

11<sup>th</sup> September, 2020

## THE HUMAN RIGHTS DEFENDERS' PROTECTION BILL, 2020

### MEMORANDUM

#### **1. Policy and principles of the Bill**

The Policy of the Bill is to provide a framework for the recognition and protection of the work and activities of Human rights defenders in order to guarantee a safe and enabling environment for human rights defenders to freely operate.

#### **2. Defects with current legislation**

Chapter Four of the 1995 constitution of the Republic of Uganda provides a Bill of rights which guarantees various rights and freedoms for persons in Uganda, including recognising the existence and work of Human Rights Defenders under article 50 (2) of the Constitution and empowering them to bring action against the violation of human rights and freedoms.

Objective V (ii) of the National Objectives and Directive Principles of State Policy further recognizes the existence and work of human rights defenders and enjoins the state to guarantee and respect the independence of non-governmental organisations which protect and promote human rights. Article 38 (2) further buttress the work of human rights defenders by guaranteeing the civic rights of Ugandans, including their participation in peaceful activities to influence the policies of Government through civic organisations.

The recognition and existence of human rights defenders under the Constitution of the Republic of Uganda is a realization that the promotion and protection of human rights is a shared responsibility between the state and non-state actors in form of human rights defenders who increasingly play an important role in keeping checks and balances on the State and other non-state actors and ensuring that the State and the non-state actors not only protect, but also promote human rights and fundamental freedoms of the people of Uganda.

In doing so, the individuals, or the association of individuals who qualify as human rights defenders have been increasingly victimized by those perpetrating violations of the rights

and freedoms guaranteed under the Constitution and are often the target of coercive measures by state and non-state actors through misinformation, fabricated criminal charges, forced disappearance, imprisonment, torture, intrusion, intimidation and unlawful restricts from the state and state organs and are not recognised a critical body of persons in the field of human rights protection to warrant special legal protection themselves.

The Bill therefore seeks to recognize, promote and enhance the mechanism for the protection of the work and activities of human rights defenders through-

- (a) imposing specific obligations on the Government to recognise, protect and promote the rights of human rights defenders, their work and activities in order to guarantee a safe and enabling environment for human rights defenders to freely operate;
- (b) prescribing the powers of human rights defenders beyond merely bringing action against the violation of another person's or group's human rights and freedoms but being actively engaged in the recognition, promotion and protection of human rights and freedoms of other;
- (c) the criminalisation of acts and omissions that not only hinder the safe and free operation of human rights defenders but also unreasonably restrict the enjoyment of their rights and freedoms.

The protection of the work, activities, rights and freedoms of human rights defenders enhance the recognition, promotion and protection of rights of other ordinary citizens and will set the basis for the full enjoyment and realization of all the rights guaranteed under chapter four of the Constitution.

### **3. PROVISIONS OF THE BILL**

**The Bill has 19 clauses divided into six parts.**

#### **Part I-Preliminary**

This part has three clauses. Clause 1 incorporates the application of the Bill, clause 2 deals with application of chapter four of the Constitution to human rights defender and clause 3 defines the key words and phrases used in the Bill in the context in which they are used in the Bill;

#### **Part II- - Obligations of Government and Other Organs of State**

This part incorporates clauses 4 to 11, dealing with obligation to protect human rights defenders, obligation to protect the rights and freedoms of human rights defenders,

obligation to protect human rights defenders from intimidation and reprisals, obligation to protect human rights defenders from unlawful and arbitrary intrusion and interference, obligation to protect human rights defenders' communication and cooperation, obligation to recognise participation of human rights defender in the conduct of public affairs, obligation to take measures to facilitate the activities of human rights defenders and additional Obligations on Government.

### **Part III- Regulation of Activities of Human Rights Defenders**

This part incorporates clauses 12 to 15 dealing with powers of human rights defenders, limitation of powers of human rights defenders, financial assistance to human rights defenders and assistance to human rights defenders.

### **Part VI - Miscellaneous**

This part incorporates clauses 16 to 19 dealing with offences, enforcement of obligations on Government, report on the implementation of this Act and regulations.

