

An Annual
Publication of
Human Rights
Awareness and
Promotion
Forum



THE HUMAN RIGHTS ADVOCATE

The Human Rights Enforcement Act, 2019:

A new dawn for the enforcement of human
rights of marginalised groups in Uganda?

Seventh Issue – December 2020



THE HUMAN RIGHTS ADVOCATE

Seventh Issue – December 2020

The Human Rights (Enforcement) Act, 2019: A new dawn for the enforcement of human rights of marginalised groups in Uganda?

An annual publication of Human Rights Awareness and Promotion Forum

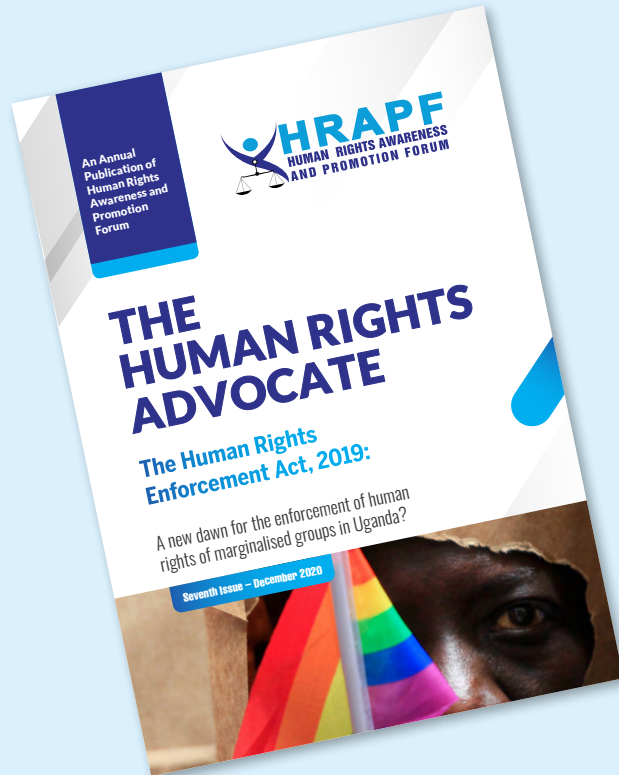
Copyright: Human Rights Awareness and Promotion Forum (HRAPF), 2020

Human Rights Awareness and Promotion Forum (HRAPF)

HRAPF House
Plot 1 Nsubuga Road, Off Ntinda-Kiwatule Road,
Ntinda, Kampala
P.O. Box 25603, Kampala – Uganda
Tel: +256-414-530683 or +256-312-530683
Email: info@hrapf.org Website: www.hrapf.org



EDITORIAL TEAM



EDITOR

Dr. Adrian Jjuuko

RESEARCHERS

Linette du Toit
Martha Masiko
Pearl Mirembe

REVIEWERS

Edward Mwebaza
Flavia Zalwango

TABLE OF CONTENTS



EDITOR'S NOTE	1
EDITORIAL	3
Introducing the future of Human Rights enforcement in Uganda - The Human Rights (Enforcement) Act, 2019 Dr. Adrian Jjuuko and Pearl Mirembe	7 7
ANALYSIS	10
The impact of the Human Rights Enforcement Act on the future of Public Interest Litigation in Uganda Michael Aboneka	10
COMMENTARY	15
Will the Human Rights Enforcement Act mean new levels of justice for marginalised groups in Uganda? Herbert Ayesiga	15
ANALYSIS	17
Non-state actors' liability under the Human Rights (Enforcement) Act: Is it the way forward? Joel Basoga	17
OPINION	20
In implementing the Human Rights Enforcement Act (2019), the procedural rules would frustrate the right to a speedy trial: a comment on Section 17 of the Act Martha Masiko	20
COMPARATIVE PERSPECTIVE	24
Enforcing human rights: Does Uganda's Human Rights (Enforcement) Act of 2019 set the gold standard? Anneke Meerkotter	24
COMPARATIVE PERSPECTIVE	29
Comparative Analysis of Human Rights Enforcement Laws in three African states Auma MI Dinymoi	29
CASE NOTE	34
Suit Local Council and Prison authorities for violations committed against 20 LGBT youths during the COVID-19 lockdown	34
TEXT OF THE HUMAN RIGHTS (ENFORCEMENT) ACT 2019	36

EDITOR'S NOTE



I am proud to present the **seventh issue** of **The Human Rights Advocate magazine**, an annual publication of Human Rights Awareness and Promotion Forum. The magazine considers how particular laws affect the human rights of persons in Uganda, and marginalised groups in particular. Every issue of the magazine is dedicated to analysing a particular law from different viewpoints.

This seventh issue of the magazine is dedicated to the Human Rights (Enforcement) Act, 2019 (HREA). This law was enacted in order to operationalise Article 50(4) of the Constitution of the Republic of Uganda by providing for a procedure to enforce rights under Chapter Four of the Constitution.¹ The Act seems to herald the beginning of a new era for the enforcement of human rights in Uganda. It has various progressive protective features such as the broad provision on standing, and individual liability for human rights violations by state officials.

HRAPF, as an independent, not-for-profit, non-partisan and non-governmental organisation, aims to raise awareness and defend the rights of marginalised groups in Uganda. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, research, advocacy and legal aid service provision. The vision of HRAPF is a society where the human rights of all persons, including marginalised persons and Most at Risk Populations, are valued, respected and protected.

The marginalised and Most At Risk Population groups that HRAPF works with face violation of their fundamental rights on a regular basis.

¹ Short title to the Act.

The marginalised and Most At Risk Population groups that HRAPF works with face violation of their fundamental rights on a regular basis.

HRAPF documents these human rights violations in our various annual violations reports. Over the years, HRAPF has found that the state is often the biggest perpetrator of human rights violations on our target groups. These violations are furthermore rarely effectively addressed through the available mechanisms and victims hardly ever attain vindication or compensation for the abuse and loss that they have suffered. This state of affairs also sends the message to violators that they are free to trample on the rights of vulnerable persons and will not be brought to book before the courts or other justice mechanisms. The HREA is hoped to be a turning point and that the progressive procedures it prescribes could be used to ensure justice for the victims of human rights violations.

HRAPF decided to dedicate this issue of the Human Rights Advocate magazine to exploring various aspects of the HREA and its potential to transform the state of realisation and enforcement of human rights, particularly for vulnerable minority groups in Uganda. The magazine features viewpoints from various stakeholders, including academia, human rights lawyers, lawyers in private practice and civil society actors who promote human rights in general as well as the rights of vulnerable and stigmatised groups in particular.

In the editorial, we provide an overview of the Act and why we think it heralds a better future

for human rights enforcement, while at the same time we note the usual disconnect between the law as it is and its application. This is followed by a contribution by Michael Aboneka on the impact of the HREA on the future of Public Interest Litigation in Uganda. Herbert Ayesiga, considers the impact of the new Act on the enforcement of human rights of vulnerable minorities in Uganda. Joel Basoga considers whether the HREA opens the door to hold non-state actors personally liable for human rights violations. Martha Masiko critiques the procedural aspects of the Act and considers how these would delay justice to victims of human rights abuses. Anneke Meerkotter makes a comparative analysis of the HREA and legislation in other African countries that guides the enforcement of human rights, while Auma MI Dinymoi compares the position in Kenya and Nigeria. Finally, a case note is included which provides an overview of a case filed to vindicate the rights of a group of 19 LGBT persons who were arbitrarily arrested and detained for more than 51 days. Also a full text of the HREA is annexed to this issue of the magazine.

I hope that you will find this issue of the magazine both informative and engaging and that it will be used to guide the implementation of the HREA in pursuit of enforcing the human rights of victims of violations in Uganda.

Dr Adrian Jjuuko

Editor

EDITORIAL

Introducing the future of human rights enforcement in Uganda - The Human Rights (Enforcement) Act, 2019

By Dr. Adrian Jjuuko and Pearl Mirembe

Introduction.

The Human Rights (Enforcement) Act, 2019 (HREA) is a new and crucial part of the machinery for enforcing human rights in Uganda. The Act has the potential to change the landscape of human rights enforcement in favour of the victims of human rights violations by creating new accountability mechanisms. However, all this will depend on how frequently, human rights activists use the law to bring cases before courts of law, how the courts will interpret the Act, and how enforcement will be done by the other state agencies. The state of democracy in Uganda will determine whether this is a tool that can be used to reign in the powerful or that it will only be a tool to catch the small fish.

Background to adoption of the Act.

Before the Constitution of the Republic of Uganda 1995, enforcement of fundamental human rights was largely underdeveloped since the constitutional frameworks of the times did not support such enforcement with restrictive provisions and executive centered power. The 1995 Constitution introduced a new scheme that put human rights at the front and gave a bigger role to the courts of law in the enforcement of human rights.

Chapter 4 of the Constitution contains a detailed Bill of Rights and it broadly provides for the mechanisms through which to enforce human rights. These include the High Court, the Constitutional Court and the Uganda Human Rights Commission (UHRC). Article 50(4) of the Constitution enjoins Parliament to make laws for

the enforcement of rights and freedoms under Chapter Four. This is the authority under which Parliament acted to enact the HREA. Prior to the enactment of the HREA, the procedure for enforcement of human rights under Chapter Four of the Constitution was not entirely clear. In *Attorney General v Maj. Gen. David Tinyefuza*,² the Supreme Court held that the jurisdiction of the Constitutional Court as derived from Article 137(3) of the Constitution is concurrent with the jurisdiction of those other courts which may apply and enforce the human rights provision, except that for the Constitutional Court to claim and exercise that concurrent jurisdiction, the claim must be based on a petition seeking interpretation of a provision of the Constitution. This was reaffirmed in *Ismail Serugo v Kampala City Council & Attorney General*.³

In 2008, the Rules Committee established under Section 40 of the Judicature Act issued the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules Statutory Instrument 55 of 2008. The purpose of the Rules was to provide for a procedure to be followed when applying to courts of law for enforcement of human rights. The Committee has a duty to make rules regulating the procedure and practice of the High Court.⁴ Despite the intended usage, the Rules were never relied on.

² *Attorney General v Maj. Gen. David Tinyefuza* Constitutional Appeal No. 1 of 1997.

³ Constitutional Appeal No. 2 of 1998.

⁴ The Judicature Act Cap 13, Sec 41(1).

There had been some cases that had sought to rely on them but the constitutionality of the Rules remain unresolved.⁵ Subsequently, in 2011, the Constitutional Court nullified the Rules on the basis that they were unconstitutional as their issuance amounted to the usurping of powers of Parliament.⁶ The Court held that, while the Rules Committee has the statutory duty of making rules of enforcement for courts, the duty to make rules for the enforcement of human rights is expressly vested in Parliament in terms of Article 50(4) of the Constitution. Even though Parliament had not yet made the law at the time, the Committee had no powers to issue the rules, except under express delegation from Parliament. This left a gap on how actions on enforcement of fundamental human rights were to be done, and that is how the HREA came into being.

The HREA is intended to address the remaining need in the process of human rights enforcement regarding the procedure of presentation of evidence, remedies and the relationship between enforcement by courts and enforcement by other bodies.

The Bill was tabled by the Human Rights Committee of Parliament, and assented to by the President on 31st March 2019. The Act had no specified

commencement date and as such in accordance with section 14(1) of the Acts of Parliament Act, the date of commencement of the Act would be the date of its publication in the Uganda Gazette. However, the Uganda Printing and Publications Corporation (UPPC) delayed to publish and gazette the Act, until 15th November 2019, shortly after a suit was filed at the High Court by lawyer James Mubiru demanding for the gazetting of the Act.⁷

■ Structure of the Act.

The Bill has 20 clauses that are divided into three parts. They are as follows;

Part I - Preliminary

The first part of the Act deals with the application and interpretation of the Act. Section 1 states that the Act applies to the enforcement of human rights and freedoms guaranteed by Chapter Four of the Constitution. The section also provides that the Act applies to the enforcement of human rights by a competent court and does not apply to the investigation, protection or enforcement of rights and freedoms by the Uganda Human Rights Commission and the Equal Opportunities Commission.⁸ Section 2 is the interpretation section of the Bill.

Part II – Enforcement of Human Rights and Freedoms

This part contains the substantive provisions of the Bill. It contains sections 5 - 15. Section 3 provides that a person or organisation who claims that a fundamental or other right has been infringed on or threatened may apply to a competent court for redress under the Act.

The Act has a broad provision on standing, allowing for cases to be instituted by 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 the public interest as well as an association acting in the interest of one or more of its members.⁹

Section 4 provides for the jurisdiction of the High Court in regards to cases of human rights enforcement. The High Court will have jurisdiction to hear and determine an application relating to the enforcement or violation of non-derogable rights as guaranteed under the Constitution; to other rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms envisaged in Article 45 of the Constitution and to rights and freedoms restricted under a law made for the purposes of a state of emergency. The High Court can also hear an application regarding the enforcement and violation of human rights which are beyond the pecuniary jurisdiction of a magistrates'

5 See for example, *Abdalla Byabasaija Vs Major General Kale Kaihura & Attorney General* (Misc. Cause No. 4/2010) and *Titus Atugonza Vs Attorney General & 5 Others* (Unreported)

6 *Bukenya Church Ambrose v Attorney General* Constitutional Petition 26 of 2010.

7 Gov't gazettes Human Rights Enforcement Act' Daily Monitor 5th December 2019, <https://www.independent.co.ug/govt-gazettes-human-rights-enforcement-act/> (Accessed 27th June 2020).

