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THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY HUMAN AND PEOPLES
RIGHTS BILL, 2011

MEMORANDUM

The object of this Bill is to establish an East African Community human and peoples rights regime; give effect to the provisions of the Treaty for the Establishment of the East African Community on human and peoples rights; and to establish a mechanism for the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples Rights. The Bill also seeks to foster the process of deepening and widening integration by guaranteeing human and peoples rights in the social, economic and political spheres.

HON. FREDERIC NGENZEBUHORO,
Chairperson, Committee On Legal Rules And Privileges.

THE EAST AFRICAN COMMUNITY HUMAN AND PEOPLES
RIGHTS BILL, 2011

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THE EAST AFRICAN COMMUNITY HUMAN AND
PEOPLES RIGHTS BILL, 2011

A Bill for an Act

ENTITLED

THE EAST AFRICAN COMMUNITY HUMAN AND
PEOPLES RIGHTS ACT, 2011

An Act to establish a mechanism for the recognition, promotion and protection of Human and Peoples rights in accordance with the provisions of the African Charter on Human and Peoples rights and to provide for other related matters.

ENACTED by the East African Community and assented to by the Heads of State.

PART I—PRELIMINARY

1. This Act may be cited as the East African Community Short Title
Human and Peoples Rights Act, 2011.

2. This Act shall come into force on such date as the Commence-
Council may, by notice published in the Gazette appoint. ment

Inter-
pretation

3. In this Act, unless the context otherwise requires—

“Assembly” means the East African Legislative Assembly established by Article 9 of the Treaty;

“Community” means the East African Community established by Article 2 of the Treaty;

“court” means a court of judicature established by or under the authority of the Constitution of a Partner State or by or under the authority of the Treaty;

“discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by gender, sex, race, colour, ethnic origin, tribe, age, creed or religion, social or economic standing, political opinion or health status;

“marginalization” means the process by which disadvantaged groups are denied the means to improve their position;

“Partner State” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda or any other country granted membership to the Community under Article 3 of the Treaty;

“Treaty” means the Treaty for the Establishment of the East African Community.

Rights and
fundamental
freedoms

4. The rights and fundamental freedoms provided in this Act—

(a) belong to each individual and are not granted by a Partner State; and

(b) include other rights and fundamental freedoms recognized or conferred by law.

5. (1) This Act applies to all laws in the Partner States and binds all persons in the Community. Application

(2) Every person in the Community shall enjoy the rights and fundamental freedoms provided in this Act consistent with the nature of the rights or fundamental freedoms.

(3) When applying a provision of this Act, a court shall—

(a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and

(b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

(4) When interpreting a provision of this Act, a court, tribunal, or other authority shall promote—

(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of this Act.

PART II—RIGHTS AND FUNDAMENTAL FREEDOMS

6. (1) Every person has the right to life. Right to life

(2) A person shall not be arbitrarily deprived of life.

7. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law. Equality

(2) Equality includes the full and equal enjoyment of all rights and freedoms.

8. (1) A Partner State or an authority in a Partner State shall not discriminate against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Freedom from discrimination

(2) A person shall not discriminate directly or indirectly against another person on any of the grounds under subsection (1).

(3) A person shall not be compelled to indicate or define his or her ethnicity or race.

(4) Notwithstanding subsection (1), the Partner States shall take legislative and other measures, including but not limited to affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups as a result of past discrimination.

(5) Any measure taken by the Partner States under subsection (4) shall provide for any benefits to be on the basis of genuine need.

Gender

9. Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities.

Older
members of
society

10. (1) Older members of society are entitled to continue to enjoy all the rights and fundamental freedoms set out in this Act.

(2) The Partner States shall take legislative and policy measures to ensure the rights of older persons to—

- (a) participate fully in the affairs of society;
- (b) pursue their personal development;
- (c) be free from all forms of discrimination and abuse;
- (d) live in dignity and respect;
- (e) retain their social, economic and political autonomy; and
- (f) receive reasonable care and assistance from their family and the State.

