

PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY
AFFAIRS ON THE HUMAN RIGHTS (ENFORCEMENT) BILL, 2015

OFFICE OF THE CLERK TO PARLIAMENT

PARLIAMENTARY BUILDINGS, KAMPALA

DECEMBER 2018

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1.0.INTRODUCTION

The Human Rights (Enforcement) Bill, 2015 Bill was read for the first time in the 9th Parliament on the 10th November, 2015 and referred to the Legal and Parliamentary Affairs Committee of Parliament for consideration and report back.

2.0.BACKGROUND

This is a Private Member's Bill introduced under Rule 120 of the Rules of Procedure of Parliament. By the time the 9th Parliament was prorogued, the Bill was still before the Legal and Parliamentary Affairs Committee and was subsequently saved and re-tabled to the 10th Parliament on 10th November, 2016 as stipulated under Rule 232 of the Rules of Procedure of Parliament.

3.0.METHODOLOGY

In considering the Bill, the Committee was guided by Rule 128 (2) of the Rules of Procedure of Parliament and therefore met and received memoranda from the following stakeholders;

1. The Mover of the Bill,
2. The Ministry of Justice and Constitutional Affairs,
3. Uganda Law Society,
4. The Judiciary,
5. Human Rights Network,
6. Uganda Human Rights Commission,
7. Chapter Four and;
8. Foundation for Human Rights Initiative and,
9. The Leader of the Opposition among others.

4.0 OBJECTS OF THE BILL

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The object of the Bill is to give effect to Article 50 (4) of the Constitution by providing for the procedure of enforcing human rights under Chapter Four of the Constitution and for other related matters. Article 50 (4) is reproduced below-

50. Enforcement of rights and freedoms by courts.

(4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter.

Article 50 of the Constitution empowers Parliament to enact legislation for the enforcement of rights and freedoms guaranteed under the chapter 4 of the Constitution.

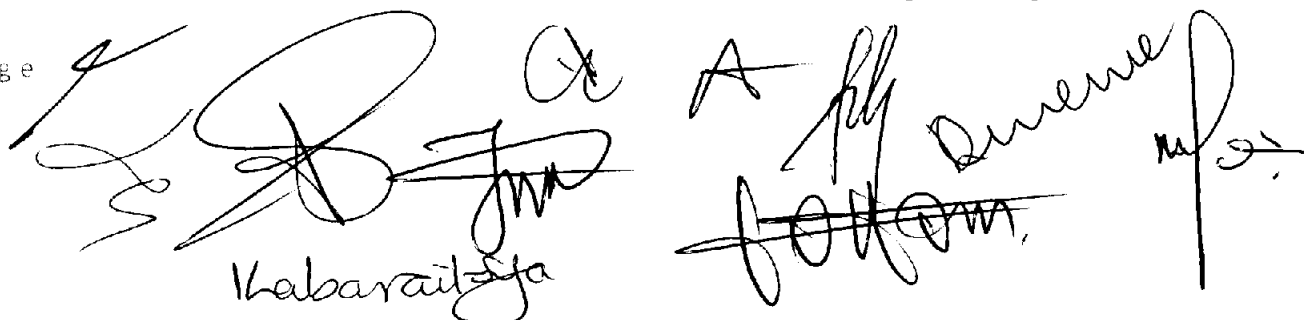
4.0. THE BILL UNDER THE LENSES OF SUSTAINABLE DEVELOPMENT GOALS (SDGs) AND HUMAN RIGHTS

The SDGs and the Human Rights system are mutually reinforcing: While the latter ensures the binding stamp and, most importantly, monitoring and accountability mechanisms, the SDGs give visibility to the rights and put in evidence the needed indivisible approach to all the multiple aspects of human rights – in addition to integrating “people, planet, prosperity, peace and partnership” for the achievement of sustainable development.

When analyzed through the lenses of existing human rights instruments, many targets of the SDGs are transformed from a goal or aspiration into immediate rights. In this sense, the implementation of the SDGs can be much more effective if guided by a human rights-approach and if considered the conclusions and recommendations of global and regional treaty based bodies and of National Human Rights Institutions. In fact, local, regional and global human rights bodies can be leveraged to ensure that a human rights-based approach underpins national policies and programs for the implementation, monitoring and reporting of the SDGs: The Committee was alive to these facts in considering this Bill.