8 Section 1(2) - (3).

9 Section 3(2).



Source: [Russell Webster](#)

court but would otherwise have been heard by that court. Such matters shall, unless the court determines otherwise, be heard in open court. Applications for enforcement of human rights before the High Court are to be in the form provided for by regulations. The Rules Committee on 31st May 2019 published the Judicature (Fundamental and other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019,¹⁰ which provides for the procedure for filing human rights suits as being through a Notice of Motion supported by an affidavit.¹¹ This clears the issue of procedure that has dogged human rights enforcement suits for long.

Section 5 of the Act provides for enforcement of human rights by magistrates courts. This shall be in all cases not listed in section 4. Applications before magistrates courts need not be only in English, but rather in any language, and not even need to be in writing at all as they can be made orally. However, if the

10 SI No 31 of 2019.

11 Above, clause 7(1).

application is made orally or in a language rather than English, the magistrate is required to reduce it into writing in English. These provisions widen the accessibility of the magistrates' courts for the enforcement of human rights by ordinary persons.



The Act has a broad provision on standing, allowing for cases to be instituted by a person acting on behalf of another person who cannot act in their own name;



Section 6 contains general provisions on suits for human rights enforcement including which courts have geographical jurisdiction, which persons to sue, provision for amicus curiae, removing the requirement for statutory notice in human rights cases, and insisting on substantial justice rather than

technicalities. On geographical jurisdiction, the Act requires suits to be filed in courts where the violation allegedly occurred, but also limits this to 'where possible indicating that where it is not possible, a suit can be filed anywhere.'¹² On who to sue, the Act provides that one may join two or more persons if one is in doubt about the person from whom they are entitled to obtain redress.¹³ The court is then to determine which person is liable for the violation. Amicus curiae can apply to be part of the case or can be invited by the court itself.¹⁴ This firmly establishes the practice of amicus curiae into Uganda's human rights jurisprudence. Statutory notice is no longer a requirement for suits under the Act,¹⁵ and this makes such suits easier to file and enables redress to be obtained as soon as possible. Finally, no suit shall be rejected or dismissed merely on the basis of failure to comply with any procedure, form or on any technicality.¹⁶ This is reminiscent of Article 126(2)(e) of the Constitution that requires justice to be done without undue regard to technicalities.

Section 7 provides for referral to the High Court in case a question concerning violation of human rights emerges in proceedings before a magistrate's court. The court is required to stay proceedings,¹⁷ and refer the question as to the violation of a fundamental

12 Above, section 6(1).

13 Section 6(2).

14 Section 6(

15 Section 6(4).

16 Section 6(5).

17 Section 7(2).

human right or freedom to the High Court for determination.¹⁸ The High Court has to determine the reference within 90 days.¹⁹

Section 8 provides for what happens when a matter of human rights enforcement arises in proceedings before the High Court. The judge has to immediately stay proceedings and determine the question on violation of human rights.²⁰ Where the matter arose in criminal proceedings, the court may grant bail to the accused person.²¹

Section 9 provides for a wide range of orders that can be made when a court finds that a fundamental right or freedom has been violated, unlawfully denied or should be enforced.²² This departs greatly from the general language of Article 50(1) of the Constitution which refers to redress generally and only mentions compensation. The court may order for restitution of the victim to their original position before the violations occurred; rehabilitation of the victim including medical and psychological care; or satisfaction, which may include measures aimed at cessation of a continuing violation, public apology, guarantees of non-repetition and judicial and administrative sanctions among others.²³ The Act provides that any payment ordered shall be a civil debt owed to the victim of the human rights violation.²⁴

18 Section 7(1).
19 Section 7(5).
20 Section 8(1).
21 Section 8(2).
22 Section 9.
23 Section 9(2).
24 Section 9(3).

Compliance with orders made under the Act is required within 6 months, unless they have been appealed against.²⁵ Thus the Act introduces new weapons available to the judiciary to ensure that appropriate redress is given and that decisions are complied with.²⁶

Section 10 contains one of the most progressive provisions of the Act. This allows for a public official to be held personally liable for a violation along with holding the state vicariously liable.²⁷

Section 10 contains one of the most progressive provisions of the Act. This allows for a public official to be held personally liable for a violation along with holding the state vicariously liable.

The public official or officials, held to be liable for the human rights violation, can be ordered to pay a portion of the compensation or restitution where this is awarded.²⁸ This

25 Section 9(4).

26 See A Ochieng 'The Human Rights (Enforcement) Act of Uganda: a practical tool for the Judicial enforcement of Human Rights' <https://www.commonwealthlawyers.com/africa/the-human-rights-enforcement-act-of-uganda-a-practical-tool-for-the-judicial-enforcement-of-human-rights-by-ochieng-augustine/> (accessed 9 November 2020).

27 Section 10(1).

28 Section 10(2).

means that in cases where government employees infringe upon the human rights of a person, they can be sued in their personal capacity so that they are accountable for the violations done. Furthermore, the state can also be sued at the same time through the Attorney General so that it shares in the liability towards the aggrieved person.

Section 11 makes derogation from human rights a criminal offence,²⁹ punishable with imprisonment not exceeding 15 years.³⁰ Any person who breaches a non-derogable right may have criminal proceedings initiated against them.³¹ This can be done by the Director of Public Prosecutions or by private persons through a complaint on oath, making it easier to act when the state does not act. Defects in the charge or complaint may not invalidate such charge or complaint.³² In criminal proceedings, where it comes to light that an accused person's non-derogable rights and freedoms have been infringed upon, the presiding judicial officer has to declare the trial a nullity and acquit the accused person.³³

Section 12 concerns compliance with orders of the court. Court orders have to be complied with within the timelines set by the court, except for monetary awards.³⁴ Monetary awards are to be complied with within a 'reasonable time.'³⁵ Although

29 Section 11(1).

30 Section 11(6).

31 Section 11(2).

32 Above, section 11(5).

33 Section 11(1) & (2).

34 Section 12(1).

35 Section 12(2).

this still leaves the state with the discretion as to when to pay, it is no longer possible for the state to take too long. An application can be made to court for summons to be issued against a person who has failed to comply with a court order within the prescribed time.³⁶ Such a person is to show cause as to why they are not to be committed to prison for contempt of court.³⁷ The Court can make any orders it considers appropriate in order to ensure that its orders are complied with.

Section 13 makes the requirement for progressive realisation of human rights. A person who believes that certain rights are not being progressively realised may petition the High Court for redress.³⁸ If the court finds that a specific right cannot be immediately realised due to resource constraints, it can order the state to take 'measurable steps' for progressive realisation of that right or freedom.³⁹ The Government is to report to Parliament on steps taken in this regard on an annual basis.⁴⁰ The concept of progressive realisation of human rights commonly applies to economic, social and cultural rights, as states usually use lack of resources to deny people these rights. This provision now gives power to citizens to make demands that such rights be progressively realised, and the state must show commitment to this.

36 Section 12(3).
 37 As above.
 38 Section 13(1).
 39 Section 13(2).
 40 Sec 13(2) & (3).

Section 14 strips away immunity from prosecution to persons violating human rights, as it declares that immunity shall not be used as a defence for proceedings commenced under the Act.⁴¹ Only the President remains immune.⁴² Any persons with immunity under any law who are found by a court to have violated a right or a freedom guaranteed under chapter 4 of the Constitution automatically lose that immunity.⁴³ Stripping of immunity makes the person liable for acts of omissions done in the course of duty.⁴⁴

A finding that a person committed a human rights violation when such person has been removed from office for misbehavior or misconduct will lead to removal or dismissal from office.⁴⁵

The Court can make any orders it considers appropriate in order to ensure that its orders are complied with.

Section 15 allows a person who believes that a person is being unreasonably detained to petition the High Court for the unconditional release of the person whom they believe are being detained unreasonably.⁴⁶ Persons who can apply for authorisation to release include

41 Section 14(1).
 42 Above.
 43 Section 14(2).
 44 Section 14(3).
 45 Section 14(4).
 46 Section 15(1).

persons in charge of detention facilities.⁴⁷ The Act defines 'unreasonable detention' to include detention beyond 48 hours after arrest without being brought before a competent court, or long term detention on remand, or where the procedure leading to detention was unlawful or irregular, or such person's fundamental rights have been violated, or where their continued detention constitutes a miscarriage of justice.⁴⁸ Detaining persons unreasonably beyond 48 hours or through an unlawful or irregular procedure or violating a detained person's non derogable rights is an offence, punishable with up to five years.⁴⁹ Refusing to receive a court release order, ignoring it or after receiving it, doing any act that defeats the purpose of that order is an offence.⁵⁰ The offence attracts up to ten years imprisonment.⁵¹ This provision is likely to lead to decongestion of prisons and a reduction in human rights violations while in detention as well as impunity among police and prisons officers.

Part III - Miscellaneous

This is the last part of the Bill and it contains sections 16 – 20.

Section 16 provides for the appeal procedure. Appeals can be made up to the Supreme Court.⁵² Appeals have to be decided within three months, and for that purpose may suspend any other matter before it.⁵³ This

47 Section 15(2).
 48 Section 14(4).
 49 Section 15(9).
 50 Section 15(6).
 51 Section 15(8).
 52 Section 16(1).
 53 Section 16(2).

gives priority to human rights appeals, which have hitherto been treated like any other appeals and have been delaying before the courts.

Section 17 makes the Civil Procedure Act Cap. 71 and the rules made under it to apply to human rights enforcement cases with the necessary modifications.⁵⁴ Section 18 empowers the Rules Committee to make rules to give effect to the provisions of the Act, including matters such as rules of evidence and procedure, summoning of witnesses, admission of amicus curiae, prescription of fees and costs, serving of applications under the Act, content of applications, hearing of applications, and withdrawal of applications.⁵⁵

Section 19 provides for ten years as the limitation period within which human rights enforcement actions may be brought.⁵⁶ The court may however allow actions to be brought if it is satisfied that the victim was unable to bring the action within the prescribed time. The Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 does not apply to cases brought under the Act.⁵⁷

Finally section 20 makes transitional arrangements for cases on human rights enforcement pending before any other court at the time that the Act came into force. These had to be transferred to the High Court if they had not been heard by the time the Act came into force.

Analysis of the HREA and its efficacy in the fight against impunity and human rights abuses

The overall design and structure of the HREA makes it clear that it is intended to simplify and expedite justice to victims of human rights violations. It is a progressive step toward creating checks and balances on the power of state officials and promotes a culture of transparency, accountability and respect for human rights. The Act furthermore strengthens the role of the courts in enforcing human rights by allowing strict procedures to be relaxed in favour of ensuring that human rights violations are addressed.

54 Section 17.

55 Section 18(1) & (2).

56 Section 19(1).

57 Section 19(2).

The HREA is believed to be a new dawn for the enforcement and realisation of human rights of all, particularly for those within society who are most vulnerable to suffer violations. We call upon human rights lawyers, civil society organisations and lawyers in private practice to actively enforce the Act and to collectively work towards ending the culture of impunity for human rights violations.

The HREA joins a number of other recent laws that have made private prosecution for human rights violations as well as individual responsibility for human rights violations possible. Most notable among these is the Prevention and Control of Torture Act, 2012. *In Human Rights Trumpet & 2 Others v Assan Kasingye & 5 others*,⁵⁸ Mutonyi J found the various public officers personally liable for the violation of human rights of persons that had been arrested arbitrarily and tortured while under police custody. She relied on Articles 29 (1) (d) and 221 of the Constitution to opine that;

'Whereas waiting for orders from above or acting on the instructions from above may be acceptable and applicable in reference to routine administrative functions within the Ugandan Police force and other security agencies or forces, it is archaic, unacceptable and extraneous in the modern constitutional and human rights regime where states and their agencies are mandated by the constitution to observe, uphold, protect and promote the universal human rights of the citizens. Any officer who violates the rights of citizens on orders from above or under the pretext that he or she was waiting for orders from above does so at his own peril.'

She further relied on Articles 27(3) and Article 50 (1) to hold that the individual public officers were to personally compensate the aggrieved persons

58 Rights Trumpet & 2 Others v AIGP Assan Kasingye & 5 Others AND Mucunguzi Abel & 9 Others v Attorney General & 2 Others (consolidated miscellaneous cause no. 17 & 3 of 2017) [2020] UGHC 42 (15 May 2020);

whose rights had been violated. She held that

'If the Uganda Judiciary is to remain relevant, it has to rise to the occasion and reclaim its mantle by accepting its responsibility for the maintenance of the rule of law that embraces the willingness to check executive action by awarding general damages as against the Attorney General who represents the state and all its reckless or incompetent staff and punitive damages against individuals who deliberately behave in a manner that violates the human rights and freedoms of other individuals in the course of performing their duties. One of the main functions of the court is to ensure that the executive arm of Government which is responsible for enforcement of the written law, as the Police in this case which is responsible for arrests and detention exercises its mandate responsibly before, during and after the arrest.'

The Act is thus an additional weapon in the arsenal of human rights defenders to bring violators to book. Since the judiciary has shown willingness to uphold rights, human rights activists ought to use this framework to bring cases before the courts, and ensure that they are enforced.

Not all that glitters is gold: Existing loopholes within the HREA that are likely to undermine its effectiveness.

The HREA has a few provisions that tend to act in a claw back manner in as far as they relate to the guarantees given under the Act. For example, Section 9(4) provides that any order made under the Act shall be complied with, within six months from the date of determination, unless appealed against. However, section 12(2) excludes monetary awards from the six month compliance rule, and instead requires them to be complied with within 'a reasonable time.' This provides a lot of lee way for the state to delay in paying victims. All awards

ought to be complied within a specific time.

