

# The Ugandan Constitution of 1995: How it integrated Human rights Principles to Contribute to the Promotion, Protection and Preservation of Rights in Uganda

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**Abstract:** Human Rights as rights recognized in the preamble of the Universal declaration of Human rights to be inherent dignity and of the equal and inalienable rights of all members of the human family, adding that it is considered to be the foundation of freedom, justice and peace in the world. This paper presents the recognized form of protection, promotion and protection of human rights through enactment of acts in the Ugandan constitution. More is done in the paper to demonstrate how it integrates the international and regional rights in the constitution. A brief history of the constitution is presented and interpretation of the implication of acts towards the established human rights institutions is explained. Lastly a critical view on the implementation of the constitution of Uganda by the Government of Uganda is made consecutively on the analysis made from acts in relation to promotion, protection and preservation of rights in Uganda.

**Keywords:** Human Rights, effective, preamble, Ugandan constitution

## INTRODUCTION

### First constitution of Uganda of 1962 and promulgated constitution of 1966

Constitutionalism in Uganda commenced with the first ever constitution enacted by the independent Ugandan leadership in 1962. Historically this was the decolonization turning point of liberating Ugandans for self-government. According to this constitution, in Chapter 1 article 2 section (1), it stated that Uganda consists of Federal States, Districts and the territory of Mbale [1].

This defining of Uganda above in the 1962 constitution, established the indigenous community that existed time before colonialists came to Uganda and was emphasized throughout the whole constitution. However, civil rights were recognized at that time different from the contemporary right context in a in the constitution of 1962. In addition the promulgation of the 1962 constitution by H.E Milton Obote in April 15, 1966 abolished the federated state and created the republic of Uganda.

### Promulgated Constitution of Uganda in 1995

In relation to the 1962 and 1966 constitutions that shaped the new Uganda, the promulgation of the 1995 Constitution, integrated human international human rights principles with consideration of customary traditional functioning of the Ugandan society. While enacting the constitution the dimensions of human rights promotion, protection and preservation are recognized in Chapter 4 of the constitution and this paper presents acts prescribed in the constitution to support this fact [2].

More is done in this paper to examine the process of implementation of the constitutional acts, a process which is referred to as constitutionalism in the paper.

### Key Concepts

#### Protection of Human rights as a principle

In this paper the principle of Protection of Human rights means; all constitutional acts and related efforts directed to ensuring that all rights are never violated. In addition, if violated, the role of punishment to the perpetrators is evoked to ensure safety of others in the general society and prohibit more victims.

#### Promotion of Human rights as a principle

In this paper the principle of Promotion of Human rights means; all constitutional acts and related efforts directed towards contributing to the existence and development of the various ways of enjoying rights by each individual at various levels in the society.

#### Preservation of Human rights as a principle

In this paper, the principle of preservation of Human rights means; all constitutional acts and related efforts to keep various forms of rights in their original nature and ensure that those who enjoy these rights don't face threat from others who may not have the same context of rights.

### 1995 Constitutional acts in relation to contextualization of International Human rights principles in Uganda

In this section of this paper, as illustrated bellow, a selection of the acts in the 1995 Ugandan constitution are presented in relation to there categorized role as enactment to promote, protect or

preserve Human rights as enshrined in the Universal declaration of Human rights, The covenant on Civil and Political Human rights and the covenant on Social, Economic and Cultural Human rights in Uganda.

### Promotion of Human Rights

Chapter 4 of the 1995 Ugandan constitution recognize and contributes to the establishment of laws to facilitate the promotion human rights in Uganda. The chapter is entitled to the protection and promotion of fundamental and other human rights and freedoms [3].

