



Constitutional Amendments Reference Book

Kituo Cha Katiba: Eastern Africa Centre for Constitutional Development

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Constitutionalism that promotes good governance and democratic development in Eastern Africa.

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P.O. Box 3277, Kampala, Uganda, **Tel:** +256 414 533295/0312 113321
www.kituoachakatiba.org, www.facebook.com/kituoacha.katiba
Facebook email: kituoacha.katiba@facebook.com

Foreword

Kituo Cha Katiba also known as the Eastern African Centre for Constitutional Development (KcK) is a regional non-governmental organisation (NGO) based in Kampala, Uganda. It was established in 1997 as a think tank to promote constitution making and democratic governance. KcK provides critical and up-to-date information to East Africans on constitutionalism, good governance and democratic development.

KcK has contributed to constitutional making processes in Uganda, Kenya, Tanzania and South Sudan. In 2013, KcK constituted a team of experts in constitution making from Uganda and Kenya to provide critical input to the Draft Constitution of Tanzania 2013. Several of the team's recommendations found their way into the Second Draft that was debated by the Constituent Assembly (CA) and

Final Draft Constitution which is to be the subject of a referendum.. In the same year - 2013, KcK commissioned a team of experts drawn from Uganda and Kenya to examine the process and progress of constitution making in South Sudan and provide critical input to it based on best practices and lessons from East Africa. The project has been partly implemented because of the civil war in the country and is to be extended. KcK conducted a fact-finding mission in Kenya in September 2001 to initiate dialogue among all stakeholders involved in the constitutional review process in the country and to share experiences with the Ghai Commission in order to positively take the constitutional reform process forward. In 2007, KcK developed an alternative draft of a new constitution for Kenya, building on the Bomas and Wako drafts.

KcK also documented the process of making of Uganda's 1995 Constitution in a book, *The Search for National Consensus: Making of the 1995 Uganda Constitution* (2005, Reprinted 2014), by Hon. Justice Benjamin Odoki. KcK's flagship project the *Annual State of Constitutionalism Project* that audits the constitutional and governance landscape in the region is a useful resource on the progress, challenges and prospects in the area.

The present constitutional reference book builds on KcK's work and focuses on the ongoing constitutional amendment process in Uganda which commenced in 2014 following a call for proposals for amendments by the Government of Uganda. KcK convened a team of constitutional law experts which thoroughly reviewed the 1995 Constitution as amended and proposed amendments which were duly submitted to Uganda Law Reform Commission.

KcK extends her sincere appreciation to USAID Rights and Rule of Law Programme, for their support towards this process. Our sincere gratitude also extends to the experts for their invaluable time and at very short notice reviewed the entire Constitution and came up with comprehensive and constructive proposals.

As further consultations and debate unfold, I hope this book is a useful reference to the legislature, policy makers, lawyers, academicians, technocrats and members of the public. It is also my earnest belief that KcK's contribution adds value to the ongoing constitutional amendment process and provides a bedrock for those to come.

Edith Kibalama
Executive Director
Kituo Cha Katiba

Proposals for Amendment of the Uganda's 1995 Constitution

Introduction

This document contains a list of proposals for amendment of the 1995 Constitution of Uganda. It was generated by Kituo cha Katiba: Eastern African Centre for Constitutional Development (KcK) following a high level expert meeting of constitutional law experts to generate proposals for amendment. The team comprised of the following:

- 1) Prof. Frederick Ssempebwa
- 2) Prof. Frederick Jjuuko
- 3) Hon. Miria Matembe
- 4) Mr. Peter Walubiri
- 5) Dr. Busingye Kabumba
- 6) Ms. Caroline Adoch

- 7) Ms. Roselyn Karugonjo
- 8) Dr. Christopher Mbaziira
- 9) Mr. Dan Ngabirano
- 10) Mr. Nicholas Opiyo
- 11) Mr. Benson Tusasirwe
- 12) Hon. Dan Wandera Ogalo
- 13) Hon. Sarah Bagalaaliwo
- 14) Ms. Edith Kibalama
- 15) Ms. Joyce Freda Apio

The meeting reviewed the 1995 Constitution as amended and also the government proposals. The structure followed specifies the article to be amended, makes proposals, and gives the justification for the same. A matrix format is used for ease of reference.

Proposals for amendment and justifications

Provision	Proposal	Justification
CHAPTER ONE: THE CONSTITUTION		
Art. 4. Government proposal to introduce a clause on promotion of the Constitution in any other appropriate manner besides translation and promotion through teaching and publication in the media.	The Government proposal should be dropped.	The addition is unnecessary. While the government justification is that the current methods for promotion are limiting, there is no evidence to show that the state has attempted to use any of these to actually promote the Constitution.

<p>Art. 4(b)- providing for the teaching of the Constitution in all educational institutions and armed forces training institutions.</p>	<p>Include civil service to the list of those to be taught the Constitution.</p>	<p>Civil service is an important sector of society that should understand and appreciate the Constitution.</p>
<p>Art. 4. Additional comment</p>	<p>Introduce a new clause to provide for involvement of other relevant stakeholders such as civil society in promotion of the Constitution.</p>	<p>Inclusion of new actors will enhance efforts to promote the Constitution.</p>
<p>CHAPTER TWO: THE REPUBLIC</p>		
<p>Art. 17(3)- Duties of a citizen – Parliament may, in any case of any duty or obligation under clause (1), prescribe a penalty for contravention of that duty or obligation.</p>	<p>Repeal Article 17 (3).</p>	<p>The duty to engage is accompanied by a right to disengage hence no need for penalties. In any case Parliament can use its broader mandate to impose sanctions even without this provision.</p>

