



CRITIQUE OF MUNICIPAL HUMAN RIGHTS LAW IN AFRICA: THE CASES OF THE 1995 UGANDAN CONSTITUTION AND 1999 NIGERIAN CONSTITUTION

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Abstract

This paper examines the challenges and effectiveness of municipal human rights law in Africa, focusing on the 1995 Ugandan Constitution and the 1999 Nigerian Constitution as case studies. Despite robust constitutional frameworks and international commitments, human rights abuses including political repression, violence, and socio-economic inequalities persist in both countries. The study aims to analyze the legal frameworks for human rights protection, identify key similarities and differences, and assess their enforcement in addressing socio-political challenges. Adopting a qualitative and theoretical approach, the paper employs John Stuart Mill's harm principle as a lens to critique state actions that violate rights under the guise of maintaining public order. The findings reveal significant gaps between constitutional provisions and their implementation, with both nations exhibiting systemic human rights violations, such as restrictions on political associations, suppression of civil society, and the use of the death penalty. Economic, social, and cultural rights remain inadequately enforced, exacerbating poverty and inequality. The study concludes that constitutional reforms and political restructuring are essential to align state practices with human rights principles. Recommendations include harmonizing conflicting constitutional articles, strengthening judicial independence, and addressing root causes of abuse, such as weak democracy and exclusionary ideologies. The paper emphasizes that without political will to prioritize human rights, legal frameworks alone will remain insufficient to curb violations in Uganda, Nigeria, and across Africa.

Keywords: Human rights, municipal law, constitutional reform, harm principle, Uganda, Nigeria.

Introduction

In human rights law, the protection of human rights is not divorceable from the general character and values of the relevant political systems and the selection of the rights to be protected. Historically, human rights law has a distinguished line of antecedents from the Bill of Rights, derived from the 1215 Magna Carta, the 1689 English Bill of Rights, the colonial struggle against the king and Parliament, the gradually broadening concept of equality, and the 1776 Virginia Declaration of Rights were all notable forerunners. Further, while the significance of national and regional peculiarities and various historical, cultural, and religious backgrounds must be borne in mind, the Vienna Declaration of 1993 states that municipalities must promote and protect all human rights which are defined in *grundnorms*. The *grundnorm* is a concept in Hans Kelsen's *Pure Theory of Law* (1934) that stands for a basic rule, order, and norms that form the fundamental basis for a legal system and was alluded to by John Rawls (1921-2002) in the discussion of justice as fairness. The *grundnorm* of any society is the



Constitution, from which flows the validity of the statement of law in the system. Hence, the constitution is expected to provide legal and institutional frameworks within a given society for the protection and promotion of fundamental human rights and other related rights and freedoms.

There are ample *grundnorms* for human rights protection across Africa, but cases of abuses are on the increase. For instance, many general elections are marred by violence, authorities responding to popular protests and critical political commentary with violent repression, including arrests, detention, torture, and in some cases killing of protesters, dissenters, and journalists among others (Segun, 2021; Muswede, 2021; Babatunde, 2021). Across Africa, government security forces and non-state armed groups have been implicated in massacres, targeted killings, sexual violence, burning and looting of villages, and kidnappings. In this study, we focus on Uganda and Nigeria as case studies to examine the problem of municipal human rights law in Africa. While adopting a qualitative technique and theoretical approach, the theoretical framework is the harm principle of John Stuart Mill (1806–1873), espoused in *On Liberty*. The harm principle states that the individual is sovereign over himself, over his body and mind, and that power can only be rightly exercised over any member of a civilised community against his will except to prevent harm to others. The principle states further that the only part of the conduct of an individual, for which he is answerable to society, is that which concerns others; nonetheless, for the part which merely concerns himself, his independence is, of right, absolute (Mill 1859).

The harm principle is a guiding compass for governments in the violation of human rights to achieve deterrence and reformation, and on the part of the individuals, it is a contour palette for the enjoyment of human rights, introducing civil unrest and destabilising public order. Therefore, this paper challenges the harm principle as an instrument of suppression, crushing the oppressed and individuals to advance pseudo-liberty. This is in line with Jean-Jacques Rousseau's submission that man is born free, but everywhere he is in chains. The paper aims to examine the fundamental human rights protection and promotion adumbrated in chapter four of the Constitutions of the Republic of Uganda and the Federal Republic of Nigeria. Incidentally, human rights provisions in the two constitutions are outlined in chapter four of each constitution. Whether this is a British influence or a coincidence is a subject of discussion outside the scope of this work. Thus, the questions this paper addresses include: how do the 1995 Ugandan Constitution and the 1999 Nigerian Constitution address the protection of human rights, and what are the key similarities and differences in their legal frameworks and approaches? To what extent have the 1995 Ugandan Constitution and the 1999 Nigerian Constitution influenced the enforcement and realisation of human rights at the municipal level, particularly in addressing socio-political challenges?

The work is organised into four sections. The first section situates the discussion within the international framework for municipal human rights law in Africa. The second and third sections include an assessment of municipal human rights law in Africa, focusing on the case studies. In each of the cases, the study covers civil and political rights and their relevant issues. It also covers economic, social, and cultural rights. The fourth section comparatively discusses the current status of human rights in Africa, the cases of Uganda and Nigeria, which are followed by a conclusion and recommendations.