5.0 HUMAN RIGHTS AND FREEDOMS IN UGANDA

The Constitution of the Republic of Uganda, 1995 contains a Bill of rights in chapter IV, which guarantees and protects a number of rights and freedoms. The Constitution, in Article 21, provides that fundamental rights and freedoms of the individuals are inherent and not granted by the State and requires that the rights and freedoms guaranteed are respected, upheld and



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promoted by all organs and agencies of Government and by all persons. The rights and freedoms guaranteed and protected under the Constitution include the right to life and personal liberty and equality; freedom from slavery; freedom from discrimination on account of racial or ethnic origin, religion or sex, or disability or any other similar ground; freedom from arbitrary arrest and detention among many others. Apart from chapter IV, the Constitution guarantee a number of other rights in other Chapters, such as-

- (a) in Article 59, the right to vote;
- (b) in Article 72, the right to form political Organisations;
- (c) in Article 84, the Right to recall; and
- (d) in Article 225, the Right of citizens to demand referenda.

In addition to those rights, the Constitution further guarantees other rights and freedoms which are not expressly provided for in chapter IV. For instance, Article 45 of the Constitution provides as follows-

“The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.”

The above recognition is important considering that Uganda is a signatory to a number of international human rights instruments which obligate the state to guarantee and protect rights and freedoms enshrined under those instruments. For instance, Uganda is a signatory to a number of human rights instruments such as the Universal Declaration of Human Rights 1948, the International Covenant on Economic, Social and Cultural Rights 1966, the International Covenant on Civil and Political Rights 1966, the United Nations Convention on the rights of persons with disabilities as well as the African Charter on Human and Peoples' Rights (“Banjul Charter. These instruments variously enjoin partner states to protect, promote and guarantee human rights and freedoms in their countries.

5.0.PROTECTION AND ENFORCMENT OF HUMAN RIGHTS IN UGANDA

In order to protect, guarantee and realize human rights and freedoms, the Constitution bestowed onto the state and other persons, bodies or entities the duty to respect and uphold the rights and freedoms guaranteed thereunder as well as establishing mechanisms through which individuals

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may enforce their rights and freedoms. In addition to Article 21, the Constitution, in article 221, impose a duty on the Uganda Peoples' Defense Forces and any other armed force established in Uganda, the Uganda Police Force and any other police force, the Uganda Prisons Service, all intelligence services and the National Security Council to observe and respect human rights and freedoms in the performance of their functions.

The enforcement of rights in Uganda is done by two bodies, namely, the Human Rights Commission as well as Courts of law. Article 51 (1) of the Constitution establishes a Human Rights Commission with the mandate to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right. The Human Rights Commission has established a Human Rights Tribunal, a quasi-judicial body that enforces human rights and freedoms prescribed under the Constitution.