CHAPTER FOUR: FUNDAMENTAL AND OTHER HUMAN RIGHTS AND FREEDOMS

<p>Art. 20(1)- Fundamental rights and freedoms of the individual are inherent and not granted by the State.</p>	<p>Amend to show that in addition to not being granted by the state, human rights are universal, interrelated and indivisible</p>	<p>This phraseology is in line with modern approaches which emphasize not only the inherent nature of rights but also the fact that all categories of rights, civil and political, and economic, social and cultural are dependent on each other and should be accorded equal measures of protection</p>
<p>Art. 20(2)- The rights and freedoms of individuals and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of government and by all persons.</p>	<p>Amend to reflect all the duties of the state to respect, protect, promote and fulfill</p>	<p>This is in line with international human rights law and is a useful tool in understanding the nature of the obligations of the state and violations in particular cases. The state is guided on what it has to do to ensure that the rights are realized. There is abundant guidance of each of these duties in respect of specific rights.</p>

Additional comment on
Art . 20.

Introduce clause (3) to cater for other persons as duty bearers to bind individuals and juristic persons to the obligations arising from the Bill of Rights.

This is also in line with the modern approach; it extends the scope of human rights and the Bill of Rights to enhance protection. This is important because of the fact that individuals and artificial persons are becoming important role-players in both public and private lives and are increasingly becoming responsible for many violations. Some corporations have become so powerful and perform functions traditionally preserved for the state and should therefore be responsible when executing these functions.

<p>Additional comment on Art. 20.</p>	<p>Introduce Clause (4) to guide the courts on how they should interpret the Bill of Rights. The clause should indicate that in interpreting the Bill of Rights, the Courts should adopt interpretations which maximize enjoyment of the rights over those interpretations which limit the enjoyment.</p> <p>This clause should also require the courts to be guided by the country's international undertakings and to develop all laws to ensure compliance with the Bill of Rights.</p> <p>This is in addition to shifting the burden on the state to justify its failure to realize rights on the basis of limited resources.</p>	<p>This will help the country to adhere to its international undertakings and to ensure that the courts appreciate these obligations and discharge their duty of ensuring that the obligations are given domestic legal effect. So far, the courts have not adequately sought guidance from international law and the country's human rights obligations</p>
<p>Art. 21(2)- ...a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.</p>	<p>Review to indicate additional grounds such as <u>HIV or other health status</u> and should be left open by indicating that the grounds listed are inclusive and not exclusive of other grounds.</p>	<p>It is important for the grounds upon which discrimination is prohibited to remain as open-ended as possible, because, over time, grounds which were not previously thought about emerge and require that persons falling in that status are protected. An example is HIV and the other health status, so is age and marital status. These are what have been referred to as analogous grounds.</p>

<p>Additional comment on Art. 21(2)-</p>	<p>Amend to prohibit not “discrimination” but “unfair discrimination”.</p> <p>Introduce a general clause to allow additional grounds be introduced.</p>	<p>This is because human rights law does not prohibit “discrimination” but rather “unfair discrimination”. There are circumstances when discrimination is allowed. For instance, it is discrimination to say that persons with disabilities board the bus first, yet it is not illegal since it is not “unfair”. Human rights law defines the phrase “unfair” and this is the same approach our courts have followed.</p>
<p>Art. 21(3)- Definition of discrimination.</p>	<p>Review to define not “discrimination” but “unfair discrimination”. “Unfair discrimination” is giving people differential treatment based on the mentioned attributes which has the effect of impairing their dignity as human beings and marginalizing from the rest of society.</p>	<p>This is the approach which human rights law has adopted in dealing with discrimination. In this regard, guidance can be sought from comparative jurisdictions which have advanced equality jurisprudence such as South Africa and Canada. See South African case of <i>Hoffman vs South African Airways</i></p>

Art. 21(4)-	Amend to apply to all the governance systems.	The current provision limits application to the Bill of rights. Refer to article to 20(3) of the Kenya Constitution for lessons.
Art. 22(1)- The right to life	Amend to out rightly abolish the death penalty	<p>There is need for outright abolition of the death penalty. This is because the trend in most democracies is now to abolish the penalty. In South Africa, the Constitutional Court in the case of <i>S v Makwanyane</i> held that the death penalty was unconstitutional to the extent that it impaired the dignity of the person. That it was also discriminatory because in many cases it was the poor who were not properly represented that get the penalty.</p> <p>In Uganda, the Supreme Court outlawed the mandatory penalty in the Susan Kigula case. Yet, Uganda in effect has a moratorium having last carried out the penalty over ten years ago in 2003. This in itself is an indication of a move towards abolition. Some neighboring countries such as Rwanda have abolished the penalty.</p>

Comment on government proposal on **Art. 23.** Protection of personal liberty. Government proposes to amend clause (4)

Clause (4) should not be amended to extend the 48 hour rule as has been argued by some agencies, including the Police.

The argument which has been made that the 48 hours prescribed is inadequate to bring a person to court are misconceived. The problem is not with the time but with the practice of the Police by which they effect arrests before carrying out proper investigations. Indeed, there are many cases in which this rule has been abused yet, even in these cases, investigations are inconclusive. There are also many cases of persons on remand whose cases have been dismissed after many months because investigations are not complete. The problem is therefore with the investigative capacity of the police and if this is not enhanced extension of the time may not help much.

Comment on government proposal on **Art. 26**. Right to property.

The proposal by the Government to amend Clause (2)(a) to allow compulsory acquisition for purposes of investment should not be effected.

This is because the phrase “public use” in the provision is good enough and should encompass investment, provided it can be proved that the investment is in public interest. Using investment as a ground is likely to result into abuse and property grabbing, especially by the rich to the detriment of poor people. Indeed, there are currently a number of cases of land-grabbing which could be legitimized by the proposed amendment.