The Act under section.13 makes provision for progressive realisation of human rights, but does not emphasise immediate obligations that attach to all rights, including social economic and cultural rights. In as much as it allows for applying to the court seeking redress in cases of delayed realisation, this stance is then watered down by imploring the courts to provide for progressive realisation. According to the Office of the High Commissioner for Human Rights (OHCHR)

*'Even though states may realise economic, social and cultural rights progressively, they must also take immediate action, irrespective of the resources they have, in five areas: elimination of discrimination; economic, social and cultural rights not subject to progressive realisation; obligation to "take steps"; non-retrogressive measures; and minimum core obligations.'*⁵⁹

The courts should not allow states to use the concept of progressive realisation as an excuse to shun away from their obligation to respect, fulfill and protect the human rights of its citizens. Such a provision is prone to being abused.

Conclusion.

The HREA is a much welcome addition to the human rights framework in Uganda. Its provisions are largely positive and generally progressive. The few loopholes could have the effect of limiting its effectiveness, but for now it is still too early to tell. It gives a lot of powers to human rights defenders who wish to use it. It will remain a piece of paper, if no ones cares to employ it to protect the rights of all persons particularly marginalised persons.

⁵⁹ Office of the High Commissioner for Human Rights 'Key concepts on ESCRs - What are the obligations of States on economic, social and cultural rights?' <https://www.ohchr.org/en/issues/escr/pages/whataretheobligationsofstatesonescr.aspx> (Accessed on 26 August 2020)

ANALYSIS

The impact of the Human Rights (Enforcement) Act on the future of Public Interest Litigation in Uganda

By Michael Aboneka



Coordinator of African Governance Architecture-Uganda at Action Aid International; Partner at Thomas & Michael Advocates; Dip, Legal Practice, Law Development Centre; LLB, UCU.

Introduction.

The Human Rights (Enforcement) Act, 2019 (HREA) came into force in November 2019 after its assent on 31st March 2019.¹ The purpose of this legislation 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. Article 50(1) of the Constitution provides that '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'. Further, Article 50(4) enjoined Parliament to make laws for the enforcement of the rights and freedoms under Chapter Four of the Constitution. It therefore means that the HREA was intended to provide a framework in which one can seek redress when their rights have been violated or threatened. The advocacy to have this piece of legislation adopted was spearheaded by various human rights advocacy agencies and one can say, this is one of their successes.

1 'Gov't gazettes Human Rights Enforcement Act' The Independent 5th December 2019. Available at <https://www.independent.co.ug/govt-gazettes-human-rights-enforcement-act/> (Accessed 18th May 2020).

Influence of the HREA on the future of public interest litigation in Uganda.

Public Interest Litigation (PIL) in Uganda has continued to grow over the past decade as many individuals and organisations have sought court redress for the violations of their personal rights as well as for the furtherance of public interest or the general good. The practice has always been one of general application of the Civil Procedure Act² and Rules³ in filing Constitutional Petitions to the Constitutional Court for interpretation of the Constitution and seeking remedies for violations and infringement of rights as well as the High Court level.

The advocacy to have this piece of legislation adopted was spearheaded by various human rights advocacy agencies and one can say, this is one of their successes.

This new piece of legislation influences the future of Public Interest Litigation in Uganda in various ways as discussed below.

Any person can now bring an action to court.

The HREA expressly solves the issue of locus standi (standing) especially in human rights litigation where it provides that any person or

2 Cap 71

3 SI-1-71

organisation can bring an action to court where there is a claim of violation or threat to any human rights as enshrined in Chapter Four of the Constitution.⁴ The key words here are ‘any person or organisation’, which means that the person, association or organisation filing the case need not to have suffered the loss of any right for them to bring an action. Any person or organisation that sees any violation or threat of a right is entitled to bring a claim. Further, Section 3(2) provides that:

“

Court proceedings under subsection (1) may be instituted by 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 of its members.’

”

This widens the scope of Public Interest Litigation to human rights organisations and interested individuals to bring actions in court against any violators of human rights. Article 50(1) of the Constitution was problematic as it only provided locus standi (standing) to any person and not an organisation. This provision resulted in long debates in Court and it was up to a judicial officer to make their own interpretation of whether an organisation and other third parties can have locus to bring an action on behalf of others.⁵ Much as courts have progressively accepted organisations to bring actions, this has been on a case by case basis but the new law now expressly provides for ‘any persons or organisations’ to bring a case meaning that the scope of locus standi has been widened and the laborious legal arguments on whether organisations and other third parties can bring an action on behalf of the victims has also been resolved.

4 Section 3(1) of the HREA.

5 See for example *Kikungwe Issa and Ors v Standard Bank Investment Corporation and three others* HCCS 0394 and HCCS 395 of 2014. In this case, Justice Kiryabwire considered the question of who may commence an action for enforcement of fundamental rights and freedoms under Article 50 of the Constitution. He held that the Applicant must show that he or she is not a mere busy body and should first exhaust other remedies available before coming to court.

Provision for individual liability/responsibility.

Most legal actions in enforcing human rights have been against the Attorney General who is the legal representative of government. One could not directly sue a Police officer or any public officer for violation of rights as it was always argued that these officers were carrying delegated mandates from the state and as such, the Attorney General’s chambers was always overwhelmed by suits against it. Section 10(1) of the HREA provides that:

‘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.’

Further, Section 10(2) provides that if a competent court awards any form of compensation against any public body, the officer who occasioned that loss shall contribute to the award. This provision is aimed at deterrence: public officers who before the coming into force of the HREA wantonly abused rights of individuals in the name of ‘order from above’ no longer possess that luxury. Public officers now have to bear in mind that a suit can be brought against them in their individual capacity and that they will suffer the consequences, even for actions occasioned while carrying out official duties or orders.

Reduction of laborious adversarial court processes.

One of the things that drives the public away from courts is the adversarial, technical nature of courts. The strictness of rules, timelines and documents has made many forego seeking justice before courts of law. Much as procedure and formalities are important in legal practice, litigation in the public interest and enforcement of human rights is a unique field of operation. Many victims cannot afford legal representation and even when they try to do it on their own, they run a high risk of breaching the procedures.

The new law has made accessing courts to address human rights violations easy. Section 6 provides for joining of multiple parties if one is not sure which is liable. The Act also provides for the joining of an expert as a friend of court,⁶ waiver of Statutory Notice against government⁷ and further enjoins the court not to dismiss any suit for failure of parties to comply with any procedure, technicality or form. This therefore means that courts are to relax their rules and pay attention more to the substance of the case especially those suits filed by individuals who have no backing of legal knowledge or representation. It has always been practice for desperate defendants or respondents to rely on technicalities as their only defence with the aim of defeating justice. The law now expressly enjoins a judicial officer to pay attention to the substance of the case ahead of considering compliance with technicalities which is a progressive step in attainment and enforcement of human rights in Uganda.

Comprehensive court awards orders.

Apart from courts taking long to deliver judgments and award remedies, the bigger problem

6 Section 6(3).

7 Section 6(4). Statutory Notice is notice required to inform government of an intended suit against it, delivered 45 days before filing, in order to give the government sufficient time to respond. This is a requirement of section 2(1) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72. The requirement of serving Statutory Notice would typically make PIL more adversarial and complicate the process.

has always been realisation of the awards from Government. At the beginning of 2020, government's outstanding court awards stood at a total of UGX 545 billion and the Attorney General claims that the funds to cover the full amount of these awards are not available.⁸ This has defeated the principle that justice should not be delayed as some litigants have even died before receiving their full compensation from Government.⁹ Further, government court awards have always been taxpayers' money being wasted because of individuals' acts. With the HREA now in force, this will no longer be the case, or at least it will reduce greatly as individuals now have to pay for their actions.¹⁰ The compensation orders have to be complied with within six (6) months unless there is a pending appeal.¹¹

Many victims cannot afford legal representation and even when they try to do it on their own, they run a high risk of breaching the procedures.

8 The Parliament of Uganda 'Attorney General calls for increased staffing' 16th January 2020 <https://www.parliament.go.ug/news/3963/attorney-general-calls-increased-staffing> (Accessed 24th June 2020).

9 'Kicwamba massacre: 20 years later survivors await government compensation' New Vision 12th June 2018 <https://www.newvision.co.ug/news/1479561/kicwamba-massacre-survivors-await-government-compensation> (Accessed 24th June 2020).

10 Sect 9(3).

11 Sec 9(4).

The new law therefore provides for compensation to the victims as one of the orders the court may grant.¹² Further, the court may make additional orders to provide for restitution of the victim to the state they were in before the violation.¹³ This is progressive as the law expressly describes the nature of available compensation and does not merely leave the nature of compensation to the discretion of court only. The court may also grant other orders such as rehabilitation of the person 'including medical and psychological care.'¹⁴

The law further provides for a unique category of award referred to as 'satisfaction' which includes measures aimed at the cessation of the continuing violation of human rights and freedoms; verification of the facts, 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 and others; restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; criminal and other judicial and administrative sanctions against persons liable for the violations; and guarantees of non-repetition.¹⁵ This gives a wide scope of remedies that are available to the victims and makes PIL

12 Sec 9.

13 This means that the victim is compensated in such a manner as to place them back in the state in which they were before the violation.

14 Sec 9(2)(b).

15 Sec 9(c).



Source: NBC News (Concerns-over-ugandas-anti-gay-bill)

against human rights violations a more worthwhile venture.

Human rights to take precedence in any court proceedings.

The new law provides that human rights will take precedence in any proceedings of court. Section 8 provides that where 'in any proceeding in the High Court, a question arises as to the violation of a fundamental right or freedom, the presiding judge shall immediately stay the proceedings and determine the question raised'. In addition, the High Court may in case of a criminal trial, upon staying the proceedings, grant bail to the accused person. This section introduces priority of human rights in trials as one can raise it at any time during the proceedings and the presiding judge is enjoined to stay all

other processes and entertain the question on any violation of any human rights. Further, this section introduces a new form of mandatory bail should the accused person prove to court any violation of their rights such as torture.¹⁶ This is a progressive provision as it empowers courts to determine human rights-related issues first and facilitates the struggle to protect human rights at whatever level and cost.

Provision of private prosecution over violation of human rights and fundamental freedoms.

The HREA under section 11 creates an offence for any person who violates any non-derogable right under the Constitution and empowers

¹⁶ Sec 8(2).

courts to make inquiry into the violation of an accused person's rights.¹⁷ If the court determines that there is indeed a violation of these rights, the court shall declare the trial a nullity and acquit the accused person.¹⁸ Further, the person who violated these non-derogable rights will be prosecuted either by the Directorate of Public Prosecutions (DPP) or a private individual and the proceedings of the private individual shall be affected by the defects of a charge and other criminal procedural issues.¹⁹ This therefore empowers any other person who is not the DPP to prosecute any individual who violates the non-derogable rights of a victim. If found

¹⁷ Sec 11(1) & (2).

¹⁸ Sec 11(2).

¹⁹ Sec 11(3) & (4).

guilty, the perpetrator would suffer imprisonment not exceeding 15 years.²⁰

Government accountability in the progressive realisation of rights and freedoms.

The Act under section 13 empowers any person who has reason to believe that the state is not taking adequate steps for the progressive realisation of rights and freedoms guaranteed under Chapter Four of the Constitution or international treaties to which the state is a party to apply to the High Court for redress.²¹ Further, if the court finds that a specific right or freedom cannot be realised due to resource constraints, the competent court shall order Government to take measurable steps for the progressive realisation of that right or freedom.²² Further, the Government must annually report to Parliament on the steps taken to progressively realise rights and freedoms as required by the court in the above.²³ This section empowers all individuals and human rights advocates and organisations to hold government accountable in retaliation of rights and freedoms of individuals. This gives the right premise/locus for anyone to hold government accountable for the realisation of recognised socio-economic rights.

Unconditional release of persons unreasonably detained.

The HREA specifically provides for procedures of releasing persons unreasonably detained contrary to Articles 28, 29 and 44 of the Constitution. One of the challenges to applications of unconditional release of individuals in unlawful detention centers has been the relationship between the Applicant and the person swearing the affidavit on their behalf. There have always been technical arguments on this footing. However, this law now empowers any person who has reason to believe that another person is being unreasonably detained to petition the High Court for the unconditional release of such a person.²⁴ Further, the law enjoins a person in charge of a prison,

police station or any other gazetted detention facility where he or she has reason to believe that a person in that prison, police station or detention facility is unreasonably being detained to release or apply to the competent court or any other authority for authorisation to release that person from detention.²⁵

Unlawful detention of persons is a common violation of rights of persons²⁶ and this section empowers any person to petition court for redress regardless of their relationship but all in the interest of promotion and protection of human rights.

3. Conclusion.

The law in place sets a good precedent for promotion and enforcement of human rights and there is therefore need for orientation of the same to all actors, both state and non-state, to increase their awareness and later application. Much as the law is progressive for the future of PIL, there are some shortcomings especially in practice that need to be addressed. For example, most security agents do not have or do not display name tags and it would be difficult for an individual to try to identify the perpetrator so as to hold them liable under the Act. Police officers and other agencies of government also need to be oriented about this law in order to achieve the purpose of deterrence of human rights violations.

20 Sec 11(6).

21 Sec 13(1).

22 Sec 13(2).

23 Sec 13(3).

24 Sec 15(1).

25 Sec 15(2).

26 See Mugwanya Patrick v Attorney General High Court Civil Suit No. 154 of 2009.

COMMENTARY



Will the Human Rights (Enforcement) Act mean new levels of justice for marginalised persons in Uganda?

By Herbert Ayesiga

Introduction.