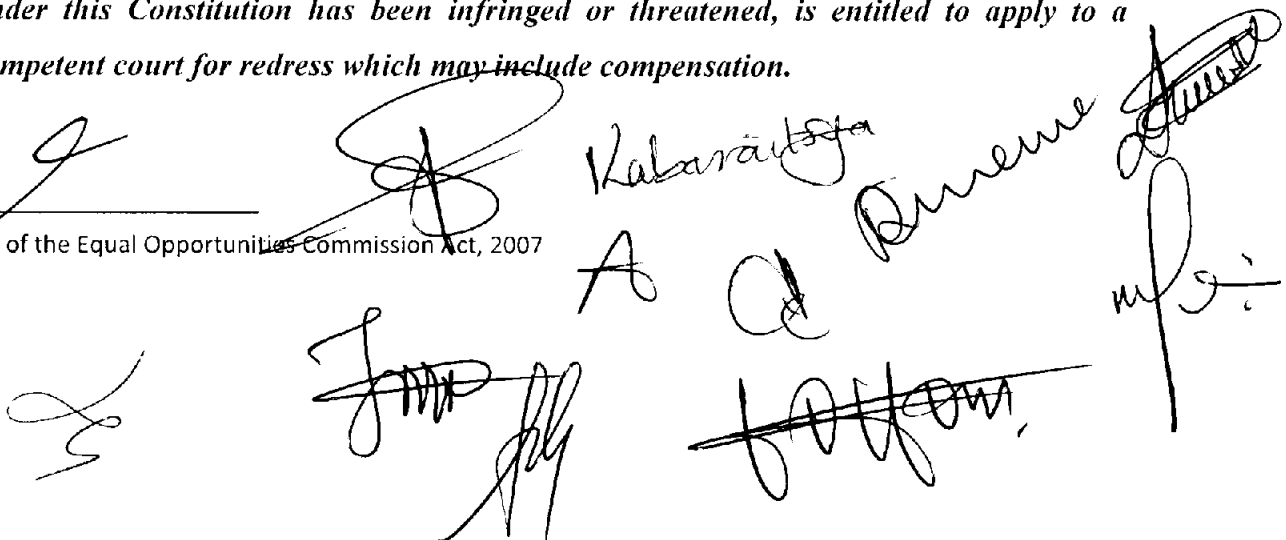
Furthermore, in Article 32 of the Constitution, there is established an Equal Opportunities Commission with the mandate to among others, monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of organs of state at all levels, statutory bodies and agencies, public bodies and authorities, private businesses and enterprises, non-governmental organizations, and social and cultural communities are compliant with equal opportunities and affirmative action in favor of groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom¹.

Additionally, Article 50 of the Constitution empowers a person to apply to a court of competent jurisdiction to enforce rights or freedoms guaranteed under the Constitution. Article 50 is reproduced below and it reads-

"50. Enforcement of rights and freedoms by courts

(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

¹ Section 14 of the Equal Opportunities Commission Act, 2007



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(2) Any person or organisation may bring an action against the violation of another person's or group's human rights.

(3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

(4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter

In addition to the right to seek legal redress before courts of law, Article 50 (4) obligates Parliament to enact legislations for the enforcement of rights and freedoms guaranteed under chapter 4 of the Constitution. Whereas Parliament has not, since the promulgation of the 1995 Constitution, enacted a law prescribing how human rights and freedoms are to be enforced, it has enacted a number of laws that have furthered the enjoyment of rights and freedoms in Uganda. These include, among others, the National Council for Disability Act, Act No. 14 of 2003, the Equal Opportunities Act, 2007, the Prevention and Prohibition of torture Act, 2012, the Employment Act, the Land Act, Cap 227 and many others.

Whereas Parliament was obligated under Article 50 (4) to enact laws to provide for the enforcement of rights, this was not done. Attempts were made to prescribe a procedure for enforcing rights and freedoms in 2008 by enacting the Judicature (Fundamental Rights and Freedoms (Enforcement Procedure) Rules, 2008, statutory Instrument No 55 of 2008. However, these rules were declared unconstitutional as will be discussed below-

6.0.CASES RELEVANT TO THE ENFORCEMENT OF HUMAN RIGHTS IN UGANDA

BUKENYA CHURCH AMBROSE VS AG CONSTITUTIONAL PETITION NO 26 OF 2010

Mr. Bukonya Church Ambrose filed a suit in the High Court under Article 50 (1) of the Constitution and Rule 3 (1) of the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, S1 No. 55 of 2008 seeking inter alia for orders:

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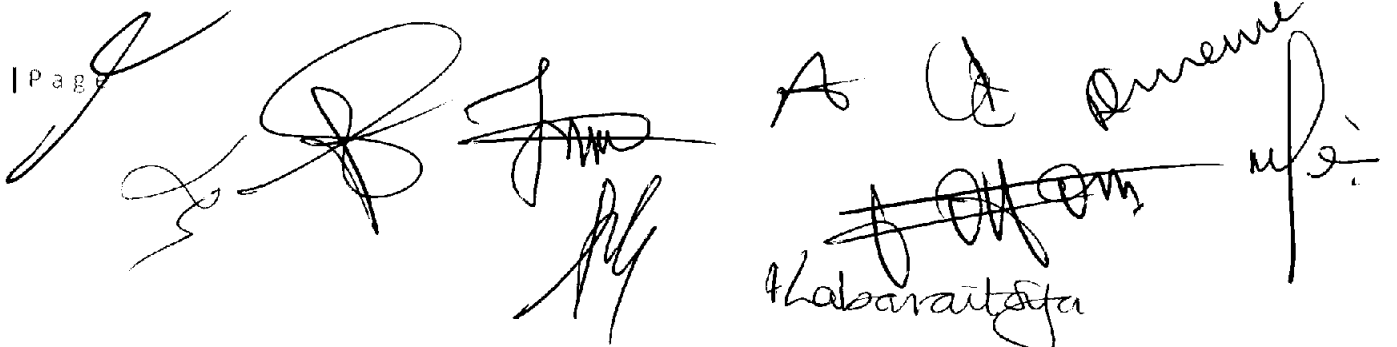
(a) That the banning of bimeeza (open air ex-studio line radio broadcasts) by Government breached the freedom of speech, expression and the media, guaranteed under Article 29 (1) (a) of the Constitution.

(b) That the honourable Court by way of enforcement of the applicant's fundamental freedoms of speech, expression and media to order the lifting of the ban on bimeeza.

At the commencement of the proceedings before the Hon. Mr. Justice V.T. Zehurikiize, Counsel for the Attorney General raised a preliminary objection on the Constitutionality of Statutory Instrument 55 of 2008 alleging that it contravenes Article 50 (4) of the Constitution. It should be noted that similar objections had been raised by the Attorney General's representatives earlier on in similar applications, to wit, *Abdalla Byabasaija Vs Major General Kale Kaihura & Attorney General (Misc. Cause No. 4/2010)* and *Titus Atugonza Vs Attorney General & 5 Others* but by the time this reference was made. Court had not yet decided those cases. The matter was, in accordance Article 137 (5) (b) of the Constitution, referred to the Constitutional court for determination. The question for determination was whether the rules Committee in enacting the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, S1 No. 55 of 2008, the rules under which Miscellaneous Application No. 118 of 2008 was brought contravened Article 50 (4) of the Constitution.

The Constitutional court was informed by the Attorney General that Article 50 (4) of the Constitution specifically provides that Parliament shall make laws for enforcement of the rights and freedoms in Chapter four of the Constitution. Therefore, in making Statutory Instrument 55/08 which clearly provides for the enforcement of the rights and freedoms under Article 50 of the Constitution, the Rules Committee usurped the powers of Parliament. The Attorney General further reasoned that the Judicature Act, Cap 13 under which the S.1 was made is not a law for enforcement of rights and freedoms. The Judicature Act was made in obedience to Article 150 (1) of the Constitution and not Article 50. Court, in agreeing with the arguments advanced by the Attorney General held-

It is common knowledge that Parliament has not made any law under Article 50 (4) above. That being so, did the Rules Committee have the mandate to make S.1 55/08?



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By the use of the word "shall" in Sub Article (4) above, the framers of the Constitution made it mandatory that it is only Parliament that is empowered by the Constitution to make laws for the enforcement of rights and freedoms under Chapter four of the Constitution. It is not the role of any other body to do it except under delegated authority under Article 79, which is not the case here.

Court therefore declared the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, S1 No. 55 of 2008 unconstitutional for Parliament had not, as commanded by Article 50 (4) of the Constitution, made a law for the enforcement of rights and freedoms.

The effect of the above case was to nullify the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, S1 No. 55 of 2008. This meant that there existed no legally recognised law through which rights and freedoms would be enforced. The lack of a law to guide the enjoyment, protection and enforcement of rights and freedoms posed a number of challenges to legal practitioners owing to the fact that they couldn't decide on which court was competent to determine Human Rights Violations and the procedure to follow in enforcing rights, especially, whether such suits are by plaint or motion.