(3) National Parliaments shall enact legislation to establish a body to define and advise on policies and programmes for the care and protection of older members of society in the Partner States.

11. (1) The youth are entitled to enjoy all the rights and fundamental freedoms set out in this Act, taking into account their unique needs. Youth

(2) The Partner States shall take legislative and other measures, including but not limited to affirmative action policies and programmes to—

- (a) promote the welfare of the youth;
- (b) ensure political participation by the youth; and
- (c) protect the youth from cultural practices that undermine their dignity and quality of life.

12. (1) Parents, the family, society and the Partner States shall nurture, protect and educate children. Children

(2) All children, whether born within or outside wedlock, are equal before the law and have equal rights under this Act.

(3) A child's mother and father, whether married to each other or not shall have an equal responsibility to protect and provide for the child.

- (4) Every child in the Partner States has a right to—
- (a) a name and a nationality from birth and to have the birth its registered;
 - (b) parental care or appropriate alternative care when separated from its parents;

- (c) free and compulsory basic education;
- (d) be protected from discrimination, harmful cultural rites and practices, exploitation, neglect or abuse;
- (e) be protected from all forms of exploitation and any work that is likely to be hazardous or adverse to the child's welfare;
- (f) adequate nutrition, shelter, basic health care services and social services;
- (g) not to be subjected to violence or to be treated or punished in a cruel, inhuman or degrading manner in schools and other institutions responsible for the care of children;
- (h) not take part in hostilities or be recruited into armed conflicts and be protected from situations of armed conflict;
- (i) not be arrested or detained except as a measure of last resort, and, when arrested or detained, to be treated in a manner that promotes the child's dignity and self-worth and pays attention to the child's rights, including but not limited to the right to—
 - (i) be detained only for the shortest appropriate period;
 - (ii) be kept separate from adults in custody;
 - (iii) be accorded legal assistance by the Partner State; and
 - (iv) be treated in a manner, and be kept in conditions, that take account of the child's disability, if any, gender and age;

(j) have an advocate assigned to the child by the Partner State and at the Partner State's expense in proceedings affecting the child, other than those contemplated in paragraph (k) if injustice would otherwise result;

(k) know of decisions affecting the child, express an opinion and have that opinion taken into account, taking into consideration the age of the child and the nature of the decision.

(7) Children with special needs shall be granted special protection by the Partner State.

(8) The Partner States shall take legislative and other measures to implement this Act and international instruments and standards on the rights of the child.

13. (1) Parties to a marriage shall have equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. Family

(2) National Parliaments shall enact legislation that recognizes—

(a) marriages concluded under any tradition, or system of religious, personal or family law; and

(b) personal and family law under any tradition, or adhered to by persons professing a particular religion, to the extent that such marriages or systems are consistent with this Act.

14. (1) Persons with disabilities are entitled to enjoy all the rights and fundamental freedoms set out in this Act, and to be full participants in society. Persons
living with
disabilities

- (2) Persons with disabilities have a right to—
- (a) respect and human dignity including to be treated, addressed and referred to, in official or private contexts, in a manner and in words that are not demeaning or derogatory;
 - (b) have access to education and to institutions and facilities for persons with disabilities that are as integrated into society as a whole as is compatible with the interests of those persons;
 - (c) have reasonable access to all places accessible to the public, to public transport and to information and communications;
 - (d) use of sign language, braille and other appropriate means of communication;
 - (e) participate in decision-making at all levels;
 - (f) have equal rights to inherit, access, and manage property;
 - (g) have access to materials and devices to overcome constraints arising from those disabilities; and
 - (h) treatment and opportunities in all spheres of life that are both fair and equal to those of other members of society.

(3) The Partner States shall take legislative and other measures, including special provisions for women, to ensure that persons with disabilities enjoy all the rights referred to in subsection (2).

Minorities
and
marginalized
groups

15. (1) Minorities and marginalized groups are entitled to enjoy all the rights and fundamental freedoms set out in this Act, on a basis of equality, taking into account their identity, way of life, special circumstances and needs.

(2) The Partner States shall take legislative and other measures to put in place affirmative action programmes designed to benefit minorities and marginalized groups.

