



THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 17 OF 2024

CORAM: KIHKA, TIBULYA, KAZIBWE, MUGENYI, SSEKAANA, JJCC

1. FARUKU MUHAMED

2. MUSINGUZI JOHN

3. BUNYASIN IBRAHIM

PETITIONERS

VERSUS

THE ATTORNEY GENERAL

RESPONDENT

AND

SEKANJAKO ABUBAKAR AND 21 ORS

INTERVENORS

CONSOLIDATED WITH CONSTITUTIONAL REFERENCE NO. 2 OF 2024

BETWEEN

THE ATTORNEY GENERAL

APPLICANT

AND

AKAMBA PAUL

RESPONDENT

AND

PROFESSOR CHRISTOPHER MBAZIRA

AMICUS CURIAE

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JUDGMENT OF THE COURT

INTRODUCTION

1. These consolidated proceedings arise from Constitutional Petition No. 17 of 2024 and Constitutional Reference No. 2 of 2024, which were, by order of this Court, heard together on account of the common constitutional questions they present.
2. Constitutional Petition No. 17 of 2024 was instituted under Articles 137(1) and 137(3)(a) of the Constitution of the Republic of Uganda, 1995 (hereinafter “the Constitution”), and the Constitutional Court (Petitions and References) Rules, S.I. 91 of 2005. The petitioners invited this Court to interpret the Constitution and pronounce itself on the constitutionality of various provisions of the Human Rights (Enforcement) Act, Cap. 12 (hereinafter “the Act”). The petition was initially brought solely against the Attorney General. Upon application, however, the Court admitted Sekanjako Abubakar and 21 others as intervenors.
3. Constitutional Reference No. 2 of 2024 emanated from Miscellaneous Application No. 062 of 2024, filed by Akamba Paul, a co-accused in High Court Criminal Session Case Nos. 4 and 6 of 2024. In that application, brought under the Act, he sought the nullification of the said criminal proceedings. During the hearing, the Attorney General applied for a reference to this Court to determine whether the nullification of a trial and the acquittal of an accused person on the basis of a violation of non-derogable rights infringes the rights of victims or complainants in a criminal case. The Attorney General further sought this Court’s interpretation of Article 28(1) of the Constitution, specifically whether the right to a fair hearing encompasses the rights of the complainant or society to have their grievances adjudicated by a court

of law.

4. In the course of the reference proceedings, Professor Christopher Mbazira successfully applied to be joined as amicus curiae vide Constitutional Application No. 018 of 2024. Given that Constitutional Petition No. 17 of 2024 raised substantially similar constitutional questions to those framed in Constitutional Reference No. 2 of 2024, this Court ordered that the two matters be consolidated for purposes of hearing and determination.

BACKGROUND

A. The petition.

5. The three petitioners are Advocates of the High Court of Uganda who describe themselves as passionate defenders and firm believers in the rule of law, constitutionalism, and the protection of fundamental human rights and freedoms. Through this petition, they invited the Court to interpret and determine whether Section 11(2)(a), (b) and (c) of the Act contravenes the Constitution. They allege that:
 - a) Section 11(2)(a), (b) and (c) of the Act is inconsistent with Articles 1, 2, 20, 28(1), 28(3)(a), 44 and 126(1) of the Constitution. They contended that the impugned provisions, which permit the acquittal of suspects on the basis of a finding that their non-derogable rights were violated, are unconstitutional as they deny the parties—including victims of crime—the right to a fair hearing.
 - b) The impugned provisions contravene Articles 2, 20 and 28(3)(a) of the Constitution in so far as they offend the presumption of innocence. The petitioners argue that the provisions effectively render suspects *absolutely*

innocent once the court determines that the their non-derogable rights were violated.

- c) Section 11(2)(a) and (b) of the Act contravenes Article 28(2)(b), (c) and (d) of the Constitution by ousting the Court's mandate to hear and determine criminal cases where it is found that an accused's non-derogable right was violated.
- d) Section 11(2)(a), (b) and (c) of the Act contravenes Articles 28(3)(a) and 28(12) of the Constitution in so far as it empowers a court to nullify a trial or acquit an accused person based merely on what appears to the court, what is brought to its attention, or on its finding that the accused was tortured.
- e) The nullification of a trial or acquittal of an accused person under the circumstances described in paragraph (d) violates the alleged violator's non-derogable rights to a trial, to a fair hearing, and to be informed of the charges relating to the alleged violation.
- f) Section 11(2)(a), (b) and (c) of the Act further contravenes Articles 28(3)(a) and 28(12) of the Constitution in so far as it allows courts to make determinations based on the circumstances of a violation of a non-derogable right even where no subsisting charges exist in respect of such violation, notwithstanding that the violation of a non-derogable right constitutes an offence under the Act.

6. The petitioners pray for the following reliefs:

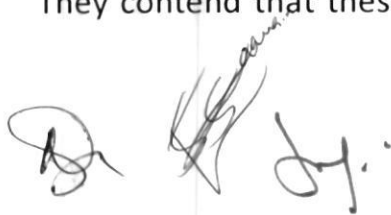
a) That Section 11(2)(a), (b) and (c) of the Act is unconstitutional, in as far as the said provisions allow to acquit the accused person based on the findings of the offence of violation of non-derogable right without a fair hearing and trial in respect to initial offences brought in the criminal proceeding.

b) That Section 11(2)(a), (b) and (c) of the Act is unconstitutional, in as far as the said provisions ordain an acquittal to the accused without a fair hearing and

fair trial in respect to the initial offences brought to court in the criminal proceeding since fair hearing is a non-derogable right.

- c) That Section 11(2)(a), (b) and (c) of the Act, is unconstitutional, in as far as the said provisions offend and or reverse the accused's presumption of innocence to absolute innocence to the extent of the initial offences charged without trial in a criminal proceeding.*
 - d) An order that the proper recourse for courts is for the courts to first make a finding in regards to the offence of violation of the non-derogable rights of the accused and then proceed to determine the criminal matter in respect to the initial offences charged against the accused and adjudge as to whether the accused for offences in the criminal proceedings are innocent or guilty of the initial offences so as to effectuate the presumption of innocence, a fair-hearing, fair trial and avoid derogation from the non-derogable rights and other rights under Articles 1, 28(1), 28(3)(a), 44 and 44(c) respectively.*
 - e) Any other orders court may deem fit, plus costs of the petition.*
7. The petition is supported by affidavits of the 3 petitioners, which substantially restate what is in the petition.
8. In answer to the petition, the Attorney General (respondent), inter alia contends that Section 11(2)(a), (b) and (c) of the Act which provides for the nullification of trials and the automatic acquittal of an accused where non-derogable rights have been violated, disproportionately infringes upon the rights of victims in the criminal justice system.

9. The respondent avers that the Constitution protects the rights of the accused, the victims of crime and the society at large. By allowing a person who has committed a crime to be acquitted without being tried at all in the criminal case, victims of crime and the society are deprived of their right to access to justice and the right to a fair hearing.
10. The respondent avers that automatic nullification of proceedings and acquittal as mandated by Section 11(2) of the Act conflicts with international standards on fair trials, particularly the principle of proportionality emphasized by international legal frameworks.
11. The answer to the petition was supported by the affidavit of Mr. Wanyama Kodoli, Acting Commissioner in the Directorate of Civil Litigation. It substantially repeats what is contained in the answer to the petition.
12. The intervenors were granted leave to oppose the petition by way of a brief. In that brief, they contended that their interest arose from the Attorney General's refusal to defend the constitutionality of Sections 7, 8, and 11(2) of the Act.
13. They further claimed that the Attorney General is moving this court to nullify an Act of Parliament by way of a Constitutional Reference, and that the Attorney General has conceded to a petition seeking to nullify provisions of the said Act.
14. In opposing the petition, the intervenors, in a nut shell, maintain that there is nothing unconstitutional about the contested Sections 7, 8 and 11(2) of the Act. They contend that these provisions remain a necessary check and a demand for



accountability from state actors that have resorted to conducting illegal prosecutions characterized by acts of torture, inhuman and degrading treatment of accused persons as well as gross infringement of the right to a fair trial.

