing power 1986 by the H.R.M, the notion was, “it was not a mere change of guards but a fundamental change”.

2.7. The period between 1989 to 1995.

When the National Resistance Movement took power in 1986, a commission of inquiry was instituted to inquire into the violation of human rights between 1962 to 1986.

The commission of inquiry headed by Justice Order called the Order Commission made a report in which it showed that between 1962 to 1986, the human rights violations that occurred were of political, social and cultural nature. This was under legal Notice No. 1 of the Constitution.³⁸

The commission of inquiry also recommended the creation of permanent human rights as well as the Bill of Rights in our constitution.

³⁷ Sowing the Mustard Seed; by Y. K. Museveni at page 221

³⁸ Legal Notice No. 1 of the Constitution.

This recommendation was adopted and found the basis of the 1995 constitution of the Republic of Uganda chapter four the Bill of Rights and the National Objective Principle of state policy which state Uganda's position on human rights.

The objects and principles of state policy paved way for a new constitution with the aim of guiding policy as well as legislation on certain matters.

This included among others the protection and formation of fundamental human rights and freedoms enshrined in paragraph five of the 1995 Constitution of the Republic of Uganda.

Paragraph five thereof provides for fundamental and other human rights freedoms to wit; that the state shall guarantee and respect institutions which are charged by the state with the responsibility for protecting and promotion of human rights by providing them with adequate resources to function effectively.³⁹

The main institution for the protection and promotion of human rights in Uganda is the Uganda Human Rights Commission as envisaged under article 51 of the 1995 constitution of the Republic of Uganda as amended.⁴⁰

Paragraph nine provides for the right to development, education, clean and safe water, food and nutrition.

It should be noted however, that in spite of being put in the constitution, these directions are not binding.

The only aim is to guide the state and its policies.

³⁹ Paragraph five of the 1995 Constitution of the Republic of Uganda.

⁴⁰ Article 51 of the 1995 Constitution of the Republic of Uganda.

Nonetheless, there is a school of thought that propounds that although these directions are not binding, they must be complied with by the state.

And where a state makes any laws or policies that are inconsistent, then such laws or policies can be challenged in the Constitutional Court.

The 1995 Constitution of the Republic of Uganda as amended under chapter four enshrines a wide range of human rights vide; civil, political, economic social and cultural rights.

An analysis of these rights shows that our constitution is comprehensive as far as civil and political rights are concerned.

However, it is vague and based on economic and social rights such as the right to education, house work etc.

There has been minimal or no litigation concerning economic rights under the 1995 Constitution of the Republic of Uganda.

Chapter four also contains restrictions on human rights in certain circumstance.

For example the right to life can be deprived in execution of a sentence passed by a court of competent jurisdiction in a fair trial in respect of a criminal offence as provided for under article 22 of the Constitution.

The right to life is one of the most respected rights in the constitution. The debate on what constitutes these rights ranges on with many scholars arguing that it extends to all aspects that constitute an adequate and reasonable life.

Thus in the case of: **SALVATORI ABUKI AND ANOTHER Vs ATTORNEY**,⁴¹ the Constitutional Court held that the deprivation of shelter, food and

⁴¹ Constitutional Petition No. 2 of 1997

essential sustenance as the consequence of the Exclusion Order under the Witchcraft Act (now repealed) as threatening the right the to life and therefore not permissible under the Constitution.

Article 22 of the 1995 Constitution does not however make the right to life absolute but does give instances where it is Lawful to intentionally deprive a person of this right⁴²

These instances are close cut and are only limited to cases of execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and a conviction and sentence have been confirmed by the highest appellate courts.

According to the case of: **SUZAN KIGULA & 416 OTHERS Vs ATTORNEY GENERAL**⁴³, the Constitutional Court held the death penalty as stipulated under article 22 of the Constitution as a recognized exception to the right to life and therefore constitutional.

There is also a general limitation on the fundamental freedoms under article 43 which provides for General limitation on the fundamental and other human rights and freedoms.

Article 43 (1) thereof provides that in the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

Further Article 43 (II) provides that public interest under this article shall not permit political persecution, detention without trial etc.⁴⁴

⁴² Article 22 of the 1995 of the Constitution of the Republic of Uganda.

⁴³ Constitutional Petition No. 6 2003.

⁴⁴ Article 43 of the 1995 Court of the Republic of Uganda.

The general limitation not with standing article 44 thereof, provides that there shall.

The general limitation not with standing article 44 thereof, provides that there shall be no derogation from enforcement, inhuman and degrading punishment, freedom from slavery or servitude, the right to a fair hearing and the right to an order of habeas corpus ad Subjucendum.⁴⁵

However article 49, of the Constitution provides for the derogation of human rights under certain circumstances.

The Article provides that during states of emergencies, Parliament has power to make laws that take measures that are reasonably justifiable for dealing with the state of emergency and these powers should only apply to a part of Uganda where the emergency exists.⁴⁶

It further provides that such an Act may have a provision for detention of persons where necessary for the purposes of dealing with the emergency.

Article 17 also provides for detention under emergencies.

⁴⁵ Article 23 (9) of the 1995 Constitution of Uganda.

⁴⁶ Article 49 of the 1995 Constitution of the Republic of Uganda.

CHAPTER THREE

Chapter three will critically explore and examine the main causes of human rights abuses in Kampala Capital City Authority.

Causes of human rights violations can be grouped into, political, economic, social, civil and cultural causes of human rights abuses.

3.1 Political causes of human rights abuses.

Uganda today is governed under a multi-party dispensation where there are a number of different political parties namely the Uganda Peoples' Congress, the Forum for Democratic Party, the Democratic Party, Conservative Party and the ruling National Resistance Movement Organization to mention but a few.

A political party is an organization of voters formed to influence the government's conduct and policies by nominating and electing candidates to public office.⁴⁷

And political power means power vested in a person or body of persons exercising any function of the state; the capacity to influence the activities of the body politics; also termed as civil power.

To that effect, sovereign political power is that power that, within its own sphere of operation, is subject in some degree to external control because there exists some superior constitutional power⁴⁸ that can prevent, restrict, direct or annul its operation, often shortened to subordinate power.

Article 1 of the 1995 constitution of the Republic of Uganda as amended provides for the sovereignty of the people, that all power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.

Article 1 (iv) thereof, provides interalia; that the people shall express their will and consent on who shall govern them and how they should be governed,

⁴⁷ Black's Law Dictionary Eight Edition at page 1197

⁴⁸ Ibid

through regular free and fair elections of their representatives or through refrenda⁴⁹

During the research study, it was found out that politics is one of the major causes of human rights abuses in Kampala Capital City Authority as seen hereunder.