President Y.K Museveni signed the Human Rights (Enforcement) Act, 2019 (HREA) into law on 31st March 2019. The new law is a good step in Uganda where human rights are under threat, especially for the case of marginalised persons. The HREA gives effect to article 50(4) of the Constitution by providing for the procedure of enforcing human rights. Additionally, it provides for: enforcement of rights and freedoms by the High Court, enforcement of rights and freedoms by magistrate courts, general provisions on human rights suits, personal liability for infringement of rights and freedoms, progressive realisation of rights and freedoms, loss of immunity from prosecution, and unconditional release of persons unreasonably detained

The new law is aimed at ensuring that the human rights listed in the Constitution are respected and that there are consequences when they are not. But will new law favour the marginalised persons in Uganda and, if so, how?

The HREA and marginalised groups.

The HREA provides for a procedure to enforce rights under chapter four of the Constitution. This Act can therefore be of help to marginalised groups especially LGBTIQ persons and sex workers who are highly stigmatised, discriminated and threatened because of their sexual orientation and gender identity and also on the basis of the

kind of work that they do. Many LGBTIQ persons and sex workers in Uganda have been arrested for no reason.¹ They are also often tortured, beaten and violated by public officers when being arrested, while in Police custody and prison and at the end of the day they would not report the violations they had suffered because the public officers are protected by the state.² The HREA can provide a shield of protection to marginalised persons in Uganda whose rights have been violated by public officers.

The HREA provides that any 'public officer' who, alone or with others, violates or participates in violating someone's rights or freedoms 'shall be held personally liable for the violation', even if the state is vicariously liable for his or her actions.

Following on from this, if the court orders compensation or any other form of restitution to a victim of human rights violations, any public officer found to have personally violated those rights 'shall pay a portion of the compensation or restitution' as ordered by the court and could also be dismissed from their position.

1 See for example, Human Rights Awareness and Promotion Forum (HRAPF) The Uganda report of human rights violations based on sexual orientation and gender identity 2018* (2019) 26 and Human Rights Awareness and Promotion Forum (HRAPF) 2018 Report on the protection and violation of human rights of sex workers in Uganda (2019) 7.

2 Human Rights Awareness and Promotion Forum (HRAPF) 2018 Report on the protection and violation of human rights of sex workers in Uganda (2019) 20.



Photo Credit: Dai Kurokawa/EPA
Source: Irish Times

Following up on the role of the state where monetary restitution orders are made against it by the court, the law says that the state must take all reasonable steps to comply with these orders, and that where the order is not satisfied within the prescribed time, the victim of the human rights violation 'or any other person' may apply to court for summons against the person who should pay the restitution to show why he or she 'should not be committed to civil prison for contempt of court'. This provision can work to the benefit of LGBTIQ persons and sex workers as it could mean that Police officers will refrain from inflicting violence on them on the basis of their sexual orientation, their status as sex workers or the way they express their gender identity.

However, such provisions could also lead to a greater level of animosity between marginalised groups and law enforcement officials as they would see efforts at enforcing court awards as a way the LGBTIQ community or sex

workers are getting back at them. It is thus important to keep sensitising the law enforcement officials about the rights of marginalised persons while also sensitising them about the new law.

The HREA can provide a shield of protection to marginalised persons in Uganda whose rights have been violated by public officers.

Conclusion.

The HREA has been passed and operationalised, however it is yet to be enthusiastically employed by marginalised persons who often face human rights violations at the hands of law enforcement officers and other public officials. There is need to sensitise marginalised groups on the Act to ensure that they know about the existence of the Act and the potential that it holds in vindicating their rights.

ANALYSIS

Non-state actors' liability under the Human Rights (Enforcement) Act: Is it the way forward?

By Joel Basoga



Associate at Cristal Advocates; Joel holds a BCL (Masters) from Jesus College, University of Oxford, an LL.B. from Uganda Christian University and a Post Graduate Diploma in Legal Practice from the Law Development Centre.

Introduction.

While Uganda is still ranked low (97th in the world) on the Human Freedom Index,¹ the enactment of the Human Rights (Enforcement) Act 2019 (HREA)² has promised a much better future for enforcement and protection of human rights. The HREA provides for a mechanism of enforcement of the Bill of Rights³ and should be applauded for its detailed procedural framework, however, some have argued that it is not elaborate enough on specific issues. One such criticism is leveled against its silence on personal liability for non-state actors. The HREA does not explicitly recognise the personal liability of non-state actors for human rights violations, even though it does not exclude this possibility. This taps into the global debate surrounding the status of non-state actors in human rights law. This article will discuss first, the ever-increasing role of non-state actors in committing human rights violations. Second, it will consider the lack of an express provision on non-state actors' liability in the HREA and its supposed impact on the enforcement of the Act.

1 Fraser Institute The Human Freedom Index, 10, available at <https://www.fraserinstitute.org/studies/human-freedom-index-2019> (Accessed 1 April 2020).

2 The Human Rights (Enforcement) Act, 2019.

3 Chapter 4, the 1995 Uganda Constitution, which provides for the Bill of rights of citizens of Uganda.

Third, it will draw from the debate at the level of international human rights law which argues for adaptation of the human rights regime to ensure accountability of non-state actors. Finally, the Article will propose that going forward, an express provision providing for liability of non-state actors is the best option, as it will add to consistency and predictability in the law which in turn will increase the respect for human rights in Uganda.

The ever-increasing role of non-state actors in the commission of human rights violations.

There is increasing responsibility of individuals and informal groups for human rights violations committed at a global level. Further, the rise of multi-national corporations, organisations, and paramilitary groups make imminent the question of liability for non-state actors for human rights violations.⁴ For instance, there has been controversy over the involuntary displacement of communities in western Uganda to pave way for the construction of the oil processing facility in Buliisa District. These oil fields which are operated by multinational corporations (Tullow Uganda Operations Pty Limited (TUOP), Total E & P Uganda B.V (TEPU) and CNOOC Uganda Ltd (CUL) and are now subject to human rights litigation and compensation claims.⁵ These

4 United Nations General Assembly, Sixty-fifth session, Item 69 (b) of the provisional agenda, Report of the Special Rapporteur on the situation of human rights defenders, 3.

5 P Epodoi 'Oil Companies and Land Owners Turf Wars in the Albertine Graben- Are the Answers in France?' CueAfrica 20 February 2020.

<https://www.cueafrica.net/2020/02/20/oil-companies-and-land-owners-turf-wars-in-the-albertine-graben-are-the-answers-in-france/> (Accessed on 1 April 2020).

and several acts by private individuals and paramilitary groups make the omission of an express provision providing for liability for non-state actors in the HREA, worth re-examining. The Ugandan Courts have held non-state actors liable for human rights violations on different occasions. For instance, in 2010, Justice VF. Musoke Kibuuka in *Kasha Jacqueline and others v Rollingstone Limited*,⁶ found a private newspaper liable for damages arising from a publication that threatened the applicants' human rights and dignity. Rolling stone Limited, a private company (non-state actor) was held liable for threatening human rights. Notwithstanding similar decisions holding non-state actors liable, this issue is important to clarify in the context of Uganda's evolving regime on the enforcement of human rights.

The fundamental questions that follow are: do we need an express provision providing for non-state actors' liability for human rights violations in the HREA? What are the consequences of not having such a provision in the HREA? What does it mean for victims? Should the legal protection mention the widest extent possible of locus standi to all parties?

⁶ *Kasha Jacqueline and Others v Rollingstone Limited* Misc. Cause No. 163 2010.

The current state of the law and its inadequacy in ensuring remedies for human rights violations committed by non-state actors.

Ugandan laws recognise that one may institute an action before a competent court when their human rights are threatened or violated. Article 50 of the Constitution provides that any person can apply to a competent court for redress if they allege that a right is infringed or threatened. Similarly, in the HREA, any person who alleges that their rights have been infringed or threatened may apply for redress to a competent court in accordance with the Act. Most human rights claims for redress have been brought under article 50, which is replicated in section 3(1) of the HREA.

Despite these apparently progressive provisions, they do not expressly specify the scope of persons against whom these claims can be brought. Although one can argue that open-ended provisions enable a wider enforcement regime for rights, such ambiguous provisions could also be strictly interpreted to deny victims of human rights violations an opportunity to successfully pursue their claims against non-state actors.

Although section 10 of the HREA provides for personal liability of perpetrators for infringement of rights and freedoms, it only states this in as far as it relates to public

officers who, individually or in association with others, violate or participate in the violation of a person's rights or freedoms. It does not address non-state actors who are not affiliated with the government or public authorities. Even though the court may interpret the HREA to provide the broadest possible protection for victims of human rights violations, this is not explicit in the positive law.

Especially where there is a likelihood of derogation, the law should spell out expressly the extent of the obligations it imposes.

An express provision would add consistency and predictability to the law. It would minimise the risk of claims being struck out on ambiguous grounds. Further, it would encourage strategic litigation, since litigants would have an 'express' provision that they could now rely on to hold non-state actors personally liable. An added advantage of this is that it would reduce the strain on the courts to moot the question on liability of non-state actors.

As such, the HREA would benefit human rights lawyers more by expressly providing for the personal liability for non-state actors.

Even though the court may interpret the HREA to provide the broadest possible protection for victims of human rights violations, this is not explicit in the positive law.

Liability of non-state actors for human rights violations in the global context.

The Ugandan municipal regime on human rights is premised on international human rights law.⁷ Although the primary actors under international law were states, this position has since changed to accommodate and include non-state actors.⁸ Phillip Alston argues that as privatisation, outsourcing, and downsizing place ever more public or governmental functions into the hands of private actors, the human rights regime must adapt to the same if it is to maintain its relevance.⁹ It follows that human rights regimes, especially their procedural frameworks, should also recognise expressly the liability of non-state actors under the law.

The Preamble of the Universal Declaration of Human Rights (UDHR)¹⁰ creates an obligation on states to promote respect of human rights and freedoms, and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among other peoples of territories under their jurisdiction. This requires states to create an enabling framework for the enforcement of rights. Article 10 of the declaration on the Right and Responsibility of Individuals Groups and Organs of Society to promote and protect universally recognised human rights and fundamental freedoms, states that 'No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms', non-state actors are included and therefore have a responsibility to promote and respect the rights enshrined in the Declaration. If non-state

actors are required to respect rights within the international framework, then their liability for human rights violations should be expressly spelt out, especially under the HREA.

The need for an express provision on liability of non-state actors for human rights violations.

Providing for an express provision on the liability of non-state actors will help to mitigate and address non-state actors' non-compliance and arbitrary actions contrary to the Bill of Rights. In addition, some scholars have argued that the international human rights regime's aspiration to ensure the accountability of all major actors will be severely compromised in the years ahead if it does not succeed in devising a considerably more effective framework than currently exists in order to take adequate account of the roles played by some non-state actors.¹¹ If this is the trend, then this should be the case even under the provisions of the HREA on personal liability, especially in countries where individuals and private entities may perpetrate human rights violations. An express provision acknowledging these positive rights is preferable.



Conclusion.

Although the HREA provides a framework for protection of human rights, it omits an express provision outlining the liability of non-state actors for human rights violations. In my evaluation a complementary approach which acknowledges liability for both public and non-state actors would be a vital step towards better accountability and enforcement of human rights, this would also bring the HREA in line with international human rights law.

7 Art 45 of the 1995 Constitution of the Republic of Uganda acknowledges that the Bill of Rights set out in the Constitution shall not be regarded as excluding other rights not specifically mentioned. This can be interpreted to mean that the Bill of Rights operates within the International Human Rights System, especially considering that Uganda has ratified the major human rights instruments.

8 I Brownlie Principles of Public International Law (2008). United Kingdom: Oxford University Press.

9 P Alston Non-state Actors and Human Rights (2005) 289. Oxford University Press: United Kingdom.

10 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> (Accessed on 1 April 2020).

11 Alston (n 10 above) 299.

OPINION

In implementing the Human Rights Enforcement Act (2019), the procedural rules would frustrate the right to a speedy trial: A comment on Section 17 of the Act

By Martha Masiko



Martha Masiko is a Communications Associate at Human Rights Awareness and Promotion Forum.

Introduction.

The enactment of the Human Rights (Enforcement) Act hereafter HREA, is a watershed moment in the protection of human rights and is intended to ensure that violators of human rights are held to account in Uganda. It comes at a time when the Constitution of the Republic of Uganda 1995 and national legislation have been silent on the actual processes around the issue of securing judicial relief for the various human rights abuses. Over the course of the past fifteen years there has been considerable confusion and missteps by the authorities in passing rules to operationalise Article 50 of the Constitution.

The Rules were passed irregularly by the Rules Committee in 2008.¹ There has since been no clear route for filing a case for enforcing human rights. This confusion and lack of clear legal direction has been exacerbated by the backlog in the courts of law which has inevitably contributed to a delay in justice delivery to the victims.² This

1 Bukenya Church Ambrose vs Attorney General Constitutional Petition 26 of 2010.

2 See for example Abdalla Byabasaija v Major General Kale Kaihura & Attorney General Miscellaneous Cause No. 4 of 2010.

article argues that the new law, though a step in the right direction, does not effectively provide a solution to the long technical and bureaucratic procedures entailed in filing human rights cases which makes relief for human rights violations inaccessible to poor and vulnerable persons and also derails the right to a speedy trial. The Act suggests that applications should be filed by way of the Civil Procedure Rules which are technical in nature and may require the use of lawyers and fees which defeat the purpose of the Act which ostensibly is to enable a lay person whose rights have been infringed to access justice. Firstly, this article analyses the procedures to be followed when enforcing human rights and freedoms as provided for by the HREA. It shows that the HREA falls short of curbing the bureaucracies involved in awarding victims of human rights violations their desired remedies.

