



A Comparative Legal Analysis of the Fundamental Human Rights Enshrined in Nigeria and Uganda Constitutions

DAMINA JOSHUA JOHN, KHADIJAT IBRAHIM MAIFADA,
IFESINACHI CHARLES OKONJI, KELECHI ONWUBIKO, ESTHER KISUBI
Kampala International University, Kampala Uganda

Abstract. What is now known today as Fundamental Human Rights came to lamb light through a United Nations declaration called the UDHR; Universal Declaration of Human Rights, of 1948. This document may have not been a legal instrument per se but a mere declaration for the world to follow. Because it was not an instrument to be relied on in Court when these rights were violated, there was a need for separate documents to be created and that led to the creation of two instruments out of it Known as ICCPR and ICESCR. These two legal instruments have been incorporated by Nigeria and Uganda with little variations adopted in their constitutions. It is concerning that this study seeks to educate readers through a comparative analysis of the fundamental human rights stipulated in the Nigeria and Uganda Constitutions to show their similarities and differences and if there are gaps make recommendations to fill them. Concerning this the study adopts a doctrinal method of research, utilizing primary and secondary sources. The study found that Nigeria and Uganda have recognized these rights and codified them under chapter four of their Constitutions, these rights are referred to as inalienable rights are they cannot be transferred, sold, or shared among citizens. The constitution of Nigeria and the constitution of Uganda guarantee their citizens protection of these rights where; violation will attract full punishment by the Law. However, there are core variations in these which in essence the Uganda constitutional rights seem to be more encompassing than the Nigerian rights provided for in the constitution. Hence this study concludes and recommends the need for Nigeria government to take a leap from the Uganda perspective of human rights as contain in their constitution.

Keywords: Legal, Fundamental, Human, Rights, and Constitution.

1. Introduction

The Constitution in every circular country is the highest law of the country with its provisions having a binding force on all authorities and persons in the country (Masajuwa and Aidonojie, 2020; Aidonojie and Egielewa, 2020), when other laws or any customs are inconsistent with the provisions of the constitution, the constitution prevails and all other laws or customs become void to the extent of inconsistency (Aidonojie et. al., 2021; Aidonojie and Agbale, 2020).

Nigeria has a federal system of government embedded with federal states and local government as tiers of Governments (Aidonojie et. al., 2020; Edetalehn and Aidonojie, 2023), Uganda operates a Republican system with a Central and Local Government; however, these two countries are members of the Common Wealth Nations having the same common laws inherited from their colonial masters (Mubanzi, 2006; Busia, 2003). While Nigeria copied the presidential system of Government from the United States, Uganda retained the Parliamentary system from England. Both countries are Governed by the Rule of Law and their Constitutions are Supreme (Sewanyana, 2003, Oloka-Onyango, 2004), their Fundamental Human Rights (FHR) are all enshrined in the Constitutions and make their provisions supreme and binding on all Governments and citizens. Although the Government is not the originator of these rights it ensures that these rights are protected at all times (Aidonojie et. al., 2021; Egielewa Aidonojie, 2021; Aidonojie et. al. 2020). The FHR enshrined under chapter Four of the Grund norm of Nigeria is provided from sections 33 to 46 while the FHR provided for under the Ugandan Constitution begins from Articles 20 to 40, Nigeria Constitution uses Sections and subsections to cite any of its provisions while the Ugandan Constitution uses Articles and Clauses to cite any of its provisions (Oladele et. al., 2022; Aidonojie et. al., 2021). Therefore, both Nigeria and Uganda are parties in international human rights treaties (Mubangizi, 2015).

However, the main essence of these studies is aim at examining the similarities and dissimilarities of rights as contain in the Nigeria and Uganda constitutions (Majekodunmi et al., 2022). Furthermore, to ascertain the extent these rights are protected and enforceable in the various jurisdiction.