B. The reference

15. The background to the Reference, as determined from the record of proceedings in the High Court, is that on 14th June 2024, the respondent in the Reference, took a plea before the Chief Magistrate in Criminal Case No. 78 of 2024. He pleaded not guilty. He applied for bail which was granted. Upon fulfilling the conditions imposed by the court, he was released. Upon his release, the respondent was confronted by security agents who arrested him and bundled him forcefully into a waiting minibus. He was taken to an unknown place where he was kept incommunicado for seven days. He was later taken to a police station and jointly charged with others on fresh charges of Diverting Public Funds Contrary to Section 6 of the Anti-Corruption Act, Cap 116. He was later produced in court vide Criminal Case No. 82 of 2024 to which he entered a plea of not guilty and was subsequently remanded.
16. The respondent alleged that during his detention, he was subjected to various forms of torture by various security agencies who repeatedly coerced him to confess, plead guilty with threats to withdraw his bail application. He further alleged that they threatened to prolong his detention unless he complied.
17. The respondent thereafter filed Miscellaneous Application No. 62 of 2024, arising from Criminal Cases Nos. 78 and 82 of 2024 and Criminal Session Cases Nos. 4 and 6 of 2024, under Sections 4 and 17 of the Act. In that application, he sought orders

dismissing the charges against him in the two criminal trials, contending that State agents abducted him from the Court premises on 14th June 2024, assaulted him, and detained him incommunicado for seven days in an ungazetted facility, thereby violating his non-derogable right to freedom from torture, cruel, inhuman, and degrading treatment.

18. When Criminal Session Case No. 4 of 2024 came up for hearing before Lawrence Gidudu, J., Miscellaneous Application No. 62 of 2024 was called for hearing as well. In the course of hearing Miscellaneous Application No. 62 of 2024 Ms. Jackline Amusugut, appearing for the Attorney General, raised objections to the remedies in Sections 7, 8 and 11(2) of the Act contending that those provisions were unconstitutional in so far as they stay criminal trials and provide for an acquittal of an accused without trial.
19. Lawrence Gidudu, J. in his ruling delivered on the 1st October 2024 ruled that the matters canvassed by the Attorney General were substantial questions of law which needed to be interpreted by the Constitutional Court. Hence this Constitutional Reference.
20. The High Court made reference to the Constitutional Court for the determination of the following questions which were framed by the High Court as follows:
 - a) Whether the provisions of Sections 7, 8 and 11(2) of the Act which mandate the trial court to nullify a trial and acquit an accused without taking evidence in a trial violate the right to a fair hearing in Article 28 of the Constitution?
 - b) Whether a victim of a crime or society has a right to a fair hearing in Article 28 of the Constitution?

21. The intervenors in their brief opposed the Reference. They assert that the Attorney General, in light of Article 119(4) (c) of the Constitution, cannot seek to challenge the constitutional validity of Acts of Parliament and that therefore Constitutional Reference No. 2 of 2024 was erroneously granted by the High Court. They additionally claim that no bona fide constitutional questions arose from the proceedings in the lower court.

Representation

22. When the matters came up for hearing on 7th March 2025, the petitioners were self-represented. Mr. Geoffrey Madette, Principal State Attorney, Mr. Raymond Nganzi, State Attorney, and Ms. Jackline Amsugut, State Attorney, appeared for the respondent in the petition and for the applicant in the reference. Mr. Jude Byamukama and Mr. Paul Katunguka appeared for the respondents/intervenors in the petition. Mr. Innocent Wanambuko appeared for the amicus curiae. Mr. Jonathan Muwaganya, Chief State Attorney, was present in Court representing the Office of the Directorate of Public Prosecutions.

23. The parties filed their respective written submissions with the leave of Court. The intervenors likewise filed their brief with the leave of Court, and the amicus curiae filed an amicus brief with the leave of Court. All these submissions have been considered by the Court in determining this consolidated petition and reference

ISSUES FOR DETERMINATION

24. Regarding the petition, the following issues were agreed upon for determination by the Court:

1. *Whether the petition is properly before the Court?*
2. *Whether Section 11(2)(a), (b) and (c) of the Fundamental Human Rights (Enforcement) Act Cap 12, contravenes Articles 1, 2, 20, 28 (1), (3) (a), (3) (b), 28 (3)(c) 28 (3) (d), and (12), 44 (c), 128 and 126 of the Constitution of the Republic of Uganda?*
3. *Whether the Petitioners are entitled to any relief?*




25. Regarding the reference, the following questions were referred by the trial Court for determination by this Court.

1. *Whether the provisions of Sections 7, 8 and 11 (2) of the Human Rights (Enforcement) Act Cap 12 which mandate a trial court to nullify a trial and acquit an accused without taking evidence in a trial violates the right to a fair hearing in Article 28 of the Constitution?*
2. *Whether a victim of crime or society has a right to a fair hearing in Article 28 of the Constitution?*



ANALYSIS AND DETERMINATION.

26. Mwondha, JSC., distilled the governing principles of constitutional interpretation that this Court must bear in mind when construing the Constitution in *David Tusingwire v Attorney General* [2017] UGCC 11, and summarized them as follows:



- “(i) The Constitution is the Supreme law of the land and forms the standard upon which all other laws are judged. Any law that is inconsistent with or in contravention of the Constitution is null and void to the extent of its inconsistency (see Article 2(2) of the Constitution). Also see Presidential Election Petition No. 2 of the 2006 (SC) **Rtd Dr. Col. Kiiza Besigye v Y. K. Museveni**.*
- (ii) In determining the constitutionality of a legislation, its purpose and effect must be taken into consideration. Both purpose and effect are relevant in determining the constitutionality of either effect animated by the object of the legislation intends to achieve. See **Attorney General v Silvation Abuki**, Constitutional Appeal No. 1988 (SC).*
- (iii) The entire Constitution has to be read together as an integral whole with no particular provision destroying the other but each sustaining the other. This is the rule of harmony, the rule of completeness and exhaustiveness (See **P. K. Ssemwogerere and Another v Attorney General**, Constitution Appeal No. 1 of 2002 (SC) and **the Attorney General of Tanzania v Rev Christopher Mtikila** (2010) EA 13.).*
- (iv) A Constitutional provision containing a fundamental human right is a permanent provision intended to cater for all times to come and therefore should be given dynamic, progressive liberal and flexible interpretation keeping in view the ideals of the people, their social economic and political cultural values so as to extend the benefit of the same to the maximum possible. See **Okello John Livingstone and 6 others v The Attorney General and Another**, Constitutional Petition No. 1 of 2005, **South Dakota v. South Carolina** 192, USA 268. 1940.*
- (v) Where words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural meaning. The language used must be construed in its natural and ordinary sense.*
- (vi) Where the language of the Constitution or a statute sought to be interpreted is imprecise or ambiguous a liberal, general or purposeful interpretation should be given to it. (See **Attorney General v Major David Tinyefunza**, Constitutional Appeal No. 1 of 1997 (SC)).*

(vii) *The history of the country and the legislative history of the Constitution is also relevant and useful guide to Constitutional Interpretation (see Okello John Livingstone and 6 others v. Attorney General and Another (Supra)).*

(viii) *The National objectives and Directive principles of state policy are also a guide in the interpretation of the Constitution. Article 8A of the Constitution is instructive for applicability of the objectives."*

We shall be guided by the foregoing principles of constitutional interpretation in resolving this petition.

27. Before we embark upon the determination of the substantive issues presented for our consideration, we find it appropriate to address, at the outset, issue No. 1 as framed by the parties. It is couched in the following terms: *"Whether the petition is properly before the Court?"*
28. This issue lends itself to summary disposal. Insofar as it challenges the propriety of the petition, we are satisfied that, on its face, the petition was duly filed. It raises legitimate questions warranting constitutional interpretation. Accordingly, there is no need to revisit the well-settled principles governing this Court's jurisdiction.

ISSUE NO. 2 OF THE PETITION

Whether Section 11(2)(a), (b) and (c) of the Fundamental Human Rights (Enforcement) Act CAP. 12, contravenes Articles 1, 2, 20, 28 (1), (3) (a), (3) (b), 28 (3)(c) 28 (3) (d), and (12), 44 (c), 128 and 126 of the Constitution of the Republic of Uganda?