CHARLES TWAGIRA VS ATTORNEY GENERAL SCCA 4/2007

This was an appeal from the decision of the Court of Appeal in which it had held that "An action can only go to the High Court under Article 50 of the Constitution on a plaint and purely for enforcement of fundamental rights and freedoms, the Supreme Court held that the Court of Appeal erred when it held that an action under Article 50 of the Constitution can only be instituted by a plaint. The Supreme Court held that a person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened, can institute an action in a competent court by plaint, or can seek declarations by Notice of Motion depending on the facts of the complaint within the meaning of Article 50. The Supreme Court directed that a person claiming that his or her human rights or freedoms have been infringed or threatened would seek redress through petitioning the Constitutional Court. Therefore unless Parliament enacts a law for the enforcement of rights and freedoms guaranteed under the Constitution, the above confusion will continue, making it difficult for people to protect and enjoy rights and freedoms guaranteed under the Constitution.

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BUKENYA CHURCH AMBROSE VS AG SUPREME COURT CONSTITUTIONAL APPEAL NO 3 OF 2011

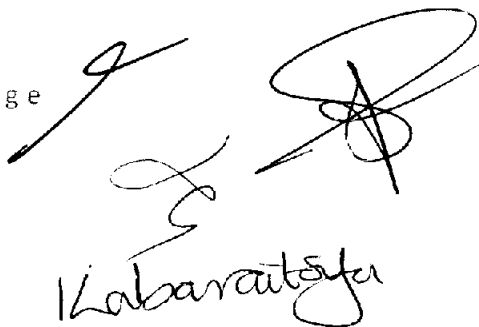
This was an appeal by Bukenya Church Ambrose against the Ruling of the Constitutional Court which held that the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, 2008 were unconstitutional. Being dissatisfied with the decision of Court, Mr. Bukenya Church Ambrose appealed on two grounds, namely-

1. That the Constitutional Court erred to have held that Parliament had not made any law for the enforcement of fundamental rights and freedoms
2. That the Constitutional Court erred to have held that the Rules Committee was not empowered to make Rules for enforcement of fundamental rights and freedoms.

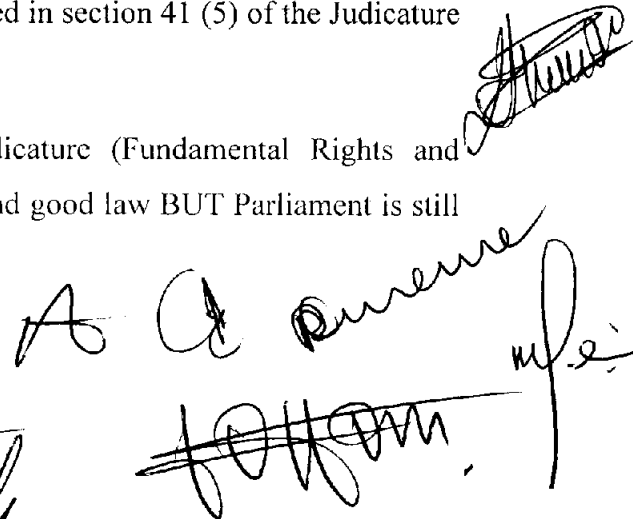
The Supreme Court held as follows-

1. The Constitutional court answered a different question from the one that was referred to it by the High Court;
2. The Constitutional Court erred when it held that the Rules Committee did not have the mandate to make Rules of procedure for enforcement of fundamental rights and freedoms provided for under Chapter 4 of the Constitution.
3. That the Rules Committee acted within its powers when it made Rules providing for the procedure to seek redress for violations of fundamental rights and freedoms under Article 50(1) of the Constitution.
4. Parliament is duty bound under Article 50 (4) to enact laws for the enforcement of rights in Uganda;
5. Whereas the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, 2008 were not laid before Parliament as required in section 41 (5) of the Judicature Act, they were still Constitutional;

The above Supreme Court decision means that the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, 2008 are valid and good law BUT Parliament is still


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obligated to enact laws for the enforcement of rights and freedoms guaranteed in chapter 4 of the Constitution.