2. Conceptualizing of Human Rights

The *Universal Declaration of Human Rights* (1948) and the following contemporary human rights practice are the results of a longstanding and progressive process of juridical politicisation of traditional natural rights (Aidonojie et. al., 2022; Aidonojie, 2022), from modern theories of natural law to the famous French *Declaration of the Rights of Man and the Citizen* (Idahosa et. Al., 2023). Even though the idea of natural rights had a certain success in the concrete political battles carried on during the American and French Revolutions, it is precisely from the theoretical point of view that this idea of humans has suffered (Edetalehn and Aidonojie, 2023; Gunawan et. al., 2023; Aidonojie 2023) and received criticism. Some of this criticism stems from at least three classic critiques:

- Edmund Burke considered the universal rights of man as “abstract principles”.
- Jeremy Bentham even labeled natural rights as simple nonsense: “natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts”.

Lastly, the well-known Karl Marx’s trenchant critique of the rights of man, notably towards the existence of abstract (taken out of social and historical context) individuals who are, just by the fact of existing, natural rights-holders.

Afterward the *Universal Declaration* was issued, philosophical debate about the nature and the foundations of human rights developed at the same pace as the human rights practice, to such an extent that reflection on human rights in recent times has been elevated to the status of a real ethical *lingua franca*. However, despite the wide acceptance of the concept of human rights, it must be noted that the practical agreement of such an original document emphasizing the concept of human rights, created several theoretical problems (Hetns and Kaguongo, 2006). Many times, the alleged universalism of human rights has been conceived as theoretically indefensible because of the issues of ethnocentric focus of ideological perspective of human rights. This opposition between the philosophical need to find universally sharable foundations and the urgent

requirements of current practice is nowadays at the core of philosophical thinking about human rights.

The most vital concept in the presence day generation is human rights. Governments, activists and corporations use it to attract a collective understanding where all people merit to certain rights and freedoms (Mutawali et. al., 2024; Aidonojie et. al., 2023; Mukhlis et. al., 2023). Irrespective of the persons origin, belief, custom and way of life. any one has rights that are reserved. Many people around the world believe that human rights are divine in nature or are God’s free given rights, a person can only access these rights by virtue of being a human, these rights are inherent in that they cannot be alienated or shared to another person and Government is not the originator of them, Government only comes in to ensure that these rights are codified under our laws and protected (Mukhlis et. al., 2024; Aidonojie et. al., 2024). Protecting human rights is tied into peace and development as in accordance with the UN, where sustainability, peace and freedom are impossible to achieve without preserving these rights.

In Nigeria for instance, only those rights that are stipulated in chapter four of the 1999 constitution are justiciable while those in Chapter Two are not. Uganda Human Rights contained in Chapter Four seems to be more ambitious and elaborate than those of the Nigerian Constitution. The UDHR of 1948 opened space for countries to recognize and adapt the human rights declaration as enshrined in Article 2.

3. Legal Analysis of Human Rights as contain in Nigeria and Uganda Constitutions

The extant Laws in Nigeria and Uganda make provisions for every citizen right, liabilities, duties and privileges, however, some rights are included in the constitution for them to be guaranteed, these rights are known as inalienable rights in Chapter four of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) and the 1995 Constitution of the Republic of Uganda (CRU); The article makes a comparative analysis on these rights provided for under these two Grund Norms with a view to see whether they are adequately provided for or there are needs for improvement when comparing the Nigeria Constitution with that of Uganda to see where there are gaps in any of the them so as to make recommendations for the Government concern to take steps to amend her Constitution to ensure that these rights are adequately provided to ensure that citizens are better protected in line with the UDHR declaration of 1948.

The constitution of both jurisdictions provides for right to life, in this regard, everyone has a right to life; It is the duty of the State to ensure that lives of its citizens are protected and life is unnaturally taken away except through lawful means (Aidonojie et. al., 2024; Safi et. al., 2024; Aidonojie et. al., 2024). While the same right provided for in Article 22(1) in the constitution of the republic of Uganda (CRU) makes it clear that this right shall be respected and protected by people and government except the Court says otherwise. Clause 2 of article 22 gives an unborn child right to life in the mother's womb except permitted by a court of law. In *Onuoha Kalu v the state of Nigeria (SC 24/1996) 1998. 6 (18 December)* the SC held that the death penalty is in line with the laws of the land. however, the supreme court of Uganda: in *attorney General v Susan Kigula* and 417 others, held that the death violated the rights of convicts without fair trial in such way he heard in mitigation. The position of the death sentence in both the laws is that, the death penalty is still applicable however with some judicial variation from one jurisdiction to the other.