Art. 26(2)(b)- Government has proposed to amend the provision by replacing it with the following “prompt payment of fair and adequate compensation, prior to taking of possession or acquisition of property in the case of physical structures in permanent materials.

The Government proposal to amend **Art. 26(2)(b) (i)-** should be dropped. The Government proposes a new provision (ia) to read: “payment of prompt, fair and adequate compensation within one year to person’s property in temporary materials has been taking possession of or acquired by Government for public use (under paragraph (a) of this clause).

The Government proposal is problematic on a number of grounds:

First, the proposed new provisions are vague, what amounts to “permanent” or “temporary” materials may be hard to define. For instance, where do food crops fall?

Second, in some cases, the materials that may be considered to be temporary such as food crops may be the most important to the person’s livelihood

Third, the one year proposed for compensation of temporary materials may be problematic. This is because in some (if not many) cases when payment is not made in one year, the person may have to sue the state. Besides the case taking many years to resolve may be expensive for poor persons, who are in most cases the victims of these violations.

<p>Art. 27. Right to privacy of person, home and other property.</p>	<p>Amend to introduce clauses which cater for protection of personal data which may be in the possession of either the state or private entities.</p> <p>Amend to include non physical invasion of privacy.</p> <p>The Constitution should also require Parliament to adopt laws to provide for penalties for those who abuse personal data and for compensation for victims.</p>	<p>Increasingly, personal data is getting into the hands of both state and private entities without proper protection extended to the individual. An example is the sim-card registration. Yet, increasingly, the individual is required to give personal information for various purposes. If no protection is extended, the data may be misused to the detriment of the individual.</p>
<p>Art. 28. Right to a fair hearing.</p>	<p>Amend to make access to legal aid a right for all those who deserve it in both criminal and civil cases.</p> <p>A State Legal Aid Board should be introduced as a constitutional Body and facilitated to provide legal aid services to the indigent.</p>	<p>This change would guarantee the indigent a fair trial and yet would simply be entrenching as constitutional some of the proposals which appear in the Draft Legal Aid Policy.</p>

<p>Art. 28(3)-</p>	<p>Amend to provide the rights of the accused persons to have access to evidence in the possession of the state.</p> <p>Introduce a clause to authorize courts to exclude from trials all cases in which violations of human rights occurred in pre-trial situations.</p>	<p>It supports the right to a fair hearing.</p> <p>It will discourage the police from violating rights in the process of investigations.</p>
<p>Introduce provision on the rights of victims of crime under Art. 28.</p>	<p>Amend Art. 28. to introduce a clause which guarantees the rights of victims of crime. Victims of crime should be guaranteed the right to be treated with respect, dignity and care as they interact with the criminal justice system. They should also be entitled to protection, reparation, compensation, counseling, rehabilitation and appropriate medical care at the expense of the State. This is in addition to ensuring that their cases are heard in a timely manner and in a manner that does not traumatize and victimize them further when interacting with the justice system. The protection should be extended to their family members whenever appropriate.</p>	<p>The protection of victims of crime is something which has not been given appropriate attention, creating the perception that the criminal justice system is more concerned with the rights of suspects (“criminals”) than with those affected by crime. This is partly responsible for the loss of confidence in the criminal justice system. There is need for appropriate balancing to ensure that both suspects and victims’ rights are respected.</p>

<p>Art. 29(2)- Freedom of Movement -Every Ugandan shall have the right to move freely throughout Uganda, reside and settle in any part of Uganda...</p>	<p>Amend to extend the right of freedom of movement to refugees.</p>	<p>This will in addition to ensuring compliance with international law be a reflection of what is already indicated in Section 30 of the Refugee Act of 2006.</p>
<p>Arts. 32, 33, 34, 35 and 36 Affirmative action in special groups</p>	<p>Introduce provisions which protect other vulnerable groups which were “forgotten” in 1995. These include Older Persons and Youths. These groups have special needs that should be attended to. The elderly need to be assured of care and access to such social goods as health care. People above a certain age should be entitled to free medical services at public facilities and to take part in public affairs. Additionally, those retiring from employment should have access to retirement benefits without delay.</p> <p>The employment needs of the youth too need to be attended to, in addition to their education and training needs and should be facilitated to take part in public affairs and decision-making.</p>	<p>These two groups deserve protection. Increasingly, older persons are being neglected and live at the margins of society. At the moment, there are no comprehensive programmes to cater for the needs of this group. The same could be said of the youth, who moreover form the biggest proportion of the population.</p> <p>Comparative constitutions such as the Kenyan one have comprehensive provisions which protect these groups.</p>

<p>Art. 33(1)- Women shall be accorded full and equal dignity of the person with men.</p>	<p>Amend to include a phrase at the end of the provision which reads that “Such measures shall be designed to achieve specific objectives and shall be guided by clear time-bound targets which may be reviewed from time to time”.</p>	<p>Although the Constitution has had this phrase for quite some time now, there is no evidence of clearly defined affirmative action programmes with clear objectives and time defined targets. It is therefore impossible to evaluate whether the measures in place are realizing their objectives and targets and whether they are benefitting the peoples they were designed for since targets and objectives are not defined.</p>
<p>Art. 33(2) and (3)- Protection of rights of women</p>	<p>Amend to give horizontal application in order to extend the obligations to private entities as much as they do for the state.</p>	<p>It is important for the obligations to be given horizontal application for the same reasons advanced to justify amendment of Article 20 to introduce clause (3)</p>

