



UGANDA HUMAN RIGHTS COMMISSION

POSITION ON THE HUMAN RIGHTS (ENFORCEMENT) BaL, 2015

PRESENTED TO THE LEGAL AND PARLIAMENTARY AFFAIRS COMMITTEE OF
PARLIAMENT

ON

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1. INTRODUCTION

The Uganda Human Rights Commission is a National Human Rights Institution established under Article 51(1) of the 1995 Constitution with a mandate of promoting and protecting human rights and other fundamental freedoms. The UHRC also monitors Government's compliance with international treaty and convention obligations and makes recommendations to Parliament on effective measures for promotion and protection of human rights. Furthermore, the UHRC has the responsibility of reviewing and analyzing bills, laws and policies in order to ensure that they comply with human rights standards.¹

UHRC appreciates the effort made by the Human Rights Committee of Parliament for drafting a bill that establishes an enforcement mechanism for the promotion and protection of human rights in Uganda. The proposed law is clearly an endeavor to bring Uganda in line with its international, regional and constitutional obligations.

This position paper therefore is as a result of UHRC's assessment coupled with consultations with various stakeholders². The UHRC will therefore give a brief on the Human Rights Enforcement Bill; highlight the contents of the Bill; point out the positive aspects and human rights concerns of the Bill and thereafter make appropriate recommendations.

2. BACKGROUND TO THE BILL

The Human Rights (Enforcement) Bill 2015 gives effect to Article 50(4) of the 1995 Constitution which provides that Parliament shall make laws for the enforcement of guaranteed rights and freedoms enshrined in Chapter 4 of the 1995 Constitution.

The Bill seeks to provide a law on enforcement of human rights as required by Article 50(4) of the Constitution. It further empowers the Rules Committee to make rules in respect of the specific procedural matters relating to protection of human rights and enforcement of the fundamental rights and freedoms by courts.

¹UN Paris Principles relating to the status of national human rights institutions, Section 3 (a) (i).

²Uganda Human Rights Commission consulted relevant stakeholders such as representatives from CSOs, Government Ministries and Departments, and the Academia.

3. POSITIVE ASPECTS OF THE BILL

3.1 Right to Effective Remedy

Article 8 of the Universal Declaration on Human Rights (UDHR) provides for a right to an effective remedy for acts violating the fundamental rights guaranteed by the Constitution or by law. The right to a remedy is a secondary right, deriving from a primary substantive right that has been breached.³ It encompasses the right to: a) equal and effective access to justice; b) adequate, effective and prompt reparation for harm suffered; c) access to relevant information concerning violations and reparative mechanisms; and d) access to fair and impartial proceedings.⁴

Article 2(2) of the International Covenant on Civil and Political Rights (ICCPR) calls upon State Parties: to undertake necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights such as the right to a fair and speedy trial. At the regional level the African Charter on Human and People's Rights, requires state parties to commit themselves to recognize human and people's rights, duties and freedoms and adopt legislative measures to ensure that the provisions under the charter are put to effect.⁵ At the sub regional level, the Treaty for the establishment of the East African Community (EAC Treaty) provides in Article 3 (3) (c), 7 (2) and 123(3) (c) for adoption of key human rights principles by member States

At the national level, Article 50 of the Constitution of the Republic of Uganda guarantees judicial remedy for human rights violations and in particular stipulates that, any person who claims that 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.

3.2 Establishment of procedure for enforcing human rights

It is good to note that the bill endeavors to ensure that human rights violations and abuses are handled in a more unified and systematic manner according to the laws provided, and also provides a means

³https://www.icrc.org/eng/assets/files/other/irrc_851_zegveld.pdf accessed 9th February, 2017

⁴Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of serious violations of international human rights law and international humanitarian law.

⁵Article 1 of the African Charter on Human and People's rights.

ensuring accountability and redress for individuals whose rights have been abused⁶. UHRC also notes that the proposed law provides clarity on the procedure for taking action when seeking redress and action against human rights violations as stipulated in Article 50 of the Constitution. In addition, it enforces the provision under 50(1) and 50(2) of the Constitution which stipulates that any person may bring a case to court for the purpose of protecting and enforcing human rights.