International Framework for Municipal Human Rights Law in Africa



The United Nations (UN) Declaration of Human Rights provides a multiple-layer framework for human rights protection globally, which constitutes the 'gravitational pull and the safety nets' for the pursuit, protection, and promotion of human rights (Viljoen 2012). Established in 1945, the UN was formed to maintain international peace and security. The Charter adopted in 1945 includes the Universal Declaration of Human Rights (UDHR), and the network of treaties subsequently adopted by UN members such as the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) are the core system of human rights promotion and protection under the UN. In particular, UDHR is the UN global working principle for human rights protection adopted in 1948. The declaration became necessary after the world's inhumane experience and atrocities, and the aftermath of the Holocaust and World War II. The UDHR acknowledges the need for international human rights to be protected by the rule of law and stands as a core global framework for human rights promotion and protection and a reference for all human rights entitlements and advocacy.

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly (UNGA) on 16 December 1966. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, electoral rights, freedom of speech, freedom of assembly, and a fair trial. As of September 2019, the Covenant had 173 parties, including Uganda and Nigeria. In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by UNGA on 16 December 1966 and came into force on 3 January 1976. It commits its parties to work towards the granting of economic, social, and cultural rights (ESCR) to non-self-governing and trust territories and individuals, including labour rights, the right to education, the right to an adequate standard of living, and the right to health. As of January 2020, the Covenant had 170 parties, including Uganda and Nigeria.

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent (Banjul Charter 1981). The Charter was adopted on June 21, 1981, and entered into force five years later on 21 October 1986. The Charter's Preamble lays down equality, freedom, dignity, and justice as essential objectives for the achievement of aspirations of the African people towards human rights, good governance, and a healthy polity. It opened up Africa to supra-national accountability and established the foundation for the promotion and protection of human rights in Africa. The Charter provides the regional basis for individuals in Africa to claim their human rights in any of its regions.

The Banjul Charter shook up state sovereignty across Africa by emphasising that human rights violation transcends internal affairs, and could no longer be swept under the carpet. But has there been a difference? The Charter, supported by the ICCPR and ICESCR, is ratified by all African Union member countries, including Uganda and Nigeria. For both Uganda and Nigeria, human rights articles in their Constitutions are outlined in chapter four of each of the respective constitutions. Hence, the Case studies of Chapter Four of the 1995 Ugandan Constitution and the 1999 Nigerian Constitution, respectively. Thus, the framework for municipal human rights law in Africa provides the enabling environment for comparative investigation of human rights on the continent.

Impact of Municipal Human Rights Law in Uganda



The Republic of Uganda is a landlocked country in East Africa with a 241,037 km² landmass and an estimated population of over 45 million. Gained independence on October 9, 1962, from Great Britain, Uganda is bordered to the west by the Democratic Republic of Congo, to the south by Rwanda and Tanzania, Kenya to the east, and the north by South Sudan. Uganda is divided into four regions - Western, Eastern, Central, and Northern regions, respectively, with 135 districts. Also, there are different ethnic groups with varied lifestyles and languages spoken. The most common languages are Luganda, Bantu, Swahili, Nilotic, and Lumasaba, and English is spoken by a few (Edodi, 2023). Politically, Uganda holds periodic elections. In recent years, the periods before, during, and after the elections have often been marked by a closing of political space, intimidation of opposition and journalists, and widespread use of torture by security agencies. Since independence, Uganda has adopted different constitutions, and the current constitution was adopted in 1995.

The spirit of the 1995 Constitution is the promotion and establishment of a just, free, and democratic society. In Chapter Four, Articles 21 – 29, 38, 41, 44, the Constitution recognises the fundamental human rights to include equal protection of the law and freedom from discrimination; the right to life; personal liberty; prohibition from torture, cruel, inhuman or degrading treatment or punishment; protection from slavery, servitude and forced labour; protection from deprivation of property; right to privacy of the person, home or other property; right to a fair hearing; freedom of conscience, expression, movement, religion, assembly and association. In addition, the Constitution protects the right of a citizen to participate in the affairs of government and the right of access to information in the possession of the State. There is a total and absolute prohibition on derogation of freedom, and from torture, cruel, inhuman or degrading treatment or punishment, including freedom from slavery or servitude. There is the right to a fair hearing and the right to an order of habeas corpus. However, based on the ICCPR, ICESR, and Banjul Charter human rights protection framework, we will examine these rights concerning civil and political rights, and economic, social, and cultural rights.

