

## PROPOSED AMENDMENTS TO THE HUMAN RIGHTS (ENFORCEMENT) BILL, 2015

### 1. CLAUSE 1: APPLICATION

- In clause (2), substitute the words “**High Court**” for “**courts of law**”
- **Replace sub clause (3) as follows-**

“Save as provided, this Act shall not apply to investigation, protection or enforcement of rights and freedoms by the Uganda Human Rights Commission and the Equal Opportunities Commission established under Articles 51 and 32 (3) of the Constitution.”

#### **Justification:**

- *For clarity and better drafting*
- *To empower magistrate courts to enforce rights and freedoms rather than the High Court alone;*
- *To ensure that the Act doesn't affect the operation of the Equal opportunities Commission established under Article 32 (3) of the Constitution;*

### 2. CLAUSE 2: INTERPRETATION

- In the definition of the word “**application**”, substitute for “**referred to**”, the words “**guaranteed under the**”
- **Substitute for the definition of the word “competent court” the following-**

“Competent Court” means a High Court or a Chief Magistrate Court;

- **Insert immediately after the definition of the word “Minister” the following new definition-**

“Non-derogable rights and freedoms” means rights and freedoms listed in Article 44 of the Constitution.

- **Insert immediately after the definition of the words “subordinate court” the following-**

“Victim of a human right violation” means a person who suffers a human right violation and also includes such a person's immediate family or dependents or any other person whose rights have been violated as a result of the violation of the victim's rights and freedoms.

**Justification:**

- *To align the definition of the words used with the Constitution and other laws.*
- *To provide working definitions for words used in the bill*
- *For clarity*

**3. CLAUSE 3: ENFORCEMENT OF HUMAN RIGHTS**

Replace clause 3 as follows-

**“3. Enforcement of human rights and freedoms**

- (1) In accordance with article 50 of the Constitution, any person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act.
- (2) Court proceedings under subsection (1) may be instituted by-
  - (a) a person acting on behalf of another person who cannot act in their own name;
  - (b) a person acting as a member of, or in the interest of a group or class of persons;
  - (c) a person acting in public interest; or
  - (d) an association acting in the interest of one or more its members.

**Justification:**

- *To capture the spirit of Article 50 (1) by allowing only suits where fundamental rights and freedoms guaranteed under the constitution have been infringed or threatened as required under Article 50 (1) of the Constitution.*
- *To recognize a person’s right to bring action for infringement of human rights in other fora such as the Uganda Human rights commission and the Equal Opportunities Commission.*
- *For clarity, to enumerate the persons who may bring suits for human rights violation.*

**4. CLAUSE 4: HIGH COURT TO DETERMINE MATTERS RELATING TO HUMAN RIGHTS**

Replace clause 4 with the following-

**“4. Enforcement of rights and freedoms by the High Court**

- (1) The High Court shall hear and determine any application relating to the enforcement or violation of -
  - (a) non derogable rights and freedoms guaranteed in article 44 of the Constitution,
  - (b) other rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms envisaged in article 45 of the Constitution, and
  - (c) rights and freedoms restricted under a law made for purposes of a state of emergency.
  - (d) rights and freedoms which are preserved by this Act to be determined by a magistrate court, where the remedy sought by the applicant is beyond the pecuniary jurisdiction of that court.
- (2) Applications under subsection (1) shall be in the form prescribed by regulations and may, unless court determines otherwise, be heard in open court.

**Justification:**

- *To prescribe which rights can be enforced by the High Court.*
- *To allow court to hear applications in any manner in open court.*
- *To allow the High Court determine matters involving other rights and freedoms where such matters go beyond the pecuniary jurisdiction of the Magistrate court*

**5. INSERTION OF NEW CLAUSES**

Immediately after clause 4, insert the following new clauses-

**“Enforcement of rights and freedoms by Magistrate courts**

- (1) A Chief Magistrate Court shall hear and determine applications relating to the enforcement or violation of human rights and freedoms guaranteed in chapter four of the Constitution in any of the circumstances not referred to in subsection (1) of section 4.
- (2) The application under subsection (1) may be made in any language, orally or in writing or in any form as may be prescribed by regulations.
- (3) Where the application is made orally or in any language other than the language of court, the Chief Magistrate shall reduce it in writing in the language of court.