Legal arguments for the petitioners

29. In essence, the petitioners submitted that Section 11(2)(a)–(c) of the Act is unconstitutional and contravenes Articles 1, 2, 20, 28(1), and 44 of the Constitution of the Republic of Uganda. They contended that the impugned provisions permit the complete acquittal of accused persons on charges based solely on a determination of the offence of violation of non-derogable rights, without any trial, determination, or findings in respect of the remaining offences initially charged in the criminal proceedings. This, they argued, denies the victims of such offences the right to a trial and a fair hearing in relation to the initial charges.
30. The petitioners further submitted that the biggest constitutional challenge presented by the impugned provision, Section 11(2)(a)(b) and (c) of Act is to acquit an accused person of offenses undetermined, or unheard. They contended that this is a phenomenon unheard-of in our legal regime. They argued that whenever a charge or indictment is brought against an accused person, the net effect of the impugned provision is to exempt the accused from accounting for his/her actions through a fair-hearing, only because his/her non derogable rights were violated.
31. The petitioners submitted that the other constitutional flaw is that the effect of Section 11(2)(a)(b) and (c) of the Act is to remove the right to a fair hearing and fair trial, which is an absolute reserve of the constitution, which they argue cannot be mitigated for whichever reason or justified under Article 43 of the Constitution. They contend that any statutory provision that seeks to undermine the Constitutional guarantee is unconstitutional.

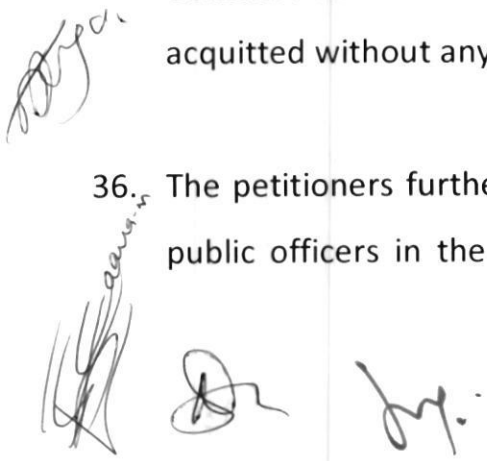
32. The petitioners further contend that the victims of criminal offences, in which the accused are unconstitutionally acquitted by the force of the impugned provision, are left staggering, in a situation of confusion, perplexity and uncertainty on the next course of action, since they (victims of offences) cannot be afforded any remedy by courts of law for the offences, in which the accused is acquitted. The victims cannot apply for review or revision, not even appeal since the denial to hear the victim's cases was ordained by law, the impugned provision.

33. The petitioners submitted that scrapping the impugned provisions off the statute book, does not subvert the Act's aim of deterring the multitude of human rights violations in our country. This is so because Sections 4, 5, 6, 7, 11(1) and (6) of the Act, is still intact and good law, thus perpetrators of human rights violation can still be dealt with and curbed therein.

34. The petitioners further argued that the perpetrators of human rights violations can be curbed under other independent statutes, particularly under the Prevention and Prohibition of Torture Act, Cap 130, Prevention of Trafficking in Persons Act, Cap 131 and Prohibition of Female Genital Mutilation Act, Cap 133.

35. The petitioners relied on **CEHURD and another v Attorney General**, Constitutional Petition No. 64 of 2021 and **Sam Kuteesa and 2 others v Attorney General**, Constitutional Petition No. 46 of 2011 for the proposition that a person cannot be acquitted without any hearing or determination of court.

36. The petitioners further argued that the mischief created by third parties such as public officers in the course of pre-trial processes, in which the non-derogable

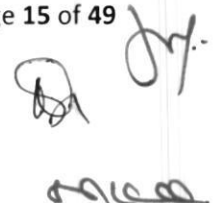


rights of an accused are violated, cannot be visited on the victims of the offence allegedly committed by the accused. The petitioners in support of their arguments cited the Supreme Court case of India in **Zahira Habibula H. Shiekh and another v State of Gujarat and others**, Appeal (crl.) 446-449 of 2004 and **Paras Yadav and others v State of Bihar** (1999) 2 SCC.

37. The petitioners submitted that the Constitution only refers to rights of victims in Articles 52(1)(d) and 126(2)(C). They argued that if the framers of the Constitution had intended to restrict the right to a fair hearing under Article 28(1) to “any person charged with an offence” it would have a deleterious effect on the present and the future of victims who are citizens of Uganda. They contend that the framers could not have intended that the right of fair hearing is only available to accused persons. They submitted that the right to a fair hearing is categorically made available to everyone under Articles 28 and 42 of the Constitution.

38. The petitioners submitted that the tenets of the right to a fair hearing for victims of offences are not expressly provided for in the Constitution. By contrast, the tenets of the right to a fair hearing for accused persons are clearly articulated under Article 28 in its entirety. The petitioners contended that, at the time of drafting the Constitution, emphasis was placed on the rights and interests of accused persons rather than those of victims. They therefore asserted that any such tenets relating to victims’ right to a fair hearing must be implied under Article 28(1) of the Constitution.

39. The petitioners submitted that the Constitution, by its nature, is designed to transcend and outlive constitutional silences. They cited the Supreme Court of



Kenya decision in *Attorney General & 2 Others v David Ndi & 79 Others; Dixon & 7 Others*, Petitions Nos. 11, 12 and 13 of 2021 (Consolidated), [2022] KESC, at pages 1188–1190, in which the Court observed that certain matters of constitutional relevance are sometimes left unaddressed, and that courts have invoked the doctrine of constitutional silence to expand the ambit of rights and to render democracy substantive.

Submissions of the respondent/Attorney General

40. The Attorney General in its submissions considered the provisions of Section 11(2)(a), (b) & (c) of the Act 2019 which provides for the acquittal of the accused upon a finding of a violation of the accused's non-derogable rights. The Attorney General submitted that the Section means that once the court finds that a person's non-derogable right has been infringed upon, the trial shall be declared a nullity and the accused person will be acquitted.
41. The Attorney General submitted that the Constitution requires the State to prosecute anyone who has committed an offence. However, Section 11(2) of the Act introduces a new concept of acquittal without prosecution or trial. The Attorney General contends that the Section therefore creates inherent imbalance, nullifying the entire trial thereby denying the victims of crime justice.
42. The Attorney General further submitted that the principle of proportionality is a key component of both international human rights law and domestic criminal justice systems. It dictates that any remedy for a violation of rights must be

proportionate to the harm caused by the violation.

43. It was contended that Section 11(2) of the Act does not leave room for judicial discretion, which is essential in determining an appropriate remedy for rights violations. Courts must be empowered to weigh the severity of the rights violation against the interests of justice. It was argued that, in many instances, remedies other than nullification of the entire trial, such as excluding illegally obtained evidence through trials-within-trial, compensating the accused for the wrongs occasioned, or ordering a retrial can adequately address the violation without undermining justice.
44. The Attorney General finally submitted that by nullifying proceedings on account of violations of an accused's rights without considering victims' rights, results in an unjust outcome where an accused escapes liability without trial. Reliance was made on the case of **Mthembu v S**, (2008) AHRLR 223, (SASCA 2008) for this proposition.

Legal argument of the Intervenors

45. The intervenors contend that their interest in the petition stems from the refusal by the Attorney General to defend the constitutionality of Sections 7, 8 and 11(2) of the Act contrary to Article 119 of the Constitution. They argued that the Attorney General contrary to the mandate of its office moved the court to nullify an Act of Parliament by way of a Constitutional Reference and further conceded to the petition which seeks to nullify the provisions of the Act.