“

Over the course of the past fifteen years there has been considerable confusion and missteps by the authorities in passing rules to operationalise Article 50 of the Constitution.

”

Secondly, it evaluates the small claims procedure and its positive contribution toward the easy access to justice. This Article further juxtaposes the two procedures and provides exposition as to why the HREA could have been a better law had it addressed the issue of tedious procedures of filing a suit. The HREA does not effectively deal with the enforcement of an accused's right to a speedy trial with regard to the technicalities involved in bringing forth an application under the Act in the courts of law. To substantiate this position,

an exposition of the challenges in the implementation of the HREA is made, including analysing the inherent technicalities in the proposed procedure for enforcing human rights. Finally, proposals and recommendations are offered in order to ensure access to justice to all under the Act.

Background.

The Constitution of the Republic of Uganda (1995) provides for the enforcement of the rights of an individual who has suffered a violation.³ The Human Rights (Enforcement) Act, 2019 was enacted under the Constitution, to provide a procedural framework for the enforcement of human rights.⁴ Just like the Constitution, the HREA does not remedy the delay in justice caused by procedures in filing a case for the enforcement of human rights. It is ironic that the HREA provides that a case will not be dismissed merely on the basis of a party's failure to comply with a procedure or other technicality,⁵ and yet the procedure is technical itself.⁶

Article 50 of the Constitution of Uganda sets out an elaborate avenue for the protection of the fundamental and other human rights of Ugandans by allowing an individual to bring a claim for the enforcement of their own or another person or groups of persons' rights in the style of public interest litigation.⁷ The drafters of the Constitution

reiterate that the dual role of Article 50 is: first, to guarantee the protection, promotion and enjoyment of human rights and second to ensure that Uganda adheres to its human rights obligations.⁸ It should be noted, however, that the enforcement of fundamental and human rights extends from the substantive to the procedural aspects regarding a victim's right to a fair and speedy trial.

Given the nature of the rights contemplated to be protected through such an action, for example the right to liberty, the right not to have one's property appropriated without prompt, fair and prior compensation and the right to a fair hearing, it is imperative that the enforcement of such rights be timely. In fact, in some cases a delay in the protection of such rights may prove fatal or equally as egregious as the initial violation. It is therefore antithetical to the nature of fundamental rights to have an overly technical means of enforcement of these rights.

It is therefore antithetical to the nature of fundamental rights to have an overly technical means of enforcement of these rights.

The normative position.

The Constitution provides for various rights in the Bill of Rights such as: the right to a fair and speedy trial.⁹ A speedy trial can be defined as a trial conducted without unreasonable or undue delay by rules of procedure within a statutory period.¹⁰ A speedy trial basically is one that should award redress to a victim within time.

In Uganda, a person who claims that a right has been or may be infringed upon may apply on his own or on behalf of others for redress.¹¹ The HREA goes ahead to describe the process for enforcing a human right as one to be drawn from the Civil Procedure Act (CPA) with the necessary modifications. Despite this, the CPA and the Civil Procedure Rules (CPR) are very technical and impede a speedy trial.¹² According to the CPR, which provides the rules by which a suit is to be brought, a suit is filed by way of Notice of Motion.¹³ This involves drafting summons to defendants (notice of intention to sue), summons for settlement of issues (mediation summary), summons to the defendant to appear in person

3 Art 50.

4 Art 50(4).

5 Sec 6(5).

6 Sec 18.

7 Submission of Hon. Cecilia Ogwal in the Report of the Proceedings of Constituent Assembly, 1994 (CA Proceedings Report) 1809.

8 As above.

9 Art 8. (as enforced by Hon. Sekaana Musa in the case of *Kimpi Isabirye v Attorney General and Dr. Medard Bitekyerezo* Miscellaneous Cause No. 23 of 2017)

10 Merriam Webster online dictionary, available at <https://www.merriam-webster.com/legal/speedy%20trial> (accessed 13th June 2020).

11 Art 50 of the 1995 Constitution.

12 Sec 17 of the HREA.

13 Order 52 of the Civil Procedure Rules.



Source: Brookings Institute

and finally a summons summary suit in form of a plaint stating the brief facts of the case, cause of action and the remedies sought by the plaintiff. These same processes have been replicated in the Judicature (Fundamental and other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019,¹⁴ which provides for Notice of Motion supported by an affidavit.¹⁶

Although the HREA provides for admissibility of a suit without undue focus on technicalities,¹⁷ the pre-trial procedures are nevertheless very technical. In practice, these applications take a long time for the other party to get served, to reply to the summons and for the court to proceed to provide a hearing date for the application. The

14 SI No 31 of 2019.

16 Above, clause 7(1) and clause 9.

17 Section 6(5) of the Human Rights Enforcement Act (HREA).

procedure on paper seems easy, but the duration to which a complaint might be brought forth for redress is prolonged by the extensive paperwork involved. Notices of Motion are technical in nature, that is to say, they involve a certain jargon that may require the involvement of a lawyer. A Notice of Motion also requires court fees to be paid when an application is made. This may be an impediment to someone who may not be able to afford the court fees. If the intention of enforcing a human right is access to justice, the procedure should be as easy enough for a lay person to use without the expense of a lawyer and court fees.

Indeed, the HREA makes applications before magistrates courts to be simpler – as they can be made orally, but nevertheless they are required to be reduced into writing in the language of the court by the

magistrate and again subjected to the same procedure.¹⁸

For instance, in *Bandhua Mukti Morcha v Union of India & Ors.* the Supreme Court of India adopted a simpler way of bringing forth a complaint in order to promote access to justice.¹⁹ By writing a letter to the court, laborers were able to seek redress from inhuman and intolerable conditions. It was the judiciary who invented a new form of action to provide remedies to the sufferers of human rights violations, such as poor, underprivileged and downtrodden groups within the society.²⁰

It is imperative to look at other legislation in the context of judicial procedure in the imploration of redress and

18 Section 5 of the HREA.

19 (1997) 10 SCC 549.

20 As above.

compensation. For example, the Small Claims procedure offers a simple procedure that entails simply writing a claim of debt to the defendant and notifying the court of the same within seven days.²¹ This procedure does not require paying legal fees in instituting a claim against someone. A lay person can fill in a form and serve it to the defendant and write to court about it within seven days without necessarily involving a lawyer. The defendant then pays back the owed amount to the applicant upon receipt of the summons. When the defendant has no defence, he/she may write to the court to counter the claim within fourteen days.²² This simple process mitigates the possibility of backlog within courts that may be as a result of the more complex suit procedure. The small claims procedure, however, is limited to commercial transactions or claims that are commercial in nature, it does not extend to human rights matters. It would be therefore rational to implore a simpler procedure in bringing forth a case for human rights enforcement.

As earlier intimated, the HREA was enacted pursuant to Article 50(4) of the Constitution to provide a procedure for enforcing human rights.²³ This means that the civil suits' procedure of filing pleadings in the court registry is used. The act of seeking redress by way of application or a suit demands that the rules of service of the court process be followed which are long and technical. While all these steps show a move to ensure that human rights are enforced, they do not capture the need to do this speedily. The pre-trial process is tedious, involves a lawyer and court fees. This may be expensive for the poor and vulnerable persons that may not be able to afford the legal and court fees. This fails their need to access justice easily. The fact that the Civil Procedure Act is technical in nature may prevent a simple lay person from enforcing their human rights and freedoms which slows down the execution of justice. The pretrial process is lengthy and impedes a speedy trial. This goes to show that the HREA not only fails to pave the way for easy access to justice but also fails to offer remedies to vulnerable persons that cannot afford the bureaucratic process of filing an application.

.....

21 Sec 12 of the Judicature (small claims procedure) Rules.

22 Section 13 Of the Judicature (small claims) Procedure Rules.

23 Preamble of the Human Rights Enforcement Act.

Recommendations.

It would be desirable that a section on the procedure to be followed in the HREA incorporates simplicity in filing cases and requires no fees to be paid as a way of catering for the poor and vulnerable persons that may not be able to pay the fees. It is clear from the simplified procedure in the case of the Small Claims Procedure that it is possible to have a simplified process that ensures procedural fairness to all parties involved and this should be replicated for the enforcement of human rights. Secondly, a separate specialised division of court like the Anti-corruption Court, Industrial Court and the recently-created Water Crimes Court can be established to settle disputes that arise from human rights violations to reduce the existing backlog. This will in turn quicken the procedure and bureaucracy involved in enforcing human rights and freedoms and facilitate a speedy t

Conclusion.

The HREA (2019) inadequately deals with the bureaucracy that comes with filing a case for enforcement of human rights by way of suit as provided by the CPA. The enforcement of rights is not only measured against substantive violations that a court establishes and addresses at the end of a hearing but also by the procedure according to which a complaint is brought forward. The continued failure to provide for a simpler procedure will continue to frustrate the right to a speedy court process.

COMPARATIVE PERSPECTIVE

Enforcing human rights: Does Uganda's Human Rights (Enforcement) Act of 2019 set the gold standard?

By Anneke Meerkotter



Litigation Director, Southern Africa Litigation Centre (SALC)

Generally, a country's Constitution includes a chapter on fundamental rights and freedoms and the avenue for enforcing such rights. Sometimes the Constitution provides only the basic framework for the enforcement of rights, leaving it to either Parliament or the courts to determine how best to obtain redress for human rights violations.

The enforcement provision in Uganda's Constitution, for example, sets out four important parameters for approaching the courts in the case of human rights violations:¹

1. Where a right has been violated or threatened, one can apply to a court for redress;
2. Legal standing extends beyond the person or group of persons whose rights have been personally affected;
3. Redress can include compensation; and
4. Within the court process, there is an option of appeal.²

The Uganda Constitution requires Parliament to make laws for the enforcement of the rights and freedoms in the Bill of Rights. The resulting Human Rights (Enforcement) Act of 2019 (hereinafter referred to as the HREA), is remarkable in its efforts to facilitate access to justice for human rights violations. Most countries do not have a constitutional requirement that Parliament further elaborates on the enforcement provision in the Constitution. This has meant that courts are often left with the task of interpreting the enforcement provision without any guidance. The result has frequently been that human rights cases are rejected based on technicalities, lack of standing, or availability of other remedies.

Unlike the HREA, which seeks to facilitate litigation on human rights violations, courts in other jurisdictions within the Sub Saharan Africa region have been dealing with the right to approach the courts in cases of human rights violations, more as a luxury than a critical corollary of the human rights themselves. Some of the features of the HREA in comparison with the practices elsewhere in the region are discussed below.



The result has frequently been that human rights cases are rejected based on technicalities, lack of standing, or availability of other remedies.



1 Section 50, Constitution of Uganda, 1995.

2 Section 16, Human Rights (Enforcement) Act, Uganda, 1999.

Broadening the jurisdiction of courts to hear cases relating to rights violations

The HREA provides that both Magistrates' Courts and High Courts have jurisdiction in human rights cases.³ In many jurisdictions, only the High Court has jurisdiction in human rights cases,⁴ and even then, such matters must be determined by a panel of three judges.⁵ The resource constraints faced by most judiciaries in the region, make jurisdictional limitations harmful to the enforcement of human rights. The most restrictive requirements in constitutional issues are from the Malawi courts, where the Chief Justice must certify a matter before it even qualifies as a constitutional issue.⁶ This is in complete contrast to Uganda's HREA, which focuses on making access to justice a reality. Instead, Malawi has created an administrative hurdle to accessing justice for rights violations, which is entirely determined based on the discretion of the Chief Justice. This administrative function of the Chief Justice is exercised without hearing arguments from the parties, and although the rules require that the certification be done within seven days, it can often take months or years for

3 Sections 2, 4 and 5, Human Rights (Enforcement) Act, Uganda, 1999.

4 See for example, section 18, Constitution of Botswana, 1966; section 28, Constitution of Zambia, 1991; Basic Rights and Duties Enforcement Act, 1995, Tanzania.

5 Section 10, Basic Rights and Duties Enforcement Act, 1995, Tanzania. See also the practice in Eswatini, Malawi and Lesotho.

6 Order 19, Part 1, rule 2, Courts (High Court) (Civil Procedure) Rules, 2017, Malawi.

such certification to happen.⁷ Whether a case is certified as a constitutional matter is also heavily dependent on the rights violations complained of, resulting in different approaches to certification depending on the beliefs of the person holding the position of Chief Justice. Ideally, anyone approaching the courts should have the option to appeal if they are unhappy with the outcome. Uganda allows the possibility of appeal.

In some countries, the right to appeal is based on the High Court's discretion, and if the court deems a constitutional matter frivolous or vexatious, an appeal is not possible.⁸ This is quite restrictive since persons can usually only apply to the High Court in human rights matters in the first place. If subordinate courts also have jurisdiction to determine human rights abuses, it could provide redress for rights violations which might not otherwise be considered by the High Court.



Ideally, anyone approaching the courts should have the option to appeal if they are unhappy with the outcome. Uganda allows the possibility of appeal.

7 Order 19, Part 1, rule 2(3), Courts (High Court) (Civil Procedure) Rules, 2017, Malawi.

8 Section 28, Constitution of Zambia, 1991; section 14(2), Basic Rights and Duties Enforcement Act, 1995, Tanzania.

Substantive justice over procedural technicalities

The HREA emphasises substantive justice and provides for a flexible application procedure, including oral applications in any language, and the specific requirement that no suit be dismissed for procedural reasons or based on a technicality.⁹ Ultimately, what the HREA ostensibly seeks to facilitate, is a scenario where any person can approach the courts to seek redress for human rights violations. This is a critical element of the duty of the State and the courts to protect and enforce human rights. In many countries, human rights violations can only be claimed through applications following strict High Court rules which require experienced litigators to ensure formalities are met and are accompanied by restrictive legal fees which hinder access to justice.