# **THE HUMAN RIGHTS DEFENDERS' PROTECTION BILL, 2020**

## **PART I - PRELIMINARY**

1. Application
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3. Interpretation

## **PART II - OBLIGATIONS OF GOVERNMENT AND OTHER ORGANS OF STATE**

4. Obligation to protect human rights defenders
5. Obligation to protect the rights and freedoms of human rights defenders
6. Obligation to protect human rights defenders from intimidation and reprisals
7. Obligation to protect human rights defenders from unlawful and arbitrary intrusion and interference
8. Obligation to protect human rights defenders' communication and cooperation
9. Obligation to recognise participation of human rights defender in the conduct of public affairs
10. Obligation to take measures to facilitate the activities of human rights defenders
11. Additional Obligations on Government

## **PART III- REGULATION OF ACTIVITIES OF HUMAN RIGHTS DEFENDERS**

12. Powers of human rights defenders
13. Limitation of powers of human rights defenders
14. Financial assistance to human rights defenders
15. Assistance to human rights defenders

## **PART VI - MISCELLANEOUS**

16. Offences
17. Enforcement of obligations on Government
18. Report on the implementation of this Act
19. Regulations

**SCHEDULE:** Currency Point

## **A Bill for an Act**

### **ENTITLED**

#### **THE HUMAN RIGHTS DEFENDERS' PROTECTION BILL, 2020**

An Act to prescribe obligations of Government towards human rights defenders; to provide for powers of human rights defenders; to prescribe limitation on powers of human rights defenders; to provide for assistance of human rights defenders; to prescribe offences for violation of human rights defender; and for related matters.

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

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

##### **1. Application**

This Act applies to a human rights defender in Uganda without discrimination based on gender, race, colour, tribe, language, religion or conviction, political or other opinion, ethnic origin, birth, creed, religion, nationality, age, economic position, marital status or disability.

##### **2. Application of chapter four of the Constitution to human rights defenders**

The rights and fundamental freedoms guaranteed under chapter four of the Constitution shall apply to human rights defenders.

##### **3. Interpretation**

In this Act, unless the context otherwise requires-

“associate of a human rights defender” includes a family member, a legal or other representative, an employer, an employee or a partner of a human rights defender;

“Commission” means the Uganda Human Rights Commission established under article 51 of the Constitution;

“computer” means an electronic, magnetic, optical, electrochemical or other data processing device or a group of interconnected or related devices, performing logical, arithmetic or storage functions; and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or group of such interconnected or related devices;

“currency point” has the value assigned in the schedule to this Act;

“cyber-attack” means any kind of malicious activity or attempt to collect, disrupt, deny, degrade or destroy information held on a computer or any other information system;

“human rights defender” means an individually or an organisation which solely, or in association with others advocates for promotion, protection or realisation of another person or group’s human rights and fundamental freedoms guaranteed under the Constitution.

“intimidation or reprisal means any form of violence, threat, retaliation, discrimination, pressure or any other unlawful, arbitrary or abusive action or threat related to a person’s status, work or activity as a human rights defender, directed at —

- (a) the human rights defender;
  - (b) an associate of a human rights defender;
  - (c) a legal or other representative of the human rights defender;
  - (d) a family member or relative of the human rights defender;
  - (e) a group, association, organisation, community or network, whether formal or informal, with which the human rights defender is associated;
- or

the home, property or possessions of the human rights defender

“intrusion and interference” includes any form of cyber-attack or unlawful form of surveillance, interception of communication, digital or electronic interference, recording, search and seizure carried out against a human rights defender or an associate of a human rights defender, in connection with the human right’s defender’s legitimate activity or work as a human rights defender;

“Minister” means the Minister responsible for human rights;

‘victimization’ means the unfair or less favorable treatment of a human rights defender as a result of his or her work or activity as a human rights defender.

## **PART II - OBLIGATIONS OF GOVERNMENT AND OTHER ORGANS OF STATE**

### **4. Obligation to protect human rights defenders**

- (1) Government shall guarantee, uphold, encourage and respect the work and activities of human rights defender.
- (2) Government and all its organs and agencies shall ensure that-
  - (a) laws, policies and programs are consistent with the obligations of Government prescribed in this Act and any other law;
  - (b) security personnel are adequately trained to respect, protect and promote the rights and work of human rights defenders; and
  - (c) human rights defenders are able to undertake their activities and work in a safe and enabling environment free from unlawful restrictions.

### **5. Obligation to protect the rights and freedoms of human rights defenders**

- (1) Government shall guarantee, respect, uphold and promote the rights and freedoms of human rights defenders.
- (2) In limiting the rights and freedoms of human rights defenders, Government shall ensure that the limitations-
  - (a) are prescribed by law;

- (b) comply with Uganda's international human rights obligations and undertakings;
- (c) comply with international human rights standards;
- (d) are reasonable, necessary, proportionate, acceptable and demonstrably justifiable in a free and democratic society; and
- (e) are solely for the purpose of securing due recognition and respect of the human rights and fundamental freedoms of others and meeting the requirements of public order and general welfare in a democratic society.