46. It was argued that the Attorney General in light of Article 119(4)(c) of the Constitution could not seek to challenge the constitutional validity of Acts of Parliament. It was further argued that the Parliament, which the Attorney General is mandated to represent under Article 119(4), was not heard in the proceedings and the Attorney General is constitutionally prohibited from turning against his client. Therefore, Constitutional Reference No. 2 of 2024, **Attorney General v Akamba Paul** was erroneously granted.
47. The intervenors further argued that no constitutional questions validly arose from the High Court. They contended that the Attorney General neither demonstrated that Parliament enacted the Act in disregard of his opinion nor objected to the passage of the impugned provisions in Parliament, and that the Act was duly assented to by the President.
48. The intervenors faulted the High Court for framing questions for constitutional interpretation without first determining whether a bona fide constitutional question had arisen from the proceedings, and noted that there was no objecting victim at the trial. Counsel cited *Kizza Besigye v Yoweri Museveni & Another*, Presidential Petition No. 1 of 2006, and *Andrew Kibaya v Uganda*, Constitutional Reference No. 28 of 2010, in support of their argument.
49. It was pointed out that Sections 7, 8 and 11(2) of the Act codify the legal principles promulgated by this court in **Kizza Besigye & others v Attorney General**, Constitutional Petition No. 7 of 2007, where it was held that courts should not sanction continued prosecution of accused persons where their non-derogable rights have been violated.

50. It was further argued that the non-derogable rights enshrined in the Constitution could not be effectively protected without a Parliamentary enactment as required by Article 50(4) of the Constitution. Sections 7, 8 and 11(2) of the Act prevent the manipulation of the justice system for ulterior purposes, provide a framework for the enforcement of the non-derogable rights and therefore operationalize Article 44 of the Constitution.
51. Counsel for the intervenors submitted that it was erroneous for the petitioners and the Attorney General to posit that the right to a fair trial is enjoyed by complainants or victims of crime. It was argued that Article 28(1) of the Constitution provides for the determination of a criminal charge and the attendant procedure is intended to reach a finding of guilt while protecting the rights of those subjected to criminal proceedings and the Court should not be persuaded to rewrite the Constitutional provision to include "victims." A task that belongs to Parliament.
52. Counsel submitted that there is nothing unconstitutional about Sections 7, 8, and 11(2) of the Act, as they serve as necessary checks on the accountability of State actors who choose to conduct illegal prosecutions characterized by abuse of rights and infringements on the right to a fair trial.
53. It was finally submitted that this court should further consider the historical context that led to the enactment of the Act. The effect it would have on the international human rights conventions the country has ratified and the possible erosion of the public trust and confidence in the justice system once the impugned provisions are scrapped.

The petitioners' rejoinder to the intervenors' submissions.

54. The petitioners in re-joinder reiterated the ground of the petition stressing that Sections 11(2)(a), (b) & (c) of the Act is unconstitutional as it does not conform to the Constitution, international law and practices. Rendering the Section unconstitutional would not fetter the enforcement of human rights under the Act and or cause the enforcement of such rights redundant.
55. It was further argued that, broadly speaking, the right to a fair trial is available to all persons facing a criminal charge. It was argued that the right to compensation, restitution or the right to remedy as attributed to victims of wrong or crime cannot be realized if the victims do not have a right to a fair trial. Further that the right to equal protection of the law irrespective of status cannot be construed to be a preserve of the accused. Counsel for the petitioners cited the **Banjul Charter**, the **International Covenant on Civil and Political Rights** and the **United Nations Human Rights Declaration on Human Rights** which instruments provide for a right to a fair hearing to a "person" or 'any person' and not to 'an accused person'.
56. Counsel argued that Article 119(c) of the Constitution does not stipulate how the interests of Government are to be represented by the Attorney General, who may defend, concede, or withdraw any matter in Court.

Brief of *Amicus Curiae* in the Reference

57. The *Amicus curiae* in his brief contended that neither of parties to the reference addressed the historical background of the Act. He argued the constitutionality of

Section 11 of Act cannot be determined without considering the historical context guiding the enactment of the provision. The enactment of Section 11(a), (b) & (c) of the Act was informed by Uganda's dark history of wanton human rights violations. The amicus supported his brief by referring to the Report of the Commission of Inquiry into violations of Human Rights; Findings and Recommendations (October 1994) and the Report of the Uganda Constitutional Commission (1992).

58. The amicus further commenting on the assertion that Section 11 of the Act violates the rights of victims of crime, argued that while their rights should not be down played, the obligation to conduct investigations in a professional manner lies with the police. He further pointed out that one of the grounds advanced in the petition to challenge Section 11 of the Act was that it violates the rights of victims of crime when accused persons are acquitted by the Court without a trial, on account of the violation of their rights.

59. He further stated that when rights are violated and such violations become systematic, incompetent and unprofessional security agencies should not be rewarded by sustaining the trial. Rather, they should be sanctioned by terminating the trial and held accountable to the victims of crime, who remain at liberty to proceed against the Attorney General. He advised that this is a matter which the Court should recommend for inclusion in the Act, so as to give victims the right to seek redress from the Attorney General in cases where Section 11(a)-(c) has been applied by the Court.

The Attorney General's response to *Amicus Curiae*

60. It was Attorney General's submission that the historical background of human rights in Uganda spelt out in the amicus' brief, tracing back to the colonial era, pertains broadly to the evolution of human rights in general. It does not specifically address the origins of the Act nor does it provide any insight into the rationale or context for the inclusion of the impugned Sections within the Act.
61. The Attorney General further gave an elaborate historical background which gave the genesis of the Act and set out how it was initiated as a Private Members' Bill presented by Honorable Joviah Kamateeka. It was contended that the Bill that was forwarded to Parliamentary Counsel under the Ministry of Justice and Constitutional Affairs had only three parts and contained none of the impugned Sections.
62. It was submitted that the amicus demonstrated no knowledge of how the impugned sections became part of the Act and therefore presented no novel point of law or fact. It was further submitted that the amicus' brief does not assist this Court in fulfilling its mandate to adjudicate on the constitutionality of the impugned provisions of the Human Rights Enforcement Act. The amicus' version of the emergence of the impugned sections was said to be misleading, in that it suggested the provisions were informed by Uganda's historical human rights context. It was contended that the provisions were introduced into the Bill without due regard to the guidance of the Attorney General, as mandated under Article 94(4) of the Constitution, which governs the rules of procedure of Parliament.

63. The Attorney General submitted that the recommendation of the Commission of Inquiry into violations of Human Rights was duly implemented and realized. Also, that certain provisions within the Bill of Rights are entrenched as non-derogable rights under Article 44 of the Constitution.

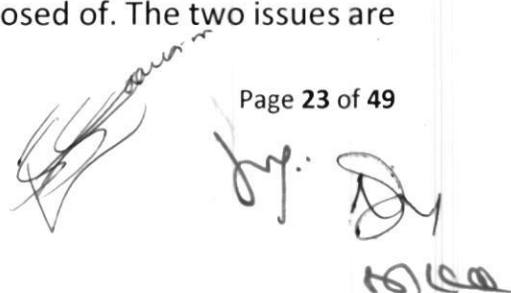
64. The Attorney General further submitted that there already exists a comprehensive legal framework safeguarding the rights of accused persons, particularly protection against torture. These include Article 44 of the Constitution of Uganda, the Prevention and Prohibition of Torture Act 2012, and Section 57 of the Prisons Act 2006, which provides for the humane treatment of prisoners.

DETERMINATION OF ISSUE 2 OF THE PETITION

65. At the outset, and before addressing issue 2 of the petition, it is necessary to make some clarifications.

66. First of all, although the reference challenged the constitutionality of Sections 7, 8, and 11(2) of the Act, the petition itself was confined to Section 11(2). Sections 7 and 8 merely regulate the procedure for referring matters from subordinate courts to the High Court and the manner in which such references are to be considered. These provisions are purely procedural and do not, in themselves, raise any constitutional controversy. The real point of contention lies in Section 11(2), which is the subject of this petition.

67. Secondly, we take the view that, in addressing issue 2 of the petition, issues 2 and 3 of the Reference will, by necessary implication, be disposed of. The two issues are

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inextricably interlinked and arise from the same factual and legal matrix. It is therefore neither necessary nor judicious to consider issues 2 and 3 of the Reference in isolation, as their resolution is subsumed within the determination of issue 2 of the petition.