7.0. NEED FOR THE BILL

The Committee took note of questions raised by some stakeholders who appeared before it on the necessity of the legislation. Indeed, some stakeholders appeared to suggest that Article 50 (4) of the Constitution did not envisage a single legislation for the enforcement of rights but a multitude of legislation which collectively would guide the enforcement of rights in Uganda. The Committee considered the above assertions and concluded that the Bill was necessary. The major reasons for such a finding are-

1. The Bill is a response to the command contained in Article 50 (4) which directs Parliament to enact legislation for the enforcement of rights in Uganda. The Committee notes that both the Constitutional Court and the Supreme Court in the case of Bukenya Church Ambrose recognized that Parliament was directed by the Constitution to enact legislation for the enforcement of rights. Indeed, the Constitutional Court, in Constitution Petition No 26 of 2010 noted as follows-

“By the use of the word “shall” in Sub Article (4) above, the framers of the Constitution made it mandatory that it is only Parliament that is empowered by the Constitution to make laws for the enforcement of rights and freedoms under Chapter four of the Constitution. It is not the role of any other body to do it except under delegated authority under Article 79, which is not the case here.”(emphasis mine)

In light of the above, by enacting this legislation, Parliament will be responding to a Constitutional command contained in Article 50 (4) since it is the only body that the Constitution mandated to enact laws for the enforcement of rights guaranteed and protected under the Constitution.

2. There has been inordinate delay in complying with the provisions of the Article 50 (4) of the Constitution. The Committee notes that since the promulgation of the Constitution of Uganda in 1995, Government has not introduced before Parliament a Bill envisaged in article 50 (4) of the Constitution. Indeed, the Supreme Court in Constitutional Appeal No. 3 of 2011 noted,

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that the non-action on the part of the Executive and Parliament to pass the law 22 years after the Constitution was promulgated, runs contrary to the letter and spirit of the Constitution of Uganda which was intended and indeed came into effect on the date of its promulgation on 8th October, 1995. The Committee shares the sentiments and frustrations of the Supreme Court and finds the delay on the part of Government to introduce a Bill envisaged in article 50 (4) for 22 years as a roadblock towards the full realization and enjoyment of rights and freedoms guaranteed and protected under the Constitution.

Other reasons the Committee considered include the need to enhance and facilitate the enjoyment of rights and freedoms under the Constitution, the need to respond to court directives as far as human rights enforcement is concerned, to determine the competent court envisaged in article 50 (4) of the Constitution as well as dealing with prevalent human rights violations in Uganda.

8.0. OBSERVATIONS, RECOMMENDATIONS AND CONCLUSIONS

This part will analyze the proposal made in the Bill, state the stakeholder's views, provide a legal analysis and recommend the action to take.

1. CLAUSE 1 OF THE BILL

Clause 1 of the Bill deals with application and is reproduced below-

"Application

- (1) This Act applies to the enforcement of rights and freedoms guaranteed by chapter four of the Constitution.*
- (2) This Act shall apply to the enforcement of human rights by the High Court.*
- (3) This Act does not apply to the investigation, protection or enforcement of rights and freedoms by the Uganda Human Rights Commission under articles 52 or 53 of the Constitution.*

ANALYSIS AND OBSERVATIONS

The above provision limits the application of the Bill to only rights and freedoms guaranteed under chapter four of the Constitution. However, the Bill doesn't apply to the investigation,

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protection or enforcement of rights and freedoms by the Uganda Human Rights Commission under articles 52 or 53 of the Constitution. The above provision raise the following concerns-

1. It only limits the application of the Bill to only rights under Chapter Four of the Constitution leaving out other rights under other Chapters. For instance, in Chapter 5 of the Constitution, Section 59 grants every citizen of Uganda of eighteen years of age or above a right to vote. Furthermore, Article 72 of the Constitution guarantees a right to form political parties and any other political organizations is guaranteed.

The Committee notes that Article 50 of the Constitution broadly empowers a person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation. This provision therefore applies to rights and freedoms guaranteed under the entire Constitution. Therefore clause 1 of the Bill should be broad to capture all the rights prescribed in the Constitution.

2. Clause 1 of the Bill should not interfere with other human rights enforcement agencies prescribed under the Constitution. The Committee notes that the Constitution creates two major human rights enforcement agencies. These include the Human Rights Commission established under Article 51 as well as the Equal Opportunities Commission established under Article 32 of the Constitution. Whereas the provision currently provides that the Bill doesn't apply to the Human Rights Commission, this exemption should be extended to the operations of the Equal Opportunities Act.

