THE CONFERENCE ON THE CONSTITUTION

THE STATE OF CONSTITUTIONALISM AND RULE OF LAW IN EAST AFRICA

REPORT – December 2024.

With Support from GIZ Uganda

Background:

In East African countries like Kenya, Uganda, Tanzania, Rwanda, and Burundi, constitutionalism has evolved through colonial histories, independence, and modern reforms. Despite progress, constitutionalism in East Africa is often challenged by issues such as political instability, authoritarianism, corruption, and limited enforcement of democratic principles. However, ongoing reforms and public demand for accountability continue to shape the region's constitutional landscape.

Promoting constitutionalism in East Africa faces several key challenges, reflecting the complex political, social, and historical contexts of the region. Some of the main challenges include: authoritarianism and Executive Overreach, weak Judiciary and Rule of Law, Ethnic and Political Conflict, corruption, limited civic awareness, elections and democratic deficits, constitutional amendments for political gains, human rights violations, devolution of power struggles and regional integration challenges. Promoting constitutionalism in East Africa is a complex process, often hampered by entrenched political interests, weak institutions, and socio-political instability. However, efforts to strengthen the rule of law, increase civic engagement, and promote constitutional reforms offer hope for better governance in the region.

Uganda's Context:

The history of constitutionalism in Uganda is complex and has evolved through a series of political transitions, colonial influence, and struggles for independence. Uganda's constitutional journey from the first to the fourth constitution has been characterized by turbulent movements and turns and the 29 years of a seemingly stable 1995 Constitution, as amended, has not been completely seamless. The 1995 Constitution introduced significant reforms, including a presidential system of government, a multiparty political system (after a 2005 referendum), and provisions for human rights and the rule of law. The constitution also sought to address Uganda's diverse cultural heritage by recognizing traditional institutions.

Contemporary Developments Since the adoption of the 1995 Constitution, Uganda has seen several amendments, some of which have sparked controversy. For example, the removal of presidential term limits in 2005 and the lifting of the presidential age limit in 2017 were seen by many as efforts by President Museveni to extend his hold on power. Despite these challenges, the 1995 Constitution remains a central document in Uganda's political life, providing a framework for governance, the protection of rights, and the functioning of state institutions. However, debates about constitutionalism in Uganda continue, particularly regarding the balance of power between the executive, legislature, and judiciary, as well as the role of traditional institutions and the protection of human rights.

Purpose:

As part of our effort to contribute to the culture of constitutionalism in the East African Community (EAC), CCG, convenes high-level forums on constitutionalism and the rule of law in East Africa annually. The purpose of this is to stimulate debate and growing a community of scholars, practitioners and active citizen engagement on constitutionalism and the rule of law in the sub-region. Consistent with this commitment, we are launching an Annual High-Level Forum on constitutionalism and the rule of law code named Conference on the Constitution series. The Launch of the Forum took place at **Sheraton Hotel, Kampala, Uganda on November 15, 2024** This inaugural forum featured key note presentation on **Constitutionalism in East Africa** that was delivered by one of Africa's pro-eminent scholars Prof PLO Lumumba.

The Center for Constitutional Governance (CCG) also used the same occasion to launch the Constitutional Virtual Museum - a digital constitutional museum by CCG as one of the flagship programs for promotion of the culture of constitutionalism. This digital museum will be a one stop center for literature on constitutionalism in Uganda and East Africa.

Objectives of the Conference:

i. To highlight the importance of constitutionalism in modern democracies.

ii. To analyze the evolution and impact of the constitution in shaping national governance.

iii. To discuss contemporary challenges and the need for constitutional reforms.

iv. To provide a platform for dialogue between citizens, scholars, practitioners, and policymakers.

v. To devise means of achieving free and fair credible elections for greater democratization.

Pre - Conference Session:

L-R: Judith Atim, Robert Ojambo, Mwambutsya Ndebesa, Joseph Ochieno, and Pollar Awich

The second panelist, Pollar Awich took a historical perspective that browsed the series of tumultuous events surrounding the immediate post-Independence period, not least the Kabaka Crisis, the overthrow of Milton Obote's administration, the Idi Amin era, and the subsequent armed conflict that roiled the country as group after group attempted to wrest power from another.