Human rights violations are on the rampage during election period when electorates elect their leaders and in the process, elections are rigged.

This was witnessed during the Kampala Capital City Authority Mayoral race which was so tight between the Lord Mayor Mr. Lukwago and Peter Sematimba; where on the election day, ballot boxes had been staffed fully to capacity by eight O'clock in the morning.

Another example was the Parliamentary election in Lubaga North where the race was so tight between Honorable Kasibante and Katongole, and Katongole Singh was announced winner and put in the gazette that night after a recount by the chief magistrate at Mengo chief magistrates court which recount was annulled by Justice Kibuka Musoke in the election petition filed by Honorable Kasibante in the High Court at Kampala.

Lastly human rights abuses were vehemently seen during the walk to work demonstrations immediately after the 2011 presidential elections.

Whenever the electorates show discontent of election rigging by demonstrating onto the streets, the police comes in to disperse them; under article 43 of the Constitution thus violating their rights to assemble and demonstrate.

Whereas article 29 of the Constitution provides for protection of conscience, expression, movement, religion, assembly and association.

And in the case of **MUWANGA KIVUMBI Vs ATTORNEY GENERAL**⁵⁰, the Constitutional Court declared section 32 of the police Act unconstitutional and

⁴⁹ Article 1 of the 1995 constitution of the republic of Uganda.

echoed the importance of freedom of assembly as well as the restrictions attached to it.

While dispersing such demonstrations, one respondent told me that the police are said to carry out their functions on orders from above and in the end they open live bullets and tear gas into the masses demonstrating.

This was seen during the Kayunga demonstrations when the Kabaka of Buganda was stopped from travelling to Kayunga (September 2009 Buganda riots and over ten people lost their lives thus human rights violations).

I interviewed a one police officer who told me that the Uganda police today is headed by an army man General Kaihura Kale and that during operations, they see people in police uniforms whom they don't know and such people monitor them and keep on reporting whatever goes on during such operations.

That whatever such people in police uniforms do is so militaristic and he told me that they are the people who open live bullets into the people who demonstrate.

During a demonstration around Uganda House, a police officer opened tear gas into a coaster omnibus and one child suffocated to death.

In the government's attempt to persecute and prosecute opposition politicians, some are arrested, detained tortured when extracting confessions from them.

This is in total contravention of human rights freedoms by the government. For example Dr. Kiiza Besigye was arrested, detained tried on fabricated rape case where he was alleged to have raped Kyakuwa.

However the honourable court presided over by Justice John Bosco Kastusi acquitted him under the notion of presumption of innocence as provided for under article 28 of the Constitution because he took the option of keeping quiet when he was put on defence.

⁵⁰ Supra

The above is a clear manifestation of political prosecution on opposition politicians thus human rights abuses.

Others who were arrested and detained in unknown places were Hon Medard Segona Akalya Amaggwa. Hon Namboze Bakireke, the new Katikiiro of Buganda Peter Maiga.

The sealing off of the constitutional square, freedom square, the Railway grounds, Centenary part and the deployment of the police and the army immediately after the 2011 general elections in the city was politically initiated which led to many human rights abuses and this was in contravention of fundamental freedoms of protection of freedom of conscience, expression, movement, religion, assembly and association as enshrined under article 29 of the 1995 Constitution of the Republic of Uganda.

The several instances of media intimidation by the government operative by closing them, beating up journalists, siege of the daily Monitor and the Red Paper by the police is alleged to be politically motivated thus violating the right to freedom of expression as enshrined in article 29 of our Constitution.

After the closure of the media houses for eleven days in May 2013, the Daily monitor was forced to sign an agreement never again to publish such information like Major General David Tinyegunza's letter.

The observer reported on Monday 27th May that the outgoing Internal Affairs Minister Hilary Onk set tough conditions for Monitor publications managers if the paper was to reopen.

The paper would have to sign an undertaking never to write negative stories about the army, the president, his son Muhoozi Kainerugaba, his wife and his family at large⁵¹

⁵¹ The observer Wednesday may 29th – 30th 2013

Hon. Ssemujju Nganda, the political editor of the Observer asked, “ how can the media stop writing about Muhoozi Kaneirugaba who is a general and the head of the presidential protection brigade, his wife, who is the member of Parliament for Ruhama constituency in Ntugamo district and his daughters⁵²

This was while appearing on the Capital Gang on Capital FM Radio with the Ganga stars Hon Abdul Katuntu, Ofono OPondo and others at large.

According to one respondent, I found out that the New Vision publication has not published Dr. Besigye’s articles or letters yet he writes to all the media houses. It is only the Daily monitor, Observer and the Red paper which publish Dr. Kiiza Besigye’s articles.

This is as if the new vision being a government paper works on instructions from above.

And during the eleven days when the media houses like the Monitor, Red Paper, KFM and Dembe FM, the New Vision was reluctant to publish the events that befell for example beating up of journalists for example Mr. Chris Obore was squeezed or pushed onto a telephone pole at the Monitor headquarters in Hamuwongo.

Chris Obore the investigative editor of the Monitor publication, in exchange of words told the police that it is the media fighting for the police but the police are instead violating the media freedom.

The office of the High Commissioner for Human Rights, (OHCHR), Human rights Watch, African Liberal Network (ALN), East and Horn of Africa Human Rights Defenders Project (EH AHRDP), Foundation for Human Rights Initiative (FHRI) and Amnesty International were some of the organizations that spoke out about what they see as intimidation of journalists⁵³

⁵² Capital Ganga Talk show on Capital FM

⁵³ The observer, Wednesday, May-29th – 30th 2013

“Police should resolve legal disputes before the courts of law without resorting to abuse tactics to scare journalists from politically-sensitive stories”, said Maria Burnett, the senior African researcher at the Human Rights Watch⁵⁴ This is a clear manifestation of media intimidation.

Further more, media houses were intimidated after the publication of information in regard to oil exploration in Western Uganda and the death of Honourable Serina Nebanda.

However Article 29 (1) (a) (b) and C of the constitution provide for the enjoyment of the right to freedom of speech, expression, which shall include freedom of the press and other media as well as freedom of thought or religion⁵⁵ And further more, article 41 provides for access to information.

According to the case of **CHARLES ONYAGO OBBO ANOTHER Vs ATTORNEY GENERAL**⁵⁶ the Constitutional Court held that the right to freedom of expression extends to holding, receiving and imparting all form of opinion, ideas and information.

It is not confined to categories, such as correct opinions, sound ideas or truthful information.

Therefore restraining the media from writing about the president and his family, oil exploration etc is media intimidation.

