

# Enhancing Public Interest Litigation for Human and Social Rights Justice in Uganda

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## ABSTRACT

This research critically examines the potential of public interest litigation (PIL) to advocate for access to human and social rights justice in Uganda. While the Constitution of Uganda upholds fundamental freedoms and human rights, PIL remains underutilized in the country. The study emphasizes the importance of PIL in providing socioeconomic justice to marginalized segments of society and highlights the role of competent public interest litigators in championing the rights of the disadvantaged. Additionally, it discusses the need for legislative amendments to facilitate easier access to PIL and calls for the appointment of morally upright judges to administer justice impartially. Drawing on international precedents and legal frameworks, the study underscores the significance of PIL in safeguarding collective liberties and advancing the rule of law.

**Keywords:** Collective liberties, Constitution, Human rights justice, Lawsuits, Public interest litigation.

## INTRODUCTION

The Constitution of the Republic of Uganda provides for the defence and advancement of fundamental freedoms as well as other human rights. It expressly stated that all people, including governmental organs and agencies, must respect, uphold, and promote the individual and collective liberties and rights outlined in Chapter 4 of the constitution [1]. The general rule is that anyone whose fundamental rights have been infringed upon may file a petition with the court to seek remedies. Article 50(2) also permits access to justice through third-party representation [2].

In a similar vein, Article 137(3) [3] establishes public interest litigation (PIL), which permits any individual to petition the constitutional court alleging a breach of the constitution to have occurred. The article states that any act or omission by any person or authority, as well as any parliamentary act, other law, or everything contained in or carried out under the authority of any law.

According to the National Environment Act [4] gives anyone the ability to request an environment restoration order even if they are not harmed and do not have any ownership stake in the area in question. It is in this wise that the Bible urges us to always speak up and judge fairly, defend the rights of the poor and needy, and speak up for those who cannot speak for themselves. More so, we are expected to

"support the underprivileged and the orphans. Give the hungry, disadvantaged, and afflicted justice. Release the hungry and destitute from the evildoer's grasp" [5].

The court [6], in the case of *Kwizera v Attorney General* noted that"

PIL is not the kind of lawsuit that is intended to appease public curiosity; rather, it is one that is filed with the hope that the court will be able to provide meaningful remedy to the entire or a specific segment of the public. A court must be able to provide effective and comprehensive remedy before it will consider a public interest lawsuit (PIL). If the court is unable to provide effective and comprehensive relief, it will not entertain the PIL".

The term public interest litigation has recently been used to describe initiatives to offer previously underrepresented groups and interests legal representation. These initiatives have been launched in acknowledgment that a major portion of the populace and key interests do not receive these services from the traditional legal services market [7].

The court [8], in *Janata Dal v H.S Chowdhary* stated that "public Interest Litigation is the legal enforcement of a general or public interest in which a class of the public or the public has a financial

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interest or some other interest that affects their rights or liabilities”.

Despite the Ugandan constitution providing for the enforcement of rights through the representation of any individual or group, PILs have not been successfully utilised nor gained encouraging traction in the country. This anomaly necessitated the present study that onerously examined how public interest litigation can be used to advance human and social rights justice in Uganda.

The origin and development of PIL can be traced to the USA in the 1960s, with the aim of providing legal representation to previously unrepresented persons and groups. Prior to the emergence of PIL in the 1960s, different groups in the USA contributed to public interest law which has significant connection to the development of legal aid movement. This culminated to the establishment of the first legal aid office in 1876 in New York, USA.

The term “PIL” is a term that has been clothed with different definitions—strategic litigation, human rights litigation, impact litigation, test case litigation, social change litigation and social action litigation are among the few most common definitional concepts. In the words of Goldstone [7] PIL “seek to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms”.

Furthermore, a few additional scholars have characterised PIL as court-driven approaches in producing significant social reform, systemic policy change in society on behalf of individuals who are members of groups that are disadvantaged or underrepresented [9]. Cases involving allegations broadly implicating the operations of large public institutions such as school systems, prisons, mental health facilities, police departments and public housing authorities; and remedies requiring long-term restructuring and monitoring of these institutions referred to as public law litigation in the US, where most PIL originated.

The Supreme Court of India considered instances involving significant issues affecting women that have been brought before it as public interest litigations in *Social Action for Women*, PIL. He contends that despite the courts' limited capacity to advance and bring about change, their efforts in these particular initiatives have raised awareness of women's issues and increased the amount of gender-based social activity [10, 11].

He primarily concentrated on rape, prostitution, and sexual harassment, drawing on court developments in these areas. The former President of the Uganda Law Society, Andrew Kasirye, noted that PIL

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enables judges and solicitors focus on procedural and judicial innovations in overcoming obstacles posed by traditional legal systems. He argued that the reason for this was that, by traditional legal standards, those who started the legal procedure in the public interest were not always 'standing' close to the situations that called for judicial action.

