Towards the Human Rights Defenders Protection Bill 2016

A bill to provide for the protection of Human Rights Defenders in Uganda

Frequently Asked Questions
Purpose of the bill

Human Rights Defender's peculiar and difficult working environment makes them susceptible to unique human rights violations.

Human Rights Defenders protect and defend the rights of others but cannot continue to do so if they are not protected by a specific law, it is hoped that this law will provide (in addition to the Penal Code) bigger punitive sanctions based on individual liability to the perpetrator.

Threats faced by HRDs include:

**Bail Conditions**  Human rights defenders suffer prolonged fulfilment of bail/bond conditions (i.e. regular reporting to police/court).

**Self Censorship**  Self-censorship due to fear of political authorities and trumped up charges.

**Intimidation and Interference**  Intimidation to frustrate justice, and interference of the justice processes by the perpetrators.

There is no specific law providing for their (HRDs) protection. Therefore, the object of this Bill is to provide a framework for the protection and realization of the rights of human rights defenders. The HRD Bill will afford greater and specific protection against human rights violations arising from the work that HRDs do.
Background

1. Human Rights Defenders who dare to speak out on behalf of the voiceless are usually singled out and directly or indirectly threatened/frustrated to stop promoting and protecting Human rights do not have a specific protection legislation.

2. The Ugandan Parliament has a constitutional duty of discussing and drafting laws. Over the years, several laws have been drafted to cater for different issues and concerns for the good of the citizenry BUT we do not have a specific protection legislation for Human Rights Defenders in Uganda.

Studies on and situations faced by HRDs in Uganda call for a Protection Bill

STUDIES

- The Legislative Climate for Human Rights Defenders in Uganda 2015-Defenders Protection Initiative

- Protecting Human Rights Defenders in the East African Region, ASF briefing paper.

SITUATIONS

- Arbitrary office searches,
- Seizure/theft of office property,
- Withdrawal of work permits
- Office break-ins,
- Threat of office closures

SHRINKING LEGAL ENVIRONMENT

Repressive legislation such as the

- The NGO Registration Amendment Act (2008)
- Non-Governmental Organizations (NGOs) Registration (Amendment) Bill of 2014,
- Anti Money Laundering Act
- Anti Terrorism Act 2002,
- The Regulation of Interception of Communications Act.
- The Communication Regulatory Act (2012)
Consequent to the studies,

**Defenders Protection Initiative-DPI**
**Human Rights Centre Uganda-HRCU**
**National Coalition for Human Rights Defenders Uganda-NCHRDU**
**Defend Defenders**
**Human Rights Center Uganda-HRCU**
**Human Rights Network Uganda-HURINET** and **Chapter Four Uganda**

have chosen to advocate for a law on the protection of Human Rights Defenders as a strategic approach to mitigate threats faced by HRDs in Uganda.
HRD Bill FAQ’s

Who is a Human Rights Defender?
A Human Rights Defender is defined by the nature of his or her work - promotes and protects human rights.

A Human Rights Defender (HRD) may work individually or in association with others, to defend the universally recognized fundamental human rights and freedoms through non-violent means.

Why do we need a law protecting Human Rights Defenders?

In order to provide for what other laws don’t provide to HRDs. Their (HRDs) peculiar and difficult working environment renders them more susceptible to human rights violations, such as;
Victimization, humiliation, dehumanization, defamation, assault leading to grievous harm, restrictive legal environment and tramped up charges

Is the HRDs Protection Bill peculiar to Uganda?

No, it is not peculiar to Uganda only, There exist continental and national special guidelines, policies, resolutions, judicial and administrative decisions and bills, in other countries, such as;
Brazil, Burkina Faso, Colombia, Ivory Coast, Guatemala, Honduras, Mali, Mexico, Philippines, and Sierra Leone.

Further, there are more countries considering the enactment of a Human Rights Defenders law.
HRD Bill FAQ’s

What is the legal justification of the Human Rights Protection Bill?

The Constitution under The National Objectives and Directive Principles of State Policy under Objective V (ii) provides that; The State shall guarantee and respect the independence of non-governmental organizations which promote and protect human rights. This provision obliges the State to guarantee protection to non-governmental organizations that promote and protect human rights.

However this National objective does not have a law to ensure that it is enforced.

Article 20 (1) of the Constitution provides that the rights and freedoms of individuals that are enshrined in the constitution shall be respected, upheld and promoted by the state. The HRD Bill if passed into law would be one of the means by the State to uphold and promote the rights of individual HRDs.

Article 221 of the Constitution provides for it as a duty by all armed forces in Uganda (UPDF, UPF, Prisons Service, National Security Council and Intelligence services) to observe and respect human rights and freedoms in the performance of their functions.

How does the Bill prevent itself from being misused?

