

### What can you do if your rights are abused during a search?

Resistance and challenge to illegal conduct and searches is lawful. However one should be careful in the resistance especially when confronted with armed security personnel. It may lead to your death. Resistance or challenge here refers to asking the trespasser to vacate your property, or demanding for a search warrant or identification documents.

But where you stand better chances then the illegal search should be resisted with reasonable force.

However where you give into illegal search, you may later do any or all of the following once you gain your freedom back.

Seek legal redress through the lawyers.

- Publicize the incident in the media.
- Report the incident to your Member of Parliament so that he can ask a question about it in the Parliament.
- Report the Police Official involved to the Officer in Charge of a Station in your area or to the District Police Commander, or to the Regional Police Commander, or Police Standards Unit or Inspector General of Police.
- At times the matter may be referred to the Director of Public Prosecutions who once convinced with available evidence may either initiate criminal proceedings or direct Police to investigate.
- A person may also report the matter to the Inspector General of Government or
- A person may file a complaint with the Uganda Human Rights Commission for infringement of the right to privacy.

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## LEARNING YOUR RIGHTS



# ENTRY, SEARCH AND SEIZURE

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## FOREWORD

The National effort of creating awareness of our human rights and civic duties requires us to continuously educate ourselves and the general public on those aspects of the law touching the promotion, respect and protection of human rights. These series aim at exactly doing that.

Street Law (Uganda) is fully committed to the promotion and defence of human rights through civic education. That is the rationale behind the production of the materials in the "Learning your Rights Series". The objectives are in accordance with the organisation's mission of working for the promotion of the rule of law, democracy and human rights in Uganda. It is a mission shared with the entire family of Street Law organizations in the individual

countries in the continents of North America, South America, Europe and other countries in Africa.

We hope in the nearest future to translate these pamphlets into the major Uganda languages so as to reach a vast number of the population who can not read and write the English language.

It is our hope that this effort will have a far reaching impact on the promotion, respect and protection of human rights in Uganda by both the State and non-state actors.

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Solomon Webalearaali  
EXECUTIVE DIRECTOR

This booklet tells you;

- • The powers of the police and other law enforcement agencies in carrying out searches.
- • What you can do if the police exceed their powers and abuse your rights.
- • The powers and limitations of the police and other security agencies in their law enforcement work.
- • What to do when police and security agencies abuse their powers and violate your rights.

**Article 27** of the Constitution of Uganda protects citizens and all people resident in Uganda against;

- Violation of right to privacy.
- Unlawful search of the person, home and other property of the person.
- Unlawful entry by other persons, whether security personnel or otherwise into other people's premises.
- Unlawful search.

**NOTE** *No Police Officer, LC Official or any other person may enter your property without your permission or consent to carry out any search except where authorized by law. If anyone does so, he or she would be charged with a criminal offence or sued for trespass.*

The Bill of rights in the Constitution guarantees peoples rights to privacy and the protection of their property by the state. The police may only enter people's homes on grounds backed by law.

However, while carrying out their duties of preventing crimes and arresting suspected criminals, the police needs to investigate and to get evidence to prove their case against the suspect.

In such circumstances they may lawfully carryout the acts that infringe a person's right to privacy

#### **When can the police enter and search your home?**

##### ***With a search warrant;***

- Police officers are allowed to enter your home if they are investigating a crime and trying to get evidence to convict criminals. They must be civil and show you a document called a search warrant.
- A search warrant is an order from Court giving a police officer permission to enter any property, or building, search it and seize any



items suspected to be related to a criminal offence.

- The search warrant must state the specific item to be searched for.
- In order to get a search warrant, the police officer must give evidence on oath before Court to the effect that he has reasonable grounds to believe that there is some object or objects on the property or building which should be seized in connection with a particular crime.

If the searching officer finds other items not named in the

warrant but of a criminal nature, he or she can also seize them. For example he or she spots an unlicensed gun while looking for forged documents.

**Note:** It should be noted that for every item seized, the Officer must make an inventory in duplicate whereby one copy is taken by him and the other given to the owner of the premises. This is for record purposes as well as accountability for the recovered items.

#### ***Without a search warrant;***

A Police Officer is authorized without a search warrant to stop, search or detain a vehicle, vessel or aircraft if he or she reasonably suspects it to contain stolen property or property unlawfully obtained or kept.

A Police Officer may also enter premises to seize any crime related items without a search warrant if he or she reasonably believes that any delay in getting a search warrant may lead to the disposal or disappearance of the items.

#### **What goods maybe forfeited?**

In some cases, Court may order that goods seized should not be returned to the person found with them but that they be forfeited to the state. Such items may include;

- A weapon or instrument used to commit a crime.
- Smuggled items including the vehicle used in smuggling.
- Fire arms or other items exclusive to the armed forces where the offence relates to the Firearms Act.
- Vehicles, air crafts or boats used to enter or leave Uganda illegally.
- The profit of a criminal offence e.g. money earned from the sale of narcotics, money laundered etc.

#### **What is a Police Officer not allowed to do?**

- Use force un reasonably: This includes beating, pushing, pulling, destroying property or harassing in any other way etc when no resistance is offered.
- Removing clothings from some one being searched.
- Sexual assault during search
- Keep for himself or herself articles which are confiscated during a search.
- Asking for a bribe in order not to reveal the illegal item otherwise called extortion.