Restraining movements of some other politicians like the Lord Mayor E. Lukwago and the former president of the Forum for Democratic Change to move around the city is in total violation of the right to freedom of movement as enshrined in article 29 (2) of the Constitution and this led to the death of a police officer Ariongo along Ben Kiwanuka street.

⁵⁴ Ibid

⁵⁵ Constitutional Appeal No 2 of 2002 (2004) UGSc 191 February 2004.

⁵⁶ Article 29 of the 1995 constitution of the Republic of Uganda.

3.2 Economic causes of human rights abuses.

The economic factor plays a bigger role in contributing to human rights violations in Kampala capital city Authority.

A one police officer I interviewed told me that they are not well facilitated.

That whenever they are deployed to cherry riots at times they are not given water yet they stand in the sun shine.

So when they are provoked by the demonstrators, they also reply by use of excessive force for example opening tear gas and live bullets.

The police live in bad state, low pay, they are disgruntled yet the cost of living and the standard of living are so high in Uganda today.

According to a mini-survey conducted by the Daily Monitor in Naguru and Nsambya police barracks in Kampala revealed that police officers occupy houses with leaking roofs and whenever the skies open, most of their beddings get soaked⁵⁷

Living under such conditions, police are prone to violate peoples' human rights whenever they are deployed to crack down demonstrations because at times, they are seen yawning along the streets, I have always seen them in such conditions, very miserable, cruel, angry, hungry and that is why they act as wounded lions or wasps when cracking down demonstrations in the city.

Another cause under the economic factor as a cause of human rights abuses is unemployment, poverty underemployment, increasing pathetic economic conditions among the masses in the city suburbs, idleness and overpopulation.

When these people are dissatisfied or discontented with something for example election rigging, they are forced to flock the streets and most of these are unemployed city dwellers, rogue and vagabonds.

⁵⁷ Daily Monitor: Newspaper May 2013

And in reiteration, the police also uses excessive force on them thus violating human rights.

A one police officer told me that if the masses are dissatisfied with something, the only options are; to petition the speaker of parliament and petitioning the courts of law e.g the Constitutional Court for interpretation.

3.3 Social-Cultural causes of human rights violations.

While the political and economic factors play an important role in causing human rights abuses in Kampala Capital City Authority, social-cultural factors also supplement them.

It was discovered that most of the populace are ignorant about their, human rights, freedoms as envisaged in the 1995 Constitution of the Republic of Uganda under chapter four the (Bill of rights) because the Constitution has not been translated into the local languages of Uganda.

Some police men and women have not read the Constitution and the Penal Code Act which they are supposed to enforce, thus the police ignorant about the law.

How can a police officer enforce the law when he or she has not seen or read the Constitution which is the grund norm or supreme law of the law⁵⁸

The economic growth and changes ushered in Kampala Capital City Authority in the recent past has in an influx of people from rural areas to the city.

Therefore, when demonstrations emerge, you see a number of huge masses onto the streets and the police is called upon to crack them thus human rights abuses.

Further more, the unsettled conflicts between the law and culture has also attributed much to human rights abuses in Kampala Capital City Authority. These are controversial theories of culture and the law.

⁵⁸ New vision, Thursday, April-4th – 2013 at page 5.

The issue of marginalization of some classes of people, tribes, cultures, sexes for example the female, children, the poor and less recognised tribes like the Bakonjo who live in Nsambya has also attributed so much to human rights violations.

For example in other cultures, it is believed that a girl child or a woman is just fit for kitchen work thus violating their human rights as enshrined in the 1995 constitution.

Article 21 of the Constitution provides for equality and freedom from discrimination; that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and every other respects and shall enjoy equal protection of the law⁵⁹

Further more, Article 30 of the Constitution provides for the right to education, that all persons have a right to education. Further still, article 31 thereof, provides for rights of the family; that men and when of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.⁶⁰

Article 33 thereof provides that women shall be accorded full and equal dignity of the person with men.

That the state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.

That the state shall protect women and their rights, taking into account their unique status and natural maternal functions in society.

That women shall have the right to equal treatment with men and that right shall include equal opportunities in political economic and social activities.

⁵⁹ Article 21 of the 1995 constitution of the republic of Uganda as amended.

⁶⁰ Articles 30, 31 and 33 of the 1995 constitution of the Republic of Uganda.

That without prejudice to article 32 of this constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

That laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this constitution⁶¹

According to the landmark case of ASSOCIATION OF WOMEN LAWYERS (FIDA) Vs AG⁶², Section 4 of the Divorce Act was declared null and void for being discriminatory against the women, thus being in contravention of the provisions of the constitution especially Articles 21 and 33 which provide, for equality and freedom from discrimination.

And in another case of: MIFUMI Vs ATTORNEY GENERAL⁶³, female genital mutilation was rendered null and void because the custom is against the dignity, welfare or interest of women and undermines their status thus being in contravention with article 33 of our constitution.

Therefore all the above social and cultural unrest according to a respondent (Ssendagire of Gogonya 11 zone Nsambya) have made a great contribution to human rights violations and are in total contravention of the constitutional provisions and the human rights international instruments for example; the International Covenant on Civil and Political Rights, the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights and the European Convention on Human Rights and the American Convention on Human Rights.

⁶¹ Article 33 of the 1995 constitution of RON

⁶² Constitutional petition No. 1 of 2003

⁶³ Constitutional petition (unreported)

CHAPTER FOUR

4.1 Introduction

Chapter four forms the focal and central theme of this research paper. The chapter critically examines the different forms of human rights violations in Kampala capital city Authority.

Having explored the causes of human rights abuses, it is now wise to carry out a specific examination of the various forms of human rights violations committed in Kampala Capital City Authority.

And with specific reference to specific causes of human rights abuses identified above, this helped me as a researcher to examine the specific human rights violations committed in the city as expounded hereunder.

4.2 The major human rights abuses committed in Kampala Capital City Authority.

4.3 Threats to freedom of expression and the media.

The Proposed Press and Journalist (Amendment) Bill 2010 continued to worry media practitioners in 2011.⁶⁴

The proposals were aimed at giving the Media Council the authority to licence newspapers annually and to close those that were deemed to have violated the provisions of the Act.

The proposed amendment was giving the minister of information the power to appoint the chairman of the Media Council creating new offences relating to the publication of information prejudicial to national security, public morality and economic interests of the country⁶⁵

⁶⁴ The fourteenth Annual Report 2011 to the Parliament of the republic of Uganda at page 73.

⁶⁵ Ibid

With regard to the working conditions of media practitioners, the Uganda Human Rights commission (UHRC) noted that journalists lacked safety and protection mechanisms especially for reporters in the field.