**“General provisions on human rights suits**

- (1) Every suit for the enforcement or protection of human rights and freedoms shall, where possible, be instituted in a court where the alleged violation took place.
- (2) Where a person is in doubt as to the person from whom he or she is entitled to obtain redress, he or she may join two or more persons in order for the question as to which person is liable for the violation to be determined by Court.
- (3) Court may allow any person with expertise on a particular issue which is before court to appear as a friend of the court, either on application or on court's own request.
- (4) For avoidance of doubt, statutory notice shall not be a requirement for suits under this Act.
- (5) No suit instituted under this Act shall be rejected or otherwise dismissed by court merely for failure to comply with any procedure, form or on any technicality.

**Justification:**

- *In order to bring justice close to the people, by granting jurisdiction to courts presided over by Chief Magistrates to enforce human rights other than those reserved for the High Court.*
- *To require that suits are instituted in court where the violation took place.*
- *To allow a person include any persons in a suit if he or she is in doubt as to who is liable for human rights violation.*
- *To allow court be assisted by amicus curiae*
- *To require no statutory notice in human rights violations*
- *To ensure substantive justice is served with undue regard to technicalities.*

**6. CLAUSE 5: PROCEDURE FOR ENFORCEMENT OR VIOLATION OF HUMAN RIGHTS**

Delete the entire clause.

**Justification:**

- *Consequential amendment*

**7. CLAUSE 6: REFERENCE OF HUMAN RIGHTS MATTERS BY SUBORDINATE COURTS**

Replace clause 6 with the following-

**“6. Reference of Human rights matters by subordinate courts.**

- (1) Where in any proceedings in a subordinate court or tribunal any question arises as to the violation of a fundamental right or freedom, the Magistrate or person presiding shall-
  - (a) in case of rights or freedoms falling in section 4, refer the question for determination by the High Court;
  - (b) in case of rights and freedoms falling in section 5, refer the matter for determination by the Chief Magistrate Court;
- (2) Where a human right matter arises in any proceeding before the Chief Magistrate Court, Court shall stay proceedings in the main matter and first determine the human rights issue raised;
- (3) A Magistrate or person presiding over proceedings referred to in subsection (1) may stay the proceedings until the reference is determined and may, in case of a criminal trial, grant bail to the accused person.
- (4) The Magistrate or person presiding in the subordinate court or tribunal shall dispose of the question referred to in subsection (1) in accordance with the determination of court.
- (5) The court to which a reference is made shall, within ninety days from the date of the reference, determine the reference made to it.

**Justification:**

- *To prescribe a procedure through which human rights matters arising from proceedings before subordinate courts can be determined by magistrate courts or the high court.*
- *To allow the presiding person or the magistrate to grant bail to an accused person in a criminal matter where a question is referred to the High Court.*
- *To prescribe the time within which to determine a human rights matter referred to the High Court or Chief Magistrate court as the case may be;*

**8. INSERTION OF NEW CLAUSE**

Immediately after clause 6, insert the following new clause-

**“Consideration of human rights matters arising in the High Court**

- (1) Where, in any proceeding in the High Court, any question arises as to the violation of a fundamental right or freedom, the person presiding shall immediately stay the proceedings and determine the question raised.
- (2) The person presiding may, upon staying the proceedings in subsection (1), in case of a criminal trial, grant bail to the accused person.

**Justification:**

- *To provide a procedural through which human rights matters arising in the High Court may be dealt with by the High Court.*

- *To allow the presiding person to grant bail to an accused person in a criminal matter where a question is raised during a proceeding before the High Court.*