68. Thirdly, the intervenors challenge the Attorney General's position and the manner in which he has handled the petition. They assert that their interest arises from the Attorney General's refusal to defend the constitutionality of Sections 7, 8 and 11(2) of the Act. They note that the Attorney General's mandate, as set out in Article 119 of the Constitution, includes representing the Government in courts of law and in other legal proceedings. The intervenors contend that, by virtue of this constitutional mandate, the Attorney General is obliged to defend the Act, being a statute duly enacted by Parliament.
69. The Attorney General's constitutional duty is to uphold the Constitution. That duty does not require blind defence of every statutory provision. Where a statutory provision is incompatible with the Constitution, the Attorney General may properly concede its invalidity. It has to be pointed out that a concession by the Attorney General is persuasive but not dispositive; the Court retains the final, independent authority to determine constitutionality.
70. Before delving into the substance of the issue we find it necessary to address some aspects of the brief by the amicus curiae. The *amicus curiae*, in his brief, submitted that where violations of suspects' rights are systematic, incompetent or unprofessional conduct by security agencies should not be rewarded by sustaining

prosecutions. We find this submission wanting.

71. In the first place sustenance of a prosecution is not an action taken in the interest of individuals so as to be taken as a reward. This opinion is misguided. The purpose of the criminal justice system is to maintain social order by enforcing laws, delivering justice, and protecting the rights of both victims and offenders. At its core, the system exists to ensure that when a crime is committed, society responds in a structured, fair, and effective manner.
72. The *amicus curie's* submission was found to be forceful and passionate. An *amicus curie* must strive to remain neutral when addressing constitutional issues so as to preserve his relevance and assist the Court impartially. In this instance, he would rather have joined the intervenors and proffered his strong views as such.
73. Turning now to the substance of the issue, we considered it necessary, for purposes of clarity and analytical coherence, to delineate a set of sub-issues that would guide and assist the Court in arriving at the requisite constitutional determinations.

SUB-ISSUES

i) Whether Section 11 of the act violates Article 20 of the Constitution?

74. Chapter Four of the Constitution of Uganda provides for the protection and promotion of fundamental and other human rights and freedoms, which are set out in Articles 20 to 50. Article 50 is specifically dedicated to the enforcement of those rights and freedoms by the courts. Article 50(4) further provides as follows:

“Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter.”

75. In an effort to operationalise Article 50(4) of the Constitution, the Rules Committee of Parliament enacted the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, S.I. No. 55 of 2008. These Rules were, however, subsequently declared unconstitutional in **Bukenya Church Ambrose v. Attorney General**, Constitutional Petition No. 26 of 2010. The Court held that they were invalid because they had been promulgated by the Rules Committee of Parliament rather than by Parliament itself, in contravention of Article 79 of the Constitution.

76. According to the Attorney General, a member of Parliament, Honourable Jovia Kamateeka introduced a Private Member’s Bill which resulted in the Human Rights Enforcement Act (CAP 12). Section 11(2) of the Act provides that:

“2) Whenever, in any criminal proceedings—

(a) It appears to the Judge or magistrate presiding over a trial;

(b) it is brought to the attention of the competent court; or

(c) the competent court makes a finding,

That any of the accused person’s non derogable rights and freedoms have been infringed upon, the judge or magistrate presiding over the trial shall declare the trial a nullity and acquit the accused person.”

77. The Petitioners in Constitutional Petition No. 17 of 2024 contended that Section 11(2)(a)(b)(c) of the Constitution as couched contravenes various constitutional provisions and thus invited the Court to make declarations to the effect.

78. The Attorney General, as the statutory respondent to constitutional petitions, asserted that the impugned Section 11 is unconstitutional. He contended that there



were legislative flaws in the processes preceding the enactment of the Act. The guidance of his office and that of the First Parliamentary Counsel regarding the intended contents of the Act was omitted. This omission led to the inclusion of the impugned provisions in the Act.

79. This Court is therefore tasked to determine whether Section 11(2) (a) (b) and (c) contravened Article 20 of the Constitution.

80. Whereas the petitioners alleged that Section 11(2)(a), (b) and (c) of the Act contravenes Article 20(1) of the Constitution, they did not assist the Court with any submissions demonstrating how Section 11(2)(a), (b) and (c) infringes Article 20. Counsel for the respondent likewise offered no argument on this point.

81. Article 20(1) of the Constitution provides that:

"(1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.

(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons."

In our view, Article 20 operates as a foundational guiding principle for the interpretation and application of the specific rights and freedoms enshrined in the Bill of Rights. It affirms the inherent nature of human rights, which accrue to all persons by virtue of their humanity. In effect, Article 20 proscribes any form of discrimination in the enjoyment of those rights and embodies a constitutional command to safeguard them. This obligation rests not only upon all persons but also upon every organ of the State.

82. In light of the foregoing principles, and upon our independent assessment, we find that Section 11(2)(a)–(c) of the Act operates in a manner that results in the acquittal of an accused person whose non-derogable rights or freedoms have been infringed, albeit at the expense of the victim of the alleged offence. The practical effect of this operation is that the victim’s right to be heard in the criminal process is curtailed by a violation for which he or she bears no responsibility. Such an outcome offends the constitutional command embodied in Article 20 and, in substance, amounts to a denial of access to justice.

83. Furthermore, and consistent with the constitutional framework earlier outlined, we observe that Section 11(2)(a), (b) and (c) of the Act also has the effect of subordinating the rights of an accused person to those of the victim of the alleged offence. This subordination disturbs the constitutional equilibrium that must be maintained between the rights of the accused and those of the victim, thereby undermining the principle of equality of all persons before the law. Article 20, which implicitly guarantees equality before the law, does not sanction the elevation of one party’s rights at the expense of another. To the extent that the impugned provisions impose such a hierarchy of rights, they contravene the constitutional command and result in a denial of equal protection and access to justice.

84. The principle that all persons are equal before the law is further reinforced by the **International Covenant on Civil and Political Rights (ICCPR)**, to which Uganda is a State Party. Article 14(1) of the Covenant provides that—

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall

be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

This provision underscores the universality of equality before judicial bodies and affirms that fairness in the administration of justice is a right owed to all parties without distinction.

85. The impugned provisions further contradict the constitutional imperative requiring all persons and all organs of the State to promote and protect fundamental rights and freedoms. We are therefore of the considered view that, to the extent that Section 11(2)(a), (b) and (c) denies victims of crime their right to be heard, Article 20 of the Constitution is thereby contravened. Such denial not only undermines the principle of equality before the law but also constitutes a violation of the right of access to justice.

ii) Whether Section 11(2)(a), (b) and (c) of the Act contravenes Article 44(c) of the Constitution?

86. In order to resolve this sub-issue, it is necessary to determine the import and legal effect of Section 11(2)(a), (b) and (c) of the Act. The provision stipulates as follows:

"11. Derogation from non-derogable rights and freedoms

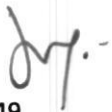
(2) Whenever, in any criminal proceeding—

(a) it appears to the judge or magistrate presiding over a trial;

(b) it is brought to the attention of the competent court; or

(c) the competent court makes a finding;

that any of the accused person's non-derogable rights and freedoms have been infringed upon, the judge or magistrate presiding over the trial shall declare the trial a nullity and acquit the accused person."



This provision forms the core of the constitutional inquiry before us and must therefore be interpreted with due regard to the broader constitutional framework governing the protection and enforcement of fundamental rights.

87. The import of Section 11(2)(a), (b) and (c) is that it imposes a duty upon a presiding judicial officer to act '*suo motu*' where—

- a. it appears to him or her; or
- b. it is brought to the attention of the court by any party; or
- c. the court itself makes a finding,

that any of the accused person's non-derogable rights or freedoms have been infringed.

88. In our view, the provision establishes a mandatory consequence: the termination of the criminal trial upon the violation of an accused person's non-derogable rights. A judicial officer before whom such an accused person appears is obliged to declare the proceedings a nullity and to acquit the accused. The language of the section admits of no discretion.

89. We further observe that, unlike an ordinary dismissal—where the possibility of re-charging an accused person may remain open—Section 11(2) specifically requires the court both to nullify the trial and to acquit the accused person. The judicial officer is left with no alternative course of action. The mandatory nature of this consequence is central to the constitutional concerns raised by the petition.