In the layout of acts in this chapter of the constitution, it establishes in the article 20 (1)

*“Fundamental rights and freedoms of the individual are inherent and not granted by the State.”* And further more establish in the consecutive article in 20(2) that;

*“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 this paper the interpretation of these direct quotations from the Uganda constitution of 1995, are argued to be a positive contribution to the integration of International Human rights instruments ranging from the Universal declaration of Human Rights declared in 1984, The Covenant of Civil And Political rights of 1966 as well as the Covenant on Social, Cultural and Economic rights of 1967. Some of these rights that where directly in cooperated in the drafting of the constitution include the following;

*“Right to life, Protection of personal liberty, protection of human dignity and protection from inhuman treatment, protection against slavery, servitude and forced labor, against deprivation of property,*

*Right to privacy of person, home and other property, Right to a fair hearing, freedom of conscience, expression, movement, religion, assembly and association,*

*Right to education, Rights of the family Affirmative action in favour of marginalized groups, Rights of women, Rights of children, Rights of persons with disabilities, rights of minorities, Right to culture and similar rights,*

*Civic rights and activities, Right to a clean and healthy environment, Economic rights Right of access to information, Right to just and fair treatment in administrative decisions [4]”*

In relation to these recognized rights enshrined in the constitution, the role played by the Uganda Human Rights Commission as mandated by the constitution to promote human rights in different forms, is presented once more in Chapter 4 article 52 as presented bellow;

*“(a) To establish a continuing programme of research, education and information to enhance respect of human rights;*

*(b) To recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families;*

*(c) To create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda;*

*(d) To educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;*

*(e) To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;” [5]*

### Critic to the enshrined rights in the acts as opposed to real enjoyment of the rights

In the general summary provided by the 1995 Ugandan constitution article 12 section 221 states that;

*“It shall be the duty of the Uganda Peoples’ Defense Forces and any other armed force established in Uganda, the Uganda Police Force and any other police force, the Uganda Prisons Service, all intelligence services and the National Security Council to observe and respect human rights and freedoms in the performance of their functions.[6]”*

However the Ugandan police is the highest violator of Human rights and has continually arrested and detained Ugandans without trial at different levels of the society. This has been accelerated by the high corruption rates in the institution that value less the meaning of human rights protection.

In the consecutive section, some of the enshrined approaches in the 1995 constitution to protect the rights integrated rights from the international human rights systems in the Ugandan society are presented.

### Protection of Human Rights

Chapter 4 of the 1995 Ugandan constitution once again established legal ground through the acts in the constitution to create the following institution in relation to the protection of Human rights;

### Uganda Human Rights Commission

In article 51(1), of the constitution in Chapter 4, it establish that the Uganda Human Rights Commission is mandated to do the following functions closely linked to protection of rights of all Ugandans;

*“(a): To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;*

*(b) To visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations;*

*(c) To monitor the Government’s compliance with international treaty and convention obligations on human rights; and. [7]”*

In addition to the functions of the Human rights commission as enshrined in the constitution above, in 50 (2), its stated that the commission may, if satisfied that there has been an infringement of a human right or freedom, do the following to protect enjoyment of rights by Ugandans;

*“(a) The release of a detained or restricted person; (b) payment of compensation; or (c) any other legal remedy or redress. [8]”*

Evident from the mandate granted to the Human rights commission as enshrined in the Ugandan constitution of 1995, this makes the Commission to be the overall institution to monitor and evaluate rights violations as well as to protect the infringement of human rights for all Ugandans. While working with the Uganda Parliament to check government function and avoid state based violence of citizen’s rights, it also works with the police to ensure that there limited cases of arbitrary arrest as well as detentions of criminals without trial.

Furthermore the commission works with national Non-organization across the country to contribute to improving the human rights enjoyment across the country.

This prime role and duty enshrined in the constitution puts the Commission mandate from the constitution to be in the first position and point of reference in relation to the violation of Human rights in relation to the International Human rights instruments as well as the African charter on human and people’s rights.

### **Critic to the mandate granted to the Uganda Human rights commission realities in practice**

The protection of rights as mandated to the Human rights commission by the Ugandan constitution has faced many challenges that inhibit its full implementation force to ensure the rights a protected across the country.

The commission is less funded, limited to cities, understaffed and influenced by politics in case of victimization of the citizens by the state; this in the long run has continued to make the role for which the constitution envisioned to be unmet.

In the consecutive section some of the enshrined approaches in the 1995 constitution to preserve the rights integrated from the international human rights systems in the Ugandan society are presented.