(3) The measures referred to in subsection (2) shall include measures to ensure that minorities and marginalized groups—

- (a) participate and are fully represented in governance and in all other spheres of national life;
- (b) are accorded special opportunities in the educational and economic fields;
- (c) are accorded special opportunities for access to gainful employment;
- (d) are assisted to develop their cultural values, languages and practices;
- (e) are assisted to have reasonable access to water, health services and transport infrastructure;
- (f) have a reasonable opportunity to meet their basic needs; and
- (g) live a life free from discrimination, exploitation or abuse.

16. (1) Every person has inherent dignity and the right to have that dignity respected and protected. Human
dignity

(2) The inherent dignity of every person—

- (a) includes the right to dispose of the remains of a deceased person in a dignified manner; and
- (b) extends to the remains of a person after burial or cremation.

Freedom
and security
of the
person

17. Every person has the right to freedom and security of the person, which includes the right—

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial, except during a state of emergency;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be subjected to torture in any manner, whether physical or psychological; and
- (e) not to be subjected to corporal punishment or to be treated or punished in a cruel, inhuman or degrading manner.

Slavery,
servitude
and forced
labour

18. (1) A person shall not be held in slavery or servitude.
(2) A person shall not be required to perform forced labour.

Privacy

19. Every person has the right to privacy, which includes the right not to have his or her—

- (a) person or home searched;
- (b) property searched;
- (c) possessions seized;
- (d) information relating the family or private affairs of such person unnecessarily required or revealed;
or
- (e) privacy of communications infringed.

20. (1) Every person has the right to freedom of conscience, religion, thought, belief and opinion.

Freedom of
conscience,
religion,
belief and
opinion

(2) Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, observance, including observance of a day of worship, practice or teaching.

(3) A religious community may establish and run places of education at its own expense and to provide religious instruction for persons of that community in the course of providing the education.

(4) Religious observance or religious instruction may be conducted at a State or State-aided institution, if—

(a) conducted on an equitable basis; and

(b) attendance at such religious observance or religious instruction is voluntary.

(5) A person may not be denied access to any institution, employment or facility or the enjoyment of any right, for reasons of that person's religious beliefs.

(6) A person shall not be compelled to—

(a) take an oath that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;

(b) take an oath in a manner that is contrary to that person's religion or belief or that involves expressing a belief that the person does not hold;

(c) receive religious instruction or to take part in or attend a religious ceremony or to observe a day of rest or other observance that relates to a religion that is not that person's religion;

- (d) perform, observe or undergo a rite or a religious practice;
- (e) disclose that person's belief or religious conviction; or
- (f) engage in any other act that is contrary to that person's belief or religion.

Freedom of
expression

21. (1) Every person has the right to freedom of expression, which includes—

- (a) freedom to seek, receive or impart information or ideas;
- (b) freedom of artistic creativity; and
- (c) academic freedom and freedom of scientific research.

(2) The right referred to in subsection (1) does not extend to—

- (a) propaganda for war;
- (b) incitement to violence;
- (c) hate speech; or
- (d) advocacy of hatred that—
 - (i) constitutes ethnic incitement, vilification of others or incitement to cause harm; or
 - (ii) is based on any prohibited ground of discrimination.

(3) In the exercise of the freedom of expression, every person shall respect the rights and reputation of other persons.

22. (1) A Partner State shall not—

Freedom of
the media

(a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or

(b) penalise a person for an opinion or view or the content of a broadcast, publication or dissemination.

(2) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that are—

(a) designed to ensure the necessary regulation of the airwaves and other forms of signal distribution; and

(b) independent of control by the government, political interests or commercial interests.

(3) All State-owned media in the Partner States shall—

(a) be free to determine independently the editorial content of their broadcasts or other communications;

(b) be impartial; and

(c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

(4) National Parliaments shall enact legislation that provides for the establishment of an agency in each Partner State which shall—

- (a) be independent of government or political control in the Partner States;
- (b) reflect the interests of all sections of the society in the Partner States; and
- (c) set media standards and regulate and monitor compliance with those standards.