90. Article 44(c) of the Constitution provides as follows:

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“Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—...

(c) the right to fair hearing;”

91. Article 44(c) affords absolute protection to the right to a fair hearing, rendering it an absolute right that cannot be suspended, limited, or taken away by the State under any circumstances, including during a state of emergency, war, or internal unrest. We are of the view that the phrase “notwithstanding anything in this Constitution” means that this protection overrides any other constitutional provision—such as Article 43—that might otherwise permit the limitation of human rights in the “public interest.”
92. We consider Article 44(c) to be a cornerstone of the Rule of Law. It ensures that even when the State exercises its most extraordinary powers, the procedural and substantive requirements of justice—such as the right to be heard by an independent and impartial tribunal—must remain intact. The right to a fair hearing is therefore regarded as so fundamental that no justification can permit its violation.
93. The matter, however, does not end there. The respondent, in agreement with the petitioners, contends that an acquittal without trial is unconstitutional and offends the principles of natural justice. It is further argued that, since the Constitution requires the State to prosecute any person who has committed an offence, Section 11(2)(a), (b) and (c) is unconstitutional. The respondent also maintains that an acquittal must arise from a trial—meaning that the judge must consider the facts of the case, evaluate the evidence, and determine that the charge has not been

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proved beyond reasonable doubt.

94. The Intervenors, on the other hand, contend that both the petitioners' and the respondent's assertions are wrongly premised. They argue that complainants or victims of crime do not possess a right to a fair trial. According to the Intervenors, Article 28(1) of the Constitution concerns the determination of a criminal charge, and the attendant procedures are intended to arrive at a finding of guilt while safeguarding the rights of persons subjected to criminal proceedings. Therefore, they maintain that the provision does not envisage victims of crime as beneficiaries of the right to a fair trial.

95. The arguments by all the parties to the petition give rise to yet another sub-issue:

iii) Whether the right to a fair hearing applies to victims of crime?

96. Both the petitioners and the respondent take the position that Section 11(2)(a)(b) (c) of the Act is unconstitutional. The Intervenors, however, maintain that the provision does not offend the Constitution. They base their arguments on their interpretation of Article 28 (1) of the Constitution.

97. We think that the intervenors' understanding of the import of Article 28 (1) of the Constitution is fundamentally flawed as we shall demonstrate.

98. Article 28(1) provides as follows:

"In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court

or tribunal established by law.”

99. In the first place, the clear terms of the Article indicate that the right to a fair hearing applies to “a person,” rather than exclusively to an accused. On this basis, the entitlement to a fair hearing extends to all persons whose rights or interests are affected by the outcome of a criminal charge. These necessarily include victims of crime.

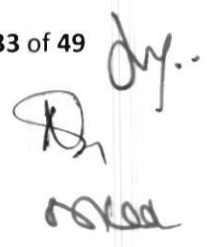
100. Secondly, the Article applies to both civil matters and criminal charges. This ensures that the right to a fair hearing is universal across all legal proceedings. Article 28(1) and recent legal developments have changed the traditional structure of criminal law, such that victims are parties to criminal trials. During trials, their rights to safety, dignity, and restitution are determined, along with the innocence or guilt of the accused. The following provisions underscore the fact that victims have rights which must be protected during criminal trials.

101. Article 126(2)(c) of the Constitution provides as follows:

“In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles— (c) adequate compensation shall be awarded to victims of wrongs;” (Emphasis added)

102. This constitutional mandate has been codified into several legal provisions recognizing victims as claimants for reparation. Section **125 (1)** of the Trial on Indictments Act provides as follows;

“When any accused person is convicted by the High Court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the



*offence committed, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such **compensation** as the court deems fair and reasonable.” (Emphasis added)*

103. When a court orders a convicted person to pay compensation to the victim, such victim is effectively a civil claimant before a criminal forum. In effect, the criminal court will have determined the “civil rights and obligations” (as per Article **28(1)** of the Constitution) of the victim regarding compensation.

104. Section 267(4) of the Penal Code provides as follows:

*“...where a person is convicted of the felony of robbery the court shall, order the person convicted to pay such sum by way of **compensation** to any person to the prejudice of whom the robbery was committed, as in the opinion of the court is just having regard to the injury or loss suffered by such person, and any such order shall be deemed to be a decree and may be executed in the manner provided by the Civil Procedure Act.”*

105. Section 196(1) of the Magistrates’ courts act provides as follows:

“When any accused person is convicted by a magistrate’s court of any offence and it appears from the evidence that some other person, whether or not he or she is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, the court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable.” (Emphasis added).

106. The foregoing legal provisions demonstrate that criminal cases involve the determination of the victim’s rights. When a victim seeks compensation, restitution, or damages from an offender, they are engaging in a civil process within or following a criminal trial. The provisions for payment of compensation to victims

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of crime, which are the central theme of the above legal provisions, can only mean that victims rightfully participate in criminal trials as rights holders.

107. In the specific scenario of Section 42 of the Magistrates Courts Act (MCA), victims are formal parties to criminal proceedings. They may initiate private prosecutions, thereby becoming prosecutors and direct parties to criminal proceedings. In this regard, they enjoy the right enshrined in Article 28 (1) of the Constitution, a right on equal footing with that of accused persons.

108. Victims of crime are key stakeholders in Plea Bargaining arrangements. Before a Plea agreement is accepted by the court for example, the prosecution must inform the victim and consider their views on the proposed sentence or compensation. While the victim does not have a veto power (they cannot stop the plea deal), their input is a valid consideration. This gives them a participatory role akin to a party during the sentencing phase.

109. Therefore, victims of crime are rights holders as the catalyst for the trial (the complaint), the primary source of evidence (the witness), and the beneficiary of the outcome (through compensation or the satisfaction of justice). The general right to a fair hearing ensures that victims' voices are heard regarding the harm suffered and determining the sentencing outcomes in criminal proceedings. The right to a fair, speedy and public hearing before an independent and impartial court is necessary for victims to obtain redress. The fair hearing provision is the procedural mechanism through which the substantive right to an effective remedy (reparation for harm) is realized.



110. The different aspects of a fair trial impact on both accused persons and victims of crime. While a speedy trial protects the accused from prolonged incarceration for example, it equally protects victims from unreasonable delays which prolong their suffering, delay their healing process and diminish the reliability of evidence.

111. If Article 28(1) only applied to the accused, the accused could theoretically waive their right to a public hearing and demand a secret trial. However, the Constitution prevents this because the public has a right to observe the administration of justice. The right to a public hearing guards against secret or biased proceedings. It ensures that the victims' suffering is recognized by society and that the justice system is held accountable for how it treats all participants, preventing further victimization by the state or the justice system itself. Hearings may be conducted in camera where the protection of victims or witnesses so requires, or where considerations of national security render it imperative.

112. When victims participate in trials, they will, therefore, be co-claimants to the right to a fair, speedy and public hearing before an independent and impartial court or tribunal.

113. Therefore, in interpreting Article 28 of the Constitution, it is necessary to appreciate that the right to a fair hearing is not confined solely to accused persons. Article 28(1) expressly guarantees a fair hearing to "*a person*," and not merely to "*an accused*" as we have stated before. The choice of language is deliberate. It reflects the framers' intention that the entitlement to a fair hearing extends to all persons whose rights or interests are affected by the outcome of a criminal charge. These necessarily include victims of crime, whose participation and protection are integral

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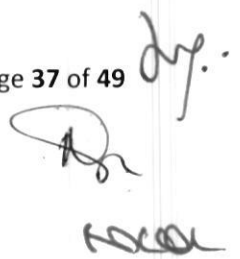
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to the administration of justice.

114. When this understanding is read together with Article 44(c), which renders the right to a fair hearing non-derogable, the constitutional position becomes even clearer. The right is elevated to a status that cannot be suspended, limited, or taken away under any circumstances. Its protection applies notwithstanding any other provision of the Constitution, including Article 43, which ordinarily permits the limitation of rights in the public interest. The combined effect of Articles 28 and 44 is therefore that the right to a fair hearing is both inclusive in its scope and absolute in its protection.