He noted that despite being in these dire straits, the political class then had the presence of mind to have a tripartite presidency comprising Saulo Musoke, Polycarp Nyamuchoncho, and Joel Hunter Wacha Olwol as a means of placating the various competing interests in the country at the time.

Awich commended the National Resistance Movement (NRM) administration which, during their inception, separated the constitution-making process from the incumbent political class by appointing a Constituent Assembly. He distinguished this from the antics of the Uganda People's Congress (UPC) which overlooked the conflict of interest and went ahead to promulgate the 1967 Constitution. The argument was refuted by Joseph Ochieno.

Awich closed by underlining the participatory nature of the process that led to the enactment of the 1995 Constitution and the resulting legitimacy it enjoyed because of the lengths at which the NRM administration went to build consensus—ensuring that at the end of the process, only four issues were unresolved i.e., land tenure, national language, federal system of governance, and the political system.

Robert Ojambo indicted each one of the four Constitutions Uganda has had as having been tailor-made to suit the narrow interests of the political class, without considering the desires of the greater population.

Ojambo demonstrated this by contending that the first Constitution was written without clarity on which Uganda (the one with Buganda or the one without Buganda) the document was being written for, hence the need to hold that constitutional conference in Lancaster in the United Kingdom. Without clarity or finality on that question, we ended up with (and in many ways still have) a dualistic Constitution. Still in line with the tailor-making of Constitutions to suit narrow interests, the 1967 Constitution was targeted at emasculating the Kabaka, but veiled in Republican language.

The National Resistance Council was an extension of the NRA war cabinet. This is the vehicle through which the NRA ideology was introduced and propagated into the country's public affairs. The Commissioners were not chosen in a democratic manner; the subsequent process of writing it was designed for politicians, not for the people's issues.

This explains why we have a 1995 Constitution that is steeped in presidentialism, with more than 40 provisions focusing on that office. Ojambo ended by decrying the fact that the essence of the constitution is protected not by the people in whose name it is enacted, but by the armed forces.

Joseph Ochieno noted that there has been fits and starts of creating a new nation in Uganda at different turns, and that the 1962 document was the most comprehensive, even though there was no direct process (such as elections) to involve Ugandans in its enactment.

Co-moderators Oscar Semweya Musoke and Judith Atim

Ochieno indicted the 1995 Constitution for the unprecedented act of banning political parties yet these are the organizations through which politics is conducted. This was a major drawback. He ended by underscoring three essential ingredients of constitutionalism: conscious leadership, progressive spirit, and climate (operating environment).

The panelists agreed upon the following as the engagement drew to a close:

- Citizens, not subjects, have the capacity to protect and uphold a constitution;
- Constitutionalism should be written in the hearts of the people, beyond the text;
- Constitutions should not exclusively be written by the political elite because they are conflicted;
- A good constitution should add to or contribute towards livelihoods, quality of life, and wellbeing, since it cannot exist in a vacuum.

Conference Proceedings:

(i) Opening Session

CCG Executive Director

The Conference on the Constitution is part of the institution's thrust in terms of promoting a culture of constitutionalism in the country. It is a forum to discuss the shared visions of justice, democracy, and prosperity not just for the country, but the region at large. Citizens' voices matter, and it is part of the CCG's role to amplify those aspirations. Constitutionalism is ultimately more than a system of governance; it is the ethos that underpins people-centred, progressive leadership.

In its most basic form, constitutionalism demands fidelity to the Rule of Law, protection of human rights, separation of powers, and the observance of democratic freedoms.

Constitutions inform how countries will resolve the challenges of our times, in our case political transition, economic development, social inclusion, and security in its varied dimensions. Specifically in our case, the Constitution can be a beacon to guide us out of our dark history (and present spectre of) militarism, civil war, seeming inability to have peaceful transitions of power, as well as institutional dysfunction. The Constitution can also be a tool for the navigation of both the country's national and regional Future.

Finally, the virtual museum is a one-stop centre and repository of constitutional history. In a country where the vast majority of Ugandans alive today have no experience or reference point about our past, the museum is a technological innovation that utilises digital tools to convey our history through methods that are most relatable to millennials and Gen Z youth alike.