A citizen isn't expected to be exposed to torture, and slavery or be required to perform forced labour. Article 24 of CRU replicates the position and says citizens must be treated as human. There wordings seem to be the same. Right to personal liberty; every citizen must be entitled to liberty. Article 23 of CRU provides the same rights and the same exceptions as provided under the Nigerian Constitution, some of the exceptions could be when a person is alleged to have committed an offence (Aidonojie et. al., 2024; Obisan et. al., 2024; Ekpenisi et. al., 2024). An individual is entitled to the respect of dignity, While Article 25 CRU has the same provision with an inclusion of a proviso in Clause (3)(a) to (d) which excludes labour ordered by the Court, when a person is under arrest, any labour required by a member of a disciplined force is part of the member's duties such as work directed by institutions recognized by law. Both Constitutions give clarifications on what forced labour is or is not. The right of Fair Hearing; this a right provided in the Constitution for a person who is standing trial to be given the opportunity to be heard on his part of the story. In other words, if a person is given the opportunity to hear the version of his case before a decision is taken against him. While Article makes the same wordings the two provisions will have same words (Ademola, 2003). On right to privacy and family life; Citizens have privacy to their homes, correspondence, telegraphic communications, and telephone conversations are thereby guaranteed and protected.

Furthermore, concerning the presumption of innocent; any person standing before the courts of law on any

alleged offence is presumed innocent until the contrary is proved. The same presumption under Article has the same provision with Nigeria the little variation for Ugandan provision is a word or the person has pleaded guilty which Chapter Four of Nigeria did not make provision. On the right to legal practitioner of his choice; the right to have a legal provide a legal representation is fundamental to the accused, while Article 28(2)(d) of CRU goes further by showing he will be one to pay the legal fee. The little variation in the Ugandan provision is that the Accused will engage a lawyer at his own cost while that is silent in Nigeria provision. Also, right to be convicted on offense written Law, the provision makes it clear that a person can only be charged with on offence known to the law Article 28(7) is shows clearly that only written offences are known to the law. The right to freedom of thought conscience and religion is another notable right, it gives a person the right to reason for what is best for him and choose a religion he likes. The same applies under Article 29(1)(d) of CRU except subsection 4 of section 38 of the CFRN forbids any activity that relates to cultism. Concerning freedom of expression and press, constitution allows a citizen an opportunity to express himself as an individual or as a corporate body, except right to belong to secret society. This is also found in Article 29(1)(a) of CRU with no variation. On rights to peaceful assembly and association, these rights include the right to belong to a political party, trade union, or friends as long as the objectives are legal. This is also found in Article 29(1)(e) of CRU as exactly as provided under the Nigerian Constitution.

Freedom of movement, is one of the most important rights because without these human activities will not be possible, a right to move from one place to another is key to human association and development will not be realized. This provision is similar to Article 29(2) of CRU. On freedom from discrimination. This provision forbids discrimination of any kind, whether by race, religion, gender, or by birth. Article 21 CRU makes the same provisions and goes further in Clause 3 to define what discrimination means. Then clause (2) states clearly that no citizen of Nigeria shall be subjected to any disability or deprivation merely. Also, the right to own immovable property, the Nigerian Constitution restricts the right to own only immovable property. In Article 26(1) of CRU says both an individual and a body corporate can own property. Nigerian Constitution expressly limits its citizens to immovable property while the Uganda Constitution makes it general property whether movable or immovable. Furthermore, the right to seek redress in Court, the constitution not only did it provide these rights to the citizen but also gives them right to seek

redress in Court when these rights are breached. On rights of actrofoit acquit and convict, this right is specifically provided to a person who has served his jail terms or pardon should not be asked to serve the second time again, it will be a double jeopardy. Article 28(9) CRU makes the same provision, pardon is also provided in section 175 of the Nigerian constitution.

The rights analysed above are rights that are globally recognized and provided for in the Nigeria and Uganda constitutions. However, from the analysis above there are several variations of these rights in the various jurisdictions under study.