In some countries, the rules relating to constitutional cases are determined by the Chief Justice, see for example Lesotho¹⁰ and Tanzania.¹¹ Whilst this is undoubtedly practical, the State ought to protect human rights by laying out clear principles to ensure any person can obtain redress. In Kenya, the Constitution itself provides parameters for the rules made by the Chief Justice and stipulates that the right of standing must be facilitated, formalities must be

9 Sections 5 and 6, Human Rights (Enforcement) Act, Uganda, 1999.

10 Section 22(6), Constitution of Lesotho, 1993.

11 Section 15, Basic Rights and Duties Enforcement Act, 1995, Tanzania.

kept to a minimum, no fee may be charged, and the court shall not be restricted by procedural technicalities.¹² However, the HREA goes much further, allowing persons to even approach the courts through oral applications and in any language, which includes languages which are not recognised as official languages. The nearest comparison would be South Africa's Equality Courts, which require expeditious and informal procedures, but unlike the HREA, these courts are limited to only one aspect of the Bill of Rights.¹³ The Act provides for the Magistrates' Courts to assist applicants in human rights matters. This recognises that for the most marginalised in society, even approaching the courts can be a daunting experience.

In Namibia, a person who wants to apply to the court in a human rights matter may approach the Ombudsman for assistance and advice, although the Ombudsman can choose not to assist.¹⁴ The rules created by Nigeria's Chief Justice state explicitly that the court must "proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented."¹⁵ Unlike the Nigerian rules, which set out principles for access to justice but does not give clear guidance on how this should be achieved, the HREA places a duty on the courts to provide practical assistance to applicants.

The Act provides for the Magistrates' Courts to assist applicants in human rights matters. This recognises that for the most marginalised in society, even approaching the courts can be a daunting experience.

In many countries, domestic violence laws place such a duty on court registrars and police to assist victims in completing applications for protection

12 Section 22, Constitution of Kenya, 2010.

13 Section 4, Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, South Africa.

14 Section 25(2), Constitution of Namibia.

15 Preamble 3(d), Fundamental Rights (Enforcement Procedure) Rules, 2009, Nigeria.

orders.¹⁶ Uganda is the first country to realise that evidently, such assistance must extend to victims of other human rights violations.

Approaching the courts does not preclude other remedies

The HREA stipulates that access to the courts for redress does not preclude other actions lawfully available.¹⁷ Compare this to Lesotho and Tanzania, for example, where the Constitution provides that the High Court may decline to hear a constitutional matter where it is satisfied that another law adequately provides for redress.¹⁸

There is also an outdated practice of constitutional avoidance in some courts. Courts in Eswatini and Botswana, for example, have held that where it is possible to decide any case without reaching a constitutional issue, that is the course that should be followed. What the HREA does is to place human rights violations at the forefront of the problems to be dealt with by the courts.

Empowering courts to make any order.

The HREA empowers courts to issue a range of orders for rights violations, including compensation, restitution, rehabilitation, public apology, criminal sanctions, and guarantees of cessation and non-repetition.¹⁹ In other countries, the ambit of the court's powers is often outlined in the Constitution itself, sometimes by merely stating that the court may make any order it deems fit. In Namibia, the court has the power to make all orders necessary to secure human rights, including awarding monetary compensation.²⁰ Whilst the broad framing of these constitutional provisions have allowed the courts in many jurisdictions to develop innovative constitutional remedies, such developments have stalled in more conservative jurisdictions, where orders are often limited to declaratory orders and compensations are seldom awarded. Although courts should be given a broad discretion to determine their orders, the HREA provides clear

16 See for example South Africa's Domestic Violence Act, 1998.

17 Section 3, Human Rights (Enforcement) Act, Uganda, 1999.

18 Section 22(2), Constitution of Lesotho, 1993; section 8(2), Basic Rights and Duties Enforcement Act, 1995, Tanzania.

19 Section 9, Human Rights (Enforcement) Act, Uganda, 1999.

20 Section 25(3)-(4), Constitution of Namibia.

examples of potential remedies for courts to consider. Even more critical, the HREA stipulates that such orders must be complied with within six months from the date of determination.

Legal standing in human rights matters

In most countries, persons can apply to court if a right is violated or threatened.²¹ Some jurisdictions have however interpreted this to mean that the only persons who can approach the courts are those who can prove that they suffered rights violations. This interpretation often limits legal standing in human rights matters and places a burdensome onus on applicants. Uganda's Constitution, like in many jurisdictions, tries to address this by explicitly providing that legal standing in human rights cases extends beyond the person or group of persons whose rights have been affected, to include other persons or organisations. Compare this, for example, to Tanzania's Basic Rights and Duties Enforcement Act which was recently amended to specifically require that all applications made to the High Court challenging violations of the Bill of Rights, be accompanied by an affidavit made by a person who is personally affected by the alleged violation.²² This amendment creates a barrier to access to justice, especially for the most vulnerable who are often unable to represent themselves.

The Nigerian rules specifically state that "no case may be dismissed or struck out for want of locus standi", although this provision is not adhered to in practice.²³

Since the courts are tasked with protecting and upholding the provisions in the Constitution, courts must be able to give a broad interpretation to legal standing when the interests of justice so require. To be able to dispense justice requires that courts are empowered to allow litigants to approach the courts in cases where rights violations are likely but have not yet occurred;

in cases where the relief sought affects the rights not only of the individual applicants before the court but a wider group who have not been able to approach the courts; and in cases where injustice has occurred, but individuals are unable to approach the courts in their personal capacity due to safety and other risks.

This amendment creates a barrier to access to justice, especially for the most vulnerable who are often unable to represent themselves.

The HREA extends even further by allowing any person who reasonably believes that the State is not taking adequate steps to progressively realise the rights under the Constitution or international treaties to which the State is a party, the standing to apply to the High Court for redress.²⁴ In Zimbabwe, any person may approach the court where they believe the Parliament or the President failed to fulfil a constitutional obligation.²⁵ Whilst courts have been willing to assume jurisdiction in such cases, they will not easily grant standing to "any person," making this provision a critical element to creating a dispensation where the State can be held accountable by its citizens for failure to comply with the Constitution.

Holding public officials liable for human rights violations

A welcome provision in the HREA is that public officers may be held personally liable for rights violations, including being liable to pay a portion of the ordered compensation or restitution.²⁶ Immunity is further not a defence from prosecution, and a finding that a person violated constitutional rights shall result in dismissal or removal from office.²⁷ Throughout the region, public officials have often benefited from

21 Section 25, Constitution of Namibia; section 28, Constitution of Zambia, 1991; section 18, Constitution of Botswana, 1966; section 22, Constitution of Lesotho, 1993; section 22, Constitution of Kenya, 2010.

22 Written Laws (Miscellaneous Amendments) (No. 3) Act No. 6 of 2020, Tanzania.

23 Preamble 3(e), Fundamental Rights (Enforcement Procedure) Rules, 2009, Nigeria.

24 Section 13, Human Rights (Enforcement) Act, Uganda, 1999.

25 Rule 27(1), Constitutional Court Rules, 2016, Zimbabwe.

26 Section 10, Human Rights (Enforcement) Act, Uganda, 1999.

27 Section 14, Human Rights (Enforcement) Act, Uganda, 1999.

immunity for human rights violations. Usually the State is held responsible for rights violations, but the individual public officers who perpetrated such violations come off scot-free, especially in the case of presidents, monarchs and diplomats, who are cloaked with immunity. Cutting through this veil of immunity is a vital deterrent measure. Most importantly, the HREA allows for the institution of criminal proceedings against a person who breached a non-derogable right, which can result in up to 15 years' imprisonment.²⁸

Although this penalty is perhaps not harsh enough, considering that the non-derogable rights include slavery and torture, it does set an important precedent in the region by actually criminalising the violation of non-derogable rights.

Reforming the criminal justice system.

The HREA states that where a person has been unreasonably detained, the High Court can order the person in charge of the place of detention to release such a person immediately.²⁹ Unreasonable detention includes: where a person has been detained for more than 48 hours without being brought before the court; where the person has been detained without trial for 120 days for a subordinate court offence; and for 360 days for an offence triable

28 Section 11, Human Rights (Enforcement) Act, Uganda, 1999.

29 Section 15(5), Human Rights (Enforcement) Act, Uganda, 1999.

by the High Court.³⁰ These pre-trial custody time limits are not unproblematic, as they essentially allow the State to detain a person for a year before being brought to trial. In Malawi, where similar albeit shorter pre-trial custody time limits apply, they are seldom implemented, and people easily spend years in prison awaiting trial. For this reason, the HREA's novel provision of making it an offence to detain a person beyond the 48-hour rule; based on an irregular procedure; or involving torture or cruel and inhuman and degrading treatment; and imposing up to 5 years' imprisonment, is an important shift in how States treat the rights of arrested and detained persons.³¹

Holding courts accountable.

The HREA requires that where a constitutional matter is referred from the Magistrates' Court to the High Court, it be determined within 90 days.³² In Malawi, constitutional matters must be determined within 45 days from the conclusion of court proceedings.³³ Other courts have similar provisions. Whilst such requirements set standards for the delivery of justice, without adequate supervision and an effective mechanism in the case where a judgment is not forthcoming, these provisions will not be meaningful.

30 Section 15(4), Human Rights (Enforcement) Act, Uganda, 1999.

31 Section 15(9), Human Rights (Enforcement) Act, Uganda, 1999.

32 Section 7, Human Rights (Enforcement) Act, Uganda, 1999.

33 Order 19, Part 1, rule 12, Courts (High Court) (Civil Procedure) Rules, 2017, Malawi.

Conclusion.

The HREA is revolutionary in many ways. Most importantly, it allows any person to approach the courts to seek redress for a human rights violation. In the absence of accessible avenues for redress of human rights violations, the rights contained in the Bill of Rights become meaningless. It is astounding how little effort has been made since independence in most countries to develop mechanisms such as the HREA to ensure access to justice for human rights violations. The truth is that in most countries, including Uganda, the human rights enshrined in the Constitution are violated daily by the State. By seeking to address the impunity with which such violations take place, it might help to shift from a culture of systemic rights violations, particularly among the police. The effectiveness of the HREA will lie in the extent to which it is effectively communicated to the public and all public officers, and enforced throughout the country.



Most importantly, the HREA allows for the institution of criminal proceedings against a person who breached a non-derogable right, which can result in up to 15 years' imprisonment.



COMPARATIVE PERSPECTIVE

Comparative analysis of human rights enforcement laws in three African states

By Auma MI Dinymoi



LLD Candidate, UP; LLM (HRDA), UP; LLB, MUK; Dip. Legal Practice; Law Development Centre.

Introduction.

The human rights fight has been fought long, far and wide. Through thick and thin, by hook or crook human rights provisions have made their way into the laws of almost all countries. That being so, there comes a time when the rights that have fought for recognition come under great contestation. At such times, it is incumbent upon us to seek validation and indeed enforcement of these rights. It is at these very moments that the question of enforcement becomes central to the protection and promotion of human rights. It is at these moments that the strength of a human rights system is tested. After all, how else can we test the tenacity of these rights? The details of the manner and procedure of enforcement of human rights at a domestic level are usually left to the discretion of the state.

As such, some states encompass enforcement of human rights within the Constitution, at least a minor aspect of it. Most of these constitutions usually proceed to mandate parliament or the executive to make laws or rules respectively for the enforcement of human rights.

This was the case in Uganda¹ until when the Human Rights (Enforcement) Act was enacted in March

1 Art 50(1)-(4) of the Constitution of the Republic of Uganda, 1995.

2019. On the other hand, other constitutions have within themselves clearly established the parameters of enforcement of human rights, leaving room only for the enactment of procedural rules and regulations.²

However, in most cases, a state's chosen approach to enforcement of human rights is more a matter of form than that of substance as will be illustrated in this article. The underlying concern is and should always be the effectiveness of the chosen method in ensuring the enforcement of human rights. Therefore, even though the means may vary, the end should be the same.

The details of the manner and procedure of enforcement of human rights at a domestic level are usually left to the discretion of the state.

In this article, I compare the procedures that have been adopted by two states: Kenya³ and Nigeria⁴ to evaluate their success in the enforcement of human rights as well as to project the potential of Uganda's Human Rights Enforcement Act.⁵

2 Art 22 of the Constitution of the Republic of Kenya, 2010.

3 The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

4 Fundamental Rights (Enforcement Procedure) Rules, 2009.

5 The Human Rights (Enforcement) Act, 2019.

Basis for enforcement of human rights.

In one way or another, the various provisions for enforcement of fundamental human rights derive their authority from specific constitutional provisions of each country.⁶ In some cases, as in South Africa, the enforcement procedure is comprehensively embedded within the Constitution. In other instances, such as Kenya, Nigeria and indeed Uganda, the basic Constitutional provision is supplemented by a set of rules governing either the procedure or the practice of enforcement. In many ways, the substantial provisions that appear in Uganda's Human Rights (Enforcement) Act resemble those of Kenya and Nigeria.

Uganda's Act specifically addresses aspects of human rights enforcement that have hitherto neither historically nor contemporarily been dealt with in other jurisdictions including Kenya and Nigeria. It extends parameters for human rights enforcement, and consequently builds confidence that its wide girth will facilitate greater enforcement. On the reverse side, there are concerns regarding whether the widened parameters of human rights enforcement will have the effect of excluding all other aspects that have not been specifically addressed

6 Art 46(1) of the Nigerian Constitution is the blanket provision under which the enforcement of the bill of rights is covered. Art 46(2) gives the Chief Justice power to make rules for the practice and procedure of enforcement of human rights.



in the Act, limiting room for creativity in enforcement of human rights. Could it in the future be argued that because something doesn't exist in the Act, the parliament meant not to cater for it?