## **9. CLAUSE 7: POWER OF HIGH COURT IN HUMAN RIGHTS CASES**

Replace clause 7 with the following-

### **“7. Orders that may be made by court in human rights cases**

- (1) Where court determines that a fundamental right or freedom has been violated, unlawfully denied or should be enforced, the court shall issue orders it deems fit and appropriate, including ordering for compensation.
- (2) Court may in addition to the orders it may make under subsection (1), order for the
  - (a) restitution of the victim to the original situation before the violation of his or her human rights and freedoms;
  - (b) rehabilitation of the victim including the provision of medical and psychological care;
  - (c) satisfaction, which shall include-
    - (i) effective measures aimed at the cessation of the continuing violation of human rights and freedoms,
    - (ii) verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations,
    - (iii) restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim,
    - (iv) public apology, including acknowledgement of the facts and acceptance of responsibility,
    - (v) criminal and other judicial and administrative sanctions against persons liable for the violations,
    - (vi) guarantees of non-repetition,
- (3) Restitution, compensation, rehabilitation or any payment ordered by the court under this section shall be a civil debt owed to the victim of a human rights violation.
- (4) All orders made by court under this section shall be complied with, within six months from the date of determination, unless appealed against.

### **Justification:**

- *To make the provision applicable to all courts of law and not High Court alone.*
- *To prescribe the nature of compensation, restitution as well as satisfaction that court may grant.*
- *To prescribe a time within which to comply with orders of court.*

## 10. INSERTION OF NEW CLAUSES

Immediately after clause 7, insert the following new clauses-

### **“Personal Liability for infringement of rights and freedoms**

- (1) A public officer who, individually or in association with others, violates or participates in the violation of a person’s rights or freedoms shall be held personally liable for the violation notwithstanding the state being vicariously liable for his or her actions.
- (2) Whenever court orders for the payment of compensation or any other form of restitution to a victim of a human right violation by the state, a public officer who is found to have personally violated or participated in the violation of a person’s human rights or freedoms shall pay a portion of the compensation or restitution so ordered as shall be determined by court.

### **“Derogation from non-derogable rights and freedoms**

- (1) It shall be an offence for a person to derogate from a non-derogable right and freedom guaranteed under the Constitution.
- (2) Whenever in any criminal proceeding,-
  - (a) it appears to the person presiding over a trial,
  - (b) it is brought to the attention of Court or tribunal; or
  - (c) Court makes a finding,

that any of the accused person’s non derogable rights and freedoms has been infringed upon, the person presiding over the trial shall declare the trial a nullity and acquit the accused person.

- (3) Criminal proceedings maybe instituted against a person who breaches a non derogable right or freedom guaranteed under the Constitution even where an action for protection or enforcement of such a right or freedom has not been instituted.
- (4) Criminal proceedings under this Act, may be instituted in any of the following ways—
  - (a) by the Director of Public Prosecution laying a charge against a person; or
  - (b) by any person making a complaint on oath to a Court of competent jurisdiction.

- (5) The validity of any proceedings instituted or purported to be instituted under subsection (1) shall not be affected by any defect in the charge or complaint or by the fact that a summons or warrant was issued without any complaint or charge or, in the case of a warrant, without a complaint on oath.
- (6) A person who commits the offence referred to in subsection (1) shall on conviction, if no sentence is prescribed by law for such violation, be liable for imprisonment for a term not exceeding fifteen years.

#### **“Complying with orders and directives of court**

- (1) Save for monetary orders against the state, any other order, directive or recommendation made or issued by court pursuant to the provisions of this Act shall, unless it is appealed, be complied with within such a time as shall be determined by court.
- (2) The state shall take all reasonable steps to comply with monetary orders issued by court within a reasonable time.
- (3) Wherever an order, recommendation or directive issued by court is not complied with, within the time prescribed by Court, a victim of the human rights violation or any other person may apply to court for summons to be issued against a person who is obligated to comply with the order to show cause why he or she should not be committed to civil prison for contempt of court.
- (4) The application in subsection (2) shall be made to the court that issued the order, directive or recommendation sought to be enforced.
- (5) Where a person makes an application under subsection (4), court may issue orders as it deems fit for complying with its orders.

#### **“Progressive realization of rights and freedoms**

- (1) A person who has reason to believe that the state is not taking adequate steps for the progressive realization of rights and freedoms guaranteed under chapter four of the Constitution or international treaties to which the state is a party, may apply to the High Court for redress.
- (2) Notwithstanding subsection (1), wherever a court finds that a specific right or freedom cannot be realized due to resource constraints, court shall order Government to take measureable steps for the progressive realization of that right or freedom.
- (3) Government shall annually report to Parliament on the steps taken to progressively realize rights and freedoms as required in subsection (2) as well as any other rights and freedoms prescribed in international treaties to which Uganda is a party to.