<p>Art. 35. Rights of persons with Disabilities.</p>	<p>Amend to indicate some of the basic rights of PWDs beyond respect and human dignity. These rights include access to inclusive education, medical care and health services, accessible infrastructure and places, sign languages and reasonable accommodation.</p>	
<p>Art. 36. Protection of rights of minorities.</p>	<p>Amend to extend its application to “Minorities and Marginalized Groups” and not just “minorities”.</p> <p>Secondly, the provision should sketch out some of the basic rights which these groups deserve, such as access to education, access to economic and social goods and services such as water and health care, to culture and to take part in public affairs and decision-making.</p>	<p>This is important because the use of the word “minorities” excludes groups which may be numerically strong yet live on the margins of society. An example includes the Karamojong, who although many in numbers have been marginalized for some time now.</p> <p>The provision in its current form is inadequate and does not give guidance on the rights of this group.</p>

<p>Art. 38. Civic rights and activities.</p>	<p>Amend to introduce a clause acknowledging NGOs as one of the means of ensuring civic engagement and a recognition of their right to operate and to be supported by the Government in their operations.</p>	<p>This is important because Government needs to acknowledge the role which NGOs have played in promoting civic engagement. At the moment, although Government knows about the contribution of NGOs, it has not publically acknowledged this and guaranteed NGOs the right to exist and operate freely.</p>
<p>Art. 40. Economic Rights</p>	<p>Amend provision to rename this article “Labour Rights” and not “Economic Rights”.</p> <p>Secondly, amend to extend the rights to persons in informal employment who should also be protected in terms of ensuring proper working conditions.</p> <p>Third, the provision should reflect all labour rights including the right to work and to social security and retirement benefits.</p>	<p>Use of the word “economic” is not a true reflection of the rights being protected and may be misleading in some respects as these are labour or employment rights.</p> <p>The majority of the labourers in Uganda work in the informal sector where they have not been protected adequately.</p> <p>The failure to ensure the protection of the right to work violates international law since this right is provided for in the instruments Uganda has ratified. It would also guide the state in taking measures towards job creation.</p>

<p>Art. 41(1)- Right of access to information – Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State ...</p>	<p>Amend to extend provision to include information in possession of private actors and companies as long as they infringe on human rights and freedoms.</p>	<p>Many private actors perform public and execute tasks that impact on rights and freedoms of other persons.</p>
<p>Art. 43. General limitations on fundamental and other human rights and freedoms</p>	<p>Introduce a clause to provide that international human rights instruments to which Uganda is a party shall be applied by the courts of law in Uganda.</p>	<p>To streamline the court practice.</p>

<p>Art. 51. Uganda Human Rights Commission: The Government proposal to amend this provision by substituting clause (2) with a clause which reads as follows: “(2) The Commission shall be composed of a Chairperson, a Deputy Chairperson and such other members as Parliament shall by law prescribe, all of whom shall be appointed by the President with the approval of Parliament”.</p>	<p>A more comprehensive process of appointment of people to such offices is required to ensure that the process is independent, public and shielded from political interferences. There should be an independent process and body through which these offices are filled in an open and transparent process involving public scrutiny and done in a competitive manner rather than the hand picking it is now.</p>	<p>It is important that holders of offices such as the Uganda Human Rights Commission are seen to be independent in order to assure public confidence. Yet, the holders of the offices should not feel bound to pay allegiance to the appointing authority.</p>
<p>Art. 56. Removal of Commissioners of the Uganda Human Rights Commission.</p>	<p>The proposal by Government to subject removal of UHRC Commissioners to a more strict process is supported</p>	<p>This will make the Commission more independent.</p>

Inclusion of economic and social rights

There is need to include economic, social and cultural rights in a comprehensive manner as part of the Bill of Rights. The rights that should be introduced include:

- Right to the highest attainable state of mental and physical health
- Right to sufficient water and sanitation
- Right adequate food
- Right adequate housing
- Right to social security and assistance
- Right to intellectual property and benefits of science
- Rights of consumer to protection
- Right to economic and social development
- Right to use public facilities
- The right to education is also protected in Art. 30 but needs to be enhanced in line with international human rights law.

It is important to include these rights in order for the Constitution to protect all categories of rights and for Uganda to live up to its international undertakings. Yet, these rights are so important to human wellbeing and the civil and political rights would be meaningless if people's economic and social welfare is not guaranteed.

Although many of the elements of these rights are included in the National Objectives and Directive Principles of State Policy, the justiciability of these objectives is still the subject of debate. The 2005 introduction of Art. 8A which seemingly makes the objectives justiciable has not been enough.

Yet, the mere fact that the bulk of these rights are in the National Objectives is an indication that the country recognizes them and should take a step by including them in the Bill of Rights.

Uganda has even taken steps to illustrate its commitment to these rights by for instance submitting a state report to the UN Committee on Economic, Social and Cultural Rights, which is to be considered in July 2015.

The inclusion of the rights would also enhance the fight against poverty by empowering citizens in line with the concept of the human rights-based approach to development.

CHAPTER FIVE: REPRESENTATION OF THE PEOPLE

Art. 60. Electoral Commission

Amend to provide that members of the electoral commission must be publically vetted and selected by an independent body in this case the Judicial Service Commission.

Members of the electoral commission should be appointed for a fixed and non-renewable term of 7 to 10 years

All provisions on the Electoral Commission should be moved to the proposed separate Chapter on Independent Commissions.

This will improve on the credibility of the EC and promote transparency in electoral processes.

To strengthen independence of Commissioners.