It is my opinion that the Constitutional provisions both in Kenya and Nigeria covered enough ground for the basics of human rights enforcement in the form of locus standi, jurisdiction, and remedies. As such when they resorted to parliament or the executive to make laws or rules, these were merely to cover procedural aspects that had no place in the Constitution. Uganda's situation differs and highlights our need to enact a specific law to cater for the same nuances of human rights enforcement. Uganda's HREA therefore speaks directly to factors which, although not new in the human rights sphere, are a confirmatory nod in favour of enforcement in Uganda. The point of analysis is therefore how far each of these domestic laws goes to ensure full enforcement of the human rights in terms of locus standi provisions, procedural accessibility, remedies granted, to mention but a few.

7 Enforcement Act (n 5 above), secs 3(1) & (2).

8 High Court Misc. Application No. 394/2004 and 395/2004

In the following sections, I examine some of the provisions of Uganda's HREA, and whether similar provisions have, when employed, been successful in enforcing human rights in Kenya and Nigeria.

Broader provision on locus standi.

The HREA extends locus standi in matters of human rights enforcement - beyond individual capacity - to cover persons acting on behalf or in the interest of others. In the same way, the Act grants locus standi to persons acting in communion and in a representative capacity.⁷

Theoretically, a wider provision on locus standi will guarantee an increase in the number of cases brought for enforcement of human rights. This is because now anyone who feels that anybody else's human right has been violated can initiate action for enforcement. In practice, Uganda had, through litigation, expanded to cover all grounds of locus standi thanks to Article 50 of the Constitution. Cases for example *Kikungwe Issa & 4 others v Standard Bank & 3 others*⁸ have clearly pronounced themselves on this.

This provision brings Uganda at par with other progressive African countries, in particular Kenya and Nigeria which have already recorded progress. The provision of locus standi is similar to that in the Kenyan Constitution.⁹ The Nigerian provision on locus standi is couched within the language of public interest litigation, much like the provision in Uganda's Constitution. However, this provision goes further to specifically state that '[t]he Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*.'¹⁰ It thereafter elaborately outlines categories of people who can institute proceedings.

The provisions of section 3(2) of Uganda's Act does not particularly provide for locus standi in the individual capacity, focusing instead on the extended capacity. Perhaps this is ignored because individual locus to enforce human rights is already mentioned in the Constitution. However, it is my opinion that an express mention of the same in the Act as appears in Kenya's Constitution¹¹ and Nigeria's 2009 Rules¹² would have gone a long way to carry the spirit of the Constitution and validate locus standi from an individual point of view. If we were to follow the provision of this law to its letter, it would bear the absurd result that a person cannot enforce human

rights on his/her own behalf. Although it is difficult to conceive this absurdity, the neglect to mention individual locus puts Nigeria and Kenya hypothetically in a better place. But collectively, all the three countries are more likely to enforce human rights within their jurisdiction than a country like Tanzania whose legal provisions on locus standi restrict it to the victim.¹³

Provision on undue regard to technicalities.

Whenever attention is paid to formal procedures in the enforcement of human rights, the likelihood of deciding the cases based on technical aspects rather than merits increases twofold. An over-reliance on procedure obstructs human rights discussions. In Nigeria for example, prior to the enactment of the Rules, the requirement for formal application for enforcement within fourteen days after grant of leave was found by courts to be mandatory and a number of cases were thrown out for non-compliance.¹⁴ It is therefore no secret that a forward-looking procedure for human rights enforcement should be able to sidestep what would appear as procedural impropriety and focus on the merits of the case.

Formalities include a defined formal procedure for instituting a

matter, strict timelines, filing fees and others all aimed at ensuring that an application falls within pre-drawn parameters. To partly curb this vice, Uganda's HREA does away with the requirement for statutory notice¹⁵ which was previously relied on to strike out human rights complaints in their infancy.¹⁶ It should be remembered that the Constitution of Uganda clearly mandates courts to dispense substantive justice without undue regard to technicalities.¹⁷ To further substantiate the Constitutional provision, the HREA mandates the Rules Committee to make rules for the enforcement of human rights¹⁸ including fees payable, timelines, procedure for admissions and evidence, to mention but a few. Notwithstanding, section 6(5) of the Act bars the dismissal of a suit merely for failure to comply with prescribed procedures or rules. Similarly, the Kenyan and Nigerian Rules¹⁹ require that formalities in the enforcement of human rights must be kept to a minimum. Kenya's Rules prescribe that an application for enforcement of human rights be fashioned in the form

15 HREA (n 5 above) sec 6(4).

16 *Greenwatch v Attorney General* High Court Miscellaneous Application No. 92 of 2004 arising from Misc. Cause No 15 of 2004.

17 Constitution of Uganda (n1) Article 126(2)(e)

18 HREA (n 4 above) sec 18(1) & (2.)

19 Order 9(1) of the 2009 Rules states that 'where at any stage in the course of or in connection with any proceedings there has, by any reason of anything done or left undone, been a failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to the mode of commencement of the application...'

9 Constitution of Kenya (n 2 above) Art 22(2).

10 Nigeria's Rules (n 4 above) paragraph 3(e) Preamble.

11 Constitution of Kenya (n 2 above) Art 22(1) & (2).

12 Nigeria's Rules (n 4 above) Preamble, para e(i).

13 Art 30(3) of the Constitution of the Republic of Tanzania.

14 *Ogwuche v Mba* (1994) 4 NWLR (Pt 336) 75, *Ezeadukwa v Maduaka* (1997) 8 NWLR (Pt 518) 635, *Umoh v Nkan* (2001) 3 NWLR (Pt 710) 512 and *EFCC v Ekeocha* (2008) 14 NWLR (Pt 1106) 161.

of a petition.²⁰ However, like Uganda's HREA, the rules permit a court to accept complaints that are commenced in an informal manner.²¹ The government in Nigeria enacted the new Rules as a matter of necessity because human rights practitioners felt that enforcement of human rights had been drenched in an undue regard to formalism and technicality.²² Human rights cases were constantly entangled in an unceasing debate about the procedure for institution of human rights cases.²³ As such, Nigeria's rules do away with any specific mechanism of commencement and leave it open to an individual stating that an application can be made by an applicant through any originating process.²⁴ Accordingly therefore, even though effectively all the three countries have done away with the requirement for formal procedures, Nigeria is likely to see more success in enforcement of human rights because it does not require any formal procedures in the first place.

Urgency of human rights cases.

Human rights matters - in more cases than not - exhibit a sense of urgency because of the potential damage that can be done if the violation is left to continue unchecked. Infringements on human rights, if not dealt with in an urgent manner, pose a threat even to the life of a victim. The sense of urgency is reflected in the provisions of the HREA. Section 7(2) & (5) speak to the immediacy of determination of human rights matters referred to the High Court. Similarly, Rule 4 of Kenya's Practice and Procedure Rules requires that courts charged with the determination of human rights matters facilitate 'just, expeditious, proportionate and affordable resolution of all cases'. Additionally, certificates of urgency may be issued to expedite human rights applications.²⁵ Although the Rules in Nigeria do not provide for urgency in the literal sense that Uganda's Act does, several provisions of the rules provide for expediency as one of the principles which should be adhered to. Provisions

20 Kenya's Rules (n 3 above) Rule 10(1)

21 Kenya's Rules (n 3 above) Rule 10(4)

22 E Nwauche 'The Nigerian Fundamental Rights (Enforcement) Procedure Rules 2009: A fitting response to problems in the enforcement of human rights in Nigeria?' African Human Rights Law Journal (2010) 503.

23 For instance, the case of Aoko v Fagbemi (1961) 1 All NLR 400 was instituted by an application while Whyte v Commissioner of Police was instituted by a notice of motion.

24 Nigeria's Rules (n 4 above) Order II, Rule 2.

25 Kenya's Rules (n 3 above) Rule 13.

removing the mandatory application of leave to file a matter in the High Court²⁶ as well as reduced timelines and requirement that an application for enforcement of human rights should be fixed for hearing within seven days from the filing of the application²⁷ ensure that proceedings are dealt with expeditiously.²⁸ In one way or another, the rules in all three countries when adhered to are likely to result in quicker enforcement of human rights.

Extended limitation periods.

When human rights cases are barred by passage of time, victims find themselves in situations where they can no longer seek redress for violations that occurred outside the limitation period. The danger in this can be seen when human rights violations occurred in a time of protracted civil strife followed by a militaristic dictatorial style government. Such is just one of the scenarios that provoke a critical reconsideration of the civil procedure rule of limitation. The HREA prescribes a general limitation period of ten years²⁹ with the exception that the victim was justifiably unable to commence the action within the prescribed time.³⁰ Kenya's Practice and Procedure Rules are silent on limitation periods for human rights enforcement. Human rights actions in Nigeria are not bound by a limitation clause as is the case in Uganda.³¹ Therefore, Nigeria's Rules are better placed in this regard because the possibility of commencing human rights applications is a right ideally to be enjoyed in perpetuity giving a sense of security.

Remedies.

There is a satisfaction that hails from knowing that a human rights violation did not go unpunished. As such, in most human rights cases, there is a longing for a remedy or reparation. Remedies in human rights cases are identical across various jurisdictions. Uganda's Act gives the courts powers to grant any appropriate remedies including monetary compensation, restitution,

26 Nigeria's Rules (n 4 above) Order 1, Rule 2.

27 Nigeria's Rules (n 4 above) Rule 1 Order 4.

28 Nigeria's Rules (n 4 above) Preamble 3(f).

29 HREA (n 5 above) sec 19(1).

30 As above at sec 19(2).

31 Nigeria's Rules (n 4 above) Order III, Rule 1.

rehabilitation, and satisfaction.³² The orders that may be given by courts in Kenya are to be found in the Constitution and they include the declaration of a right, injunction, conservatory order, declaration of invalidity of law, compensation and judicial review.³³ On the surface of it, Kenya's remedies appear to be more comprehensive and exhaustive. However, the Constitution specifically excludes all remedies that are not included thereunder. On the other hand, Nigeria's provision is perhaps the most comprehensive given that Nigerian courts are empowered to give any and all orders and directions they deem fit to ensure the enforcement of human rights.³⁴ Generally therefore, there is sufficient reason to believe that victims of human rights violations in all three jurisdictions are entitled to remedies appropriate to their circumstances.

8. Developments brought by the Act.

Far and above the provisions that have been discussed thus far, Uganda's HREA introduces ingenious provisions which are bound to give Uganda an edge over both Kenya and Nigeria. The application of these principles is yet to be tested but they will be briefly mentioned in this section and these include the introduction of personal liability for human rights violations. In this regard, on top of government's vicarious liability for the infringements of its agents, individuals found to have violated human rights will be found personally liable for their infringements.³⁵

Relatedly, the HREA introduces criminal liability for human rights violations perpetrated in Uganda. Previously, under the Constitution, only civil liability was envisioned for violation of human rights. In most cases this terminated in the payment of damages or other remedies like a declaration of rights. This is the position as is currently in the Kenyan and Nigerian Rules. Uganda's introduction of criminal liability is critical because an analysis of Uganda's Human rights violations in the past reveals that the majority of cases were perpetrated by the Police, army and other security organisations and yet the retribution was always damages incurred wholly

by the government. Moreover under the new Act, a person may be held criminally liable for violation of a non-derogable right even when no civil action has been commenced for the same.³⁶ Criminal liability under the Act is therefore an innovation that is deemed to serve a deterrent role for fear of serving a criminal sentence.

The HREA also interacts with criminal law and procedure in such a way that it requires granting of bail in criminal matters where an application for enforcement of human rights has arisen.³⁷ It also provides for the unconditional release³⁸ of persons who have been unreasonably detained in accordance with section 15(4) of the Act. The HREA appears to introduce the idea of enforcement of social economic rights which historically are subject to progressive realisation. In a creative manner, the Act allows for a person to institute a suit when he/she believes that the state is not taking adequate steps for progressive realisation of rights under the Bill of Rights. Although the Act appears to provide for enforcement of social economic rights, the implication of this is yet to be assessed since most social economic rights do not even appear within the Bill of Rights to which the section refers.

Conclusion.

It is to be recognised that Uganda's constitutional provisions on enforcement of human rights prior to the enactment of the HREA were expansive and yet enforcement of human rights was barely achieved. In many ways this Act speaks directly to the nuances of human rights enforcement in Uganda. It is alive to the human rights concerns that have long plagued Uganda. It sheds light on aspects that are most relevant to the human rights arena in Uganda and is representative of issues that have previously been engaged with in a litigious manner in courts. It is unclear at this point whether Uganda's less than satisfactory enforcement record was as a result of anomalies that have now been addressed by this Act such as personal liability for human rights violation. It remains to be seen to what extent the new provisions will be employed for better enforcement of human rights.

32 HREA (n 5 above) sec 9(1) to (4).

33 Constitution of Kenya (n2) art 23(3).

34 Nigeria's Rules (n 4 above) Order XI

35 HREA (n 5 above) sec 10.

36 As above at sec 11(3).

37 As above at sec 8(2).

38 As above at sec 15.

CASE NOTE

Civil suit before High Court of Uganda to hold accountable Local Council and Prison authorities for violations committed against 20 LGBT youths during the COVID-19 lockdown.