3. The provision also limits the application of the Bill to enforcements of human rights by the High Court. This provision means that all human rights enforcement in Uganda will be made by the High Court as a court of first instance. The Committee believes that in the interest of justice, enforcement of rights should be by the lowest court in order to extend justice to the most vulnerable people in society. The Committee notes that unlike other lower magistrate courts, the High Court is not easily accessible by most people, considering that there are only 20 High Court circuits in Uganda. The Committee further notes that the High Court suffers from chronic case backlog, has limited judges (50 in number) and applies strict rules of procedure that might affect a person who doesn't poses resources to procure a lawyer to prosecute their applications.

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The Committee observes that currently Uganda has 80 magisterial areas spread throughout the country. These magisterial areas are easily accessible by most persons in the country and can apply simple rules of procedure that enables persons to self-represent. The Committee also takes cognizance of the fact that most of the rights and freedoms guaranteed under the Constitution are those that apply to persons at the grassroots, such as the rights on education, the rights to a clean and safe environment, the rights of children, right of women and other rights, these should be enforced by courts that are close to the people. This means that such rights are better enforced at the grassroots starting at the magistrates level and not by the High Court as proposed by the Bill.

RECOMMENDATIONS

The Committee therefore recommends that clause 1 of the Bill stands part of the Bill albeit with the following amendments-

- (a) The provision should be broad to capture all the rights prescribed in the Constitution.*
- (b) The provision should exempt from its operations, the operations of the Equal Opportunities Commission.*
- (c) The provision should refer to a court of law, instead of limiting such enforcement to the High Court alone.*

2. CLAUSE 2 OF THE BILL

Clause 2 of the Bill is on the interpretation and it provides working definitions of major words and phrases as used in the Bill.

ANALYSIS AND OBSERVATIONS

Clause 2 of the Bill contains a number of definitions which may pose a challenge to users of the law and may be challenged for being unconstitutional. Such definitions include the definition prescribed for the word "subordinate court", "application" and "competent court". It should be noted that the Constitution defines the above words differently as compared to the proposed working definitions in the Bill.

For instance, where the Constitution defines a "subordinate court" to mean a court subordinate to the High Court, the Bill defines the word to mean any court lower than the High Court or established under the Magistrate Court Act or the Local Council Court Act,

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2006. The definition proposed in the Bill is different from the one prescribed under the Constitution, making the proposed definition unattainable at law. In order to enhance the usability of the law, there is need to bring the definitions used within the ambit of the Constitution as well as the manner it is used in the Bill.

RECOMMENDATION

The Committee recommends as follows-

- (a) *In the definition of the word "application", substitute for the words "referred to in article 20 to 45 of the", the words "guaranteed under the"*
- (b) *By defining the word "competent court" the following to mean a High Court or a Magistrate Court presided over by a Magistrate Grade One;*
- (c) *By defining the word "Subordinate Court" to mean a court subordinate to the High Court.*

3. CLAUSE 3 OF THE BILL

Clause 3 of the Bill deals with enforcement of human rights and requires as follows-

"3. Enforcement of human rights

In accordance with article 50 of the Constitution, any person or organisation may bring an action for the protection or enforcement of human rights.

ANALYSIS AND OBSERVATIONS

This is one of the most important and fundamental provision of the Bill. It allows a person or institution to bring an action for the protection or enforcement of human rights. That being the case, the Committee notes that the provision leaves a lot to be desired as discussed below-

- (1) The provision is too broad in its current form and doesn't capture the spirit of Article 50 which it intends to operationalize. The Committee believes that there is need to reproduce or conform to the provisions of Article 50 (1) in order for the provision to be confined to the circumstances outlined in article 50. Article 50 is reproduced below-

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50. Enforcement of rights and freedoms by courts.

(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation.

(2) Any person or organisation may bring an action against the violation of another person's or group's human rights.

(3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

(4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter.

Article 50 (1) allows any person, who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened to apply to a competent court for redress. Clause 1 should therefore contain similar words in order 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 to apply to court for redress.