a. Civil and Political Rights in Uganda

Civil and political rights are rights that protect the freedom of individuals from infringement by governments, private individuals, and social organisations, and ensure people's ability to participate in the civil life of society and the political life of the state without discrimination or repression (Front Line Defenders, 2022). Civil and political rights are guaranteed in the ICCPR to which Uganda assented on 21 June 1995. Uganda is also a party to the first optional protocol of the ICCPR since 14 November 1995, which allows individual petitions to the Human Rights Committee (HRC) (Ssenyonjo 2002). Under this protocol, for instance, in February 2021, the Ugandan opposition candidate under the National Unity Platform party petitioned the UN Human Rights Office over alleged human rights violations by the ruling party (Athumani 2021). However, Uganda is not yet a party to the Second Optional Protocol to the ICCPR, aimed at the abolition of the death penalty, since the death penalty is still used as a tool to protect those in power (Ssenyonjo 2002). Nevertheless, Chapter Four of the 1995 Constitution incorporates and protects civil and political rights guaranteed under the ICCPR. The basic premise is that human rights are not gifts from the constitution or the State, but inherent in every human being by being human. However, the constitutional provisions that guarantee freedom from infringement by governments and ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression have encountered challenges. Some of these challenges include general limitations on civil and political rights,



restrictions on political associations, restrictions on civil society organisations, and the use of the death penalty.

General limitations on civil and political rights: The rights guaranteed under Chapter Four of the Constitution are subject to two general limitations. The first is that in the enjoyment of the rights, no person shall prejudice the fundamental and other human rights and freedoms of others and secondly “the public interest” is “acceptable and demonstrably justifiable” in a “free and democratic society” (Arts. 43 (1) and (2) (c)). These limitations are predicated on the harm principle. In considering the scope of this limitation, one justice of the Ugandan Constitutional Court has taken the view that this limitation is not capable of precise definition as it is a new development. However, the underlying principle is that the restrictions must have regard for proper respect for the rights and dignity of humans (Constitution Petition No. 6 of 1999). It is, however, possible to give meaning to this limitation by comparing it with other similar Commonwealth jurisdictions. The phrase ‘free and democratic society’ appears in the Bill of Rights of many Commonwealth Constitutions, for example, Canada, New Guinea, Namibia, Zimbabwe, Nigeria and Zambia Constitutions, while the phrase ‘acceptable and demonstrably justifiable’ as used in Article 43(2) of Uganda’s 1995 Constitution is substantially similar to the Canadian Constitution phrase ‘reasonable and demonstrably justified’ as used in the Canadian Charter (Ssenyonjo 2002). This has been understood to mean that any limitation on a human right or freedom must be ‘of sufficient importance to warrant overriding a constitutionally protected right or freedom’ (R V. Big M Drug Mart Ltd 1985) and the onus of justification is on the party seeking to limit (R V. Oakes 1986). The argument is that human rights should be limited to prevent harm to others and for the security of the state. As a result, there exist structural, internal, and regime limitations on human rights in Uganda. Dicklitch and Lwanga (2003) argue that human rights organisations in Uganda are significantly limited in their ability to help create a positive human rights culture in Uganda by historical/structural legacies that have created a culture of political apathy and fear amongst the general population experiences ‘regime repression.’

Restrictions on Political Associations: Under Article 29(1)(e) and Article 270 of Chapter Four of the 1995 Constitution, freedom of association including the freedom to form and join a political organisation is guaranteed. Political interests can only be effectively championed in a community with others as a political party. Hence, freedom of association is necessary as a political right for the existence and functioning of democracy (Nowak 1993). However previously in Uganda, political parties were restricted from opening and operating branch offices; holding delegates’ conferences; holding public rallies; sponsoring or offering a platform to or in any way campaigning for or against a candidate for any public elections, and carrying on any activities that may interfere with the Movement political system (Mugaju & Onyango [eds.] 2000). Recently, different political parties have now allowed to participate in political associations, though with some restrictions. With the 2005 referendum, which allows for a multiparty political system, the situation has not improved. Nonetheless, in the wake of the 2020 elections in Uganda, the opposition party candidates were subjected to severe human rights abuses and violations (Athumani 2021). Also, the likelihood of the continuance of the abuses in subsequent elections is glaring.

Restrictions on Civil Society Organizations: Civil society organizations (CSOs) play an active role in the pursuit of sustainable development in Uganda. However, CSOs that engage in advocacy and monitoring of government activities have often been subjected to severe pressure



in Uganda, and legislation in recent years has narrowed the legal space for civil society in the nation (International Center for Not-For-Profit Law 2021). Uganda's parliament had considered drafting a law proposed by the government that would increase state control over nongovernmental organizations, whose existence and activities are already subject to stringent legal restrictions (Karatnycky & Piano 2018). However, on October 2, 2013, the President assented to the Public Order Management Act (POMA). Section 9 of POMA granted the police broad powers to prohibit public meetings. After POMA's enactment, a disproportionate force has been used against meetings organized by some civil society representatives (International Center for Not-For-Profit Law 2021). A recent clampdown on civil society in the nation has led to the suspension of 54 civil society organizations. The organizations work on human rights, the environment, religious issues, and democracy (Civicus 2021). While the action may be seen as a human rights violation, it's important to note that such action has a long history in Uganda. The period 1962-1986 was classified as the era of human rights violations in Uganda. In 1971, Uganda became internationally notorious for human rights violations, including killings, disappearances, torture, arbitrary arrest, and discrimination, as evidenced by Amin's expulsion of 'non-citizens' - Asians (The Report of the Uganda Constitutional Commission 1994). With Chapter Four of the 1995 Constitution, this trend has not changed much. Consequently, for Ssenyonjo (2002), Museveni had argued that 'unlike the Law of Moses, most human rights are not divinely ordained and are subject to modification to fit the political and socio-economic conditions of the societies where they are applied.' This view of human rights is contrary to the position declared in the 1995 Uganda Constitution, which repealed the 1967 Constitution.