Human Rights Awareness and Promotion Forum (HRAPF) in June 2020 joined 20 LGBT persons whose rights were violated in filing a civil suit in the High Court of Uganda against those who perpetrated acts of torture against them, that is the Local Council and Prison Authorities. The suit was instituted under; Article 44(a) of the 1995 Constitution as amended, the Human Rights Enforcement Act of 2019 particularly Sections 3(1) (2) (c) and 4 (1) (a) among other laws. These laws emphasise the sanctity of the right to freedom from torture, cruel, inhuman and degrading behaviour as well as discrimination for all persons.

On 29th March 2020, a group of 25 youths were arrested from a shelter for LGBT persons in Kyengera, Wakiso district on suspicions of being homosexuals. The youths were all male and staying in the same house which prompted the LC III Chairperson to have them arrested on suspicion of them being homosexuals.

The youths were physically beaten, subjected to insults and mandatory searches without a warrant. They were subsequently tied up with ropes and marched off to Nkokonjeru Police

Post amidst threats of a hostile crowd that had collected following the arrest. Twenty of them were eventually charged with doing a negligent act likely to spread infection of disease contrary to Section 171 of the Penal Code Act before the Chief Magistrates Court of Mpigi at Nsangi. After their remand, they were subjected to beatings, as well as denial of access to food, sanitary facilities and medication. In one extreme incident where the Deputy Officer in Charge at Kitalya MiniMax Prison, Philimon Woniala, asked one of the 20 to strip naked and burnt him with a burning piece of wood between the thighs.

Additionally, the 20 youths were denied access to their lawyers for the first 42 days of their detention until the High Court issued an order directing that lawyers should be granted access to their clients as it is an integral part of the right to a fair hearing which is non-derogable. Shortly thereafter, the state withdrew its case against the 20 youths.

It is this act of wanton arrest and prosecution, coupled with the torturous acts committed against the persons of the 20 youths that prompted Human Rights Awareness and Promotion Forum

(HRAPF), alongside the 20 youths, to file a civil suit vide High Court Miscellaneous Application No.179 of 2020 under the Human Rights Enforcement Act.

This application was instituted against the state through the Attorney General, Kyengera Town Council as well as individual state actors who were responsible for committing human rights violations against the 20, namely the LC III Chairperson who led the arrest and the Deputy Officer in Charge of the Prison where the 20 were tortured.

The application seeks a number of declarations: that the actions of the Respondents were a violation of the right to freedom from torture, cruel, inhuman and degrading treatment enshrined in the Constitution and the Prohibition of Torture Act, 2012; that the unsanctioned searches of the person and house of the 20 youths amounted to a violation of the right to privacy enshrined in the Constitution and that the actions also amounted to a violation of the right to freedom from discrimination. The applicants further prayed for compensation of the victims as well as general and punitive damages against the respondents.

In the affidavits supporting the application, the youths spell out the horrors they experienced, such as stated by Henry Mukiibi who is the first applicant in the case: 'Hajji Kiyimba repeatedly beat me with a cane that he got from one of the Local Defence Unit (LDU) members. He hit me on the arms, and back and I still



have scars from those beatings'. The affidavits by the 19 other applicants have similar narratives.

HRAPF joined and supported this case to ensure that state operatives are held accountable for their actions and obtain justice for them from the Courts. This case the first of its kind to test the applicability of the Human Rights Enforcement Act, 2019 in as far as human rights of LGBT persons are concerned in Uganda. The sections of the law upon which the application stands categorically state that any person or organisation that claims that a fundamental right or freedom guaranteed under the Constitution has been infringed upon, may apply to the appropriate Court for redress. The High Court was appropriate in this instance because the violations were of non-derogable rights guaranteed under Article 44 of the Constitution.

If the High Court finds in favour of the applicants, it will be a huge win for the LGBT community. This is because LGBT persons are subjected to acts and threats of violence and discrimination in the criminal justice system on the basis of their sexual orientation and gender identity. This goes against the principle of the inherent nature of human rights that should be accorded to all without favoritism. As such, declarations from the Court that the actions of the second and third respondents were a violation of the human rights of the first twenty applicants will ensure that state operatives approach members of the LGBT community with the same courtesy that they extend towards their heterosexual counterparts.

THE HUMAN RIGHTS (ENFORCEMENT) ACT 2019



THE REPUBLIC OF UGANDA

I SIGNIFY my assent to the bill.

A handwritten signature in black ink, appearing to read 'Yoweri Museveni', written over a white rectangular background.

.....
President

Date of assent 31/3/2019

THE HUMAN RIGHTS (ENFORCEMENT) ACT, 2019.

Section

ARRANGEMENT OF SECTIONS.

PART I—PRELIMINARY

1. Application.
2. Interpretation.

PART II—ENFORCEMENT OF HUMAN RIGHTS AND FREEDOMS

3. Enforcement of human rights and freedoms.
4. Enforcement of rights and freedoms by the High Court.
5. Enforcement of rights and freedoms by magistrate courts.
6. General provisions on human rights suits.
7. Reference of human rights matters by subordinate courts.
8. & Consideration of human rights matters arising in the High Court.
9. Orders that may be made by court in human rights cases.
10. Personal Liability for infringement of rights and freedoms.
11. Derogation from non-derogable rights and freedoms.
12. Complying with orders and directives of court.
13. Progressive realization of rights and freedoms.
14. Loss of immunity from prosecution.
15. Unconditional release of persons unreasonably detained.

PART III—MISCELLANEOUS

16. Appeals.
17. Application of Cap. 71.
18. Rules of procedure.
19. Limitation of human rights actions.
20. Transitional provision.



THE REPUBLIC OF UGANDA

THE HUMAN RIGHTS (ENFORCEMENT) ACT, 2019.

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.

DATE OF ASSENT:

Date of commencement:

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Application

(1) This Act applies to the enforcement of human rights and freedoms guaranteed by Chapter Four of the Constitution.

(2) This Act shall apply to the enforcement of human rights by the competent court.

(3) 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.

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 guaranteed under articles 20 to 45 of the Constitution;

“competent court” means a high court or a magistrate court; “Minister” means the Minister responsible for justice;

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

“Rules Committee” means the rules committee established under the Judicature Act, Cap 13; “subordinate court” means any court lower than the High Court or established under the Magistrates Courts Act, Cap 16 or the Local Council Courts Act, 2006; and

“Victim of a human rights violation” means a person who suffers a human right violation and includes the 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.

PART III—ENFORCEMENT OF HUMAN RIGHTS AND FREEDOMS

3. Enforcement of human rights and freedoms

(1) In accordance with article 50 of the Constitution, a 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 of its members.

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;
- (c). rights and freedoms restricted under a law made for purposes of a state of emergency; and
- (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 the high court determines otherwise, be heard in open court.

5. Enforcement of rights and freedoms by magistrate courts

(1) A 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 Magistrate shall reduce it in writing in the language of court.

6. General provisions on human rights suits

(1) A suit for the enforcement or protection of human rights and freedoms shall, where possible, be instituted in the court in whose jurisdiction 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 the competent court.

(3) The competent 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 the competent 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 the competent court merely for failure to comply with any procedure, form or on any technicality.

7. Reference of human rights matters by subordinate courts.

(1) Where in any proceedings in a subordinate court, any question arises as to the violation of a fundamental right or freedom, the magistrate shall refer the question for determination by the High Court.

(2) Where a human rights matter arises in any proceedings before the magistrates' court, the magistrate court shall immediately stay the proceedings in the main matter and first determine the human rights issue raised.

(3) A magistrate 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 presiding over the matter shall dispose of the question referred to in subsection (1) in accordance with the determination of the High Court.

(5) The court to which reference is made, shall within ninety days from the date of the reference determine the reference made to it.

8. Consideration of human rights matters arising in the High Court

(1) Where, in any proceeding in the High Court, a question arises as to the violation of a fundamental right or freedom, the presiding judge shall immediately stay the proceedings and determine the question raised.

(2) The High Court may, upon staying the proceedings in subsection (1), in case of a criminal trial, grant bail to the accused person.

9. Orders that may be made by court in human rights cases

(1) Where the competent court determines that a fundamental right or freedom has been violated, unlawfully denied or should be enforced, the competent court shall issue orders it considers appropriate, including an order for compensation.

(2) The competent court may in addition to the orders referred to under subsection (1), order for—

- (a). the restitution of the victim to the original situation before the violation of his or her human rights and freedoms;
- (b). the rehabilitation of the victim including the provision of medical and psychological care; or
- (c). satisfaction, which shall include—
 - i). measures aimed at the cessation of the continuing violation of human rights and freedoms;
 - ii). verification of the facts, 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; and
 - vi). guarantees of non-repetition;

(3) Restitution, compensation, rehabilitation or any payment ordered by the competent court under this section shall be a civil debt owed to the victim of a human rights violation.

(4) Any order made under this Act shall be complied with, within six months from the date of determination, unless appealed against.

10. 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 the competent court orders for the payment of compensation or any other form of restitution to a victim of a human rights violation by the State, a public officer who is found by the competent court 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 the competent court.

11. Derogation from non-derogable rights and freedoms

(1) It is 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 judge or magistrate presiding over a trial,
- (b). it is brought to the attention of the competent court; or
- (c). the competent court makes a finding,
- (d). that any of the accused person's non-derogable rights and freedoms have been infringed upon, the judge or magistrate presiding over the trial shall declare the trial a nullity and acquit the accused person.

(3) Criminal proceedings may be 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 preferring a charge against a person; or
- (b). by any person making a complaint on oath to a competent court.

(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 determined under subsection (1) shall on conviction, if no sentence is prescribed by law for such violation, be liable to imprisonment for a term not exceeding fifteen years.

12. 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 the competent court under this Act shall, unless it is appealed, be complied with within such a

time as shall be determined by the competent court.

(2) The State shall take all reasonable steps to comply with monetary orders issued by the competent court within a reasonable time.

(3) Whenever an order, recommendation or directive issued by a competent court is not complied with, within the time prescribed by Act Human Rights (Enforcement) Act 2019 the 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 (3) 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 (3), court may issue orders as it considers appropriate complying with its orders.

13. 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 the competent court finds that a specific right or freedom cannot be realized due to resource constraints, the competent 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.

14. 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 whom immunity is granted under any law shall automatically lose that immunity if he or she is found by a competent court 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.

15. 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 a prison, police station or any other gazetted detention facility shall, where he or she has reason to believe that a person in that prison, police station or detention facility is unreasonably being detained, release or apply to the competent court or any other authority for authorization to release that person from detention.

(3) The High 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 centre in which such a person is detained as the High Court considers appropriate; or
- (c). order for the release of such a person from detention on any terms and conditions as the High 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 competent court;
- (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 the High 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 (4) (a), (e) and (g) commits an offence and is liable to imprisonment for a term not exceeding five years.

PART III—MISCELLANEOUS

16. Appeals

(1) A person aggrieved by a decision or order of a competent 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; or
- (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 filed 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.

17. 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.

18. Rules of procedure

(1) Subject to the provisions of this Act, the Rules Committee may 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 this Act;
- (b). prescribing the time for applications and references under this Act;
- (c). rules of evidence and procedure.
- (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.

19. Limitation of human rights actions

(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), the competent court may allow an action to be brought after the expiry of the period referred to 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.

20. 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.



THE REPUBLIC OF UGANDA

This printed impression has been carefully compared by me with the bill which was passed by Parliament and found by me to be a true copy of the bill.

.....
Clerk to Parliament

Date of authentication:..... 22nd/03/2019

ABOUT HRAPF

Background

Human Rights Awareness and Promotion Forum is a voluntary, not for profit, and non-partisan Non-Governmental Organisation. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, research, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. It was established in 2008 with a vision of improving the observance of human rights of marginalised persons in Uganda.



Vision

A society where the human rights of all persons including marginalised persons and Most at Risk Populations are valued, respected and protected.



Mission

To promote respect and protection of human rights of marginalised persons and Most at Risk Populations through enhanced access to justice, research and advocacy, legal and human rights awareness, capacity enhancement and strategic partnerships.



HRAPF Values

- Equality, Justice and Non-Discrimination
- Transparency, Integrity and Accountability
- Learning and Reflection
- Quality and Excellence
- Teamwork and Oneness
- Passion and Drive
- Networking and Collaboration

Legal Status

HRAPF is incorporated under the laws of Uganda as a company limited by guarantee.

HRAPF's Objectives

- To create awareness on the national, regional and international human rights regime.
- To promote access to justice for marginalised persons and Most at Risk Population groups.
- To undertake research and legal advocacy for the rights of marginalised persons and Most at Risk Population groups.
- To network and collaborate with key strategic partners, government, communities and individuals at national, regional and international level.
- To enhance the capacity of marginalised groups, Most at Risk Populations and key stakeholders to participate effectively in the promotion and respect of the rights of marginalised persons.
- To maintain a strong and vibrant human rights organisation.

Our target constituencies

Lesbian, Gay, Bisexual and Transgender (LGBT) persons
 Intersex Persons
 Sex Workers
 Women, girls and service providers in conflict with abortion laws
 People who use drugs
 People Living with HIV and TB (PLHIV/TB)
 Poor women, children and the elderly with land justice issues
 Refugees

Slogan

Taking Human Rights to all

“

When human rights cases are barred by passage of time, victims find themselves in situations where they can no longer seek redress for violations that occurred outside the limitation period.

Photo Source: Hotnewsline.com

”

Human Rights Awareness and Promotion Forum (HRAPF)

HRAPF House, Plot 1 Nsubuga Road, Off Ntinda-Kiwatule Road,
Ntinda, Kampala. Po Box 25603, Kampala - Uganda
Tel: +256-414-530683/ +256-312-530683 / 0800130683 (Toll Free)
Email: info@hrapf.org | Website: www.hrapf.org