Through the possibilities of the ongoing digital revolution, we will be able to make a modest contribution towards making concepts like social justice, and ultimately, constitutionalism a lived reality and expectation of citizens here and beyond.

The Centre for Constitutional Governance will continue to grow a community of scholars and practitioners from amongst its pool of university students whom it regularly engages in constitutional literacy and civic activities.

We are eternally grateful for the support received and look forward to your enthusiastic participation. This conference will be an annual event at which we take stock of and celebrate the strides made as citizens in the push for a demonstrably free, open, and democratic society.

AMBASSADOR OF GERMANY TO UGANDA

Constitutions can take many forms: San Marino's is less than 4000 words; India's is 600 times longer.

Uganda's is a modern Constitution, with the only common defect that runs through being implementation, which only means that there is always room for improvement—whether it's an established, fledgling, or recently created democracy.

What matters ultimately is that the actors in a given setting strive to uphold the values and standards set by a given constitution. For purposes of brief juxtaposition, the Constitution of Germany is not necessarily referred to as the Constitution; it is referred to as the Basic Law as a function and consequence of the country's formative history. Federalism and Human Rights are at its core; the two are evidently central tenets to peace and justice in any community of peace.

Indeed, the Constitutional Court in Germany has been steadfast and consistent in defending human rights and thereby advanced the spirit of the German Constitution. Through such institutions, a society's progress and adaptation to change are guaranteed. Indeed, fundamental rights have to be protected and upheld as an outcome of constitutionalism: holding perpetrators accountable, safeguarding the civic space, and ensuring the sanctity of the social contract between citizens and the State.

Constitutions must tangibly protect the people in whose name they are enacted. Schauer applauded the innovation behind the creation of the digital constitutional museum as a flagship programme for the promotion of the culture of constitutionalism in Uganda, and as a repository of literature on the subject.

As a partner in development, Germany is pleased to play a supporting role in enabling civic education both with State and non-State actors. The conference offers a prospect for guiding the approach towards how Uganda can improve its democratic experiment. He concluded by noting the well-crafted themes and selection of topics.

Minister of Justice and Constitutional Affairs

The state of constitutionalism in our country should be viewed from the long timeline of our country's history, which features military rule, ethnic cleansing, coups and counter coups d'état, and experimentation with different constitutions.

In this respect, there was the era of colonial rule (1894-1962), the doldrums (1962- 1966), military rule (1966-1979), the honeymoon phase (1980-1986), mixed bag (1986-1996), through to the present day. This timeline is analogous to a marriage, which begins with high hopes but soon comes to the realization that there is more to it than the glossy event of the wedding. The Constitution can be equated to the wedding vows, while the marriage is the period after the honeymoon—during which the real implementation (both high points and pitfalls) is encountered and responded to.

In the course of conversations, we must mull over questions like: is the State a liberating force or a repressive one? The conference is a gathering for citizens to express their expectations of the Ugandan State. As such, criticism arising out of the engagement should be heard, not suppressed

A culture of constitutionalism is grown by the people—particularly the leaders, as the American founding fathers did for the American experiment. We must, out of such public courses, develop consensus on the rules of engagement.

Importantly, a peaceful transition requires us to place a currency on a practice and culture of dialogue. This is the path that other countries which were able to avert catastrophe took; Uganda should not be an exception.

Deputy Speaker, Parliament

Constitutionalism and its constituent parts are essential building blocks for any intending or enduring democracy. Yet it is important that the elite sections of society, leaders, and the population are on the same wavelength when it comes to understanding what constitutionalism entails and means from their different vantage points.

A gathering like this should help us answer the question about the gulf between elite candidates and the electorate who vote for those that we in conversations like this consider not to be ideal leaders or representatives.

Part of the solution rests in sustaining civic education, beyond conferences of this kind so that the conversation is inclusive of as many sections of the population as possible. Civic education should also answer questions around livelihoods and the daily struggles that everyday citizens confront daily.

Ultimately, constitutionalism will be nurtured and upheld when the Constitution speaks to:

- Shared values and aspirations;
- Institutional frameworks;
- State-Citizen relations; and,
- Management of difference or disagreement.