Discouragingly, the court in *Rwanyarare v. A.G*, found it difficult to accept that a lawsuit could be filed on behalf of an anonymous group of people. In this particular case, the court decided it cannot allow any spirited person to represent any group of persons without their knowledge or consent because it would be undemocratic and could have far reaching consequences. In the language of the court, how would the respondent recover costs from the unknown group called Uganda peoples' congress? What if other members of Uganda Peoples' Congress chose to bring a similar petition against the respondent, would the matter be foreclosed against them on the ground of *res Judicata*?

This same idea was applied in the non-smokers' rights case of *TEAN v. BATU*, where non-smokers filed a lawsuit alleging that public smoking infringed their constitutional rights to a clean and smoke-free environment. A healthy atmosphere and way of living. It was decided that the motion could not have included every nonsmoker in Uganda, nor had they been identified in it [12].

The Tanzanian ruling in *Rev. Mtikila v. A.G* [23] and the English ruling in *IRC v. Exp Federation of Self Employed* [24] were cited by the court. The court determined that the interests of public rights and freedoms override technicalities in both cases, particularly with regard to the guidelines governing the process that leads to the preservation of those rights and freedoms. The petitioner would be given a hearing because the judge determined that it was imperative that they defend the liberties and rights of others.

Lord Denning noted in *A.G. v. Independent Broadcasting Authority* that:

"This is a most important safeguard for the common citizens of this country to see that those great powers and influences are exercised in accordance with the law, especially in these days when government departments and public authorities have such great powers and influence."

However, prior to 1995, Ugandan courts believed they were powerless to provide social justice.

The question of how to interpret, uphold, or apply constitutional provisions is another crucial one in PIL cases. There is significant difficulty in applying the word "interpretation" in the Constitutional

Court's mandate as stated in Article 137(1) of the 1999 Ugandan Constitution. The Constitutional Court has been dismissing a number of cases on the grounds that the petitioners' requested remedy is Article 50 for enforcement rather than an interpretation of Article 137.

The court examined the definition of "interpretation" in *Alenyo v. AG* [15], ruling that "the arguments presented to the Constitutional Court, provided they comply with Article 137(3), give rise to the interpretation of the constitution and the court has jurisdiction to hear them...

The court proceeded to rule that the petitioner in this particular case claims that the Law Council has committed acts or omissions that are unconstitutional or violate the Constitution. He has requested a declaration to that effect from this court. These are the kinds of conduct that Article 137(3) allows for, according to our judgment. He is not asserting that he has a set of rights that must be upheld. He is claiming that the Law Council's actions have infringed upon his constitutionally granted rights, and this court ought to declare as much. To achieve so, the court must interpret the specific constitutional articles that are being purportedly infringed and decide whether the behaviour under complaint has in fact breached those requirements. The court's execution of this procedure is an interpretation of the Constitution. It is not the upholding of liberties and rights. It is the court's responsibility to interpret the Constitution. It has the authority to declare these to be stopped or, if necessary, to provide remedy. The question of jurisdiction is unaffected by whether the Law Council's purported actions and inactions violate or are inconsistent with the Constitution. After assuming jurisdiction, the court is asked to look into and make a determination about it. The fact that the petitioner may obtain a remedy elsewhere is also irrelevant. That in and of itself cannot deprive the court of the authority granted to it by Article 137.

Furthermore, the court stated in *Ismail Serugo v K.C.C and Attorney General* [16] that in order for the Constitutional Court to have jurisdiction, the petition must demonstrate on its face that the Court has jurisdiction and that an interpretation of a particular constitutional article is necessary. Merely claiming that a constitutional provision has been broken is insufficient. Therefore, if any rights have been allegedly violated, they might be enforced by another court under Article 50 of the Constitution. Regarding this question of constitutional interpretation, *Kenyaihamba* [17] of the Supreme Court stated in the case of *David Tinyefuza* that:

It should be mentioned that the Constitutional

Court is made up of at least five senior Court of Appeal judges. Numerous appeals involving serious and significant matters of public concern are heard by the Court. It cannot have occurred to the drafters of the Constitution that, in the event that such small claims were to be brought directly before the Court of Appeal as a Constitutional Court, the Court of Appeal would have to decide whether to drop appeals involving death sentences, treason, and egregious violations of other human rights that had come from the High Court and entered the Court of Appeal through ordinary procedure in order to settle those unimportant issues arising from claims that they were in conflict with Article 137(3) and (7) of the Constitution.

Consequently, even while the Constitutional Court would have the authority to hear the petition and make a decision, it went beyond its authority in this instance by considering and making a decision on issues that were not covered by Article 137. The High Court ruled in *Ostraco v AG* [18] that the judge's job is not to interpret the Constitution but to subject the current legislation to it, comply with Article 273 of the Constitution when needed, and construe the current legislation with the necessary modifications, adaptations, qualifications, and exceptions to bring it into compliance with the Constitution.