Access to
information

23. (1) Every citizen in a Partner State has the right of access to—

- (a) information held by the Partner State; and
- (b) any information that is held by another person and is required for the exercise or protection of any right or fundamental freedom.

(2) Every person has the right to demand the correction or deletion of untrue or misleading information that affects that person.

(3) Every Partner State shall publish and publicize any important information affecting the Partner State.

Freedom of
association

24. (1) Every person has the right to freedom of association.

(2) The right extends to the formation, operation and continued existence of civil society organisations.

(3) A person shall not be compelled to join an association of any kind.

(4) Every Partner State shall take legislative measures and adopt policies to promote civil society participation in decision-making and in the management of public affairs at all levels of government.

(5) Any legislation that requires registration of civil society organizations shall provide that—

- (a) registration may not be withheld unreasonably;
- (b) registration shall be in the hands of a body that is independent of government or any other form of political control;
- (c) any fee chargeable shall be no more than is necessary to defray the cost of the procedure;
- (d) there shall be a right to have a fair hearing before a registration is cancelled;
- (e) an appeal to an independent tribunal against a decision to cancel a registration.

(6) Any legislation that applies standards of conduct to civil society organizations shall be formulated with input from affected organizations.

25. Every person has the right, peaceably, unarmed and without the requirement of permission, to assemble, demonstrate, picket, and to present a petition to a public authority.

Assembly, demonstration, picketing and petition

26. (1) Every citizen of a Partner State is free to make political choices, which includes the right to—

Political rights

- (a) form, or participate in forming, a political party;
- (b) participate in the activities of, or recruit members for a political party; and
- (c) campaign for a political party or cause.

(2) Every citizen of a Partner State has the right to free, fair and regular elections for—

- (a) any elective public body or office; and
- (b) any office holder of any political party of which the citizen is a member.

(3) Every adult citizen of a Partner State has the right to—

- (a) be registered as a voter and to vote in any election referred to in subsection (2) and in any referendum; and
- (b) stand for public office, or office within a political party of which he or she is a member, and if elected, to hold office.

Freedom of movement and residence

27. (1) Every person resident in a Partner State has the right to freedom of movement in the Partner State.

(2) Every person has the right to leave the Partner State in which he or she is resident.

(3) Every citizen of a Partner State has the right to enter into, remain in and reside anywhere in the Partner State.

Refugees and asylum seekers

28. (1) The right to seek and obtain asylum is recognized and shall be granted in accordance with international law and practice on refugees.

(2) National Parliaments shall enact legislation in compliance with international law and practice, governing persons who seek refuge or asylum in the Partner States.

Freedom of trade, occupation and profession

29. (1) Every person has the right to choose a trade, occupation or profession.

(2) The practice of a trade, occupation or profession may be regulated by legislation.

30. (1) Every person has the right to acquire and own property in any part of the Community, either individually or in association with others.

Protection
of right to
property

(2) National Parliaments shall not enact laws that permit the Partner States or any person to—

- (a) arbitrarily deprive a person of property of any description;
- (b) arbitrarily deprive a person of any interest in, or right over, such property; or
- (c) limit or in any way restrict the enjoyment of any right under this section.

(3) A Partner State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless that deprivation—

- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with this Act; or
- (b) is for a public purpose or in the public interest and is carried out in accordance with this Act or an Act of Parliament of the Partner State that—
 - (i) requires prompt payment in full, of a just compensation to the person, before the property is taken;
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Notwithstanding any law to the contrary, provision may be made for compensation to be paid to occupants in good faith of the land acquired under this section who may not hold title to that land.

(5) The right recognized and protected under this section does not cover any property that has been unlawfully acquired.

Labour
relations

31. (1) Every person has the right to fair labour practices.

(2) Every worker has the right to—

(a) fair remuneration;

(b) reasonable working conditions;

(c) form, join or participate in the activities and programmes of a trade union; and

(d) go on strike.

(3) Every employer has the right to—

(a) form and join an employers' organisation; and

(b) participate in the activities and programmes of an employers' organisation.