4. HUMAN RIGHTS CONCERNS ARISING FROM THE BILL⁷

Lack of a nexus between UHRC and the need to strengthen UHRC and its Tribunal for effective enforcement of human rights.

UHRC appreciates the provision under Clause 1(3) of the bill which defines its mandate in enforcement of human rights and clearly sets it apart from other institutions such as the Judiciary. This is important for ensuring that there is no duplication of services. Article 51(1) of the 1995 Constitution of the Republic of Uganda and the Uganda Human Rights Commission Act No.4 of 1997 clearly sets out the powers and functions of the Uganda Human Rights Commission including summoning witnesses and receiving evidence regarding a human rights violation⁸. Whereupon a violation is proven, UHRC can order for an appropriate redress such as compensation, or any other remedy that it deems fit.⁹ Most importantly, UHRC provides free services that enable citizens to enforce their rights.

It is noted that the Bill fails to provide a linkage with other institutions that promote and protect human rights like the Equal Opportunities Commission. This nexus between UHRC and other institutions that promote and protect human rights in the country is crucial in order to avoid duplication of mandates and forum shopping by litigants where redress mechanisms have concurrent jurisdiction over a claim. The current bill seems to create a parallel mechanism in regards to human rights enforcement yet it should be complementary to the work of the UHRC and other Constitutional bodies working in the area of human rights such as the Equal Opportunities Commission, and the IGG, which all have powers to investigate actions on human rights violations and abuses in various forms.¹⁰ In addition the Bill does

⁶Article 8 of the Universal Declaration on Human Rights

⁷ Refer to the Tanzanian Basic Human Rights Enforcement Act for any best practices

⁸ Article 53(1) (a) of the 1995 Constitution of the Republic of Uganda

⁹ Article 53(2) of the 1995 Constitution of the Republic of Uganda

¹⁰ Section 15 of the Equal Opportunities Commission Act 2007

not provide for strengthening of the UHRC and its tribunal for effective and efficient enforcement of human rights.

The UHRC therefore recommends the following:

- *that the Bill should create a nexus between UHRC and other institutions that promote and protect human rights in the country in order to avoid duplication of mandates and forum shopping by litigants where redress mechanisms have concurrent jurisdiction over a claim ;*
- *that there should be a section in the Bill to the effect that the mandate of the Commission to receive, investigate and resolve human rights matters shall not be negated as a result of the Human Rights Enforcement Bill. The UHRC's mandate should therefore be maintained and clearly spelt out in the bill especially strengthening UHRC and its Tribunal for effective enforcement of human rights.*

Limitation of enforcement of rights

Clause 1 of the Bill specifies that on application, Act applies to the enforcement of rights and freedoms guaranteed by Chapter Four of the Constitution yet Article 50 of the Constitution clearly stipulates that the law on enforcement on human rights should be by any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened .

UHRC notes that the bill excludes other economic, social, and cultural rights provided for under the National Objectives and Directive Principles of State Policy such as the right to education, right to health, right to adequate food as well as other rights provided for in other chapters of the Constitution such as rights in Chapter 3 on citizenship, rights in Chapter 5 on representation of the people all of which are justiciable. In addition, it must be noted that Article 45 of the Constitution makes reference to the fact that even if freedoms and rights are not explicitly mentioned within Chapter 4, it does not exclude them from being recognized. UHRC notes that human rights are universal and interrelated and therefore should be enjoyed on an equal basis.

UHRC therefore recommends that scope of application under Clause 1 should be widened to include all rights as stipulated in Constitution as well as those in ratified international and regional human rights instruments and not limited to the rights within Chapter 4 of the Constitution.

4.3 High Court being the court of first instance

UHRC is concerned that the High Court has been stated as the court of first instance for enforcement of human rights. Clause 4(1) of the bill gives exclusive jurisdiction to the High Court to hear and determine matters relating to the enforcement of human rights, and. Clause 6(1) requires any subordinate courts to refer matters dealing with human rights enforcement to the High Court. To this extent the High Court acts as a court of first instance, and- no subordinate court may determine the matter.