PILs are lawsuits filed to uphold or defend the rights of the general public, or a sizable portion of it. Most countries in the globe, including Pakistan, India, Bangladesh, the Philippines, Australia, and the USA, use it as a mechanism for significant social change on a variety of topics, including the environment, the constitution, health, and land concerns.

The court determined in *Bandhua Mukti Morcha v. Union of India* [19] that;

"Public interest litigation is not adversarial in nature; rather, it presents the government and its officials with a challenge and an opportunity to guarantee social and economic justice—the cornerstone of our Constitution—and to give meaning to fundamental human rights for the underprivileged and marginalised communities".

During a discussion on the application and significance of Public Interest Litigation (PIL), the court in *Mtikila v AG* [20] in Tanzania stated that In order for the court to consider public interest litigation, it needs to be in a position to provide comprehensive and effective remedies. In the event that the court cannot give any meaningful relief, public interest action should be dismissed."

Additionally, PIL is a technique that offers a calculated chance to address societally relevant judiciary issues. It enables civil society organisations to move from complaining at conference tables to more effective, planned, swift, and legally binding action. Furthermore, PIL enables the judiciary to occupy its proper position in the formation and advancement of society. Court rulings are essential to the progress of lawsuits that are litigated in public. PILs also help to clarify legal matters, which advances a culture of constitutionalism, the upholding of human rights, and the rule of law in general.

It should be emphasised that PIL is primarily focused on liberalising the conventional standing rule, which aims to provide social-economic justice to the underprivileged and marginalised groups in society, guaranteeing their equal access to the justice they need.

In PIL issues, courts have also allowed civic-minded individuals and organisations to request extraordinary jurisdiction on behalf of the underprivileged segments of society in order to enforce their legal and fundamental rights.

Where a legal wrong or injury is caused to a person or to a determinate class of persons... And such a person or determinant class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for appropriate direction [21].

Public Interest Litigation as a legal action initiated in a court of law for the enforcement of public

## CONCLUSION

When it comes to basic human rights and liberties, the public—including judges—has backed away. The state, its agencies, and private individuals occasionally breach the constitutional provisions found in Chapter Four of the Constitution, which serve as a benchmark and platform for fundamental rights and freedoms. Court rulings on PIL cases have consistently demonstrated restraint rather than advancing human rights through more liberal interpretation techniques. Courts have frequently relied on procedural grounds to reject PIL actions even in situations where they are aware of widespread or widespread violations of the public's rights.

Instead of protecting the fundamental human rights and freedoms as guaranteed by the Republic of Uganda 1995 Constitution, legislators and other members of the public seek out low-paying political positions in the government and have shown little concern for fundamental human rights. In fact, they

interest or generally interest in which the public or a class of the public or a class of the community has pecuniary interest or some interest by which their rights or liabilities are affected [22; 23].

While highlighting the use of PIL, Lord Denning in *AG v. Independent Broadcasting Authority* [24] stated that:

“This is a very important safeguard for the common citizens of this country so that they can see that those great powers and influence are exercised in accordance with the law in these days when Government Departments and public authorities have such great powers and influence”.

In *Kihara Kimani v AG* [25], a Kenyan court highlighted the use of PIL by holding that:

"The law is a living thing and a court would be striking its responsibility were it to say, assuming that there is no existing recognised tort covering the facts of a particular case, "Why then, this must be the end of it”.

If it were to take such approach, for example, in a situation when injustice had been committed, it would surely be abdicating its duties. If there is no legal remedy available for an intentional act committed by an individual that results in harm to another person's property, the law may be considered to have failed. The law must be necessary in order to be upheld and provide a remedy for anyone hurt while exercising or enjoying it; otherwise, it is pointless. Imagine having a right without a cure, as the desire for a solution and a right are mutually exclusive.

have violated these rights and should not be trusted to uphold the law.

## Recommendations

Based on these observations, the study calls for the general public to defend their fundamental freedoms and human rights through PIL. It is equally necessary to alter Article 50 of the Ugandan Constitution to enable PIL. In essence, the legislation should be changed to handle costs and filing fees. This will make it easier for victims of violations of human rights to be set free, especially if filing a complaint in public is less expensive than filing a regular civil lawsuit. Finally, in order to defend rights and uphold the rule of law against everyone, including the government, the government arm of the judiciary should appoint capable and morally upright judges who would administer justice without fear of retaliation from powerful parties involved in the case. To meet the challenges posed by Public Interest Litigation and

infuse the Constitution with new vigour through judicial activism, we require a bold and daring judiciary. It is necessary for judges to be creative in order to infuse fresh perspectives into PILs, which

are now capable of addressing matters pertaining to basic human rights. The Constitution will be improved and given a new, complete meaning as a result.

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