The Use of Death Penalty: Ssenyonjo (2002) examined whether the recognition of the death penalty in the 1995 Constitution conflicts with absolute freedom from 'torture, cruel, inhuman, or degrading treatment or punishment' or is reconcilable. Article 22(1) of the 1995 Uganda Constitution provides: No person shall be intentionally deprived of life except in the execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under Ugandan law, and the sentence and conviction have been affirmed by the highest appeal court. Although this provision may not constitutionalize capital punishment, it recognizes its existence and therefore sanctions its implementation. In 1999, for example, the High Court sentenced at least 21 people to death, and the Supreme Court confirmed sentences against five others. In 2001, at least 23 people were sentenced to death (Amnesty International Report Uganda 2002). The question that arises here is whether this recognition of the death penalty conflicts with the absolute and unqualified prohibition of torture, cruel, inhuman or degrading treatment or punishment under Articles 24 and 44(a) of Uganda's 1995 Constitution: 'No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment' and 'notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms - freedom from torture, cruel, inhuman or degrading treatment or punishment.' However, in 2005, the Constitutional Court of Uganda (UGCC 2005) upheld a judgment declaring the death penalty unconstitutional over the case of Susan Kigula and 416 others on death row. Since 2005, the death penalty has not been enforced by the court. However, following the judgment, whether the death penalty is unconstitutional because it is not in the constitution or unconstitutional because of the inconsistency of certain provisions of the articles of the constitution raises serious concerns. Incidentally, even before the 2026 general elections, the head of the Uganda People's Defense Force (UPDF) threatened opposition parties with death and killings.

b. Economic, Social and Cultural Rights in Uganda



According to the United Nations Human Rights Office of the High Commissioner (2022), economic, social and cultural rights include the rights to adequate food, adequate housing, education, social security, water and sanitation, health, taking part in cultural life, and to work. The economic, social and cultural rights, which socialist governments emphasized in the early twentieth century, are guaranteed in the ICESCR. Uganda assented to the ICESCR on 21 January 1987 and it entered into force for this country on 21 April 1987, but has failed to comply with its reporting obligations (UN, HRI/GEN/4/REV.2, 7 June 2002; Ssenyonjo 2002). It follows that the State is under a duty to give effect to the Covenant obligations in Ugandan municipal law.

There is selective enforcement of human rights in the context of deteriorating social, economic, civil, and political conditions (Agbakwa 2002). While the 1995 Constitution breaks new ground in several different respects, it does not go very far insofar as the protection and enhancement of economic and social rights is concerned (Oloka 2000). The only provisions found in Uganda's 1995 Constitution and thus considered enforceable are limited to protection from forced labour; protection from deprivation of property; the right to education; the right to work; and the right to culture (Articles 25, 26, 30, 39, & 40). The lack of a serious and concrete focus on social and economic rights in the 1995 Uganda Constitution is clear (Ssenyonjo 2002; Oloka 2000; Agbakwa 2002). Nevertheless, Uganda's 1995 Constitution emphasizes principles of equality, freedom and social justice, however, Ssenyonjo (2002) argued that there is no doubt that human dignity, freedom and equality are denied to those without food, clothing, or shelter.

Impact of Municipal Human Rights Law in Nigeria

Nigeria, officially the Federal Republic of Nigeria, is a West African country on the Gulf of Guinea with a population of over 230 million, making it the most populous black nation on earth. With a 923,768 km² compact area, Nigeria extends from the Gulf of Guinea in the south to the Sahel (the shore of the Sahara Desert) in the north. It has many natural landmarks and wildlife reserves. Nigeria has protected areas that have dense rainforests, waterfalls, rare primate habitats and savannas in places like the Yankari National Park and Cross River National Park. In addition, Zuma Rock is one of the most recognizable sites in Nigeria. The rock is a 725 m-tall monolith located outside Abuja, the capital city. It is pictured on its currency. Gained independence in 1960 from Great Britain, Nigeria is a pluralistic nation with diverse ethnic groups, religions and cultural diversities. Nigeria operates a federal system of government. However, the political system of Nigeria's federalism has suffered several setbacks since its inception as a result of human rights abuses.