#### **“Loss of immunity from prosecution**

- (1) Immunity shall not be a defense to proceedings commenced under this Act.

- (2) Subject to article 98 (4) of the Constitution, a person to who immunity is granted under any law shall automatically lose that immunity if he or she is found by a court of competent jurisdiction to have violated a right or freedom guaranteed under chapter four of the Constitution.
- (3) Where a person loses immunity as prescribed in subsection (2), such a person shall be prosecuted or found liable for acts or omissions done in the course of his or her duty.
- (4) Where a person is dismissed or otherwise removed from office for misbehavior or misconduct under any law, a finding that such a person violated a right or freedom guaranteed under the Constitution shall constitute misbehavior or misconduct under that law and such a person shall be dismissed or removed from office.

#### **“Unconditional release of persons unreasonably detained**

- (1) A person who has reason to believe that another person is being unreasonably detained in the circumstances prescribed in subsection (4) may petition the High Court for the unconditional release of such a person.
- (2) A person in charge of prison, police station or any other detention facility shall, where he has reason to believe that a person in that prison, police station or detention facility is unreasonably being detained, release or apply to court or any other authority for authorization to release that person from detention.
- (3) Court shall on being satisfied that a person is unreasonably detained-
  - (a) order for the production of such a person before court;
  - (b) impose obligations on the person in charge of a detention centres in which such a person is detained as court deems fit; or
  - (c) order for the release of such a person from detention on any terms and conditions as court determines.
- (4) In this section, a person shall be taken to be unreasonably detained where-
  - (a) he or she has been detained beyond forty eight hours after arrest without being brought before a court or tribunal of competent jurisdiction;
  - (b) he or she being charged with an offence triable by a subordinate court, is remanded in custody before trial for a period exceeding one hundred and twenty days;
  - (c) he or she being charged with an offence triable by the High Court, is remanded in custody for a period exceeding three hundred and sixty days before the case is committed to the High Court for trial;
  - (d) he or she being committed for trial to the high court, is remanded without trial for a period exceeding half of the period of imprisonment he or she would be liable to if he or she was to plead guilty or be convicted of the offence;
  - (e) the procedure leading to his or her detention was irregular or unlawful;
  - (f) there are no justifiable reasons for his or her continued detention;
  - (g) his or her non-derogable rights have been infringed upon; or

- (h) his or her continued detention amounts to a miscarriage of justice.
- (5) An order issued by court in subsection (3) shall, upon being served on the Attorney General or the person in charge of a place of detention, be complied with immediately.
- (6) It shall be an offence for a person in charge of a place of detention to-
- (a) refuse service or ignore the order made under subsection (3);
  - (b) upon being served with an order, to do any act that defeats the purpose of that order.
- (7) Where a person in charge of a place of detention contravenes subsection (6), any person may make an application to court and court shall make such orders as it deems fit.
- (8) A person who commits an offence prescribed in subsection (6) shall on conviction be liable to imprisonment for a term not exceeding ten years.
- (9) A person who detains another in the circumstance described in subsection (3) (a), (e) and (g) commits an offence and is liable to imprisonment for a term not exceeding five years.

**Justification:**

- *to attach personal liability against a public officer for violation of human rights*
- *to require public officers who violate or participate in the violation of a person's human rights to pay a portion of the compensation and restitution order by court.*
- *To empower court to acquit an accused person if his or her non derogable rights have been infringed upon.*
- *To criminalize derogations from non derogable rights.*
- *To empower criminal proceedings to be instituted against a person who has breached non derogable rights and freedom guaranteed under the Constitution.*
- *To prescribe time within which human rights orders and recommendations are to be complied with.*
  - *To allow a person to whom orders have been made to apply to a court that made them if not they are not complied with in the time prescribed by court.*
  - *To allow persons to take action to ensure progressive realization of rights*
  - *To require Government to report to Parliament on steps taken to progressively realize rights and freedoms guaranteed under the Constitution as well as those prescribed in treaties the state is a party to.*
  - *To bar the use of immunity as a defense for human rights violations.*