**6. Obligation to protect human rights defenders from intimidation and reprisals**

- (1) Government shall protect and take measures for the protection of human rights defenders from acts of intimidation and reprisal.
- (2) Without limiting the general effect of subsection (1), Government shall combat intimidation and reprisals aimed at human rights defenders by carrying out inquiries and ensure that perpetrators are prosecuted or dealt with under the law.

**7. Obligation to protect human rights defenders from arbitrary and unlawful intrusion and interference**

- (1) Government shall protect and take measures for the protection of human rights defenders from arbitrary or unlawful intrusion and interference.
- (2) A human rights defender may lawfully take measures to protect itself from unlawful and arbitrary intrusion or interference in its communication, home, places of work, possessions and correspondence through encryption of communication and other lawful means.

**8. Obligation to protect human rights defender's communication and cooperation**

- (1) Government shall recognize, protect and encourage cooperation and communication between a human rights defender and a national, regional international human rights body, including subsidiary bodies, treaty bodies, special procedures, special rapporteurs, mechanisms or experts with a mandate relevant to the protection and enforcement of human rights and fundamental freedoms.

(2) Notwithstanding subsection (1), a human rights defender shall not-

(a) cooperate or communicate with-

(i) a person, an organisation or foreign Government which has demonstrated an intention to overthrow the lawfully established Government of Uganda or to endanger the security of citizens of Uganda; or

(ii) an organisation which has been declared a terrorist organisation under the Anti-Terrorism Act, 2002;

(b) communicate information which the human rights defender knows or has reason to believe to be false, misleading or inaccurate.

(3) For purposes of subsection (2) (a), the Minister may, in consultation with the minister responsible for internal affairs, declare a person, organisation or foreign Government as having -

(a) demonstrated an intention to overthrow the lawfully established Government of Uganda; or

(b) acted or conducted its' affairs in a manner that endangers the security of Uganda.

## **9. Obligation to recognise participation of human rights defender in the conduct of public affairs**

(1) Government shall recognize, protect and encourage the participation of human rights defenders in the conduct of public affairs.

(2) The participation in the conduct of public affairs by a human rights defender shall be in furtherance of the realization and protection of human rights and fundamental freedoms and may include –

(a) the submission to any person, public authority, agency or organisation, proposals for improving its functioning with respect to the promotion and protection of human rights and fundamental freedoms;

- (b) recommending to any public authority proposals for legislative or regulatory improvements with respect to the protection and promotion of human rights and fundamental freedoms; and
- (c) drawing to the attention of any public authority-
  - (i) any aspect of its work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms; or
  - (ii) any action or omission by any actor, private or public, that may involve or contribute to the violation of human rights or fundamental freedoms.

#### **10. Obligation to take measures to facilitate the activities of human rights defenders**

- (1) Government shall take all necessary measures to facilitate the work and activities of human rights defenders.
- (2) Without limiting the general effect of subsection (1), all organs and agencies of Government shall –
  - (a) permit and facilitate human rights defenders access information required in the exercise of their rights and freedoms; and
  - (b) develop and implement policies and measures to promote, support and enhance the capacity of human rights defenders to promote and protect human rights and fundamental freedoms.

#### **11. Additional Obligations on Government**

- (1) The obligations of Government specifically mentioned in this Act shall not be regarded as excluding others not specifically mentioned.
- (2) The obligations imposed on Government under this Act shall apply to organs and agencies of Government.

## **PART III- REGULATION OF ACTIVITIES OF HUMAN RIGHTS DEFENDERS**

### **12. Powers of human rights defenders**

- (1) A human rights defender may bring an action against the violation of another person's or group's human rights and freedoms guaranteed under the Constitution.
- (2) Without limiting the general effect of subsection (1), a human rights defender may lawfully-
  - (a) recommend to Government, its organs and agencies effective measures to promote human rights and freedoms guaranteed under the Constitution;
  - (b) investigate the abuse or violation of human rights and freedoms of any person and seek redress;
  - (c) visit a place of detention, whether gazetted or not, for the purpose of protecting the rights and freedoms of a person detained in the place of detention;
  - (d) offer and provide legal assistance or other relevant advice to any person;
  - (e) attend public hearings, proceedings and criminal trials;
  - (f) monitor Government's compliance with human rights and freedoms guaranteed under the Constitution;
  - (g) monitor human rights compliance with national laws and other regional and international instruments;
  - (h) make recommendations to Government on the appropriate measures to be taken to promote a safe and enabling environment for human rights defenders;
  - (i) prepare and submit reports on the situation of human rights defenders in Uganda to Government and any other relevant government agency;