The fundamental human rights have been part of Nigeria's law since independence. In Chapter Four of the 1999 Nigerian Constitution, the human rights contained in Sections 33 to 43 include the right to life, right to dignity of human persons, right to a fair hearing, right to personal liberty, right to freedom of expression and the press, right to freedom from discrimination, right to private and family life, right to freedom of thought, conscience and religion, right to peaceful assembly and association, right to freedom of movement, and right to acquire and own immovable property. In addition, under Chapter Four, there is the restriction on and derogation from fundamental human rights (Article 45). Therefore, based on the ICCPR, ICESCR and Banjul Charter human rights protection and promotion framework, we shall examine these rights recognized in the constitution with a focus on the economic, social and cultural rights; and civil and political rights.



a. Civil and Political Rights in Nigeria

Civil and political rights are a class of rights that ensures that people's ability to participate in the civil and political life of the state is guaranteed without discrimination or repression. The civil and political rights are guaranteed in the ICCPR, to which Nigeria assented on 29 July 1993 but failed to ratify the optional protocols 1 & 2. According to ICCPR (2019), the Covenant is not domesticated in Nigeria per Section 12 of the 1999 Nigerian Constitution (as amended), nevertheless, the provisions of the Covenant form a major part of the country's domestic laws (CCPR/C/NGA/Q/2/Add.1, 2019). For example, Chapter Four of the Constitution deals with the protection of civil and political rights. Other domestic laws which protect civil liberties and fundamental freedoms include the Anti Torture Act 2017; Violence Against Persons (Prohibition) Act (VAP) 2017; National Human Rights Commission (NHRC) Act, 1995 as amended; Administration of Criminal Justice Act (ACJA) 2015; Freedom of Information Act (FOIA) 2011; Legal Aid Council of Nigeria (Amendment) (LACN) Act 2012; Terrorism (Prevention) Act (TPA) 2011 as amended; The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act CAP A9, Laws of the Federation of Nigeria (LFN) 2004. Furthermore, Nigeria's Anti-Torture Act 2017 was enacted in response to its obligations under the UN Convention against torture, cruel, inhuman or degrading punishment or treatment and its Optional Protocol. Thus, Chapter Four of the 1999 Nigerian Constitution incorporates and protects civil and political rights guaranteed under the ICCPR and UNCAT. The basic premise is that human rights are not gifts from the constitution or the State, but inherent in every human being by being human. The constitutional provisions that guarantee one's ability to participate in the civil and political life of the society without discrimination have encountered challenges in Nigeria. Some of these challenges include general limitations on civil and political rights, restrictions on political associations, restrictions on civil society organizations, and the use of the death penalty.

General limitations on civil and political rights: The rights guaranteed under Chapter Four of the Constitution of Nigeria are subject to one general limitation, which is Article 45 (1). It states that nothing in sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society to protect the rights and freedom of other persons in the interest of defence, public safety, public order, public morality or public health. This is predicated on the harm principle to protect the rights and freedoms of other persons. Hence, Ewuzie (2021) argues that this provides that circumstances may arise where there will be restrictions and derogation whereby these rights though guaranteed, may not be fully available to any individual or group of persons. The argument is that human rights should be limited to prevent harm to others and for the security of the state. However, the restraint on the rights to freedom of expression and media freedom is widespread in Nigeria. Security forces continue to threaten, arrest and detain journalists, bloggers and human rights defenders and activists for the work they do (Amnesty International 2021). Likewise, journalists have experienced several threats to his life and family for publishing videos relating to a serving governor in one of Nigeria's northern states, which allegedly show the governor receiving bribes from contractors. The Nigerian security forces have killed at least 150 members and supporters of the pro-Biafra organization and injured hundreds during non-violent meetings, marches and other gatherings. In 2020, not less than 12 persons were killed by Nigerian security agencies over protests against police brutality. In the same year, the 2020 World Report has it that at least 363 civilians were killed by the Islamist insurgents between January and September. 16 days after internally displaced people were returned to Kukawa Local Government Area in Borno State, *Boko Haram* attacked the community, abducting at least 100



people. Yet the government continued to participate in forced returns of Nigerian refugees from Cameroon (Human Rights Watch 2021). All these human rights violations are contrary Chapter Four of the 1999 Constitution but perpetrated in the guise of preventing harm to others.

Restrictions on Political Associations: The ‘right to peaceful assembly and association’ is granted in section 40 of the Constitution of the Federal Republic of Nigeria 1999 stating that every person is entitled to associate with other persons and assemble freely, and to form or belong to any trade union, political party, or any other association for the protection of his or her interests. This provision is by the Constitution itself limited in section 40. The implication is that the right to form political parties is heavily abridged by the Constitution and one of the issues on which there is a near-consensus in the ongoing constitutional review process is the need to increase the level of citizens' participation in politics by liberalizing the recognition of political parties. However, for the existence and proper functioning of democracy, freedom of association which is a political right is indispensable because political interests can only be effectively championed in a community with others as a political party (Nowak 1993). In Nigeria, individuals and groups including different political parties are open to operating branch offices; holding delegates’ conferences; holding public rallies; sponsoring or offering a platform to or in any way campaigning for or against a candidate for any public elections, and carrying on any activities. Nonetheless, there exist cases of political incarcerations of opposition party members and associations in Nigeria. Recently, significant aspects of Acts of Parliament on trade unions unsuccessfully attempted restrictions to workers' freedom of association (Okene 2007).