<p>Art. 63(1)- Constituencies - ... Uganda shall be divided into as many constituencies for the purpose of election of members of Parliament...</p>	<p>Reduce the number of constituencies to have a sizeable and manageable Parliament. There should be an upper limit on the number of constituencies.</p>	<p>This will save the country several expenses associated with the number of constituencies while at the same time guaranteeing effective representation.</p>
<p>Art. 67. Organisation of elections A. 67. (3) – All presidential candidates shall be given equal time and space on the State owned communication media.</p>	<p>Provide equal time and space to all candidates and not just Presidential candidates.</p> <p>Amend to include private media.</p>	<p>This is meant to create a level playing field for candidates from all parties.</p>

<p>Art. 68. Voting at elections and referenda – A. 68(6)- – Parliament may by law exempt any public election, other than a presidential or parliamentary election, from the requirements that it shall be held by secret ballot.</p>	<p>Repeal Art. 68(6)- Parliament should not have power to dispense with the secret ballot.</p>	<p>The need to protect voters from intimidation and undue influence</p>
<p>Art. 69, 70, 73 and 74. Political systems.</p>	<p>Repeal these provisions.</p>	<p>There is a tacit presumption that Uganda is already into a multiparty political dispensation making these provisions redundant. The whole constitution design is based on representative democracy and a multiparty system. Maintaining these provisions gives room for political manipulation. If change is desired it should be brought by re-writing the constitution and not through a simple referendum.</p>

<p>Art. 71. Multiparty political dispensation</p>	<p>Repeal requirement for a political party to have a national character.</p>	<p>This infringes on freedom of association without justification. There is need for flexible political arrangements so that people are able to easily organize themselves.</p>
<p>Comment on Government proposal on Art. 72(4)- Right to form political organisations</p>	<p>Proposal to introduce Art. 72(4)- to read “right to form political organisation or political party” should be dropped.</p>	<p>Its effect is to disallow unsuccessful party members from running as independent candidates.</p>
<p>CHAPTER SIX: THE LEGISLATURE</p>		
<p>Art. 77(4)- Parliament may extend its life where a state of war or emergency would prevent a normal election....</p>	<p>Repeal Art. 77(4)- on extension of life of Parliament.</p>	<p>The provision undermines democracy and may be subject of abuse to unnecessarily extend the term of parliament. Our history supports this fact.</p>

<p>Art. 78(1)(b)- Parliament shall consist of one woman representative per district</p>	<p>Repeal this provision and introduce a system of one woman and one man per constituency.</p>	<p>This is in line with proposals on Art. 63(1)- - reduce the number of Members of Parliament.</p>
<p>Art. 78(1)(c)- Parliament shall consist of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine.</p>	<p>Repeal Art. 78(1)(c)- except for representation of persons with disabilities among special interest groups.</p>	<p>This was a stop gap measure which was supposed to be reviewed. At the time of making the Constitution these groups were considered vulnerable.</p> <p>Secondly, the army is required to be non-partisan.</p>
<p>Art. 79. Functions of Parliament</p>	<p>Introduce a new clause to guide Parliament in their functions in making laws that promote national interest.</p>	<p>The functions of Parliament are not adequately spelt out.</p>

<p>Art. 80. Qualifications and disqualifications of members of parliament</p>	<p>A new clause (h) should be introduced to bar persons disqualified by courts from contesting for Parliament where those persons were directly involved in cases of electoral malpractice and dishonesty.</p>	<p>To promote integrity and build a high caliber of persons elected to the House.</p>
<p>Art. 82(2), (7)(d)- Election and vacation of office of the Speaker and the Deputy Speaker of Parliament.</p>	<p>Repeal and instead provide for a Speaker to be elected from outside Parliament. In short the Speaker should not be a member of parliament.</p> <p>A new clause providing for a speakers panel should then be introduced.</p>	<p>This will ensure impartiality of the speaker and strengthen the independence of the speaker.</p> <p>The current Speaker and her deputy are over stretched and a panel would reduce on this challenge in the future.</p>
<p>Comment Art. 83 (1)(g)- Tenure of Office of MPs: Government proposal for MPs to lose seats upon leave or expulsion from a political party.</p>	<p>Government proposal to introduce a new clause should be dropped. The current provision should instead be entrenched.</p>	<p>Members of Parliament are elected to represent their constituencies and not political parties.</p>

Art. 85. Emoluments of MPs.	Repeal Art. 85. and the question of emoluments of Parliament should be left to be determined by the proposed Salaries' Board.	Harmonization with other public offices.
Art. 87(1)- Clerk to Parliament shall be appointed by the President with advice from Public Service Commission	Repeal and instead provide that the Clerk to Parliament be appointed by the Parliamentary Service Commission.	An appointment by the President goes against separation of powers.
Art. 88. Quorum	Amend and revert to pre-2005 position	The current position defeats parliamentary role of being a representative of the people.
CHAPTER SEVEN: EXECUTIVE		
Art. 104. Challenging presidential election - 104 (2) – Petition to be lodged in the Supreme Court within ten days after declaration of the elections.	Repeal and introduce provisions that extend the time for lodging a petition to 30 days.	The current period of ten days is not sufficient to gather all the evidence needed to challenge a presidential petition. Sixty days is more realistic.

<p>Art. 104(3)- the Supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings not later than thirty days from the date the petition is filed.</p>	<p>Repeal and introduce a new provision granting court up to 60 days to declare its findings.</p>	<p>For fair dispensation of justice.</p>
<p>Art. 105(2)- Tenure of office of the President</p>	<p>Repeal and term limits be re-introduced.</p>	
<p>Art. 108(2)- The President shall with approval of Parliament appoint a Vice President</p>	<p>Introduce a separate provision to provide for the position of a running mate that is eventually appointed a Vice President.</p>	<p>The electorate must have the right to chose the Vice President and have confidence in the Vice President as a person to take over in situation of a vacancy.</p>

Art. 108A. Prime Minister	Repeal to scrap the position of the Prime Minister	The functions of a Prime Minister can be performed by the Vice President. The Office of the Prime Minister is therefore unnecessary.
Art. 111. The Cabinet	Repeal Art. 111(1)- and to limit the number of cabinet to the current position of 21 as per Art. 113(2)-	This is more effective and would save the state a lot of resources.
Art. 113. Appointment of Cabinet ministers by the President with approval of Parliament.	Amend to provide that cabinet ministers are appointed from outside Parliament.	Refer to the Odoki Commission Report.
Art. 114. The total number of Ministers appointed under this article shall not exceed twenty one except with the approval of Parliament.	Amend Art. 114(3)- by deleting the words 'except with the approval of Parliament'. Refer to recommendation on Art. 111.	Refer to the above.