4. Notable variations of the Rights as contain in the Nigeria and Uganda Constitution

While some variations identified are provided in the two countries, however, some are not included in Chapter Four of their Grund norms, those rights contained in Chapter Four are rights contained in the Instrument known as the International Covenant for Civil and Political Rights (ICCPR) which are also called first generation rights and states are to make budgetary provision for their immediate realization. These rights are justifiable where they have been breached. This Article itemizes some of these rights are enshrined in Chapter Four of the Ugandan Constitution which are not provided for under the Nigerian Constitution and vis-vasal to see the adequacy and inadequacy of both provisions. There are human rights that are contained in the Constitution but not in Chapter Four, in Nigeria for instance some of these rights which are not included in Chapter Four are also found in Chapter Two of the same Grund norm and therefore makes them nonjusticiable under the Nigerian law. The notable differences are hereunder listed and discussed using the Ugandan Constitution.

5. Chapter IV of the Ugandan Constitution

Article 30, makes education a fundamental right; this is a fundamental human right that must not be neglected by any Government because it is an essential part of human life (Aborisade and Oni, 2020), without it, life generally will be meaningless, and without growth and development in the society. It is commendable that the Ugandan Constitution has made it part of Chapter, this right is not provided for under Chapter IV of Nigerian Constitution but in section 18 which is under Chapter Two. A person who has attained eighteen years shall be entitled to marry and to produce children, they shall have equal right of share during the dissolution of the marriage (Adebayo, 2018). This is not provided under the Nigerian Constitution though this may have express provision

in the Act or laws of the states. The rights of widows and widowers are protected in the Constitution. A very interesting human rights provision that should also be included Nigerian Constitution though some may be found in other laws, should be moved to Chapter IV for a higher legal ranking. On rights to consent to marriage, this mandates that marriage should be consensual and not under duress. This provision expressly prohibits forced marriage in Uganda and this Nigerian Chapter IV does have fundamental rights. Concerning the marginalization of citizens, this provision mandates the Lawmakers to take steps necessary to enact a law that will protect a set of people that may be marginalised in the country; however, the Uganda Constitution mandates the Parliament to take steps to enact to create equal Opportunities Commission as a regulatory body.

Furthermore, regarding the rights of women, the Constitution says Full and equal dignity should be given to Women. Although the Constitution which prohibits discrimination of any kind is an omnibus provision that has taken care of large areas of Rights in Nigeria, it is still expected that some sensitive parts of human rights like women's rights should be specifically provided as it has done in Uganda. Clause (2) of Article 33 mandates the State to provide policies that will be conducive to women's participation. Clause (3) of Article 33 also provides in every activity of government women's rights must be considered. On economic and social-political rights of women, clause (4) provides that when it comes to political, and economic activities women shall be given equal rights with men. The Ugandan Chapter IV has opened the space for women to compete favorably with their male counterparts in our modern democratic principles. With regard, to affirmative action for women, Clause (5) says without prejudice to Article 32 of this Constitution, affirmative action shall be given to women to correct the inequality that was created by tradition. By this provision custom or traditional history of a particular area shall not determine the faith of a Ugandan woman. Clause (6) of the Article prohibits any custom or tradition that undermines the interest or dignity of women. This clause expressly renders it void any Laws at in any part of Uganda.

Concerning children's rights, this provision gives children the right to be cared by their own parents or guidance based on laws to be provided by the Parliament. Basic education is made paramount for all the children in Uganda. Clause (1) and (2) maintain that every child deserves to be cared for by his parent and is also entitled to basic education provided by the state, this same provision is not enshrined in Chapter IV of the Nigeria Constitution but rather in the Act and

the States laws like the Child Rights Act/Laws. Clause (3) prohibits the deprivation of a child's benefits in all ramifications of religion or his beliefs, and Clause (4) protects the child from any form of exploitation and work that may be hazardous to him. This provision can only be taken from section 42(2) of the Nigerian Constitution which is against discrimination. Clause (7) mandates the state to ensure the protection of orphans and other vulnerable children in society and this is not expressly stated in Chapter IV.