Pictorial Launch of Katiba Digital Museum

B. Keynote Address

Led off by emphasizing the artificial origins of the postcolonial State. He further underscored the foreign roots of the philosophy, culture, legal system, and practice of the notions of the Rule of Law, and the concept of constitutionalism itself.

Highlights Kwame Nkrumah's caution about the inherently flawed architecture of the artificial African State that was designed to fail. These are critical points to bear in mind before we undertake such a conversation.

Constitutions without constitutionalism, as captured by the scholar Yash Gai, is an enduring epidemic that afflicts our polities, Uganda included. We need to move away from the commonplace practice of having constitutions that are beautifully worded, but only honoured in breach.

In equal measure we should be wary of broad-brush Constitutions that are straight jackets, with no consideration for the ethnic diversity and multiple cultures that make up our countries, themselves arbitrary colonial edifices.

Seeds of discord are entrenched in the text and format of the Constitution—such as the epic contest between the executive Prime Minister and the equally executive President that rocked Uganda's formative years, ultimately culminating in what we now know as the Kabaka Crisis of 1966. The effect that this has had on the struggle of nation-building that has not survived these cleavages.

With the benefit of hindsight, we should be able to, moving forward, caution ourselves about ensuring that our constitutions are ethnicity proof because the societies in which we operate are deeply rooted in ethnic-prone politics.

The Jehovah Complex that clouds the attitudes of liberation movements turned political parties (which are the majority on the continent) but without in fact losing their military outlook and posture towards the management of public affairs. Used the broader story of Africa's post-independence journey—with examples from the DRC, Somalia, Sudan/South Sudan, Ethiopia, Tanzania, Rwanda, and Burundi.

Our Constitutions do not address the realities of the day; this is not unique to Uganda: the trajectory of history can be found in Ghana, Kenya, South Sudan, and Nigeria. This thread of detachment from the interests and aspirations of the people is a common thread that runs through the four constitutions Uganda has had since Independence.

Lumumba wrapped up by urging attention on the variance between the text (and promises) of our Constitutions versus the practice (and implementation, or lack thereof), which have ultimately been the bane that overhangs our struggle for constitutionalism.

Implored citizens about their place and role in engaging in the quest for democratic practice and the preservation of constitutionalism.

C. Panel Session

Panelist One: Norbert Mao

In his intervention, which was a carry-on from his morning address (see page ...) Norbert Mao noted that the phenomenon of campaign finance is an area of interest to him and the ministry he leads. This will be reflected in the raft of reforms being prepared, with a view to ensuring a credible elections management system.

He added that the focus on elections is justified because they are a critical process through which political power is acquired, retained, and transferred—and most importantly through which legitimacy is conferred.

The prevailing legal framework is robust but requires the above improvements to deliver a remarkable, credible electoral management body and system. The Ministry of Justice and Constitutional Affairs is invested in supporting the attainment of "a more perfect union" (borrowing from American political parlance) for the Ugandan polity

It is a long-term process, with many moving parts, numerous interests, actors, and dynamics that cannot all come to agreement for fruition to happen overnight.

Panelist Two: Julius Kiiza

He led off by underlining the disparity between form and substance in Uganda's Constitution, and cautioned that reforms do not go far enough to address this glaring gap. This is demonstrated by, for instance, the unending contest between the ideal of a democratic government and the reality of an imperial, overbearing presidency; or the practice of statecraft as an unregulated experiment in the fusion of all branches of government versus the notions of Separation of Powers, and the Rule of Law.

As a remedy, he counselled that Ugandans should aspire to substantive—as opposed to—cosmetic reforms. There must be a confluence between formal constitutions, the processes that lead to them, and constitutionalism; ritualistic democracy versus tangible empowerment.

Secondly, Kiiza observed, our politics is still hungover from monarchism (and its manifestations such as the 'big man syndrome'), which makes a transition to republican administration a pipe dream. Further, when money induces political behavior, votes cease to matter.

The absence of social goals and objectives (like functional public services and commons e.g. State-funded education, healthcare) which would be a pathway to a Twenty-First Century digital economy impedes constructive discourse on constitutionalism.

