

THE HUMAN RIGHTS LAW REVIEW 2020

Testing the application of the
Human Rights Enforcement
Act 2019

11th December 2020,
10:00 am - 12:00 pm

Information Packet

CONTENTS

Concept Note

*The Human Rights
Enforcement Act 2019-
A Brief*

The Conveners





CONCEPT NOTE

1.0 BACKGROUND

It has been 20 months since the Human Rights Enforcement Act 2019 was assented to by the President of the Republic of Uganda on 31st March 2019. This law gives effect to Article 50(4) of the 1995 Constitution of Uganda by providing for the procedure of enforcing rights under Chapter 4 of the 1995 Constitution of Uganda. One could conclude that it was passed just in time for the 2021 elections happening in January next year. This is because of the violence that occurs before, during and after elections in Uganda.

According to the United Nations Human Rights Standards Regarding Elections, there must be free political participation, freedom of opinion, freedom of expression and information, freedom of assembly and association and an Independent Judiciary as provided for in Chapter Four of the 1995 Constitution of the Republic of Uganda. Previous elections in 2001, 2006, 2011 and 2016 were marred by allegations of vote-rigging, violence, intimidation and violations of freedom of assembly, expression and association as reported by Human Rights Watch

Today, different media houses have reported and documented how security agencies are perpetrating human rights violations against the opposition, the media and the public. This has been the trend in all previous presidential elections in Uganda since 1996.

However, the only difference now is that the Human Rights Enforcement Act 2019 is in force, but the violence persists putting the Act to the test.

2.0 WAY FORWARD

There is a growing concern as to whether the existence of the Act alone, is enough to secure the protection and promotion of human rights in Uganda. This, therefore, calls for an in-depth analysis of the Act with regards to its application considering the increased levels of impunity in the country during this election period. It is on this basis that CEPIL, NETPIL, LANDNET AND CEPA are summoning human rights defenders, civil society actors and other stakeholders at the Human Rights Law Review 2020 via a virtual dialogue to enable a more in depth discussion on the application of this Act before, during and after the elections. This will take place on 11th December 2020 from 10:00 am to 12: pm.

3.0 EXPECTED OUTCOMES:

- To shed light on the enforceability of the Act and how it can be used as a safeguard against election violence.
- A report analysis on the enforceability and the gaps in the Human Rights Enforcement Act 2019.

4.0 MODE

The dialogue will feature, a documentary of what has transpired with regards to human rights violations during the election period and a panel discussion on the theme. The discussion will be led by a panel constituting;

- Ms Diana Angwech – The Vice President Uganda Law Society,
- Dr Livingstone Ssewanyana - Executive Director Foundation for Human Rights Initiative.
- Mr Reagan Wamajji- Head of Programs at the Centre for Policy Analysis
- Moderator - Ms Maria Alesi.

5.0 PARTICIPANTS

The dialogue is expected to draw participants from a cross-section of the society including judicial officers, civil society actors, human rights defenders, journalists, academics, lawyers, and other members of the Ugandan society.

THE HUMAN RIGHTS (ENFORCEMENT) ACT, 2019 – A BRIEF.

The Constitution of the Republic of Uganda 1995, in Article 50 provides for the enforcement of rights and freedoms by courts of law. Clause (1) states explicitly 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.
- Clause (4) of the same Article mandates Parliament to make laws for the enforcement of rights and freedoms stipulated in Chapter four of the Constitution. For 20 years or more, there was no law to address human rights enforcement by the Courts of law in Uganda. The long-accepted practise to fill this lacuna has been that human rights violation cases are filed at the High Court that has unlimited jurisdiction over all civil and criminal matter. Procedural matters were guided by the Civil Procedure Act (and the Rules therein), the Evidence Act and Criminal Procedure Code, among others.

Consequently, the Judiciary Rules Committee in 2008 established under Section 40 of the Judicature Act issued the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules S.I 55 of 2008, to provide for the procedure to be followed when approaching courts of law for the enforcement of human rights. This was in pursuance of the Committee's duty to make rules regulating the procedure and practice of among others, the High Court. These rules were applied in the High Court in various cases of human rights enforcement.

In 2011 however, the Constitutional Court in the case of *Bukenya Church Ambrose v Attorney General* nullified these Rules on the basis that they were unconstitutional as their issuance amounted to the usurping of the powers of Parliament. This decision once again created the lacuna that the Committee had been trying to bridge and re-established the need for a legal framework for the enforcement of Human rights.

On 10th November 2015, the Human Rights Enforcement Bill No 26 of 2015 was tabled before Parliament for its first reading. The Bill was tabled by the Chairperson of the Human Rights Committee, Hon. Jovah Kamateeka as a private Member's Bill. On 31st March 2019, the Bill was signed into law by the President of the Republic of Uganda. The Human Rights (Enforcement) Act, 2019 was received with great anticipation.

As the long title suggests, the Human Rights (Enforcement) Act gives 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. Also, the state as a duty bearer through the new law seeks to ensure that human rights and fundamental freedoms listed in the Constitution are respected by all and the consequences for abuse are severe and deterrent whenever this occurs.

Some of the most progressive provisions of the Act include;

1. The Act lays down who may institute court proceedings, and this includes persons acting in representative capacity, class actions and persons acting in public interest among others.
2. The law has improved the ease with which litigants can approach the courts of law by providing that suits instituted in Magistrates Courts may be made in any language and orally. The onus has now been placed on the court to translate the litigants' application and reduce it into writing where this procedure is adopted. Similarly, the law stipulates that no suit shall be rejected or dismissed merely for failure to comply with any procedure, form or on any technicality. These are noteworthy strides in improving access to justice for a majority of Ugandans who neither speak nor write English, let alone understand Court processes.
3. One of the most contextually relevant provisions of the HREA is that which places personal liability on public officers for infringement of rights and freedoms of citizens notwithstanding 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 state 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.