(4) Every trade union and every employers' organisation has the right to—

(a) determine its own administration, programmes and activities;

(b) organise; and

(c) form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

32. (1) Every person has the right to social security.

Social
security

(2) Every Partner State shall provide appropriate social security to persons who are unable to support themselves or their dependants.

33. (1) Every person has the right to health, which includes the right to health care services, including reproductive health care.

Health

(2) No person may be denied emergency medical treatment.

34. (1) Every person has the right to education.

Education

(2) Every Partner State shall institute a programme to implement the right of every child to free and compulsory pre-primary and primary education and in so doing shall pay particular attention to children with special needs.

(3) Every Partner State shall take measures to make secondary and post-secondary education progressively available and accessible.

(4) Every person has the right to establish and maintain, at that person's own expense, independent educational institutions that comply with the requirements of this Act, and meet standards laid down in other legislation.

35. Every person has the right to accessible and adequate housing and to reasonable standards of sanitation.

Housing

36. Every person has the right to be free from hunger and to access adequate food of acceptable quality.

Food

Water

37. Every person has the right to clean and safe water in adequate quantities.

Environment

38. (1) Every person has the right to—

(a) a clean and safe environment;

(b) have the environment protected, for the benefit of present and future generations, through legislative and other measures that—

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources;

(c) access information about the environment.

Language
and culture

39. (1) Every person has the right to use the language, and to participate in the cultural life of that person's choice in accordance with the law.

(2) A person belonging to a cultural or linguistic community shall not be denied the right, with other members of that community to—

(a) enjoy that person's culture and use that person's language; or

(b) form, join and maintain cultural and linguistic associations and other organs of civil society.

(3) A person shall not compel another person to perform, observe or undergo any cultural practice or rite.

40. (1) Consumers have the right to—

Consumer
rights

- (a) goods and services of reasonable quality;
- (b) the information necessary for them to gain full benefit from goods and services;
- (c) the protection of their health, safety, and economic interests; and
- (d) compensation for loss or injury arising from defects in goods or services.

(2) National Parliaments shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.

(3) This section applies to goods and services offered by public entities and private persons.

41. (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

Fair admini-
strative
action

(2) Every person whose right or fundamental freedom has been or is likely to be adversely affected by administrative action has the right to be given written reasons for the action.

(3) National Parliaments shall enact legislation to give effect to the rights in this section (1) and such legislation shall—

- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and

(b) promote efficient administration.

Access to
justice

42. Every Partner State shall ensure access to justice for all persons and where any fee is required, it shall be reasonable and shall not impede access to justice.

Rights of
arrested
persons

43. (1) Every person who is arrested has the right—

(a) to be informed promptly in the language that the person understands, of—

(i) the reason for the arrest;

(ii) the right to remain silent; and

(iii) the consequences of not remaining silent;

(b) to remain silent;

(c) to communicate with an advocate and other persons whose assistance is necessary;

(d) not to be compelled to make any confession or admission that could be used in evidence against that person;

(e) to be held separately from persons who are serving a sentence;

(f) to be brought before a court as soon as reasonably possible, but not later than forty eight hours after being arrested or not later than the end of the first court day after the expiry of the forty eight hours, if the forty-eight hours expire outside ordinary court hours or on a day that is not an ordinary court day;

(g) at the first court appearance, to be charged or to be informed of the reason for the detention continuing, or to be released; and

(h) to be released on bond or bail pending a charge or trial on reasonable conditions unless there are compelling reasons to the contrary.

(2) A person shall not be remanded in custody for an offence if that offence is punishable by a fine only or by imprisonment for not more than six months.