115. Accordingly, any statutory provision that has the effect of denying victims of crime an opportunity to be heard, or that undermines their legitimate interests in the adjudicative process, must be scrutinized with the highest level of constitutional vigilance. Where such a provision derogates from the fair-hearing guarantees entrenched in Articles 28 and 44, it cannot stand.

116. Be that as it may, before rendering our final determination, we are constrained to observe that further questions and considerations arise in evaluating whether Section 11(2) of the Act offends Article 28(1) of the Constitution. The provision, on its face, appears to implicate fundamental rights and freedoms in a manner that necessitates careful scrutiny. It is incumbent upon this Court to delineate the precise issues for determination, for only through such structured analysis can we ascertain whether the impugned Section withstands constitutional muster. Accordingly, the issues for determination are as follows:



A. *Whether Section 11(2) of the Act negates the constitutional command that an accused person must undergo a full trial before being acquitted?*

B. *Whether an acquittal without a trial undermines the principle of accountability for criminal conduct?*

A. Whether Section 11(2) of the Act negates the constitutional command of holding a full trial before a person is acquitted?

117. Article 28(3)(a) of the Constitution provides that

“Every person who is charged with a criminal offence shall— (a) be presumed to be innocent until proved guilty or until that person has pleaded guilty;”

118. As already observed, Section 11(2) requires a judicial officer to nullify or terminate criminal proceedings if he or she is satisfied that an accused person’s non-derogable rights and freedoms have been infringed.


119. We take the considered view that this position is fundamentally at variance with the constitutional architecture governing criminal adjudication. The Constitution is unequivocal that an acquittal may only ensue upon the conclusion of a trial in which the court has received, scrutinised, and evaluated the evidence, and thereafter determined that the prosecution has not discharged its burden of proving the charge beyond reasonable doubt. This procedural sequence is not a matter of judicial discretion but a constitutional imperative flowing directly from the fair-hearing guarantees enshrined in Article 28(3)(b), (c) and (d) of the Constitution.

120. Section 11(2)(a), however, departs from this constitutional pathway by rendering the acquittal of an accused person contingent upon the subjective assessment of the court before which the accused appears, rather than upon the structured evidentiary inquiry mandated by the Constitution. In doing so, the provision supplants the constitutional requirement of a trial with an evaluative shortcut that the Constitution does not contemplate.

121. In light of the foregoing, we are persuaded that Section 11(2) of the Act is inconsistent with, and therefore contravenes Articles 28(3)(a), (b), (c) and (d) of the Constitution.

B. Whether acquittal without a trial exempts holding accused persons accountable for their crimes?

122. The term “accountability,” when applied to accused persons, denotes the obligation of an individual to answer for alleged conduct within the established framework of justice, while ensuring that this obligation is balanced against the full protection of their fundamental rights. Properly understood, accountability is not punitive; it is a constitutional mechanism that ensures that allegations of wrongdoing are addressed through lawful, fair, and transparent processes. In this sense, accountability embodies five interrelated elements, each reinforcing the constitutional commitment to fairness, due process, and the integrity of the criminal justice system.



(i) Answerability before the law

123. An accused person must appear before competent authorities—police, prosecutors, and courts—to respond to charges. This ensures that alleged wrongdoing is addressed through lawful processes rather than arbitrary punishment. See Article 23(2) and (3) of the Constitution.

(ii) Presumption of innocence

124. Accountability does not connote automatic guilt, nor does it imply automatic innocence. The accused is presumed innocent until proven guilty, a principle firmly embedded in Article 28(3) of the Constitution and reflected in international human rights instruments.

(iii) Right to a fair hearing

125. The accused must be tried before an impartial tribunal, with the opportunity to present evidence, challenge witnesses, and be represented by counsel. This right is non-derogable and lies at the heart of Article 28(1) of the Constitution.

(iv) Freedom from self-incrimination

126. Accountability does not extend to compelling accused persons to testify against themselves. They retain the right to remain silent, and confessions obtained through coercion are inadmissible. See Article 28(11) of the Constitution.



(v) Transparency and oversight

127. Authorities handling accused persons are themselves accountable. They must respect human rights, avoid abuse of power, and ensure due process. These obligations are reflected in Articles 23(2), (3), and (4) of the Constitution.

128. We take the considered view that Section 11(2) of the Act is unduly narrow in its construction. It focuses exclusively on the accountability of authorities in their dealings with accused persons, while disregarding the reciprocal and constitutionally grounded obligation of accused persons to answer to the law. In doing so, the provision omits essential dimensions of accountability that animate the constitutional order. This omission places Section 11(2) in conflict with Articles 21(1), 23(2), (3) and (4), and 28 of the Constitution.

129. Accountability, in its constitutional sense, is not unidirectional. It encompasses both the duty of the State to respect and uphold the rights of accused persons, and the corresponding obligation of those accused to submit to lawful processes designed to ascertain the truth of allegations against them. By omitting this latter dimension, Section 11(2) distorts the constitutional balance and undermines the coherent application of the accountability framework envisaged by the Constitution.

vi) Equality before the law.

130. Equality before the law is a core element of accountability. Accountability means that individuals and institutions must answer for their actions under established legal standards, and equality before the law ensures that this accountability applies



universally, without exceptions for status, wealth, or power. Together, they form the foundation of the Rule of Law.

131. As earlier stated, Article 21(1) of the Constitution provides that: “All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”

132. This provision embodies the foundational principle of equality, ensuring that every individual—regardless of status—is entitled to the same legal rights and protections. Article 21(1) therefore establishes that all persons, including victims, accused persons, and any other stakeholders, must receive equal treatment and protection under the law. This principle directly reinforces the right to a fair hearing under Article 28, for equality before the law is hollow if individuals are not afforded equal procedural opportunities.

133. Equal protection necessarily entails equal access to justice. The essence of a fair hearing is grounded in the concept of equality. To deny any person the right to be heard would inherently violate Article 21(1) of the Constitution, as it would imply that some individuals or groups are more entitled to legal recourse than others. Such a scenario would erode the integrity of the legal system and undermine public confidence in its impartiality.

134. Section 41 of the Prevention and Prohibition of Torture Act provides that “Any *information, confession or admission obtained from a person by means of torture is inadmissible in evidence against that person in any proceeding.*”

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135. Thus an accused person in Uganda who has been subjected to torture is entitled to the exclusion of any evidence obtained through such unlawful means. Where the remaining admissible evidence is insufficient to sustain a conviction, the accused may properly be acquitted. However, this exclusionary rule does not extinguish the accused's enduring accountability before the law; should admissible evidence establish guilt, the accused remains answerable for the offence(s) committed.

136. Accountability of an accused person entails being answerable to the justice system for alleged conduct, but always within a framework that safeguards dignity, rights, and fairness. It is a balance: the accused is responsible to the law, and the law is responsible to protect the accused from injustice.

137. There is one further matter that we must address before taking leave of this issue. The Intervenors have advanced the argument that Section 11(2) of the Act merely codifies the legal principles articulated by this Court in **Kizza Besigye & Others v Attorney General**, Constitutional Petition No. 7 of 2007, wherein the Court held that it would not sanction the continued prosecution of accused persons whose non-derogable rights had been violated. It is therefore imperative that we consider that authority within the specific context of the Petition now before us.

138. The Court's finding—particularly its conclusion that it could not *"sanction any continued prosecution of the petitioners where, during the proceedings, the human rights of the petitioners have been violated to the extent described above. No matter how strong the evidence against them may be, no fair trial can be achieved, and any subsequent trials would be a waste of time and an abuse of court process"*—appears to speak directly to the core issues presented by the parties in



this petition.

139. The brief facts of **Kiiza Besigye & others v AG**, (*supra*) were that the petitioners were arrested and charged (at different times and in different courts) with treason, unlawful possession of firearms, terrorism, rape and murder. Whenever they obtained bail from the High Court, the State always violently re-arrested, recharged and re-detained them.

