

ACTS SUPPLEMENT

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Act 18

Human Rights (Enforcement) Act

2019

THE HUMAN RIGHTS (ENFORCEMENT) ACT, 2019.

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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: 31st March, 2019.

Date of commencement: On publication.

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 a 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 other 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 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 the 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 the 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,

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

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 the 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 be liable on conviction 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 on conviction 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 filing 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, Cap. 71 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) of evidence and procedure;
- (d) of joinder, addition, substitution and striking out parties;
- (e) of admission of amicus curiae;
- (f) of service and enforcement of service;
- (g) of notices, warrants and other processes;
- (h) of summoning of witnesses;
- (i) of facts to be proved at any stage of the proceedings;
- (j) of the mode in which the facts may be given;
- (k) of service of applications for enforcement or protection of rights;

- (l) reply to applications for enforcement or protection of rights;
- (m) of consolidation of applications;
- (n) of the content of an application for enforcement or protection of rights;
- (o) of hearing of applications for enforcement or protection of rights and freedoms;
- (p) of 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

Civil Procedure Act, Cap. 71.

Judicature Act, Cap. 13.

Local Council Courts Act, 2006.

Magistrates Courts Act, Cap. 16.