(2) The provision should also recognize the right of a citizen to bring action for enforcement of rights before any other fora as recognized by the Constitution. The Constitution establishes and recognizes the protection and enforcement of human rights. These include the Human Rights Commission established under Article 51 as well as the Equal Opportunities Commission established under Article 32 of the Constitution. The Committee observes that clause 3 currently doesn't recognize that a victim of a human rights violation is granted other avenues for the protection and enforcement of his or her rights other than courts of law. The Committee believes that clause 3 should recognize this right because not doing so, a person may reason that he or she has only one avenue, bringing a suit before the High Court.

The Committee recognizes that in interpreting the Constitution, one must bear in mind the guiding principles in Constitutional interpretation which are to the effect that the Constitution must be looked at as a whole and must be read as an integrated whole with no one particular provision destroying another but supporting it. In that regard therefore, the Committee

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believes that whereas Clause 1 (3) of the Bill exempts the application of the Bill to investigation, protection or enforcement of rights and freedoms by the Uganda Human Rights Commission, clause 3 should recognize the right of any person who alleges a right or freedom guaranteed under the Constitution has been infringed or threatened to either bring a suit to a court of competent jurisdiction or to other for a such as the Human Rights Commission or the Equal Opportunities Commission. The Committee takes special recognition of section 4 of the Basic rights and duties enforcement Act of Tanzania which recognizes the right of Tanzanians to bring actions for enforcement of rights to the High Court of Tanzania as well as other for a. this is reproduced below-

“If any person alleges that any of the provisions of sections 12 to 29 of the Constitution likely to be contravened in relation to him, he may, without prejudice to any other a same matter that is lawfully available, apply to the High Court for redress.”

RECOMMENDATIONS

The Committee therefore recommends that clause 3 forms part of the Bill albeit with the following amendments-

- (a) The provision captures the spirit of Article 50 of the Constitution*
- (b) The provision recognises a person’s right to apply to other Court for the enforcement of rights and freedoms guaranteed under the Constitution.*
- (c) Provide for clarity, persons who may bring human rights action, including a person acting on behalf of another person who cannot act in their own name; A person acting as a member of, or in the interest of a group or class of persons; A person acting in public interest; or An association acting in the interest of one or more its members.*

4. CLAUSE 4 OF THE BILL

Clause 4 of the Bill deals with the jurisdiction of the High Court to determine matters relating to Human rights. The provision is reproduced below-

“4. High Court to determine matters relating to human rights

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(1) The High Court shall hear and determine any application relating to the enforcement or violation of human rights.

(2) The High Court shall not exercise its powers under this section if it is satisfied that adequate redress for the alleged violation is available to the person concerned under any other law.

ANALYSIS AND OBSERVATIONS

Whereas the above provision is important because it recognises the jurisdiction of the High Court in human rights matters, the Committee has the following reservations which it believes will hinder the smooth enforcement of human rights in Uganda.

(1) Limiting the enforcement of rights and freedoms by the high court will limit the enjoyment of rights and freedoms given the limited spread of the High court in the country. The Committee believes that in the interest of justice, enforcement of rights should be by the lowest court in order to extend justice to the most vulnerable people in society. The Committee notes that unlike other lower magistrate courts, the High Court is not easily accessible by most people, considering that there are only 20 High Court circuits in Uganda. The Committee further notes that the High Court suffers from chronic case backlog, has limited judges (50 in number) and has applies strict rules of procedure that might affect a person who doesn't poses resources to procure a lawyer to prosecute their applications. The Committee observes that currently Uganda has 80 magisterial spread throughout the country. These magisterial areas are easily accessible by most persons in the country and can apply simple rules of procedure that enables persons to self-represent. The Committee also takes cognizance of the fact that most of the rights and freedoms guaranteed under the Constitution are those that apply to persons at the grassroots. For instance the rights on education, the rights to a clean and safe environment, the rights of children, right of women and other rights. This means that such rights are better enforced at the grassroots starting at magisterial level and not by the High Court as proposed by the Bill.

(2) Sub clause (2) of clause 4 of the Bill contains a clause back which will hinder the enforcement of the rights by giving the High Court unlimited discretion to reject an application on grounds that the applicant has adequate redress available to the applicant

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