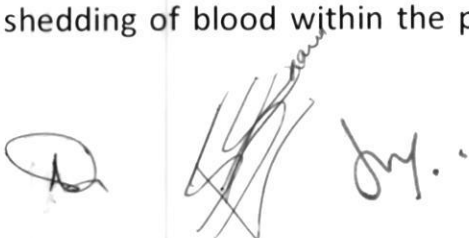
140. Despite several release orders by the High Court and the Constitutional Court, most of them were still unlawfully detained on remand by the time the petition was filed. The lengthy unlawful detention and treatment by the agents of the State caused them physical and psychological torture of the degree that is prohibited by the Constitution of Uganda. The cumulative effect of the conduct of the State towards the petitioners and the Judiciary left the petitioners with a very strong apprehension that they may never get a fair trial in all the cases that were still pending against them.

141. The issues raised by these events were twofold:

(a) whether the petitioners would ever be able to receive a fair trial on the charges which were still pending in the Magistrates Courts and the High Courts of this country?

(b) Can any trial resulting from tainted proceedings as described in the petition be fair within the meaning of article 28 and 44(c) of the Constitution?

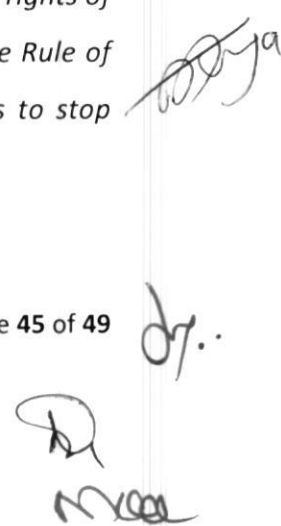
142. According to the petitioners, the events of 1st March 2007—which included the shedding of blood within the precincts of the High Court, the brutal assaults on

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prisoners who had been released on bail, the violent arrest and manhandling of those prisoners as they were thrown onto lorries like sacks of potatoes, the unlawful confinement of the Deputy Chief Justice, the Principal Judge, and other frightened Judges and Registrars who were besieged within the High Court buildings for over six hours, and the unrepentant posture adopted by the Executive arm—all pointed in one direction: that the petitioners would never receive a fair trial before the legal system in respect of the offences pending against them.

143. With respect to the Petitioners' assertion that they may never receive a fair trial in the cases still pending against them, the Court stated as follows:

"We have anxiously examined the evidence from which the petitioners draw this conclusion. We have painfully arrived at a similar conclusion that no trial arising from proceedings bearing a history like the one described in this petition can ever be said to be fair within the meaning of Articles 28 and 44 of the Constitution of Uganda, 1995. We are fortified in this belief by the decision of the Supreme Court of Uganda in Attorney General v Uganda Law Society (supra), in which that Court held that the siege of the High Court of Uganda on 16th November 2005, during which the same petitioners were arrested after being granted bail, contravened Article 28 and other provisions of the Constitution... This Court cannot sanction any continued prosecution of the petitioners where, during the proceedings, the human rights of the petitioners have been violated to the extent described above. No matter how strong the evidence against them may be, no fair trial can be achieved, and any subsequent trials would be a waste of time and an abuse of court process... We cannot stand by and watch prosecutions mounted and conducted in the midst of such flagrant, egregious and mala fide violations of the Constitution, and must act to protect the constitutional rights of the petitioners in particular, and the citizens of Uganda in general, as well as the Rule of Law in Uganda, by ordering all the tainted proceedings against the petitioners to stop forthwith and directing the respective courts to discharge the petitioners. (sic)"



144 In our view, the Court in *Kiiza Besigye* (supra) was confronted with a specific and particularly abhorrent set of circumstances, as the facts of that case clearly demonstrate. Its findings must therefore be construed as relating strictly to the situation that was presented before it.

145. We are fortified in this conclusion by the Court's own observations that "**no trial arising from proceedings bearing a history like the one described** [emphasis added] in this petition can ever be said to be fair" and that "*This Court cannot sanction any continued prosecution of the petitioners where, during the proceedings, the human rights of the petitioners have been violated to the extent described above*" [emphasis added].

146. Therefore, on this ground alone, the present petition is readily distinguishable from the *Kiiza Besigye* case. The factual foundations upon which the petition and the Constitutional Reference rest are starkly different. In this matter, the petitioners advance, in essence, a conceptual and normative challenge—asserting that Section 11 of the Act contravenes specific provisions of the Constitution. By contrast, in the context of the Constitutional Reference, the respondent has presented a factual scenario that does not exhibit the brazen, systemic, and constitutionally shocking violations that characterized the *Kiiza Besigye* proceedings.

147. It is, however, not lost on us that the events, as narrated by the respondent in the Constitutional Reference, appear to be a somewhat common occurrence. There is, therefore, a legitimate degree of apprehension that the rule of law—particularly with respect to the protection of non-derogable rights of the citizenry—is being, or has been, eroded. That may well be so. Nevertheless, we remain firmly of the view

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that, at all material times, constitutional balance must be maintained. To reiterate what we have stated before: the accused is answerable to the law, and the law is equally responsible for protecting the accused from injustice. Our legal framework, as demonstrated, provides recourse to an accused person for the enforcement of his or her non-derogable rights as established by the Constitution.

148. This Court must therefore approach the matter with a clear appreciation of the dual obligations inherent in the constitutional order. On the one hand, the State bears the duty to respect, uphold, and protect the rights of all persons, including those accused of criminal conduct. On the other hand, accused persons are not exempt from the obligation to submit to lawful processes designed to determine the truth of allegations against them. These obligations are mutually reinforcing and must be interpreted in harmony rather than in conflict.

149. It follows that the mere existence of allegations of rights violations, however grave, cannot of itself constitute proof that the constitutional architecture has failed. The Constitution anticipates the possibility of such violations and provides for redress through habeas corpus, judicial review, constitutional petitions, and the supervisory jurisdiction of this Court. These safeguards are not merely formal; they are substantive guarantees designed to ensure that no individual is left without remedy where rights have been infringed.

150. The apprehension expressed by the amicus curiae and echoed by the respondent underscores the importance of vigilance in the protection of non-derogable rights. However, vigilance must not be conflated with a presumption of systemic failure. The Constitution demands that courts remain steadfast in upholding both the rights

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of the accused and the legitimate interests of justice. To tilt the balance disproportionately in either direction would undermine the very constitutional order we are enjoined to protect.

151. In this regard, we reaffirm that the enforcement of non-derogable rights is not optional, nor is it subject to the whims of administrative convenience. It is a constitutional imperative. At the same time, the obligation of an accused to answer to the law is equally grounded in the Constitution. The proper functioning of the criminal justice system depends on the faithful observance of both obligations.

152. Ultimately, therefore, the question before this Court is not whether violations of rights have occurred in other cases, nor whether public concern about such violations is justified. The question is whether, in the present Petition/Reference, the constitutional balance has been maintained and whether the mechanisms for accountability—both of the State and of the accused—have been properly applied.

FINDINGS/CONCLUSION

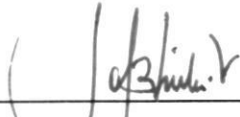
153. Taking all the above into consideration, we shall allow the above petition and reference with the following declarations.

1. That Section 11(2)(a), (b) and (c) of the Act is unconstitutional, in as far as the said provisions allow to acquit an accused person based on the findings of the offence of violation of non-derogable right without a fair hearing and trial in respect to initial offences brought in the criminal proceeding.
2. Victims' right to a fair hearing under Article 20 of the Constitution—though not expressly listed in Chapter Four—is preserved by Article 45 and must be

protected and considered in all trials. Courts and trial tribunals should therefore ensure that victims are afforded the procedural safeguards necessary to vindicate that right.

3. Each party shall bear its own costs, as this is a constitutional matter.

Dated at Kampala this 02nd day of June 2026.



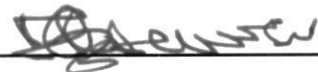
Hon. Oskar Kihika

Justice of Constitutional Court



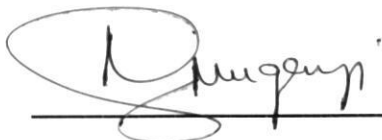
Dr. Margaret Tibulya

Justice of Constitutional Court



Hon. Moses Kazibwe Kawumi

Justice of Constitutional Court



Dr. Asa Mugenyi

Justice of Constitutional Court



Hon. Musa Ssekaana

Justice of Constitutional Court