(j) disseminate information to the public about human rights matters, including information relating to the violation and protection of human rights and freedoms;

(k) seek, obtain, hold and use information; including-

(i) information regarding how rights and freedoms are given effect in the legislative, judicial and administrative systems;

(ii) information that may be necessary for exercising or protecting or assisting in the exercise or protection of human rights or fundamental freedoms;

(iii) lawfully publishing, imparting or disseminating such information to any other person; and

(iv) studying, discussing, forming and holding opinions on the observance of human rights, and fundamental freedoms and to draw public attention to those matters.

(l) bring action, both civil or criminal, for enforcement of rights and freedoms guaranteed under the Constitution; and

(m) exercise any other power necessary for the promotion and protection of human rights and fundamental freedoms.

(3) Subject to the provisions of other laws in force in Uganda, a human rights defender shall-

(a) exercise his or her rights and freedoms with due respect for the rights of others, public safety, ethics, morals and good conscience;

(b) promote and protect universal human rights of all persons regardless of sex, race, tribe or religion;

(c) promote the rule of law and constitutionalism in Uganda; and

(d) promote social justice.

- (4) The Minister may, by statutory instrument, regulate the powers granted to human rights defenders under this Act.

### **13. Limitation of powers of human rights defenders**

In the exercise of any power granted under this Act, a human rights defender shall not-

- (a) participate, by act or omission, in the violation of human rights and fundamental freedoms of another person;
- (b) participate in or undermine democratic societies, institutions and processes;
- (c) disclose confidential information or sources of such confidential information;
- (d) engage in or encourage violence;
- (e) engage in or encourage any kind of intimidation;
- (f) encourage any non-peaceful means of advocating, protecting, promoting or encouraging the observance of human rights and fundamental freedoms;
- (g) encourage hatred, ethnic incitement, racial incitement, vilification of others or incitement to cause harm or any other unlawful conduct; or
- (h) circulate information knowing it to be false or misleading or encourage misinformation or disinformation.

### **14. Financial assistance to human rights defenders**

- (1) A human rights defender may raise funds, solicit, receive and utilise financial resources or assistance from domestic and international sources for the purpose of promoting and advocating for the protection and realisation of human rights and fundamental freedoms.
- (2) Notwithstanding subsection (1), a human rights defender shall not solicit, receive or utilise funds or assistance-

- (a) from a person who, an organisation or foreign Government which has demonstrated an intention to overthrow the lawfully established Government of Uganda or to endanger the security of citizens of Uganda;
  - (b) from an organisation which has been declared a terrorist organisation under the Anti-Terrorism Act, 2002; or
  - (c) in contravention of the Anti-Money Laundering Act 2013.
- (3) For purposes of subsection (2) (a), the Minister may, in consultation with the minister responsible for internal affairs declare a person, organisation or foreign Government as having –
- (a) demonstrated an intention to overthrow the lawfully established Government of Uganda; or
  - (b) acted or conducted its' affairs in a manner that endangers the security of Uganda.
- (4) Notwithstanding subsection (2), Government or a financial institution shall not, except with an order of court, freeze, confiscate, or seize funds or any other financial assistance belonging to a human rights defender.
- (5) A human rights defender who solicits, receives or utilises funds or other assistance in contravention of subsection (2) (a) and (b) commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment for a period not exceeding five years, or both.
- (6) Where a human rights defender is convicted under subsection (5) court shall in addition to the penalty prescribed, forfeit the funds to the State and be barred from receiving funds or financial assistance for a period not exceeding five years.