A part from the identification jackets, most journalists who covered the “walk to work” demonstrations and other dangerous scenes lacked bullet proof jackets, health and life insurance and identity cards and yet they were covering new scenes which required such items for their own safety and protection⁶⁶

On a number of occasions, we have witnessed journalists being beaten and their cameras confiscated, damaged or broken by the police.

This was evidenced during the return of Dr. Kiiza Besigye on the 12th of May 2011 from Nairobi- Kenya when he had gone to get medical care after he was tear gassed with pepper spray. During this event, many journalists were beaten up by police and their equipment were confiscated and destroyed by the police.

This is in total contravention of the media freedom as enshrined under Article 29 of the 1995 Constitution of the Republic of Uganda.

According to the landmark case of **CHARLES ONYANGO OBBO AND ANOTHER VS ATTORNEY GENERAL**⁶⁷, the Constitutional Court held inter alia that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information.

The hournable court further noted that it is not confined to categories, such as correct opinions, sound ideas or truthful information.

Article 19 of the Universal Declaration of Human Rights provides for the freedom of opinion and expression, including freedom to seek, receive and impart information and ideas through any media of frontiers.

⁶⁶ supra

⁶⁷ Supra

Article 29 (2) of the UDHR states that freedom of expression is subject to limitations as determined law.

Article 19(2) of the International Covenant on Civil and Political Rights also recognises the freedom of the media and article 19 (3) clearly stipulates that the rights enumerated carry with them special duties and responsibilities.

And article 9 (1) of the African Charter on Human and Peoples Rights provides that every individual shall have the right to receive information and Article 9 (2) thereof provides for the right to express, disseminate opinions with the law.

And Article 10 of the ACHPR provide for restrictions that this right is subjected to.

At the national legal framework, Article 29 (i) (a) (b) and (c) of the 1995 Constitution provide for the enjoyment of the right to freedom of speech, expression which shall include freedom of the press and other media as well as thought or religion.

Article 41 provides for access to information

According to an analysis on the enjoyment of the freedom of expression, freedom of expression entails freedom of speech, the press, assembly or religion. This was observed by the Constitutional Court in the land mark case of **CHRALES ONYANGO OBBO Vs AG⁶⁸**

Freedom of speech is the right to express one's thoughts and opinion without undue restrictions.

And freedom of the press implies the right to print and publish materials without undue interference.

⁶⁸ (Supra)

So the closure of media houses after having published General Sejusa's letter was unconstitutional and contrary to Article 29 of the 1995 Constitution of the Republic of Uganda.

The recent closure of media houses namely the Daily Monitor, the Red Paper, KFM Radio and Dembe FM and the beating up of journalists is a clear manifestation of media intimidation and in contravention of article 29 of the Constitution.

For example Mr. Chris Obore the investigative editor of the Daily Monitor was pushed and squeezed onto a telephone pole.

The police on Monday May 20th, 2013 cordoned off and searched the premises of Daily monitor and the Red pepper newspaper.

The police said it had got a court order for the monitor journalists to hand over documents allegedly authored by General David Sejusa to help them carry out investigations in criminal offences⁶⁹.

The police further added that it got a court warrant to search the two media houses after journalists failed to hand over the documents.

However about the issue of closing the above media houses, Mr. Mutabazi Godfrey the head of the Uganda Communications Commission (UCC) said the commission is an independent body and does not dance according to the tunes of government.

Furthermore, there is interference with editorial independence.

Owners of private media continued to present evident interference in editorial independence of their media houses.

⁶⁹ New vision, Tuesday, May, 2013 at page 2

This was particularly pronounced during the electoral period when proprietors influenced how their media houses covered political contests.

As noted earlier, in extreme cases, proprietors prevented staff of their radio or TV stations or newspapers from covering or hosting guests that were deemed to subscribe to political ideology that was different from their own or from those politicians that had their sympathy⁷⁰

In some cases, this interference was not of fear of hosting especially opposition politicians and the implications.

For example Dr. Kiiza Besigye during the 2011 general elections paid Uganda Broad Casting to cover his company but UBC never did so and Dr. Kiiza Besigye had intentions to sue the media house for breach of contract.

Lastly, the freedoms of assembly and expression are inherent rights that citizen must be facilitated to enjoy. However, it should be noted that they are not absolute and can be limited to the public interest.

It is important that the rights holders exercise their freedoms responsibly mindful of the rights of others⁷¹.

According to the landmark case of **HARUNA KANABI Vs UGANDA**⁷², the High Court held that; it is apparent that by their character and timing, the contents of the publication by the appellant that alleged that Rwanda was the fortieth district of Uganda and that the president had visited it at the material time for votes, that the contents were seditious.

The people of Uganda were being told that their money was being squandered on Rwandans who were also likely to participate in the impending elections in Uganda.

⁷⁰ Chapter 5 on Elections and Electoral Democracy and the UHRC Report on the General Elections 2001 at 24

⁷¹ The fourteenth Annual Report 2011 to the parliament of the Republic of Uganda at pages 74 and 75.

⁷² Criminal Appeal No. 72 of 1995

The contents of the publication were calculated to bring contempt or to excite disaffection against the person of the president or the government of Uganda as by law established.

It is immaterial whether they bring about such consequence or not.

Likewise, the duty bears like the police who enforce the law should note that the primary objective of the law is to facilitate realization of the freedom and not to deny them⁷³.

They should enforce the law within that framework.

According to the case of **MUWANGA KIVUMBI Vs A.G**⁷⁴, the court declared section 32 of the police Act unconstitutional and echoed the importance of freedom of assembly as well as the restrictions attached to it.

The constitutional court further noted that in a democratic and civilized society, the police are supposed to keep law and order as well as to direct rallies and not to disperse them.

And in another case of **CHARLES NYANGO OBBO VS A.G**⁷⁵, the constitutional court held that the right to freedom of expression extends to holding, receiving and imparting all forms of opinion, ideas and information.

Court further noted that, it is not confined to categories, such as correct opinions, sound ideas or truthful information.

Furthermore, the closure of central Broadcasting service (CBS) radio during the 2009 Buganda riots was also seen as intimidation of the media and in total contravention of the constitutional provisions.

⁷³ Supra

⁷⁴

⁷⁵

4.4 Unlawful arrest and detention

In Kampala Metropolitan area, the Human Rights Commission found that about seven hundred people were arrested and detained during the “walk to work” demonstrations amongst these were Dr. Kiiza Besigye, Hon. Abdu Katuntu, Hon. Ssemuju Nganda, Hon. Beatrice Anywa, Hon. Nabira Nagayi Sempala, Hon. Norbert Mao, Dr. Olara Otunu to mention but a few.

They were charged with offences like incitement to cause violence, failure to obey lawful orders, holding unlawful assembly, rioting after a proclamation, malicious damage of property as well as treason.

