

**THE HUMAN RIGHTS (ENFORCEMENT) BILL, 2014**

**MEMORANDUM**

**1. Object**

The object of this 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 related matters.

**2. Defects in the existing law**

Article 50(4) of the Constitution requires Parliament to make laws for the enforcement of the rights and freedoms guaranteed under Chapter Four of the Constitution.

However, since 1995 when the Constitution was promulgated, Parliament has not enacted any law under article 50(4) providing for the enforcement of human rights by all persons, institutions and organs of Government.

In order to fill the gap created by the absence of a law made by Parliament for the enforcement of human rights, the Rules Committee established under section 40 of the Judicature Act issued the Judicature (Fundamental Rights and Freedoms (Enforcement Procedure) Rules, 2008, Statutory Instrument No. 55 of 2008.

However, these Rules were challenged in *Bukenya Church Ambrose vs Attorney General* Constitutional Petition No. 26 of 2010 and were set aside by the Constitutional Court.

The Constitutional Court held that it was not the role of any other body other than Parliament, to make laws except under authority delegated by Parliament under Article 79.

Since the power to make laws for enforcement of the rights and freedoms in Chapter Four of the Constitution is specifically given to Parliament by the Constitution, therefore, in making Statutory Instrument No. 55 of 2008 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.

More so, the Judicature Act, Cap.13 under which the statutory instrument was made is not a law for enforcement of rights and freedoms, as it is a law intended to consolidate, revise and take account of the provisions of the Constitution relating to the judiciary in obedience to Article 150(1) of the Constitution.

### **3. Remedies**

The Bill therefore seeks to provide a law on enforcement of human rights as required by article 50(4) of the Constitution.

The Bill seeks to provide a framework for the enforcement of human rights and freedoms and also empower the Rules Committee to make rules in respect of the specific procedural matters relating to protection of human rights and enforcement of the fundamental rights and freedoms.

### **4. Provisions of the Bill**

The Bill has 11 provisions divided into III Parts.

## **Part I-Preliminary**

This Part has two clauses. Clause 1 of the Bill proposes to apply the provisions of the Bill to the enforcement of the rights and freedoms protected by Chapter Four of the Constitution. Since article 52 and 53 already provide for the enforcement of human rights by the Uganda Human Rights Commission, and in furtherance of those articles Parliament enacted the Uganda Human Rights Commission Act, Cap 24, clause 1 proposes to limit the scope of the Act to the enforcement of human rights and freedoms by the High Court.

Clause 2 defines the key words and phrases used in the Bill in the context in which they are used.

## **Part II- Enforcement of human rights and freedoms**

This Part provides for the procedure for the enforcement of human rights and freedoms.

**Clause 3** reiterates article 50 (1) of the Constitution by providing that any person may bring an action for the protection or enforcement of human rights.

**Clause 4** gives exclusive jurisdiction to the High Court to hear and determine matters relating to the enforcement or protection of human rights. Since there are other laws like the Uganda Human Rights Act under which a person may obtain redress for a violation of human rights, sub clause (2) empowers the High Court to refrain from providing any further remedy where a person has already obtained or can access redress under any other law.

**Clause 5** provides for a notice of motion as the mode of application for the protection or enforcement of human rights and freedoms.

Since applications for enforcement or protection of human rights are proposed to be heard and determined by the High Court, **clause 6** seeks to ensure that any question arising in a Magistrates Court or other court or tribunal subordinate to the High Court which relates to the protection or enforcement of human rights or freedoms is referred to the High Court for determination.

**Clause 7** empowers the High Court after hearing a matter relating to the protection or enforcement of human rights to make such orders as are necessary to remedy the breach or secure the enjoyment of the right or freedom.

Since article 137 of the Constitution gives the Constitutional Court the exclusive jurisdiction to interpret the Constitution, clause 7(2) provides for the High Court to refrain from interpreting the Constitution.

### **Part III- Miscellaneous**

This Part provides for appeals from the decisions of the High Court to the Court of Appeal in respect of matters relating to the enforcement and protection of human rights.