Restrictions on Civil Society Organizations: Civil society organizations (CSOs) play an active role in the pursuit of sustainable development in Nigeria. However, section 40 of the constitution, argues that nothing in the sections where those rights are spelt out shall invalidate any law that is reasonably justifiable in a democratic society in the interest of public safety, defence, public order, public health or public morality; and for the interest of protecting the rights and freedom of other persons. The Nigerian state had attempted to advocate a trade union monopoly on this Article. However, Ihem (2001) argued that the idea advocated by the government of Nigeria that public order is endangered without a trade union monopoly is disproved by the history of the trade union movement in the United Kingdom, where there is no trade union monopoly and from whose trade union movement, that of Nigeria has been patterned.

The Use of the Death Penalty: The death penalty remains a legal sanction in Nigeria and continues to be imposed throughout the country (Federici & Caffentzis 2001; Peiffer 2004; Fumbo, Adimekwe & Ziebertz 2019). With more than 2,000 people on death row, Nigeria had the highest death row population in sub-Saharan Africa at the end of 2018. There is rising global support for the death penalty to be abolished. By the end of 2018, 106 countries had abolished the death penalty law for all crimes. Often, within skewed justice systems, the death penalty is invoked based on torture-tainted evidence and in cases where people are convicted in grossly unfair trials. However, in Nigeria, the death penalty still holds strong because of the recent establishment of Islamic Sharia law in many states of the federation (Peiffer 2004). The scholar joins Amnesty International to advocate the abolition of the death penalty in Nigeria which of course requires constitutional reform.

b. Economic, Social and Cultural Rights in Nigeria



The UNHR Office of the High Commissioner (2022) defines economic, social and cultural rights as the rights to health, adequate food, education, adequate housing, social security, water and sanitation, to take part in cultural life, and to work. Nigeria ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 29 July 1993 (OHCHR 2009). It follows that the State is under a duty to give effect to the Covenant obligations in Nigerian municipal law. As with the case of ICCPR, the ICESCR is not domesticated in Nigeria per Section 12 of the 1999 Nigerian Constitution (as amended), nevertheless, many provisions of Nigeria's domestic laws are formed following the Covenant. Many Nigerians have not been fortunate enough to benefit from these rights maximally (Grigsby 2017). For instance, Nigeria is a middle-income country where most of the government revenue comes from oil revenue accounts and a greater part of the population lives in poverty. Corruption further exacerbates challenges associated with poverty, preventing Nigeria from addressing these issues and using its resources for social good because the resources go "into private pockets" (Corey 2009).

The Nigerian federal government allocations to consolidated government expenditures towards social protection programs, such as contributory pensions, unemployment benefits, and other poverty-alleviation programs, are non-functional. Social protection is initiatives that provide all public and private individuals, protects the vulnerable against livelihood risks, transfers consumption to the poor, and enhances the social status and rights of the marginalized. Social protection is the overall objective of reducing vulnerable and marginalized groups, and the social and economic vulnerability of the poor (Devereux & Sabates-Wheeler 2004). Nigeria spends a lower share of government expenditure on "social protection" than countries with less wealth, such as Ethiopia, Kenya, and Malawi (Hagen-Zanker & Holmes 2012). Nevertheless, Chapter Four of Nigeria's 1999 Constitution emphasizes principles of equality, freedom and social justice, however, there is no doubt that human dignity, equality and freedom are denied to the people without clothing, food, or shelter.

Comparative Analysis of Municipal Human Rights in Uganda and Nigeria

Generally, based on the concept of natural law, human rights have always existed with human beings, and in Africa, there is legal protection for human rights, as in some other countries around the world (Ssenyonjo 2002). They are universal, indivisible, interdependent and interrelated, and exist independent of and before the State. The State must therefore ensure that the very essence of government is maintained, which is the protection of lives and property and the government must strive to uphold the constitution, which it swore to uphold that the essence of state and social contract will not completely collapse (Edodi & Ahimbisibwe, 2024). However, several persons of African descent are in self-exile to avoid incarceration or assassination due to different political opinions. Several governments in Africa have not changed from this attitude today. Opponents are usually hounded in prison without trial. The government appears to be the major harbinger and violator of human rights enshrined in the constitution of the many African States, which constitution the government swore to uphold.

In the case of the Republic of Uganda, the current status of human rights protection and promotion is *non-sequitur* of the stipulations in Chapter Four of the 1995 constitution. The current state of human rights in Uganda is characterized by human rights abuses. These include unlawful or arbitrary killings by government forces, including forced disappearance, extrajudicial killings, and torture. Others include cases of inhuman, cruel, or degrading treatment or punishment by government agencies; arbitrary arrest or detention; harsh and life-



threatening prison conditions; political prisoners or detainees; arbitrary or unlawful interference with privacy; serious problems with the independence of the judiciary; and serious restrictions on freedom of expression, the press, and the internet, including violence, and threats of violence. There are cases of substantial interference with the freedom of peaceful assembly and freedom of association; restrictions on political participation; serious acts of corruption; lack of investigation of and accountability for violence against women, and the worst forms of child labour. In sum, these are all total violations of Chapter Four of the 1995 Constitution.