During the “walk to work” demonstrations, some people were arrested and charged.

However, during court process, it was difficult to get independent civilian witnesses and in certain instances when the police were able to get witness, the witnesses were not willing to testify in court sessions hence frustrating the court process.⁷⁶

Some of the cases were later on dismissed for example the charges that were preferred against Hon. Abdu Katuntu, Hon. Norbert Mao, Hon. Ssemuju Nganda and others at large were dismissed for lack of evidence.

This is an abuse of fundamental freedoms and in contravention of article 28 of the Constitution.

According to the case of: **GODFREY GAHAKWA FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM**,⁷⁷ the issue before the High Court was whether a person can be detained on the strength of a clearly invalid detention order.

⁷⁶ The fourteenth Annual Report 2011 to the Parliament of Uganda.

⁷⁷ Miscellaneous Application No. 170 of 1979.

It was alleged that the order was invalid because the president had neither signed it nor had it been shown that the president's power had been delegated to the minister alleged to have signed the order on behalf of the president.

Furthermore, that the order didn't bear a public seal thereby infringing on sections 1 and 12 of the Public Order and Security Act.

Counsel for the respondent in reply argued inter alia; that the applicant had been taken to court and charged with criminal offences under the Penal Code Act and his detention was therefore lawful.

The applicant had been denied bail.

The High Court held inter alia that the detention of the applicant on the alleged authority of the order was clearly invalid, illegal and were it not for the criminal charge which has recently been preferred against him an order for his release would have been issued.

Another example was the unlawful arrest of the Buganda kingdom officials namely; the new Katikiiro Peter Maiga, Honourable Medard Ssegona, Hon. Betty Namboze Bakireke and others.

The trio was arrested, tortured and detained in a number of unknown places like Kyenjojo, Bundibujjo and Ibanda and later released without any charges preferred against them.

This is disfranchisement of people's fundamental freedoms and in contravention of Article 23 of the 1995 Constitution of the Republic of Uganda.

Article 23 of the constitution provides for personal liberty.

Article 23 (3) thereof provides that a person arrested, restricted or detained shall be informed immediately, in a language that he or she understands, of the reasons for the arrest or detention and of his or right to a lawyer of his or

her choice. The arrest and detention of Bishop Zak Niringiye at Wandegeya police was an abuse to human rights freedoms.

4.5 Violation of freedom of movement and freedom of assembly and expression.

Freedom of assembly and expression are some of the basic civil and political rights that are nationally and internationally recognized.

They are critical for ensuring that governments are accountable, reduce corruption and promote development through improved governance and public participation.⁷⁸

These freedoms are indispensable conditions for the full development of the person and are essential for any society. They constitute the foundation stone for every free and democratic society.⁷⁹

This will analyse the state of freedom of assembly and expression in 2011 with a particular focus on “walk to work” demonstrations.

All persons have the right to enjoy the freedoms of assembly and association that are closely related.

However, these rights come with duties, obligations, responsibilities as well as restrictions as illustrated by the legal framework⁸⁰

Article 20 (1) of the Universal Declaration on Human rights (UDHR) provides that everyone has the right to freedom of peaceful assembly.⁸¹

Article 29 (2) of the UDHR states that freedom of assembly is subject to limitations as determined by law.⁸²

⁷⁸ Freedom of opinion and expression (article 29) GC (34) UNDOC CCPR/C/GC/34, December 1979, Articles 2 and 3

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Article 20 of the UDHR

⁸² Article 29 of the UDHR

Article 21 of the ICCPR provides that the right to peaceful assembly shall be recognized and no restrictions may be placed on the exercise of this right unless they are legitimate.⁸³

And article 22 of the ICCPR provides for the right to freedom of association and article 22 (1) provides that no restrictions may be placed on these freedoms unless they are prescribed by law.

Freedom of assembly is closely linked to freedom of association.⁸⁴ Article 29 (1) (d) of the 1995 constitution provides for the freedom to assemble and demonstrative together with others peacefully and unarmed and article 29 (1) (e) thereof provides for the freedom to form and join associations.⁸⁵ The freedoms of assembly and association are subject to restrictions that are provided for under article 43 (1) of the Constitution.⁸⁶

These restrictions should not go beyond what is acceptable and democratically justifiable in a free, democratic and civilized society, or what is provided for in the Constitution.

Article 20 (2) of the Constitution provides that all government agencies and organs shall respect and promote fundamental human rights and freedoms.⁸⁷

And article 212 of the Constitution provides for the functions of the police among which to protect the lives and property of the people.⁸⁸

The police Act and the Penal Code Act, among others also provide some guidance on assemblies.

Notably, the law governing assemblies and demonstrations is not comprehensive.

⁸³ Article 21 of the ICCPR

⁸⁴ Article 22 of the ICCPR

⁸⁵ Article 29 of the 1995 of the 1995 Constitution of the Republic of Uganda

⁸⁶ Article 43 (1) of the 1995 constitution

⁸⁷ Article 20 (2) of the 1995 constitution

⁸⁸ Article 212 of the 1995 constitution

4.6 The Uganda Human Rights Guidelines on Public Demonstrations and Assemblies

In order to provide guidance on demonstrations and assemblies, the UHRC through a consultative process that involved representatives from the Police Civil Society Organizations, Political Parties and Parliament in 2007 developed guidelines to promote; the enjoyment of the freedom to assemble and demonstrate together with others peacefully and unarmed.⁸⁹

These guidelines were based on the principle that police powers to regulate and direct demonstrations must meet the principles of legality, proportionality, necessity, accountability and the exercise of police power to facilitate rather than hindering the demonstrations.

These guidelines also outlined the role of the police, the role of organisers and the role of participants in the enjoyment of the freedom to assemble and associate with others.⁹⁰

4.7 Walk to Work Demonstrations

During the year 2011, the freedom of assembly was largely restricted as the “walk to work” demonstrators and other attempted assemblies were routinely suppressed for security purposes by the police with the use of force.

The “walk to work” demonstrations that were aimed at protesting the high price of fuel and other essential commodities were launched by a pressure group called Activities for Change (A4c) on Thursday 7th April 2011 at Fairway Hotel in Kampala.

These demonstrations were slated to be carried out twice a week and were to spread out to other parts of the country such as Wakiso, Jinja, Mukono, Entebbe, Buikwe, Masaka, Mbale, Hoima, Mbarara. Ntungamo, Rukungiri and Gulu.

⁸⁹ Fourteenth Annual report 2011 to the Parliament of Uganda.

⁹⁰ Ibid

The demonstrations went on from April, through the latter part of the year taking different forms like walking to church and continuous car hooting and honking for five minutes at 5:00 pm.