Panelist Three: Miria Matembe

The 1995 Constitution is a robust testament to the elaborate process we went through before arriving at promulgation. The document was never intended to give unfettered authority and power to the person of the President—it was and still is nonetheless routinely violated.

Poverty and ignorance are central tenets to the longevity of the regime. Citizens must discover their individual agency and use it to determine the course of their democracy and individual/collective fates or futures.

Matembe acknowledged the contribution of the Constitution towards advancing women's rights and participation in public affairs. Down the road, this advancement of the women's cause has unfortunately been subverted and weaponized for women in power without power, for the benefit of narrow, selfish interests. Limited access to finances further impedes the participation of women in politics in an environment where mainstream politics has been heavily commercialized.

Regardless of the multiple and layered constraints we face, we need to engage our agency as citizens to push back and not lose sight of the promise that the 1995 Constitution spells out in its preamble.

Panelist Four: Godber Tumushabe

We have lamented for far too long about the injustices of colonialism, slavery, and apartheid; six decades later, we should have corrected course as an independent people. We should depart from the tendency of always finding excuses, justifications, or explanations for our failure to move forward as Africans or Ugandans for that matter.

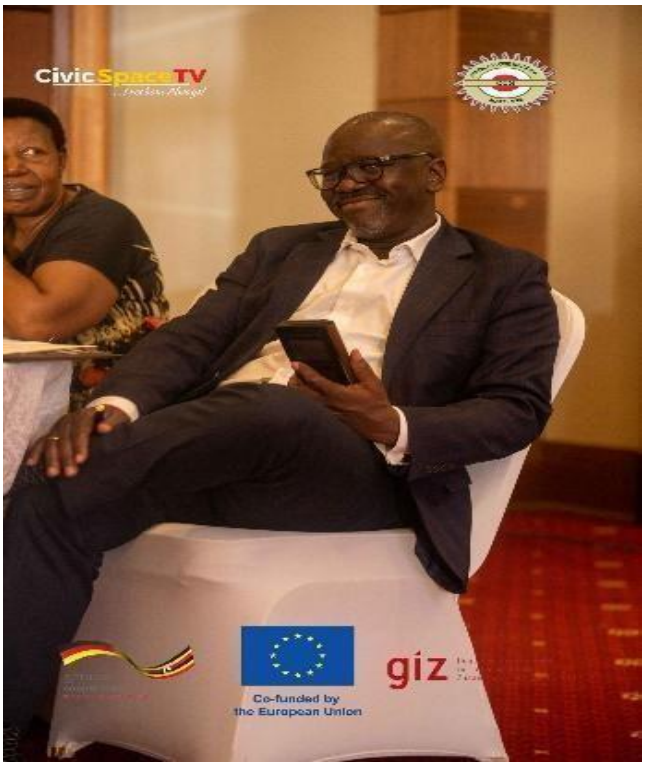
The 1995 Constitution has been so thoroughly debased that we no longer have the consensus that informed the promulgation of the document. The current state of the Constitution fails the six-part test which considers durability, popular ownership, power distribution, predictability, protection of citizens from the excesses of the State, and built-in safeguards for continuity of government.

Articles 1, 2, 3, and 4 have been subverted through successive amendments, sheer disregard, and the militarization of politics. Universal suffrage has similarly been rolled back through executive overreach, militarization of civilian institutions, a culture of lawless impunity, and the debasement of the electoral process.

For all their successes and contributions, the incumbent regime will leave us with two major crises whose effects are far-reaching and not easy to remedy, namely:

- The demobilization of institutions of the State and Citizenship; and,
- Lowering of our collective expectations as a people in terms of ambitions and measurement of success.

The solution(s) lie(s) in a National Dialogue process which acts as a platform for arriving at a negotiated settlement that allows for or facilitates peaceful transition. If we muster the first peaceful transition through this settlement, the bulk of other symptomatic issues (like campaign financing and dysfunctional public services) will be a whole lot easier to resolve.