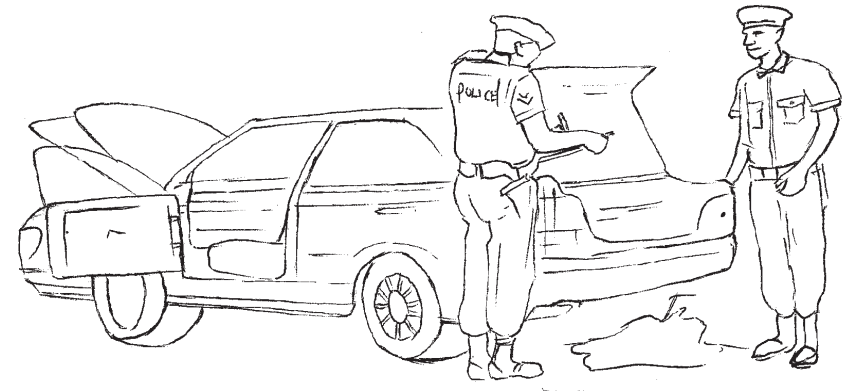
animal products) and asks for the license. He / she may also seize an item illegally held such as protected animals.

- National Forestry Officials incases of illegal felling of trees, forests, exportation of timber without a license or settlement in forests.

### What happens to the article seized?

The police must keep safely any item seized. The police should record all items seized and place them in a safe place for future production when required. After that anyone of the following may happen.

- The police may dispose off perishable goods in accordance with the law.
- If the article is stolen the police may return it to the rightful owner after completion of trial in Court.
- These articles maybe kept in the police custody until they are required as exhibits in Court.
- The article maybe forfeited to the state if the lawful owner is not found or if the article is not lawfully owned by anyone e.g. illegal guns.
- At times the articles that remain unclaimed for long may be auctioned by the police provided however that the law is complied with.
- The articles may be burnt e.g. illegal guns, expired drugs and goods as well as illegal drugs like bangi.



**Remember:** whenever a police officer acts without warrant he or she must be sure that he or she has a strong reason to believe that the wanted goods are in the building he is searching. Otherwise he/she can be sued, especially if he/she does any damage during the entry.

The police must be civil in carrying out searches whether with or without a warrant.

### How the entry should be conducted?

- Whether with a search warrant or not, the police officer should be civil and state the reason for the search. If the occupier of the premises consents, the search should be carried out smoothly. Should permission be denied then the officer is allowed to use reasonable force to gain entry or even exit incase he is locked inside.
- Reasonable force means the employment by the Police Officer of force relative or proportional to the force used .in resistance.
- If no one opens the door, he/she may use reasonable force to enter. This normally would mean breaking through a door or window.
- If the officer thinks that the suspected criminal will cause the

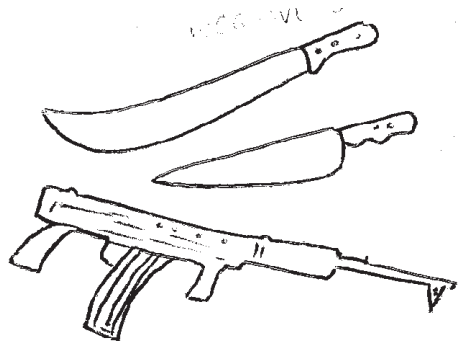
disappearance of the item when he demands to enter he/she can simply break in without any request or warning. This is especially in sensitive cases e.g. where a firearm or ammunition is held unlawfully or where a document is involved.

### How should the search be conducted?

- Every search should be conducted with decency.
- A woman may only be searched by another Woman Officer.
- A person may not be made to remove clothes
- Body cavities (i.e. mouth, vagina, anus) can only be searched in exceptional circumstances like when searching for narcotic drugs. Otherwise it would be degrading to request someone to open their mouth when searching for a gun.

### What articles may the police take?

- Usually police will be looking for articles connected in some way to a crime;
- They may seize any article whether mentioned in the search warrant or otherwise but which they reasonably think is related in some way to criminal activities e.g unlicensed guns, unlicensed medicine, smuggled goods etc.



It must be noted that the item seized should be for purposes of it being used in evidence in Court.

### What other searches and seizures are allowed?

There are state officials whose job is to see to it that certain standards and regulations are maintained. Usually they have power to enter premises, search and make seizures, sometimes with or without a warrant.

The following is the categorization of such officials;

- Animal health inspectors may enter any suspected property or vehicle and search for animals in order to inspect their conditions.
- Custom officers may search suspected air craft, boats, vehicles or trains entering or leaving the country. They may seize any items they believe are being unlawfully imported or exported.



- Any person can be searched if he is reasonably suspected by a Police Officer or other official of being in possession of illicit drugs such as cocaine, bangi, house breaking equipment, or forged documents etc.

- Public Health Officers may search premises of pharmacists, drug manufacturers and general

shops on suspicion of keeping narcotics, expired or unlicensed drugs, goods etc.

- An immigration officer may search and seize any vehicle or boat entering the country illegally.
- A Labour Officer for purposes of ensuring safe places of work, records of workers.
- Wild life authority officials may stop anyone carrying out an act which needs a license (e.g. hunting, exportation of certain