## **15. Assistance to human rights defenders**

- (1) Wherever a human rights defender reports a crime or a violation of any his or her rights or freedoms or any of the provisions of this Act to any person in authority, the person in authority –
  - (a) assess the complaint and determine whether an offence or other violation has been committed against the human rights defender;
  - (b) provide assistance to the human rights defender or refer a human rights defender to appropriate organizations and institutions for assistance and support; or
  - (c) take the human rights defender to a place of safety, if the human right defender is in danger.
- (2) Subject to subsection (1), a person in authority shall provide reasonable protection to the human rights defender and prevent the human rights defender from being intimidated or becoming the object of reprisals by any person.
- (3) A human rights defender shall be entitled to information on the nature of protection, assistance and support he or she is entitled to and the mechanisms of obtaining such assistance and support from any organisation.
- (4) The assistance referred to in this section include providing a human rights defender with –
  - (a) safe and appropriate housing or accommodation;
  - (b) legal aid services;
  - (c) counselling;
  - (d) information regarding his or her legal rights;
  - (e) medical care;
  - (f) psychological assistance;

(g) social services; or

(h) safety.

## PART VI - MISCELLANEOUS

### 16. Offences

(1) A person who does any act prescribed in subsection (2) commits an offence and is liable on conviction to a fine not exceeding one thousand hundred currency points or a term of imprisonment not exceeding ten years or both fine and imprisonment.

(2) The acts referred to in subsection (1) are where a person-

(a) subjects a human rights defender to any form of intimidation, reprisal, victimisation or harassment;

(b) attacks the honour or reputation of a human rights defender;

(c) unlawfully intrudes on or interferes with the premises of a human rights defender;

(d) unlawfully detains a human rights defender;

(e) carries out a cyber-attack on a human rights defender;

(f) unlawfully carries out surveillance on a human rights defender;

(g) unlawfully intercepts or interferes with the communication of a human rights defender;

(h) intrudes or interferes in the privacy of a human rights defender or an associate of a human rights defender;

(i) does any act that constitutes gender based violence against a human rights defender;

(j) unlawfully discriminates against a human rights defender; or

(k) being a human rights defender, does any act in contravention of section 13 of this Act.

(2) Where an offence in this section is committed by a legal person, court may-

- (a) hold a shareholder, director, employee, manager, officer or any other principle officer or natural person in authority in the legal person to be responsible for the actions of the legal person and therefore liable for the offence committed and punished as provided in this Act; and
- (b) in addition to any penalty stipulated in this section, —
  - (i) impose a penalty not exceeding twenty thousand currency points on each count;
  - (ii) order for the cancellation of the registration of the legal person as a corporate body;
  - (iii) temporarily or permanently disqualify the legal person from being a human rights defender or undertaking any other trade;
  - (iv) temporarily or permanently close the establishment which have been used by the legal person to commit the offence; or
  - (v) suspend or cancel the trading license or any other license issued under any law applicable in Uganda.

(3) For the purpose of subsection (2) (d), a person shall be taken to have unlawfully detained a human rights defender where, without lawful justification,-

- (a) compels, induces, restrains or prevents the human rights defender, by any means, from leaving the premise, vehicle, vessel or any other place;
- (b) with the intent to compel or induce the human rights defender to remain in or upon the premises, vehicle, vessel or any other place, does any act which prevents the human rights defender from leaving such premises, vehicle, vessel or place; or
- (c) with the intent to compel or induce the other person to remain in or upon the premises, vehicle, vessel or any other place, that person withholds from the human rights defender any clothing apparel, travel document or other property belonging to the human rights defender.

(4) For purposes of this section-

- (a) “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race,

colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability;

(b) “gender based violence” means any harmful act directed against individuals or groups of individuals on the basis of their gender.

### **17. Enforcement of obligations on Government**

The Human Rights (Enforcement) Act, 2019 shall apply to the enforcement of the obligations imposed on Government under this Act.

### **18. Report on the implementation of this Act**

(1) The Minister shall coordinate, monitor and oversee the implementation of this Act.

(2) The Minister shall annually submit to Parliament a report on the implementation of this Act.

(3) The report referred to in subsection (1) shall contain information on—

- (a) the nature of complaints made by human rights defenders;
- (b) the investigation and prosecution of offences under this Act; and
- (c) The fulfilment of obligations of Government;
- (d) the effectiveness of this Act; and
- (e) the challenges faced in enforcing the Act.

### **19. Regulations**

(1) The Minister may, by statutory instrument, make regulations for better carrying into effect the provisions of this Act.

(2) Notwithstanding the Interpretation Act, the Minister may, while exercising his or her powers under subsection (1), by statutory instrument, prescribe such fines and imprisonment as may be appropriate in the circumstances which may be in excess of the penalties prescribed by section 38 of the Interpretation Act.

## **SCHEDULE**

### *Section 2*

#### **Currency Point**

A currency point is equivalent to Twenty Thousand Shillings.