<p>Art. 118. Vote of censure</p>	<p>Introduce a clause to bar any future appointment of a censured minister.</p>	<p>Public confidence and upholding integrity in leadership.</p>
<p>Art. 119(1)- Attorney General shall be appointed by the President with approval of Parliament.</p>	<p>Repeal Art. 119(1)- and replace with a new provision that vests the power to appoint the Attorney General in an independent commission.</p> <p>AG should not be a cabinet Minister but an ex-official member of Parliament to give technical advice.</p> <p>The qualification of Attorney General should be a person qualified to be appointed supreme court judge.</p>	<p>To ensure credible and competent persons hold the office.</p> <p>To avert conflict of interest</p> <p>Provide clarity between the AG and the Minister of Justice.</p>
<p>Art. 120(3)(d)- Director of Public prosecutions' power to discontinue criminal proceedings at any stage before judgment is delivered...</p>	<p>Amend Art. 120(3)(c)- to provide that the DPP's mandate to discontinue proceedings should be subject to approval by Court.</p>	<p>The current provision leaves this power to be easily abused.</p>

CHAPTER EIGHT: JUDICIARY

<p>Art. 129 and 137. Courts of Judicature and questions as to the interpretation of the Constitution.</p>	<p>Art. 129 and 137. should be reviewed and provision made for a separate Constitutional Court. The court should be at the level of the Court of Appeal and would facilitate the determination of constitutional matters in a timely manner.</p>	<p>This will help reduce on the work load of the Court and make it more efficient.</p>
<p>Art. 130. Supreme Court of Uganda</p>	<p>Amend to include the Deputy Chief Justice (DCJ) as a member of the Supreme Court and not the Court of Appeal under the current arrangement.</p>	<p>This is to enable the DCJ exercise effective control over all courts.</p>
<p>Art. 134. Court of Appeal</p>	<p>Amend to introduce a president of the Court of Appeal as the head.</p>	<p>For efficient running of the court.</p>

<p>Art. 142. Appointment of judicial officers Art. 142(1)- The Chief Justice shall be appointed by President acting on the advice of Judicial Service Commission (JSC) with approval of Parliament.</p>	<p>Amend to provide that the Chief Justice be appointed through an open and competitive process by the Judicial Service Commission.</p> <p>Where the President does not approve the recommended candidate within 60 days, the JSC should directly submit the name of the recommended candidate to Parliament for approval.</p>	<p>This will enhance transparency and independence of the Chief Justice. It would also help resolve situations such as the recent standoff.</p>
<p>Art. 143. Qualifications for appointment of judicial officers.</p>	<p>Amend Article to include that a High Court judge of not less than 20 years standing can qualify for appointment as Chief Justice.</p>	<p>There is a gap because the current provision only makes reference to a practicing advocate of a period not less than 20 years.</p>
<p>Art. 146. The government proposal to make Chief Justice to chair JSC</p>	<p>The government proposal should be dropped and composition of the JSC left as it is.</p>	<p>The Chief Justice is likely to be a complainant before the JSC and there would be a conflict of interest if he is the same person to head the JSC.</p>
<p>Art. 147. Functions of the JSC</p>	<p>An additional clause should be included to grant the JSC Powers to recruit court clerks, interpreters and all other staff of the Judiciary.</p>	<p>This will augment the independence of the Judiciary</p>

CHAPTER NINE: FINANCE

<p>Comment on Government proposal to repeal Art. 155(2) and (3)- to enable the President revise estimates of revenue and expenditure from self accounting departments... before submitting to parliament</p>	<p>Contrary to the Government Proposal, Art. 155(2) and (3) should be upheld.</p> <p>Government proposal to introduce strict procedures for removal of board members is supported.</p>	<p>To ensure financial discipline and accountability.</p>
<p>Art. 159(4)-Power of government to borrow or lend</p>	<p>Amend to include a phrase to the effect that the President shall provide information concerning the loan every six months and at such times as Parliament may determine.</p>	<p>To ensure financial discipline and accountability.</p>
<p>Art. 161(3)-The Central Bank appointment of Governor and Board Bank of Uganda</p>	<p>The Governor Bank of Uganda and Board Bank of Uganda should be appointed through an open and competitive process.</p>	<p>To provide security of tenure.</p>

<p>Art. 163. The Auditor General may retire at any time after attaining the age of 60 years, and shall vacate office on attaining the age of 70 years.</p>	<p>Amend Art. 163(11)- to provide that the Auditor General shall be appointed for a non renewable specific term of ten years.</p>	<p>To provide security of tenure.</p>
<p>CHAPTER ELEVEN: LOCAL GOVERNMENT</p>		
<p>General comment on Chapter 11. -Principles and structure of Local Government.</p>	<p>Most of the provisions under this chapter should be relegated to a statute - The Local Government Act.</p>	<p>The provisions in the articles are too detailed and micro prescribed.</p>