44. (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, where appropriate, other independent and impartial tribunal or body. Fair hearing

(2) Every accused person has the right to a fair trial, which includes the right—

(a) to be presumed innocent until the contrary is proved;

(b) to be informed of the charge with sufficient detail to answer it;

(c) to have adequate time and facilities to prepare a defence;

(d) to a public trial before a court established by law;

(e) to have the trial begin and conclude without unreasonable delay;

(f) to be present when being tried unless the conduct of the accused makes it impossible for the trial to proceed;

(g) to choose, and be represented by an advocate and to be informed of this right promptly;

- (h) to have an advocate assigned to the accused person by the Partner State and at the Partner State's expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (i) to remain silent, and not to testify during the proceedings;
- (j) to adduce and challenge evidence;
- (k) not to be compelled to give self-incriminating evidence;
- (l) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
- (m) not to be convicted for an act, or omission, that at the time it was committed or omitted was not—
 - (i) an offence in the Partner State where the offence is alleged to have been committed; or
 - (ii) a crime under international law;
- (n) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
- (o) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for an offence has been changed between the time that the offence was committed, and the time of sentencing; and
- (p) of appeal to, or review by, a higher court.

(3) Whenever this section requires information to be given to a person, that information shall be given in the language that the person understands.

(4) Evidence obtained in a manner that violates any right or fundamental freedom under this Act shall be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

(5) An accused person charged with an offence, other than an offence that the court may try by summary procedures shall be entitled, on request to a copy of the record of the proceedings of the trial.

(6) An accused person has the right to a copy of the record of proceedings within a reasonable period after the proceedings are concluded, in return for a reasonable fee as prescribed by law.

(7) A person convicted of a criminal offence and whose appeal has been dismissed by the highest court to which the person is entitled to appeal, or who did not appeal within the time allowed for appeal, may petition a court for a new trial if new and compelling evidence has become available.

(8) Nothing in this section shall prevent the exclusion of the press or other members of the public from all or any proceedings for reasons of protecting witnesses or vulnerable persons, morality, public order or national security as may be necessary in a free and democratic society.

45. (1) A person held in custody under the law, whether sentenced or not, retains all the rights and fundamental freedoms under this Act, except to the extent that a right or a fundamental freedom is clearly incompatible with the fact of being in custody.

Rights of
persons held
in custody

(2) A person held in custody shall be entitled to an order of *habeas corpus*.

(3) National Parliaments shall, by legislation provide for the humane treatment of persons held in custody which shall take into account the relevant international human rights instruments that the Partner States are signatories to.

State of
emergency

46. (1) A Partner State may declare a state of emergency in accordance with this Act and only when—

(a) the Partner State is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and

(b) the declaration is necessary to meet the circumstances for which the emergency is declared.

(2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, is effective only—

(a) prospectively; and

(b) for no more than fourteen days from the date of the declaration, unless the National Assembly of the Partner State resolves to extend the declaration.

(3) The National Parliament may extend a declaration of a state of emergency—

(a) by resolution adopted—

(i) following a public debate in the Parliament;

(ii) by the majorities set out in subsection (4);
and

(b) for not more than two months at a time.

(4) The first extension of a state of emergency shall be supported by a vote of at least two-thirds of the members of the Parliament, and any subsequent extension shall be supported by a vote of at least three quarters of the members of Parliament.

(5) The court responsible for the interpretation of the Constitution in the Partner State may decide on the validity of—

- (a) a declaration of a state of emergency;
- (b) any extension of a declaration of a state of emergency; and
- (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

(6) Any legislation enacted in consequence of a declaration of a state of emergency may limit or derogate from this Act only to the extent that—

- (a) the limitation or derogation is strictly required by the emergency; and
- (b) the legislation is consistent with the Partner State's obligations under international law applicable to a state of emergency.

(7) Legislation under subsection (6)—

- (a) shall be published in the *Gazette* as soon as reasonably practicable after being enacted; and
- (b) does not take effect until it is so published.

(8) A declaration of a state of emergency, or legislation enacted or other action taken in consequence of a declaration of a state of emergency may not permit or authorize the indemnification of the Partner State, or of any person, in respect of any unlawful act.

PART III—IMPLEMENTATION OF RIGHTS AND FUNDAMENTAL FREEDOMS

Rights and
fundamental
freedoms

47. (1) It is a fundamental duty of every Partner State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in this Act.

(2) Every Partner State shall take legislative, policy and other measures to achieve the progressive realisation of the rights guaranteed under this Act.

(3) Every Partner State shall recognize and facilitate the role of civil society in the promotion and protection of the rights and fundamental freedoms in this Act.