The government described the demonstrations as illegal and having a sinister motive of overthrowing a legally elected government.⁹¹

The government blamed the ensuing violence from the protesters as police and other security agencies confronted the demonstrators and forcefully dispersed them with teargas, pink spray and bullets and also arrested some of them.

Later on in the year, the police used preventive detention and arrest to keep some opposition leaders off the streets.

Some of these opposition politicians were Dr. Kiiza Besigye, Dr. Olara Otunu, the Lord Mayor Elias Lukwago, Hon Ken Lukyamuzi, Hon Abdu Katuntu, Hon. Nobert Mao among others.

And this was a clear manifestation of the violation of freedom of movement and in total contravention of article 29 (2).

Article 29 (2) of the constitution provides that every Ugandan shall have the right to move freely throughout Uganda and to reside and settle in any part of Uganda, to enter, leave and return to Uganda.⁹²

So, by putting the above opposition politicians under preventive detention and arrest contravened article 29 (2) thereof.

And in the case of **SALVATORI ABUKI AND ANOTHER Vs ATTORNEY GENERAL**⁹³ the court held that every Uganda has a right to move to any part of the country, reside in any part of Uganda and to leave and to return to Uganda.

⁹¹ Ibid

⁹² Article 29 of the 1995 constitution of the Republic of Uganda.

⁹³ Constitutional Petition No. 2 of 1997

Furthermore, during the “walk to work” demonstrations, Dr. Kiiza Besigye was stopped at Mulago Round about, his car was vandalised and sprayed with pepper spray into his eyes thus violating his fundamental human rights and freedoms as enshrined in the 1995 Constitution.

Dr. Olara Otunou, the UPC president, Hon. Nobert Mao the DP president and others at large were dispersed by use of pink spray between Uganda House and Insurance House along Kampala Road as they were trying to access the Constitutional Square.

And the Constitutional Square during this period had been cordoned off by the police, military police and the army which was unconstitutional because the Constitutional Square is a public place for demonstrations and other functions.

4.8 Violation of Freedom of movement

During the demonstrations named “walk to work” freedom of movement was affected as routes were blocked.

There were other limitations in movement of the opposition leaders as mentioned above.

In order to prevent some of these opposition leaders from demonstrating a few of them were detained at their homes without charges preferred against them as a preventive measure under the Criminal Procedure Act Section 26 (2) and the Police Act under section 24 thereof respectively; and this was in contravention of Article 29 (2) of the Constitution.

4.9 Violation of the right to protection from torture or cruel and inhuman treatment:

In 2011, the Uganda Human Rights Commission received fourteen complaints of alleged torture and ill treatment of journalists by the Uganda police force and investigations were still ongoing at the end of 2011.

This was an increase in complaints received from journalists compared to the previous years.

The Uganda Human Rights Network for Journalists (UHRNJ) documented 107 cases of attacks on journalists countrywide compared to 58 in 2010 and 38 in 2009.

They also presented complaints of alleged violations of journalists human rights by law enforcement officers to the UHRC.

They also asked the inspector General of Police to meet the cost of treatment for injuries sustained during the walk to work demonstrations and repair or replacement of their equipment that were destroyed.⁹⁴

The IGP apologised for the way in which journalists were handled during the walk to work demonstrations.⁹⁵ The Uganda Human Rights Network for Journalists also addressed their concerns about their treatment to the Defense and Internal Affairs Committee of Parliament and the president.

Article 24 of the 1995 Constitution lays down provisions for respect of human dignity and protection from inhuman treatment.

Aspects this right have been ably discussed by different courts and tribunals.

Interestingly, the right has aspects of other rights and cannot be discussed independently of these rights.

According to case of **SUZAN KIGULA & 416 OTHERS Vs ATTORNEY** ⁹⁶ one of the issues before court was whether the death penalty process was a form of torture, cruel, inhuman or degrading treatment.

The petitioners, all of whom at the time of filing the petition were on death row, in their petition contended inter alia that; the imposition of the death sentence

⁹⁴ Fourteenth Annual Report 2011 to the Parliament of Uganda.

⁹⁵ The New Vision 16th May 2011.

⁹⁶ Constitutional petition No 6 of 2003

on them was unconstitutional for being inconsistent with articles 24 and 44 of the 1995 Constitution.

The petitioners went on to contend in the first alternative that the various provisions of the laws of Uganda, which provide for mandatory death sentence are inconsistent with articles, inter alia 24 of the Constitution.

They also argued in the second alternative that a long delay between the pronouncement of the death sentence and the carrying out of the sentence allows for a death syndrome to set in.

That carrying out of the death sentence after such a long delay constitutes a cruel, inhuman and degrading treatment prohibited by articles 24 and 44 of the Constitution.

In the final alternative, the petitioners contended that section 99 (1) of the Trial on Indictment Act (cap 23 laws of Uganda) which provides for hanging as the legal mode of carrying out a death sentence was cruel, inhuman and degrading as it contravenes articles 24 and 44 of the constitution.

The Constitutional Court held inter alia, that, it is a well known rule of interpretation that to take away a right given by common law or statute, the legislature should do that in clear terms devoid of any ambiguity.

The right to life is not included in article 44 on the list of the non-derogable rights.

Therefore, articles 24 (dealing with freedom from torture, cruel, inhuman or degrading or punishment) and 44 could not have been intended to apply to the death penalty permitted in article 22 of the Constitution.

The imposition of the death penalty therefore does not constitute cruel, inhuman or degrading punishment and the various provisions of the laws of Uganda that prescribe the death sentence are not inconsistent with or in contravention of articles 24 and 44 or any provisions of the Constitution.

The court went on and further held that execution by hanging, may be cruel but articles 24 and 44 (a) were not intended to apply to the death sentence permitted under section 22 (1) so that implementing or carrying out the death penalty by hanging cannot be cruel, inhuman or degrading.

Articles 24 and 44 do not apply to it by its nature must inflict some pain and unpleasantness, physically or mentally to achieve its objective.

Therefore section 99 (1) of the Trial on Indictment Act was constitutional as it operationalises article 22 (1) and therefore not inconsistent with articles 22 and 44 (a) of the Constitution.

The main perpetrators responsible for torturing suspects are the police, the army and the prisons wardens.

For example police officer was seen squeezing the breasts of Ingrid Turinawe in a police Van, Dr. Kiiza Besigye was on several instance thrown onto the police pickups and below the seats of police patrol vehicles and kicked; this is torture and contrary to article 24 of the Constitution.

I failed to access safe houses, where it is alleged that people are tortured severely by use of crocodiles, snakes, very cold water from refrigerators, hot water, strong lights etc.