### **Preservation of Human Rights**

Preservation of rights as explained in this papers and preference is given to the customary rights of Ugandans. That is the rights that existed in relation to the cultures of the indigenous Ugandans. Focus of the discourse on the preservation of these rights is put on land ownership as enshrined in the constitution and restoration of traditional leadership in Uganda as illustrated bellow;

### **Preservation of land ownership following the customary establishment of land tenure ship**

As enshrined in the constitution, In Chapter 15, and consecutive articles it states that;

*(3) Land in Uganda shall be owned in accordance with the following*

*Land tenure systems— (a) customary; (b) freehold; (c) mailo; and (d) leasehold.*

*(4) On the coming into force of this Constitution— (a) all Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and (b) land under customary tenure may be converted to freehold land ownership by registration.*

This establishment of land ownership as enshrined in the constitution established the traditional setup of land ownership which for the case of Buganda was mailo land for the king, and customary land tenure ship as a traditional community ownership of land in the north among the Karamojong’s. For the Karamojong this restoration of land ownership contributed to their way of life as pastoralists to utilize their land as a community than individuals as it was before time for colonization.

### **Institution of Traditional or Cultural Leaders restoration**

From the coup organized by the Prime minster of Uganda in 1963 over the King who was the first president of Uganda, H.E. Obote abolished the Federated system of Government that was established by the constitution of 1962. He established a new constitution on April 15, 1966 that created the republic of Uganda abolishing kingdoms from Uganda. However in the promulgation of the 1995, Traditional institutions

were restored in Uganda and Kingdoms regained their role to preserve their cultures across the country.

In chapter 16 section 246 (1), (2) the constitution of Uganda states that;

*“(1) Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.*

*(2) In any community, where the issue of traditional or cultural leader has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by Parliament.”*

These acts in the constitution contributed to the preservation of customary rights in relation to the cultural leadership and value preservation of people in the various given region with in Uganda. This is in support to the right to culture from the social economic and cultural convention and the Universal declaration as well as the African charter on human and people's rights.

#### **Critic to the mandate enshrined in the constitution to preservation specific rights.**

In chapter 16 article 80 (2) (c) states that people who are disqualified from being elected as a Member of Parliament to be a traditional or cultural leader as defined in article 246(6) of this Constitution. This in this paper is however argued to contradict with the principles of human rights and democracy as enshrined in the constitution in relation to the right to compete for a public office [9].

In addition the Chapter 16 article 237,

*“(a) The Government or a local government may, subject to article 26 of this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament;”*

Where by in article 26 it's established that the government may tack land for public interest. This act is abused by corruption officials in Land management in the country and it's done for selfish interests than for public interest at times.

#### **CONCLUSION**

In conclusion, a lot was integrated from the International Human rights instruments such as the Universal declaration of Human rights, the covenant on Civil and political right, the Covenant on Social, cultural and economic rights and lastly the African charter on Human and people's rights in Africa as demonstrated above in line with the protection, promotion and protection. However the implementation of these acts through the mandated institutions from the constitutional act has continued to be inhibited by those having the state machinery and limited funding which

all prohibited their function to ensure equal enjoyment of rights for all in Uganda. This as a result has contributed to the violation of human rights principles despite their integration in the constitution of 1995 as demonstrated above.

#### **REFERENCES**

1. THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1962 <http://www.buganda.com/const62m.htm>. Accessed on 25/02/2017 at 11:44 am
2. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995, <http://www.statehouse.go.ug/government/constitution>. Accessed on 25/02/2017 12 :00 pm
3. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995, Chapter 4 <http://www.statehouse.go.ug/government/constitution>. Accessed on 25/02/2017 12 :00 pm
4. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995, Chapter 4: *Fundamental Rights for all Humans*: <http://www.statehouse.go.ug/government/constitution>. Accessed on 25/02/2017 12 :00 pm
5. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995: *Chapter 4 Functions of the Human Rights Commission* <http://www.statehouse.go.ug/government/constitution>. Accessed on 25/02/2017 12 :00 pm
6. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995: Chapter Twelve Defence And National Security <http://www.statehouse.go.ug/government/constitution>. Accessed on 25/02/2017 3 :00 pm
7. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995: *Chapter 4 Functions of the Human Rights Commission* <http://www.statehouse.go.ug/government/constitution>. Accessed on 25/02/2017 12 :00 pm
8. Ibid
9. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995: *Chapter 4 Functions of the Human Rights Commission* <http://www.statehouse.go.ug/government/constitution>. Accessed on 25/02/2017 12 :00 pm