(4) All State organs and all public officers have the responsibility to understand, and equip themselves to deal with, the needs of special groups within society including women, older members of society, persons with disabilities, children, youth and members of minority and marginalized communities and of particular ethnic, religious and cultural communities.

(5) Every Partner State shall enact and implement legislation to facilitate the fulfilment of its international obligations in respect of human rights and fundamental freedoms and shall—

(a) report on time to international human rights bodies on the implementation of human rights treaties and other instruments;

(b) publish reports intended for submission by the Partner State to international human rights bodies for a reasonable period and facilitate public discussion and debate and participation of civil society before the reports are revised and submitted.

(6) Every Partner State shall disseminate to the public the General Comments and Recommendations of international human rights bodies relating to the implementation of its international obligations.

(7) The national government shall make a statement to Parliament on whether and how it intends to implement those recommendations.

(8) Every Partner State shall establish the necessary machinery to give full effect to the provisions of this Act.

48. (1) A person referred to under subsection (2) has the right to complain and to institute court proceedings alleging that a right or fundamental freedom set out in this Act has been denied, violated, infringed or threatened. Enforcement
of rights

(2) The persons who may institute court proceedings in accordance with subsection (1) are—

- (a) a person acting in his or her own interest;
- (b) a person acting on behalf of another person who cannot act in his or her own name;
- (c) a person acting as a member of, or in the interest of, a group or class of persons;
- (d) a person acting in public interest; and
- (e) an association acting in the interest of one or more of its members.

(3) The Chief Justice in every Partner State shall make rules providing for the court proceedings under subsection (1), which shall satisfy the criteria that—

- (a) the rights of standing provided for in this section are fully facilitated;
- (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary entertain proceedings on the basis of informal documentation;
- (c) no fee may be charged for commencing proceedings under this section;
- (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by technical requirements; and
- (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

(4) The absence of rules provided under subsection (3) shall not deny any person the right to initiate a complaint under this Act and to have that complaint heard and determined by a court.

Authority of
the court to
uphold and
enforce the
Bill of
Rights

49. (1) The Court has jurisdiction to hear applications for redress for violation of a right or a fundamental freedom under this Act.

(2) National Parliaments shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear applications for redress for contravention of this Act.

(3) In any matter brought before it under this section, a court may grant appropriate relief, including—

- (a) a declaration of rights;
- (b) an injunction;
- (c) conservatory orders;
- (d) a declaration of invalidity of any law that infringes this Act;
- (e) an order of compensation against the Partner State or any person responsible for the violation of a right or fundamental freedom; and
- (f) an order of judicial review.

(4) In proceedings against a public authority for a contravention of this Act, a court may not award costs against the plaintiff, or applicant, unless the court determines that the case was frivolous, vexatious or without merit.

50. (1) A right or fundamental freedom provided under this Act may not be limited except—

Limitation
of rights or
fundamental
freedoms

- (a) by a limitation or qualification expressly set out in the provision containing that right or fundamental freedom or by law; and
- (b) to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (i) the nature of the right or fundamental freedom;
- (ii) the importance of the purpose of the limitation;
- (iii) the nature and extent of the limitation;
- (iv) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- (v) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

(2) Notwithstanding subsection (1), a provision in legislation limiting a right or fundamental freedom—

- (a) is not valid unless that legislation specifically expresses the intention to limit that right or freedom and the nature and extent of the limitation;
- (b) shall not be construed as limiting a right or freedom under this Act unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and
- (c) shall not limit a right or fundamental freedom under this Act so as to derogate from the core or the essential content of the right.

(3) A Partner State or person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this section have been satisfied.

(4) The provisions of this Act on equality shall be qualified to the extent strictly necessary for the application of Islamic law to persons who profess the Muslim faith in relation to personal status, marriage, divorce and inheritance.

51. Notwithstanding anything to the contrary in this Act, there shall be no limitation on the following rights and fundamental freedoms—

Rights and freedoms that may not be limited

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and
- (d) the right to an order of *habeas corpus*.