However, I one day I heard a torture victim appearing on KFM radio who narrated the same story.

And one day, an accused person who was testifying in a criminal trial during a criminal session at the High Court at Kampala burst into tears when the judge asked him the experience he went through at Kireka at the Rapid Response Police Unit. He said that when he remembers such experience, he bursts into tears.

The police torture suspects while in police cells to extract evidence and confessions to tender in courts during trial.

The prisons make inmates work for long hours through the day.

All this, is torture and in contravention of fundamental human rights and freedoms and contrary to article 24 of the Constitution.

According to the Uganda Human Rights Commission (fifteenth Annual report 2012) to the Parliament of Uganda, the police was responsible for 177 cases of torture, the army (55) and the prisons services (26)⁹⁷.

There has been a percentage increase in the number of torture cases over the last one year even though human rights violations generally decreased according to the Uganda Human rights Commission report.

The report states that torture and cruel treatment or punishment increased from 23.7 percent in 2007 to 28.3 percent in 2010, 34.77 percent in 2011 and to 35.31 percent in 2012.

Although the report does not explain reason for this particular increase, in 2012 there was heightened confrontation between the police and opposition political activists, which was often followed by arrests and beating of some suspects to extract information from them⁹⁸.

The Uganda Police Force accounted for 177 cases of these violations, the Uganda people's Defence forces (56 cases) and the Uganda prisons services (26 cases).

Local governments were responsible for 12 of the torture cases, individuals (10) cases, the chieftaincy of military intelligence (four cases), the private security companies (five cases) and the education institutions (three cases).

The report, indicates that the human rights body registered 706 cases in 2012 compared with 1,021 in 2011, a 31 percent decrease.

⁹⁷ Fifteenth Annual report by the UHRC to the parliament of Uganda

⁹⁸ Daily Monitor, Thursday, April, 4th 2013

Cases against the police, which has for long topped the list of institutions that violate human rights, decreased from 457 in 2011 to 457 in 2011 to 346 in 2012.

The Uganda Human Rights Commission attributes the decline to reforms by the different government institutions to ensure respect for human rights and increased awareness of human rights by security personnel.⁹⁹

Though complaints against the Uganda Police Force continue to dominate, in some of the UHRC regional offices where trainings were conducted for UPF officers, an improvement was noted in their conduct.

The decrease is also attributed to the strict adherence to the admissibility criteria.

The other forms of human rights violations were detention beyond 48 hours (27.16 percent), denial of child maintenance (17.13 percent) and deprivation of property (66.4 percent).¹⁰⁰

Deprivation of life accounted for 3.15 percent of the violations, denial of basic education (2.68 percent, violation of the right to a fair and speedy trial (1.28 percent) and unlawful arrest and detention (1.17 percent).

Torture and cruel, inhuman treatment or punishment was the leading form of violation of human rights.

In total, there were 303 such torture complaints to the Uganda Human Rights Commission¹⁰¹

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

4:10 Violation of the Right to Personal Liberty.

In 2011, several journalists were arrested on various charges including false news under a law that was nullified by the Constitutional Court seven years ago in the case of **CHARLES ONYANGO & ANOTHER Vs ATTORNEY**¹⁰²

According to this case, court declared that section 50 of the Penal Code Act which provided for false news was inconsistent with Article 29 (i) (a) of the Constitution which provides for freedom of speech and expression which shall include freedom of the press and other media.

Arrests on charges based on a law that has been declared unconstitutional would violate the right to liberty. It is estimated that about twenty journalists have pending files at various police stations in Kampala Capital City.¹⁰³

4.11 Violation of the Right to Property

According to the Uganda Human Rights Network for Journalists, in April and May 2011, about ten cameras belonging to journalists were confiscated while the journalists were covering the walk to work demonstrations.

It was alleged that although these cameras were returned to their respective owners, the pictures and videos that they had taken were deleted.

The Uganda Human Rights Commission also heard allegations that some of the recorders were not returned.¹⁰⁴

WHAT IS THE WAY FORWARD

The way forward is to find means of addressing and control measures of human rights violations in Kampala Capital City Authority (KCCA).

Such means and measures of control of human rights violations include the following:-

¹⁰² Constitutional Appeal No. 2 of 2001 (2004 UGSC1

¹⁰³ The fourteenth Annual Report 2011 to the parliament of Uganda by the UHRC at page 72

¹⁰⁴ *ibid*

- (a) Assessment of circumstances that lead to human rights violations in Kampala Capital City Authority.
- (b) Training and recruitment of more personnel for the promotion, protection and observance of human rights thus the Rule of Law and Constitutionalism.
- (c) Strict adherence to the rule of law thus constitutionalism.
- (d) Enforcement of certain legislations, for example the 1995 Constitution of the republic of Uganda and the Prevention and Prohibition of Torture Act 2012.
- (e) Sensitization of the law enforcement officers for example the police and the prisons wardens.

These should be sensitized about the promotion, protection, enforcement and observance of human rights.

These will be expounded into details in chapter five of this research book which will mainly deal with recommendations concerning the promotion, protection, observance of human rights, suggestive measures in the control of human rights violations, and deterrent measures to the culprits that violate peoples' fundamental freedoms and human rights.

CHAPTER FIVE

5.0 Findings, Conclusion and Recommendations

In the previous chapter, I explored in detail the various forms of human rights abuses in Kampala Capital City Authority and partially the way forward and the recommendations thereto.

And having identified the various forms of human rights violations and the culprits involved, this chapter explores suggestive methods on promotion, protection, prevention and control of human rights abuses in Kampala Capital City Authority.

Chapter five will majorly deal with recommendations in regard to the promotion, protection, observance of human rights, suggestive measures in regard to the control of human rights violations and some deterrent measures to the violators of peoples' fundamental freedoms and human rights as enshrined in the 1995 Constitution and other regional and international instruments to which Uganda is a signatory.

Such recommendations may include the following inter alia;

The Ministry of Finance, Planning and Economic Development should increase funding to the Uganda Human rights Commission to enable it effectively fulfill its mandate to promote and protect human rights and implement the approved salary and acquire appropriate office space or establish more regional offices around Kampala city and country wide.¹⁰⁵

Furthermore, Government should designate a programme for continuous civic education to support the UHRC to fulfill its constitutional mandate in the area of human rights education.¹⁰⁶

¹⁰⁵

¹⁰⁶ Fourteenth Annual Report 2011 to the parliament of the republic of Uganda in the UHRC at page 52

The Law Reform Commission should translate the 1995 Constitution into local languages and disseminate copies to the general public to enable them understand and appreciate the constitution as the supreme law of the land.