In the case of Nigeria, the current status of human rights protection and promotion is a *non-sequitur* of the stipulations in Chapter Four of the 1999 constitution. The current state of human rights in Nigeria is characterized by major human rights abuses. These include forced disappearances by the government, criminal groups, and terrorists; torture and cases of inhuman, cruel, or degrading punishment or treatment by terrorist groups and the government; and arbitrary and unlawful killings by both non-state actors and the government. Others include arbitrary detention by government and non-state actors; harsh and life-threatening prison conditions; political prisoners, and serious problems with the independence of the judiciary. There are serious abuses in internal conflicts, including torture and killing of civilians; unlawful or arbitrary interference with privacy; and serious restrictions on free expression, the internet, and the press. Severe restrictions on religious freedom; substantial interference with the rights of peaceful assembly and freedom of association affecting gay, lesbian, transgender, bisexual, and intersex persons. Trafficking in persons, serious acts of corruption, the existence or use of laws criminalizing consensual same-sex sexual conduct between adults, inadequate investigation and accountability for violence against women, and the worst forms of child labour are other abuses. In sum, these are all total violations of Chapter Four of the 1999 Constitution.

However, the Ugandan government has reportedly been averse to investigating or prosecuting officials involved in human rights abuses, and impunity remains a problem. In the case of Nigeria, the government took some steps to investigate alleged abuses, but impunity remained a significant problem. Therefore, there is a need for either constitutional reform or national political reform to give effect to Chapter Four of the Constitution of each country.

Conclusion and Recommendation

The municipal human rights law in Africa shows the need for either constitutional reform or national political reform for the African countries to give effect to the protection and promotion of human rights in their *grundnorms*. In all the cases examined, the harm principle is a guiding compass for the government in the violation of human rights in the guise of achieving deterrence and reformation. However, the principle has not so far advanced the protection and promotion of human rights in Uganda and Nigeria. On the part of the individuals, the harm principle is a contour palette for the gratification of human rights, civil unrest and destabilization of public order. Either way, the harm principle must be put in its proper place in the municipal human rights law as supported by John Rawls's theory of social justice and Hans Kelsen's pure theory of law through constitutional reforms and harmonizing the conflicting articles in the respective constitutions. However, the prevention of human rights abuses requires targeting the roots of abuse, weak democracy, militarization, poor development and exclusionary ideologies, and not just the promotion of human rights standards in our constitutions. Therefore, this paper submits that the cacophony of politics in Africa is the



leading way to the current status of human rights in Africa vis-à-vis Uganda and Nigeria and except the politics is fixed; more abuses are likely to emerge in future.

References

- Agbakwa, S.C. (2002). Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights. *Yale Human Rights and Development L.J.*, 5, 177-216.
- Amnesty International (2002). Amnesty International Reports: Uganda 2002. Amnesty International Publications, London.
- _____. (2021). Amnesty International Reports: Nigeria Report 2020. Retrieved 5 March 2022 from <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/>
- Athumani, H. (2021). Uganda Opposition Party Petitions UN Human Rights Office Over Violations. VOA. Retrieved 4 March 2022 from https://www.voanews.com/a/africa_uganda-opposition-party-petitions-un-human-rights-office-over-violations/6202169.html
- Banjul Charter (1981). *African (Banjul) Charter on Human and Peoples' Rights*. Retrieved 5 March 2022 from <https://www.achpr.org/legalinstruments/detail?id=49>
- Civicus (2021). Uganda: End Repression of Civil Society. Retrieved 25 December 2021 from <https://www.civicus.org/index.php/media-resources/media-releases/open-letters/5254-uganda-end-repression-of-civil-society>
- Constitution Petition No. 6 of 1999. Judgment of Mpagi-Bahigine, JA, in constitutional petition No. 6/99, 6-7.
- Dicklitch, S., & Lwanga, D. (2003). The politics of being non-political: Human rights organizations and the creation of a positive human rights culture in Uganda. *Hum. Rts. Q.*, 25, 482.
- Edodi, S. (2023). Managing the environment: Issues and priority actions for sustainable waste management in Uganda. *African Geographical Review*, 42(3), 342-356. <https://doi.org/10.1080/19376812.2022.2054438>
- Edodi, S. & Ahimbisibwe, F. (2024). Challenges of deepening political commitment and long-term legitimacy in West African integration and the future of ECOWAS, 10(1). <https://doi.org/10.1080/23311886.2024.2420465>
- Federici, S., & Caffentzis, G. (2001). The death penalty and globalization in Nigeria, the United States, and Europe. *Monthly Review*, 53(3), 100.
- Front Line Defenders (2022). Civil and Political Rights. Retrieved 4 March 2022 from <https://www.frontlinedefenders.org/en/right/civil-political-rights>.
- Fumbo, C., Adimekwe, M., & Ziebertz, H. G. (2019). Death Penalty and the Right to Life. A Comparative Empirical Study in Tanzania and Nigeria. In *Euthanasia, Abortion, Death Penalty and Religion-The Right to Life and its Limitations* (pp. 209-242). Springer, Cham.
- Grigsby, S. M. (2017). Enforcing Economic, Social, and Cultural Rights: A Stark Dichotomy. *Northeastern University Law Review*. Retrieved 5 March 2022 from <http://nulawreview.org/extralegalrecent/2017/5/3/enforcing-economic-social-and-cultural-rights-a-stark-dichotomy>
- Hagen-Zanker, J. & Holmes, R. (2012). Overseas Dev. Inst., Social Protection in Nigeria (2012), <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7583.pdf>. <http://data.worldbank.org/country/nigeria>