The right to effective remedy encompasses the right to prompt, thorough and effective investigations by a competent, independent and impartial body¹¹. It is a well-known fact that the High Court of Uganda suffers from tremendous backlog of cases. Furthermore, the High Court circuits cover only 20 districts in the country. Under such circumstances, it is hard to envisage how prompt and effective remedies can be obtained through the High Court in relation to human rights violations. We further note that currently Uganda has over 80 magisterial areas and thus having more magistrates courts operating in the country. This indicates that the citizens can easily access a magistrate court as opposed to the high court. The UHRC therefore suggests that the Committee considers Magistrate Grade One as the court of first instance to further enforce the UHRC tribunal which is in 10 districts only.

The UHRC notes a number of laws that deal with human rights violations cite the Magistrates Court as the court of first instance. For instance, the Magistrates Court Amendment Act grants jurisdiction to Grade 1 Magistrates to handle cases of child protection. The then Chief Justice Benjamin Odol directed Grade 1 Magistrates to preside over cases involving families and children. In his Legal Notice Supplement No.2, 2012, he assigned G.1 to preside over family and children courts which hear and determine criminal charges against a child and application relating to child care and protection.

Conclusively, Magistrate Grade one is more accessible to the vulnerable persons compared to High Court.

¹¹Human rights Committee, General Comment No.31, the Nature of the General Legal Obligation imposed on State Parties to the Covenant adopted on 29th March 2004, par. 15

UHC therefore recommends that Grade One Magistrate Court should be the Court of first instance instead of High Court for enforcement in human rights matters.

Procedure for enforcement of violation of human rights by use of a plaint

Clause 5(1) of the Bill provides that a plaint could be used for instituting an action in court for a human rights violation claim.

UHC highlights that Article 50(1) of the Constitution provides that any person who claims that a right or freedom has been infringed or threatened, is entitled to *apply* to a competent court for redress. In addition, Article 137 of the Constitution provides that if a person alleges that a law, act or omission contravenes the Constitution, he or she may petition court.

UHC opines that the requirement of a plaint for this procedure will eliminate "any" person from petitioning or applying to the court for redress due to the technical, complex and intricate nature of plaint. UHC is concerned about this provision since a plaint requires legal assistance, which is of course expensive and out of reach for the ordinary Ugandan. Additionally, a plaint is subject to a number of procedures before consideration of the merits of the case can take place as per the Civil Procedure Rules¹². This might pose a problem because it gives considerable time to the other party to respond, yet in many instances human rights violations need immediate redress or remedy.

In addition, the court may reject a plaint on many grounds including: where it does not disclose a cause of action; where the relief claimed is undervalued, where the suit appears from the statement in the plaint to be barred by any law; and where the suit is shown by the plaint to be frivolous or vexatious among others.¹³ In essence, if the plaint is not expertly drawn, it could lead to the dismissal of an application.

To ensure non-discrimination and protection of human rights for all, the procedure for enforcement should be simple and accessible for all especially the vulnerable persons. UHC notes that a simple

¹² Order 7,8,9 Civil Procedure Rules, Statutory Instrument 71-1

¹³As above

procedure could be adopted such as a complaint form on oath as utilized by the Family and Children Court enforcement related to children. If the Committee views this procedure as too simplistic then UH C suggests a notice of motion or petition supported by an affidavit of the complainant.

In South Africa, the rules and regulations that conduct the proceedings *Of*; several provincial and local divisions of the High Court provide for the use of a notice of motion in applications to the court. A similar procedure could be adopted.

The UHRC therefore recommends that Clause 5(1) be amended to allow for an application by either or all of the following:

A complaint form if Magistrates jurisdiction is in this matter is adopted, a petition supported by an affidavit or a notice of motion similarly supported with an affidavit.

An action for enforcement of human rights being heard in open court UHRC notes that Clause 5(2) provides that every action shall be heard in an open court by a single judge. This provision is mandatory in its nature and yet it does not take into account the protection of witnesses and victims such as in cases related to children and those who are victims of Sexual Gender Based Violence (SGBV).