Clause 9 provides for the application of the Civil Procedure Act, Cap 71 which generally provides for the conducting civil matters in the High Court whereas clause 10 gives power to the Rules Committee to make rules to give effect to the matters provided for in the Bill.

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## **ARRANGEMENT OF CLAUSES**

### *Clause*

#### **PART I- PRELIMINARY**

1. Application
2. Interpretation

#### **PART II- ENFORCEMENT OF HUMAN RIGHTS AND FREEDOMS**

3. Enforcement of human rights
4. High Court to determine matters relating to human rights
5. Application for enforcement or violation of human rights
6. Reference of human rights matters by subordinate courts
7. Power of the High Court in human rights cases

#### **PART III- MISCELLANEOUS**

8. Appeal
9. Application of Civil Procedure Act
10. Rules of procedure
11. Transitional provision

A Bill for an Act

ENTITLED

**THE HUMAN RIGHTS (ENFORCEMENT) ACT, 2015**

**An Act 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 related matters.**

**BE IT ENACTED** by Parliament as follows:

**PART I- PRELIMINARY**

**1. 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.

**2. Interpretation.**

In this Act, unless the context otherwise requires-

“application” means an application to a competent court under article 50 of the Constitution for redress in relation to the fundamental rights and freedoms referred to in articles 20 to 45 of the Constitution;

“competent court” means the High court;

“Minister” means the Minister responsible for justice;

“rules committee” means the rules committee established under the Judicature Act ; and

“subordinate court” means any court lower than the High Court or established under the Magistrates Courts Act or the Local Council Courts Act, 2006.

## **PART II- ENFORCEMENT OF HUMAN RIGHTS AND FREEDOMS**

### **3. Enforcement of human rights**

- (1) In accordance with article 50 of the Constitution, any person or organization may bring an action for the protection or enforcement of human rights.

### **4. High Court to determine matters relating to human rights**

- (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.

### **5. Application for enforcement or violation of human rights**

- (1) An application for the enforcement of human rights or relating to a violation of human rights shall be made by motion.
- (2) Every application shall be heard in open court by a single judge.

### **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 guaranteed under Chapter Four of the Constitution, the Magistrate or person presiding shall, refer the question to the High Court for determination.
- (2) The Magistrate or person presiding shall immediately stay the proceedings in the subordinate court or tribunal until the High Court determines the question referred to it.

- (3) The Magistrate or person presiding in a subordinate court or tribunal shall dispose of the question referred to the High Court in accordance with the determination of the High Court.

#### **7. Power of High Court in human rights cases**

- (1) Where the High Court determines that a basic human right or freedom has been violated, unlawfully denied or should be enforced, the court may make all such orders as the court considers necessary and appropriate to secure the enjoyment of the right or freedom or to compensate the person for the violation.
- (2) For the avoidance of doubt, the High Court shall not make any orders or declarations relating to the interpretation of the Constitution.

### **PART III – MISCELLANEOUS**

#### **8. Appeal**

Any person aggrieved by a decision of the High Court made under this Act may appeal to the Court of Appeal.

#### **9. Application of Civil Procedure Act**

Subject to this Act, the Civil Procedure Act and the rules made under it shall apply in relation to an application under this Act.

#### **10. Rules of procedure**

- (1) Subject to the provisions of this Act, the Rules Committee may, after consultation with the Minister make rules to give effect to the provisions of this Act.
- (2) Without prejudice to subsection(1), the Rules Committee may make rules –
- (a) prescribing the fees payable under the Act;
  - (b) prescribing the time for applications and references under this Act;
  - (c) rules of evidence and procedure.



**11. Transitional provision**

Where at the commencement of this Act any proceedings are pending before any Court for the enforcement of human rights or freedoms protected under Chapter Four of the Constitution, the proceedings shall be transferred to the High court if the hearing of the case has not commenced.

### **Cross references**

The Magistrates Courts Act Cap 16

Civil Procedure Act Cap 71

the Judicature Act Cap 13

The Local Council Courts Act, 2006