<p>Art. 176(1)- Local Government Systems - The system of local government in Uganda shall be based on the district as a unit under which there shall be such lower local governments and Administrative units as Parliament may by law provide.</p>	<p>Amend to decentralize to the county or, alternatively have power devolved to regions which in actual sense are now districts. Therefore, the regions should be given substantive power.</p>	<p>The local government structure has changed a lot due to the expansion in the number of districts. What used to be counties in many cases are now districts.</p>
<p>Additional comment</p>	<p>Federal arrangements be revisited to create bigger local government units with less councils. Alternatively revert to the original 18 or so districts.</p>	<p>This will ensure more efficient functioning and less costs.</p>

<p>Art. 178(1)- Regional governments - Two or more districts shall be free to cooperate in the areas of culture and development as set out in the Fifth Schedule to this Constitution and may, for that purpose, form and support councils, trust funds or secretariats, subject to sub clause (a)- (d)</p>	<p>Amend to provide that two or more districts should cooperate to form a region.</p>	<p>The requirement for cooperation should be mandatory and not discretionary. The absence of this has made this provision redundant.</p>
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<p>Art. 185. Removal of a district chairperson... The district chairperson or the speaker of a district council may be removed from office by the council by resolution supported by the votes of not less than two-thirds of all members of the council on any of the grounds in sub clause (a)- (c).</p>	<p>Amend to provide that, the district chairperson shall be removed by recall not by the resolution of two-third council members.</p>	<p>The election of the district chairperson is by universal suffrage and therefore to be removed by a resolution of 2/3 of the council members contravenes democratic principles.</p> <p>The power to remove district chairman by resolution of 2/3 of Council Members was a provision made in a one party state political system which was repealed in 2005. Therefore under the current political system this provision contravenes the spirit of multipartism.</p>
<p>Art. 186(8)- Appointment of committees - A district council shall appoint standing and other committees necessary for the efficient performance of its functions.</p>	<p>Amend to provide that the district chairperson should have control over the appointment of committee members.</p>	<p>This can address potential stalemate based on political differences which can ultimately affect the performance of the council.</p>

<p>Art. 188(2)- Public Service Commission (PSC) shall appoint Chief Administrative Officer (CAOs) and Deputy CAOs. -</p>	<p>Amend to provide that CAOs and Deputy CAOs be appointed by the District Service Commission not by the central government under Public Service Commission.</p> <p>This position should equally apply to Town Clerks.</p> <p>Establish safe guards to ensure that CAOs are protected, accountable as employees of the district.</p>	<p>The appointments of CAOs by PSC defeats the principle of giving power to the people. This is the same as Town Clerks.</p> <p>We should return to the spirit of decentralization where CAOs and Town Clerks were appointed by District Service Commission before 2005.</p>
<p>Art. 192. Collection of taxes by local governments</p>	<p>Amend to revive graduated tax or any other personal tax towards local governments</p>	<p>This will boost local government revenue collection and instigate responsibilities of individuals towards government.</p>
<p>Art. 193. Grants to local governments</p>	<p>An agreed percentage of the national budget should go to the districts as opposed to conditional grants which is unreliable and restricted.</p>	<p>Financial baskets outside the manipulation of the central government would improve planning and service deliveries.</p>

<p>Art. 203. Resident District Commissioners - There shall be for each district a resident district commissioner who shall be a senior civil servant appointed by the President.</p>	<p>Amend to provide that RDCs be placed at regional levels and removed from districts.</p> <p>Alternatively, If they are to be kept at district level, they must be elected or appointed by district councils.</p>	<p>The current structure makes RDCs an imposition from the central government and their functions defeats provisions of Article 176 (2) (b) and (c) of the Constitution. Power to the people was and remains an objective of decentralization.</p>
<p>Additional comments.</p>	<p>An inclusion to clearly define the role of the Lord Mayor beyond the ceremonial roles.</p> <p>The exercise of power by the Executive Director of KCCA should not be outside the control of KCCA.</p> <p>The Minister for Kampala should have the same powers with other ministers.</p>	<p>The stalemate within KCCA is a mockery of the spirit of decentralization. This can only be resolved with clear roles and chain of command of each person within the structure.</p>

CHAPTER TWELVE: DEFENCE AND NATIONAL SECURITY

Art. 211(1) - There shall be a police force to be known Uganda Police Force...	Amend to provide that there shall be a police service to be known as the Uganda National Police Service.	This is an important signal of a transition from repressive and forceful colonial policing methods to modern citizen centered policing.
Art. 211(3) - The Uganda Police Force to be nationalistic, patriotic, competent, productive and of national character	Amend to include non-partisan as part of the characteristics of the Uganda Police, in addition to being professional, nationalistic, competent, patriotic, productive and of national character.	This is important especially in the context of the reality of multi-party dispensation. It will strengthen the independence and objectivity of what is now referred to as the Uganda Police Force.
Art. 212. Functions of the Police	Amend to provide a clear distinction between the function of the police and the army.	

<p>Comments on Art. 212. Government proposal</p>	<p>Government proposal to amend Art. 212. to give the President powers to direct the Police on matters of Policy should be dropped</p>	<p>This proposal falls short of democratic policing standards. It would consolidate regime policing, a phenomenon that is contrary to principles of democratic policing and is completely unjustified. Secondly the word policy is overly broad and may be construed to include police operations which place the police machinery at the disposal of the President who is bound to deploy against the opposition.</p>
<p>Art. 213(2)- The Inspector General and the Deputy Inspector General of Police shall be appointed by the President with the approval of Parliament.</p>	<p>Amend to provide that the appointment be transparent through public vetting.</p> <p>Amend to provide clear qualifications for the holder of the office of the IGP and Deputy IGP.</p> <p>Appointments should be restricted to qualified and professionally trained persons.</p>	<p>Promotes trust and builds public confidence.</p>