For instance, due to the sensitivity of certain issues, parties may request for closed sessions where a complainant or victim is a child or in matters involving sexual violence. The court should take into consideration of the facts and acts in accordance with the best interests of that child or ensure that the dignity of the victim is protected. Some human rights cases are sensitive in nature and need to be heard in a judge's chambers, to avoid stigma and discrimination. The court should be given the discretion to decide whether to proceed in chambers or not.¹⁴

In addition to this, Article 28 (2) of the Constitution provides that in the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society,

¹⁴ Section 21 of the Judicature Act.

UHRC therefore recommends that the proposal of hearing all cases in open court be changed to include exceptions articulated in Article 28(2) of the Constitution and in the interests of children and vulnerable victims.

c. . .

Rules of Procedure

Clause 10 of the Bill on Rules of Procedure provides that "*...subject to the provisions of this Act, the Rules of Committee may after consultation with the Minister make rules to give effect to the provisions of the Act*". The UHRC notes that the said clause prescribes the role of the Rules Committee and subordinates the Committee to the Minister who is also part of the Rules Committee.

Due to the fact that the Minister is already part of the Rules Committee and yet "must be consulted during the process of developing the rules, could potentially cause friction; reflect a lack of impartiality and a likelihood of undermining the independence of the Committee.

UHRC therefore recommends that the Rules Committee be solely in charge of developing the rules of procedure.

Right to Legal Representation

The Bill is silent about legal representation in cases before the high court yet most victims of human rights violations are marginalized persons, poor and often cannot afford services of a lawyer. An adequate legal aid system is one of the prerequisites for access to justice for all especially the vulnerable persons.¹⁵The limited ability of people living in poverty to access legal and adjudicatory processes and mechanisms is not only a violation of human rights in itself¹⁶, but is also the consequence of numerous other rights violations.¹⁷Legal aid is indispensable for effective access to courts especially the High Court. Self-representation would be ineffective given the complex procedure of the High Court and the vulnerability of victims of human rights violations.

¹⁵<http://www.dawn.com/news/1301948> accessed on 9th February, 2017

¹⁶Article 14 of the International Covenant on Civil and Political Rights

¹⁷http://www.flac.ie/download/pdf/lab_conference_paperjune_2014.pdf accessed on 9th February 2017

In the case of Airey v Ireland 32 Eu Ct HR SerA (1979) 2 E.H.R.R.305, Ms. Airey sought judicial separation from her physically abusive husband. She was unable to obtain such an order since she lacked financial means, in the absence of legal aid, to retain a solicitor.¹⁸ The European Court of Human Rights held that this was a violation of her right to access court for determination of her civil rights and obligations.

UHRC is aware that there are current provisions under the Civil Procedure Act and rules to cater for those unable to afford the fees related to court proceedings. Such provisions should be replicated in the Bill

The UHRC recommends that the bill provides for legal representation for vulnerable persons . .

5. CONCLUSION

The UHRC notes the proposed Human Rights Enforcement Bill is a positive step towards enhancing the promotion and protection of Human Rights, it will specifically give effect to Article 50 (4) of the 1995 Constitution which provides that Parliament should make laws for the enforcement of guaranteed rights and freedoms enshrined in Chapter 4 of the 1995 Constitution of the Republic of Uganda . However, the UHRC notes that the bill has negative aspects that might hinder the full realization of human rights including: limitation of enforcement of rights; definition of the subordinate court; high court being the first court of instance; appeal process stopping at High Court; procedure for enforcement of human rights violations among others.

The UHRC therefore calls upon Parliament to review the proposed bill and ensure that it complies with human rights standards.



Med S. K. Kagawa
CHAIRPERSON UGANDA HUMAN RIGHTS COMMISSION

¹⁸www.escr-net.org/caselaw/2006/airey-v-ireland-nd-32-eu-r-ct-hr-ser-1979-1979-2-ehrr-305 accessed on 7th July 2016