- *To provide for loss of immunity from prosecution for persons who, through their acts or omissions, infringe rights and freedoms guaranteed under the Constitution.*
- *To make human rights violation misbehavior or misconduct and therefore a ground upon which a person may be removed or dismissed from office.*
- *To empower a person who has reason to believe that a person has been unreasonably detained to apply to court for the release of such a person;*
- *to allow persons who have been unreasonably detained to be released unconditionally*
- *to define what amounts to unreasonable detention.*
- *To create offences against persons who refuse to comply with court orders*
- *To prescribe how and on whom the order made by court is served*
- *To empower heads of prisons or police stations to report the existence of the persons who are unreasonably detained in such facilities to bring it to the attention of court or any other authority for authorization to release such person.*

## **11. CLAUSE 8: APPEAL**

Replace clause 8 with the following-

### **“8. Appeals**

- (1) a person aggrieved by a decision or order of court may-
  - (a) in case of decisions or orders of a magistrate Court, appeal to the High Court;
  - (b) in case of decisions or orders of the High Court, appeal to the Court of Appeal;
  - (c) in case of decisions or orders of the Court of Appeal, appeal to the Supreme Court.
- (2) The court to which an appeal is filled under subsection (1) shall proceed to hear and determine the appeal within three months from the date of filling of the appeal and may for that purpose suspend any other matter pending before it.
- (3) The law governing civil appeals shall, with necessary modifications, apply to appeals under this Act.”

### **Justification:**

- *To provide that rules that govern civil appeals apply to appeals under this Act.*
- *To require that a notice of appeal acts as a stay of execution against the decision being appealed against.*
- *To provide for appeals from decisions of magistrate courts.*

## **12. CLAUSE 9: APPLICATION OF CIVIL PROCEDURE RULES**

Replace clause 9 with the following-

**“9. Application of Cap 71**

The Civil procedure Act and the rules made thereunder may, with the necessary modifications, apply to the enforcement of rights and freedoms under this Act.”

**Justifications:**

- *To ensure that the civil procedure rules apply with modification to human rights enforcement.*
- *For better drafting*

**13. CLAUSE 10: RULES OF PROCEDURE**

- In sub clause (1), delete the words “*after consultation with the Minister*” appearing in the second line.
- In sub clause (2), insert the following new paragraphs immediately after paragraph (c) as follows-

“.....

- (d) joinder, addition, substitution and striking out parties;
- (e) admission of Amicus curiae;
- (f) service and enforcement of service,
- (g) notices, warrants and other processes,
- (h) summoning of witnesses,
- (i) facts to be proved at any stage of the proceedings,
- (j) the mode in which the facts may be given,
- (k) service of applications for enforcement or protection of rights;
- (l) reply to applications for enforcement or protection of rights
- (m) consolidation of applications;
- (n) content of application for enforcement or protection of rights;
- (o) hearing of applications for enforcement or protection of rights and freedoms.
- (p) costs
- (q) withdrawal or discontinuance of applications; and
- (r) any other matter as the rules committee may deem fit; “

**Justification:**

- *for consistency in renumbering*
- *To remove redundancy in the provision since the Minister of Justice is a member of the rules committee. There is no need to consult the Minister in such circumstance.*

#### 14. INSERTION OF NEW CLAUSE

Immediately after clause 10, insert the following new clause

##### **“Limitation of human rights action**

- (1) Save for rights and freedoms guaranteed under Article 44 of the Constitution, actions for enforcement of human rights and freedoms shall be instituted within ten years of the occurrence of the human rights violation.
- (2) Notwithstanding subsection (1), court may allow an action to be brought after the expiry of the period prescribed in subsection (1) on being satisfied that the victim of the violation was unable, for any justifiable reasons, to bring such action within the time prescribed under subsection (1).
- (3) For avoidance of doubt, the civil procedure and Limitation (Miscellaneous provisions) Act, Cap 72 shall not apply to proceedings instituted under this Act.”

##### **Justification:**

- *To limit the application of the civil procedure and Limitation (Miscellaneous provisions) Act on the enforcement of this Act especially the requirement for a statutory notice before suits against Government are filled as well as the time within which certain actions are to be taken against Government.*
- *To prescribe the time within which to bring suits for the enforcement of human rights.*

**I beg to move.....**