- If a court decides that a fundamental right or freedom has been violated or unlawfully denied or that it should be enforced, the court 'shall issue orders it considers appropriate, including an order for compensation. This may include rehabilitation of the person' including medical and psychological care' if this is suitable, a public apology including acknowledgement of the facts and acceptance of responsibility, as well as criminal and other sanctions against those responsible for the violations. Restitution, compensation or payment ordered by the court shall be a 'civil debt owed to the victim of a human rights violation.'
- Given the rampant torture allegations within detention centres, Section 11(2) comes as a wakeup call to attempt to end the vice. It provides that whenever, in any criminal proceeding it appears to a judicial officer 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.
- Another exciting development is that no one will be able to plead immunity as a defence to litigation under this law. Even if you have immunity under any other law, it is automatically lost if you are found by a court to have violated someone's rights or freedom. That, in turn, means you may be prosecuted and found liable for things done in the course of your duty.

In addition to already existing avenues in place to address human rights violations, the Human Rights Enforcement Act, 2019 is a welcome, more progressive addition. What remains to be seen is if its implementation will be done and whether the Rule of law will prevail. In order for this to happen, unequivocal commitment from the government and specifically security agencies is required.

The Conveners



Center for Public Interest Law (CEPIL) is aimed at ensuring every person has equal access to social, economic and political opportunities without discrimination on the basis of their ethnicity, social standing, religion, political opinion, or membership of a political party or organization.



The Network of Public Interest Lawyers (NETPIL) was officially launched in May 2015 with the aim of promoting public interest lawyering and the pro bono spirit in Uganda, spearheaded by the Public Interest Law Clinic (PILAC) at Makerere University, School of Law to foster greater engagement of lawyers in public interest litigation and advocacy towards achieving social justice and greater protection of fundamental rights for all



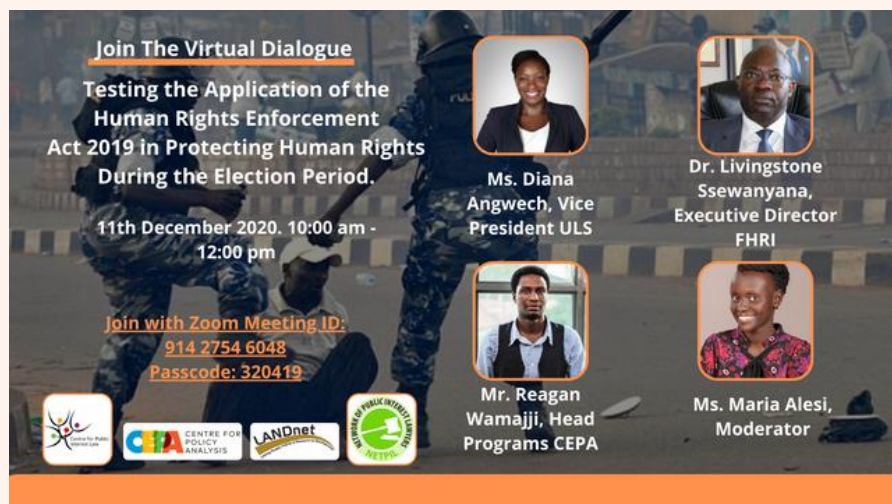
CEPA is Uganda's leading not for profit think tank engaged in parliamentary democracy and many of its policy and practice action areas have been adopted and implemented by the Parliament of Uganda.



LANDnet Uganda was founded in 2012 as a Network engaged in Research, Capacity Development and Policy Advocacy on Land, Gender, Agriculture and Natural Resources Management. Because of the role LANDnet is envisaged to play in the political economy of Uganda and the East African region, it is registered as a company Limited by guarantee.

Program

- Log in - 10:00 am to 10:15 am - CEPIL
- Opening Remarks - 10:15 am to 10:20 am - CEPIL
- The Act in Brief - 10:20 am to 10:40 am- CEPIL
- Panel Discussion - 10:40 am to 11:30 am - The Panel
- Q&A - 11:30 am to 11:45 am - The Panel
- Closing and Departure - Moderator



Join The Virtual Dialogue
Testing the Application of the
Human Rights Enforcement
Act 2019 in Protecting Human Rights
During the Election Period.
11th December 2020. 10:00 am -
12:00 pm

Join with Zoom Meeting ID:
914 2754 6048
Passcode: 320419

Ms. Diana Angwech, Vice President ULS

Dr. Livingstone Ssewanyana, Executive Director FHRI

Mr. Reagan Wamajji, Head Programs CEPA

Ms. Maria Alesi, Moderator

Logos: CEPIL, CENTRE FOR POLICY ANALYSIS, LANDnet, CENTRE FOR PUBLIC INTEREST LAW

You are invited to this dialogue on Zoom.
When: Dec 11, 2020 10:00 AM Nairobi

Register in advance for this meeting using the link below:

<https://zoom.us/meeting/register/tJUpe6tqj0qHtwC6CnZXVz-AkHdMZrfqeX3>

After registering, you will receive a confirmation email containing information about joining the meeting.

Or Join the meeting using
Meeting ID :914 2754 6048
Passcode: 320419

For more information, please reach out to info@cepilugand.org or via phone on +256 393 224 509