The Ministry of Local Government should pass a policy to fund district human rights desks or committees (DHRD/Cs).

All the District Local Government authority should establish DHRD/CS and incorporate principles of Human Rights Based Approach (HRBA) in their planning programmes.

Government should adequately fund the UHRC in order for it to carry out effective continuous human rights education and assess the impact of its human rights education and outreach activities¹⁰⁷

In light of the challenges observed during elections, the following recommendations should be made.

Government should consider reviewing the process of appointing members to the Electoral Commission so that there is greater consensus and acceptance of the members by the opposition, civil society and the public generally, for example in the Republic of Kenya.

Members to the Electoral Commission should come from the various political opposition parties.

Government should hold dialogues between stakeholders to provide a forum for aggrieved parties to air out their views.

Government should consider ratification and domestication of the African charter on Democracy, Elections and Governance.

Government should adequately facilitate the UHRC and the Electoral Commission to carry out Voter and civic education before elections.¹⁰⁸

¹⁰⁷ Ibid at page 48

Furthermore, in the absence of a public order management law, the police, the public and organizers of assemblies and demonstrations are urged to use the UHRC guidelines on public demonstrations.

The Uganda police force should set up trainings for police officers on human rights and how to handle demonstrations including those that turn riotous. The police should also ensure that officers deployed to manage riots are dressed in protective gear.

The police should also be kept abreast with the provisions of the constitution, the Prevention and Prohibition of Torture Act 2012, the Penal Code Act, the Press and Journalists Act, the police Act etc.

This is because according to the fifteenth Annual Report 2012 to the Parliament of Uganda by the UHRC, it observed that the police are ignorant about the law.

The Uganda police force should prosecute and discipline police officers who use excessive force, assault people, cause death and destroy journalists' cameras during demonstrations.

The Ministry of Information and National Guidance and the Office of the Prime Minister should support media practitioners' mechanisms of self regulation that is already in place as a way of enforcing high ethical and professional standards.

Independent media regulatory framework should be strengthened to promote a free but responsible media.

Parliament should review all laws that are inconsistent with media freedoms in particular, the cabinet should scrutinise the Proposed Press and Journalist (Amendment) Bill 2010 in line with human rights standards that are enshrined

¹⁰⁸ Ibid at page 64

both in the constitution, regional and international human rights instruments to which Uganda is a party.¹⁰⁹

The ministry of information and National Guidance and the Office of the Prime Minister should devise means of regulating private media owners to ensure that they do not abuse the privilege of owning the means through which people exercise their freedom of expression.

The term “public meeting” should be redefined to a gathering of fifty or more persons within the meaning of “public place” in the interpretation section.

The definition of “public meeting” under clause 6 (1) (a) and 6 (1) (b) of the Public Order Management Bill should be deleted.

Clause 6 (2) (e) should be deleted as it is against the principles of democracy as laid out in the 1995 Constitution of the Republic of Uganda and the positive duty of the state to protect freedom of assembly.

The Public Order Management Bill should aim at facilitating rather than prohibiting demonstrations in conformity with the law.

The Bill should also balance the right to assembly with other rights and should only impose restrictions that are acceptable and justifiable in a free, democratic and civilized society.

Parliament¹¹⁰ should review the Bill in light of the concerns expressed and the use of the UHRC Guidelines on public demonstrations which were developed in a more consultative process; as the foundation of the law on public order and management.

In order to deter violators of peoples’ fundamental freedoms and human rights, the Prevention and Prohibition of Torture Act 2012 should be enforced against the culprits.

¹⁰⁹ Ibid at page 75

¹¹⁰ Ibid at pag4e 83

The Act under its preamble provides that an Act to give effect, in accordance with Articles 22 and 44 (a) of the constitution, to the respect of human dignity and protection from inhuman treatment by prohibiting and preventing any form of torture or cruel, inhuman or degrading treatment or punishment, to provide for the crime of torture, to give effect to the obligations of Uganda as a state party to the United Nations Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment and other related matters.¹¹¹

WHEREAS Article 24 of the constitution provides that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.¹¹²

And whereas Article 44 (a) thereof provides that notwithstanding anything in this constitution, there shall be no derogation from the enjoyment of freedom from torture and cruel, inhuman or degrading treatment or punishment.¹¹³

Section 4 of the Prohibition and Prevention of Torture Act 2012 criminalizes torture; to the effect that a person who performs any act of torture as defined in section 3 commits an offence and is liable on conviction to imprisonment for fifteen years or to a fine of three hundred and sixty currency points or both.

Accuracy point is equivalent to twenty thousand shillings as provided for under the First Schedule to the Act.

Whereas section 5 thereof provides for circumstances of aggravating torture, section 7 provides for cruel, inhuman or degrading treatment or punishment and section 6 provides for compensation, rehabilitation or restitution to be ordered by court in certain cases.¹¹⁴

Therefore, by enforcing the Prevention and Prohibition of Torture Act 2012, culprits of torture for example the police officers and prisons wardens will be

¹¹¹ Preamble to the Prevention and Prohibition of torture Act 2012.

¹¹² Article 24 of the 1995 constitution of the republic of Uganda as amended

¹¹³ Ibid Article 44 (a) thereof

¹¹⁴ Sections, 4,5,7,6 and the first schedule to the prevention and prohibition of torture Act 2012

brought to book thus promotion, protection of fundamental freedoms and human rights and control of human rights abuses.

The Press and Journalist Act should also be put in force. The Press and Journalist Act in its preamble provides inter alia, an Act to ensure the freedom of the press, to provide for a council responsible for the regulation of mass media and to establish an institute of journalists of Uganda.

Section 2 thereof provides for the right to publish a newspaper. That a person may, subject to this Act, publish a newspaper. No person or authority shall, on grounds of the content of a publication, take any action not authorized under this Act or any other law to prevent the printing, publication or circulation among the public of newspaper.¹¹⁵

And section 4 thereof provides for access to official information. That a person may have access to official information subject to any law in force relating to national security, secrecy or confidentiality of information.

In conclusion therefore, human rights for example the freedoms of assembly, expression, right to personal liberty, the right to protection from torture or cruel and inhuman treatment, freedom of expression and media etc. are inherent rights that citizens must be facilitated to enjoy.

However, it should be noted that they are not absolute and can be limited in the public interest.

It is pertinent or imperative to note that the rights holders exercise their freedoms responsibly mindful of the rights of others.

Likewise, the duty bears with the police force who enforce the law, should note that the primary objective of the law is to facilitate realization of the fundamental freedoms and human rights and not to deny them.

¹¹⁵ Section 2 of the press and journalist Act chapter 105 laws of Uganda

And therefore, the Uganda police force should enforce the law within that framework.

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