Target Audience:

i. Legal scholars and constitutional law experts.

ii. Members of the judiciary and legal practitioners.

iii. Policymakers and government officials.

iv. Academics and students of political science and law.

v. Civil society organizations and activists.

vi. Media practitioners

vii. University students

Thematic areas of the Conference

1. Elections - The role of the constitution in conducting elections, regulating campaign financing and the significance of electoral reforms

2. State of Democracy and Multiparty politics - The role of the constitution in safeguarding multiparty democracy

3. Gender Equality and women participation in politics - The constitution, gender equality and women participation in politics.

4. Constitutional Amendments - Processes and challenges of amending the Constitution with case studies of significant constitutional amendments.

Expected Outcomes:

i. A deeper understanding of the role and significance of the constitution in modern democracies.

ii. Policy recommendations for constitutional reforms and better governance.

iii. Strengthening the commitment to uphold constitutional values and the rule of law.

iv. Enhanced stakeholder collaboration for the promotion of democracy and constitutional governance

Next Steps:

1. A position paper shall be developed from the conference outcome document for presentation to key stakeholders including Law Reform Commission, Ministry in Charge of Constitutional Affairs and Parliament

2. Conduct round table discussions with the Electoral Commission, Uganda Human Rights Commission, Uganda Law Reform Commission, Uganda Law Society, Legal and Parliamentary Affairs Committee and the Parliamentary Forum on Constitutionalism.

3. Outcome Document shall be used for advocacy in the quest for constitutional and electoral reforms

4. Commemoration of Uganda's Constitutional Day shall be streamlined as an annual event, with organization of the Conference on the Constitution.

5. Other steps as adopted by the Conference

University Students Representing 24 CCG Hope Initiative Clubs & Main Guests

APPENDIXES

D. Outcome Document

Communiqué

A. Preamble

We, the Citizens of Uganda, variously constituted and represented as young people, scholars, civic leaders, professionals and vocational practitioners;

Convened for the maiden Conference on the Constitution at the Kampala Sheraton Hotel on the 15th of November, 2024, under the auspices of the Centre for Constitutional Governance and supporting development partners;

Invested in charting a path forward for the entrenchment of a culture of constitutionalism, premised on engaging the evolving dynamics affecting the dynamics of our fourth post-Independence Constitution;

Concerned about the pressing questions of obstructed political transition, the quest for a credible elections management system, the desire for a functional service delivery infrastructure, and a people-centred economic model and nation-state that guarantee the dignity, wellbeing, and productivity of Ugandans;

Here below undertake as follows:

B. Undertakings

We resolve and commit to:

i. Contribute towards building civic agency for the realization of constructive political participation;

ii. Encourage cross-cutting solidarity that spans multiple segments of the Ugandan population towards popular consensus;

iii. Promote the popularization of the notions of constitutionalism, nation- building, service-oriented leadership, and the Rule of Law;

iv. Build a cadre of younger Ugandans (from amongst the millennial and Gen Z categories) to carry forward efforts for the realization of constitutionalism;

v. Enlist the participation of like-minded institutions and movements beyond those present at this conference; and,

vi. Incorporate emerging (especially digital) technologies in our continuing efforts to attain durable Constitutions and a political culture of constitutionalism.

C. Points of Action

To honor our resolutions and commitments, we shall:

i. Evolve our popular political education to include storytelling, art, and cross- generational experience sharing;

ii. Document the series of injustices and use the resulting literature as evidence for when we seek redress;

iii. Undertake a voter registration drive that focuses on younger voters, who are the decisive numerical majority and have a central civic role;

iv. Consciously adapt our internal programming as organizations to suit the dynamic and

shifting context in which we operate;

v. Build local (human and financial) resource mobilization mechanisms that benefit from the philanthropy of Ugandans, social enterprise, the business and industrial communities—as a means to reducing our over-dependence on foreign sources of funding and technical support;

vi. Support all efforts by other actors, such as public interest litigation, peaceful demonstrations, and participation in elective politics;

vii. Explore possibilities for working with progressive actors within the incumbent political establishment; and,

viii. Designate the Conference on the Constitution as an annual event for purposes of our internal reflection, introspection, and planning for each subsequent calendar year.

Adopted this ***Fifteenth Day*** of ***November***, in the year ***Two Thousand and Twenty- Four***, at Kampala.

E. Sources, References, and Recommended Reading

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