With regard, to persons with disabilities, Persons with disabilities have their rights protected under Chapter IV of the Ugandan Constitution which mandates the state to and society to ensure that these special people should be allowed to exhibit potential in Uganda with respect and dignity. This lacking in the Nigerian Constitution. Clause (2) compels lawmakers to enact laws necessary for the protection of PWD, the Parliament in compliance with the Constitution enacted Persons with Disabilities, and the L.G Act of 1997, for example, provides for two representations from persons with disabilities at the various Local Council levels. On minorities, Article 36. This is another milestone of Human Rights provided under Chapter IV of the Constitution of Uganda which it guarantees the participation and views of minorities to be taken into consideration when making national plans and programmes, it is not long before the rule where minority will have their say while the majority will have their way. While the Nigerian Constitution mandates the Federal Government and States to reflect character system in the conduct of its affairs, this is contained in chapter II which is non-justiciable. On culture and similar rights, it says the culture, the usual practice, and their belief must be protected and respected. Although the right to culture is not expressly stated in Chapter IV of the Nigerian Constitution, the word belief in the Constitution may connote a person's culture or tradition, however, this would have been expressly written and it is in the Ugandan Chapter IV where culture and tradition are provided to keep far any doubt that may come. Concerning, civic and activities rights the Constitution guarantees every citizen to be involved in government activities. This right is not expressly under Chapter IV of the Nigerian Constitution but inference can only be drawn from where the Constitution mandates the Federal Government and States to reflect character system in the conduct of its affairs, this is contained in Chapter II which is non-justiciable which seems to be a community right and not individual right as provided under Article 38 of Uganda Constitution. Clause 2 of Article 38 comes out in clear terms to give Ugandans the right of peaceful protest to influence government

policies and decisions, this is not provided under the Nigerian constitution and should be encouraged.

It must be noted that article 39 provides that a healthy environment is a healthy life and this is made as a fundamental right. This led the Parliament to enact the National Environment Act, section 3 of the Act provides that Ugandans have the right to a decent environment and section 4 of the same establishes the National Environment Management Authority to ensure the smooth realization of the set goals. The impact of Article 38 is greatly felt in Uganda, the evidence is glaring in a city like Kampala where the environmental mechanism is kept in place to ensure a decent environment at all times. On Economic Rights This Article spells out rights that workers need at their workplace, this sounds like a clear signal to employers who are bent at marginalizing their employees and treating them as slaves without regarding their dignity of human persons. This provision is commendable because it opened the space for the Parliament to enact laws that will bring safety and comfort to Ugandan workers, this should be emulated by the Nigerian government. Clause (2) and (3) go further to protect women workers who may be denied their maternity rights. Also, article 41(1) did not just provide to the citizen the right of information but a right to access where that information may be kept. The word access to information distinguishes it from the Nigerian Constitution which only guarantees freedom of information. Clause (2) makes it mandatory for legislatures to lay down laws that lead the citizen to dictate their classes of information and to obtain them

6. Recommendations

No country can realize a developmental stride if the full rights of its citizens are not guaranteed under her laws especially in the constitution that is a Supreme law which all others laws are subjected to its provisions, it is not enough for a country to claim it has enshrined her fundamental rights under the Acts. This country needs to take further steps to move these rights to the Constitution especially Chapter Iv whose rights are normally justiciable when breached.

Between Nigeria and Uganda. The Article when comparing the two Grund norms, observed that Uganda Chapter IV has more ambitious human rights provisions than that of the Nigerian counterpart, some rights that are found in the other Chapters of Nigerian Constitution but not in Chapter IV. The Article recommends to the government of Nigeria that those human rights Provision which are expressly provided under Chapter IV of the Ugandan Constitution especially between Article 31 and 42, be incorporated

into Chapter IV of the Nigerian Constitution so as to make them justiciable against the government or people who may breach these rights.

The Article also recommends to the Republic of Uganda that even though it has provided enormous rights for her citizens, the Government needs to do more in the implementation of these rights whereas they may be there for academic exercise and not for enforcement and therefore defeats the purpose of their enactment.

7. Conclusion

Fundamental Human Rights are as old as creation themselves and should not be taken for granted, no wonder UDHR shows us human rights are interdependent and indivisible, and the Declaration is important and should be given the Constitutional backing by every Government. This is because the paramount purpose of Government is the security and welfare of its citizens. It is the view of this Article that all human rights issues be codified under Chapter IV of the Constitution so that citizens will have the opportunity to realize their potentials. These rights are already incorporated into Chapter IV, Governments at all levels should ensure that citizens are protected while the ones yet to be incorporated in Chapter IV be seen to be incorporated so that at the end, every citizen lives are guaranteed.

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