- Human Rights Watch (2021). World Report 2020. Retrieved 5 March 2022 from <https://www.hrw.org/world.report/2021>. Accessed 12/4/2021)
- ICCPR (2019). Implementation of the International Covenant on Civil and Political Rights (ICCPR) in Nigeria CCPR/C/NGA/Q/2/Add.1.
- International Center for Not-For-Profit Law (2021). Uganda. Retrieved 26 December 2021 from <https://www.icnl.org/resources/civic-freedom-monitor/uganda>
- Karatnycky, A., & Piano, A. (2018). Uganda. In *Freedom in the World* (pp. 616-619). Routledge.
- The Report of the Uganda Constitutional Commission: Analysis and Recommendations*, Uganda Constitutional Commission, Kampala.
- Kelsen, H. (1934). *Pure Theory of Law*. Hans Kelsen Institut, Austria.
- Mill, J. S. (1859). *On Liberty*. London: Longmans, Green and Co.
- Mugaju J. & Oloka, O. J. (eds.). (2000). *No-Party Democracy in Uganda: Myths and Realities*. Fountain Publishers, Kampala.
- Muswede, T. (2021). Genocide, Human Rights and the Dearth of the Democratic Project in Post-Colonial Africa: An Ideological Analysis of Hotel Rwanda (2004). *African Journal of Rhetoric*, 13(1), 145-160.
- Nowak, M. (1993). *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Kehl am Rhein, Enge.
- OHCHR (2009). Lists Depicting Nigeria's Status Of Ratification Of U.N. Human Rights Instruments. Retrieved 5 March 2022 from https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2_009anx_RatifiedHumanRightsInstruments.pdf
- Oloka, O. J. (2000). 'Poverty, Human Rights and the Quest for Sustainable Human Development in Structurally-Adjusted Uganda', *Netherlands Quarterly of Human Rights*, 18, 23-44.
- Okene, O. V. C. (2007). Current Issues And Developments In Freedom Of Association In Nigeria. *Journal of Commonwealth Law and Legal Education*, 5(1), 49-68.
- Peiffer, E. (2004). The death penalty in traditional Islamic law and as interpreted in Saudi Arabia and Nigeria. *Wm. & Mary J. Women & L.*, 11, 507.
- R V. BigM Drug Mart Ltd* (1985) 18 DLR (4th) 321 (Supreme Court of Canada).
- R V. Oakes* (1986) 26 DLR (4,h ed) p. 200 at p. 227 (Supreme Court of Canada) cited with approval in the judgment of Twinomujuni, JA, in *Charles Onyango Obbo and Anor vs Attorney General* Constitutional Petition No. 15 of 1997 pp. 32-36. Also G.M Okello, JA, Constitution Petition No. 6 of 1999, 14-15
- Segun, M. 2021. Human rights abuses escalate in Africa during the pandemic. Retrieved 03/03/2022 from <https://www.hrw.org/news/2021/01/18/human-rights-abuses-escalate-africa-during-pandemic>
- Ssenyonjo, M. (2002). The Domestic Protection and Promotion of Human Rights under the 1995 Ugandan Constitution. *Netherlands Quarterly of Human Rights*, 20(4), 445-483.
- Devereux, S. & Sabates-Wheeler, R. (2004). Transformative social protection. Inst. of Dev. Stud., IDS Working Paper 232. <http://www.ids.ac.uk/files/dmfile/Wp232.pdf>.
- UGCC (2005). Susan Kigula & 416 Ors v Attorney General (Constitutional Petition 6 of 200) [2005] UGCC 8 (10 June 2005). *Constitutional Court of Uganda*. Retrieved 5 March 2022 from <https://ulii.org/ug/judgment/constitutional-court-uganda/2005/8>
- UN (2002). *International Human Rights Instruments: Recent Reporting History Under Principal International Human Rights Instruments* (as of 6 June 2002), HRI/GEN/4/REV.2, 7 June 2002, p.184; Uganda Human Rights Commission (UHRC), *Annual Report*, Kampala, UHRC, 1998)



United Nations Human Rights Office of the High Commissioner (2022). Economic, Social and Cultural Rights. Retrieved 4 March 2022 from <https://www.ohchr.org/>

United States Department of State (2020). “Nigeria 2020 Human Rights Report” *Country Reports on Human Rights Practices for 2020*. Bureau of Democracy, Human Rights and Labor.

_____(2020). “Uganda 2020 Human Rights Report” *Country Reports on Human Rights Practices for 2020*. Bureau of Democracy, Human Rights and Labor.

Vienna Declaration and Programme of Action on Human Rights 1993 (1994) 1-11.H.R.R., Vol. 1, 1994, p. 240, see section I, para. 5).

Viljoen, F. (2012). *International Human Rights Law in Africa* 2nd. Oxford University Press.