- Obligations and responsibilities of an HRD will be clearly spelt out to avoid ambiguity.
- A mandated duty bearer institution-The Uganda Human Rights Commission- HRD Protection Desk will be the oversight body to give executive direction and ensure compliance. As such any protection services and application of the bill to an HRD will be verified under the parameters mentioned above.
Human Rights Defenders Protection Bill 2016

Aims to:
- Recognize local actors as key agents of change.
- Promote and protect ‘civil society space
- Tailor protection interventions to meet the unique and specific needs of HRD individuals, groups and communities
- Build a ‘safe and enabling environment’ for the defense of human rights
HRD Bill Vs Vision 2040

By protecting HRDs, this Bill contributes to the broader goals of improving the human rights situation in the country, promoting democracy, accountability and transparency, respect for the rule of law which are all tenets of good governance.
HRD Bill FAQ’s

How does this Bill contribute to the realization of National Development Plan II?

The Second National Development Plan (NDP II) 15.6.2

Objective 1 (i) Review and harmonize the legal and policy environment underpinning Justice Law & Order Sector Service delivery for the realization of national development objectives.

Objective 3 (i) Develop and implement measures to promote human rights observance in Justice Law & Order Sector institutions

Objective 3 (iv) Introduce and enforce measures to ensure accountability in transitional justice.

How does this Bill contribute to the realization of Vision 2040?

322 This states that the legal obligation to respect and promote human rights lies with the state, however, it is a duty and obligation of all citizens to promote and protect these rights.

323 Government shall ensure that the human rights based approach to development is integrated in policies, legislation, plans and programs. This approach will strengthen the capacity of the duty bearers to respect, fulfil and protect human rights; and that of the rights holders to know, claim and realize their rights.

The above consider good governance as a crucial enabling factor to achieving the middle income status as a country and accelerating economic and social transformation.
HRD Bill FAQ’s

Having the HRD Bill is also critical in achieving the Sustainable Development Goals (SDGs) especially:

**SDG 4** - Quality Education
**SDG 5** - Gender Equality
**SDG 6** - Clean Water and Sanitation
**SDG 16** - Peace Justice and Strong Institutions

These SDGs are a reflection of what is contained in the National Development Plan II and hence the manner in which HRDs interact with NDP II will be the same way HRDs will interact with the SDGs. Most significantly, Human Rights Defenders in this respect work to secure accountability of the government for respect of human rights whilst achieving the sustainable development goals.

*Are there gaps in the existing legal framework?*

The existing legal framework is not sufficient to guarantee protection to HRDs against human rights violations or abuses arising from their work. For example:

*a) The Bill of Rights contained in Chapter 4 of the Constitution of the Republic of Uganda:*

HRDs enjoy the rights and freedoms contained in the constitution. However, the rights are not specific to afford protection to HRDs from violations arising out of their work. This proposed HRD Bill therefore seeks to expound on the existing rights by borrowing from the international best practices as contained in the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of society to promote and protect universally recognized Human rights and Fundamental freedoms;

UN General Assembly resolution 53/144 (A/RES/53/144) 8 March 1999, to which Uganda is a signatory. The HRD Bill will afford greater and specific protection for HRDs.
THE HRD Protection bill 2016 vs Vision 2040

This bill will enhance sustainable development since HRDs are at the forefront at advocating for the human rights-based approach to development, pursuing the interests of rights holders, victims of human rights violations and society as a whole.
Ms. Margaret Sekaggya
Fmr. Special Rapporteur on the situation of human rights defenders

Human rights defenders encounter a lot of challenges while promoting or protecting human rights of other members of the community. Article 50 (4) of the Constitution of the Republic of Uganda provides that Parliament shall pass laws for the enforcement of rights and freedoms.
b) The Uganda Human Rights Commission Act, 1997: Provides for judicial immunity to the staff of the Commission (as HRDs) for acts or omissions done in good faith but does not mention HRDs who do the same work though are not employees of the Commission.

c) The Whistle Blowers Act 2010
Provides protection to whistle blowers from victimization. They report a crime that is being committed, is likely to be committed or has been committed. How about HRDs who do advocacy, awareness raising, monitoring human rights compliance and investigating alleged human rights violations.

d) The National Objectives and Directive Principles of State Policy under Objective V (ii) Provides that; The State shall guarantee and respect the independence of non-governmental organizations which promote and protect human rights. However this National objective does not have a law to ensure that it is enforced.

e) The Prevention and Prohibition of Torture Act 2012: This law criminalizes torture or cruel, inhuman or degrading treatment or punishment. Violations faced by HRDs transcend torture and include, tramped up charges, anonymous verbal threats, threats to their next of kin, informal summons to political offices etc.

f) The Non-Governmental Organisations Act 2016: This law only regulates non-governmental organisations and does not provide for protection of Human Rights Defenders. It leaves out a wide range of HRDs that do not fall in this category, such as individuals and associations. The law is therefore inadequate in guaranteeing protection to all HRDs.
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Understanding and overcoming potential violations of their rights
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