<p>213(5)- The Inspector General or the Deputy Inspector General of Police may be removed from office by the President.</p>	<p>Amend to provide that powers to remove the IGP and his Deputy from Office shall be through a tribunal approved by Parliament.</p>	<p>The current provision for removal at the whim of the President does not conform to the standard of removal of a person from the office of a constitutional body.</p>
<p>Additional Comments on Art. 213. Government Proposal-to repeal Art. 213. command to be regulated by the Act.</p>	<p>The government proposal to repeal Art. 213. should be dropped.</p> <p>Amend to include a clause that bars appointment of army officers to the office of the IGP and Deputy IGP.</p>	<p>The offices of the IGP and his Deputy are extremely important and for this reason should be provided for under the Constitution. It is not necessary to repeal this provision instead it should be strengthened.</p> <p>This would address the current concern of an increasingly militarized police.</p>
<p>Additional comments</p>	<p>Amend to include a provision establishing an independent civilian oversight body for the Police.</p>	<p>Professional Standards Unit (PSU) is currently manned by Police Officers and cannot be impartial in carrying out investigations and related oversight roles and processes.</p>

<p>Comment on Art. 215. Uganda Prisons' Service - Government proposal to relegate to the Prisons Act</p>	<p>Government proposal to repeal this provision to be relegated to the Prisons' Act should be dropped.</p> <p>Amend name to change name to be Uganda Correctional Facilities from Uganda Prison's Service.</p>	<p>The office of the Commissioner General of Prisons is extremely important and for this reason should be provided for under the Constitution.</p>
<p>Art. 215(2)- Comments</p>	<p>Amend to include requirement of non-partisan among key values of the Uganda Prison Service.</p>	<p>This is a welcome development as a reflection of the current reality under the multiparty political dispensation.</p>
<p>Art. 216(2)- Removal of the Commissioner General of Prisons and Deputy by President</p>	<p>Amend to provide that the Commissioner General and his Deputy shall be removed by the President through a tribunal with the approval of Parliament.</p>	<p>This will promote transparency.</p>

CHAPTER THIRTEEN: INSPECTORATE OF GOVERNMENT

<p>Art. 223(4)- The Inspector General of Government (IGG) to be appointed by the President with approval of Parliament.</p>	<p>IGG to be appointed through a thorough competitive and open process including interviews and public scrutiny, before approval by parliament.</p>	<p>This promotes transparency and builds public trust in the office of the IGG in the execution of their mandate.</p>
<p>Additional comment.</p>	<p>Amend to provide that the IGG shall have powers to sue and be sued.</p>	<p>This will address the current gap, fueling conflict between the IGG's Office and the Attorney General's Office.</p>
<p>Art. 232. Powers of Parliament regarding inspectorate</p>	<p>Amend to include a clause that Parliament shall make laws prescribing penalties and sanctions for non compliance with the IGG's report.</p>	<p>This will strengthen the powers of the IGG in executing of their mandate.</p> <p>It will also ensure compliance with the IGG's orders to promote accountability and fight corruption.</p>

CHAPTER FIFTEEN: LAND AND ENVIRONMENT

<p>Art. 237(2)(a)- Subject to art.26, government may acquire land in public interest - the Government or a local government may, subject to article 26 ..., acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament;</p>	<p>Amend to limit the total acreage of land that any person including corporate bodies can purchase.</p> <p>Introduce a clause to provide that Parliament shall enact a law on how much land one can acquire.</p>	<p>The wording public interest is too wide.</p> <p>This will protect vulnerable people from landlessness. The current Land Act is silent on how much land one can lease.</p>
<p>Art. 239. Functions of the Uganda Land Commission</p>	<p>Introduce a clause prescribing qualifications for members of the Uganda Land Commission Chairperson and members of the Commission.</p> <p>They should be appointed through a public vetting process.</p>	<p>Improve the competence of the Land Commission in management of land matters.</p>

<p>Art. 240. District Land Boards</p>	<p>Introduce a new clause to require District Land Boards when disposing of land to do so on public disposal principles.</p>	<p>This will ensure there is competitiveness and value for money.</p>
<p>Art. 241. Functions of the District Land Board</p>	<p>Introduce a clause to provide for protection of communal land and land held under customary regimes as the function of the District Land Board</p>	<p>To protect the rights and interest of the people.</p>
<p>Art. 243. Land tribunals.</p>	<p>Repeal Art. 243. providing for land tribunals and instead empower the judiciary to adjudicate land disputes.</p>	<p>Their function can be performed by well resourced magistrates. The Land Tribunal is not necessary.</p>
<p>Art. 244. Minerals and Petroleum – 244(1) subject to Art.26, the entire property in, and the control of, all minerals and petroleum in, on or under, any land or waters in Uganda are vested in the Government on behalf of the Republic of Uganda.</p>	<p>Amend to provide that minerals and petroleum be vested in land owners</p>	<p>To protect the interest of the people and land owners.</p>

Additional comments.	<p>Amend to introduce a provision establishing a Land Rights Adjudication Commission to define who is a bonafide occupant, as a temporary measure.</p> <p>In addition, allow/force a buyout to the bonafide occupant for the percentage of the estate they own.</p>	Need to protect the economy from land speculators and launderers.
CHAPTER 16: INSTITUTION OF TRADITIONAL OR CULTURAL LEADERS		
Art. 246. Institution of Traditional or Cultural Leaders.	Revisit the debate on federal system to assess how traditional and cultural leaders can be integrated into the local government structure.	

CHAPTER 17: GENERAL AND MISCELLANEOUS

Comments on **Art. 247.**
Government proposal: To insert **247(A)**- Creation of Salaries and Remuneration Board: the Board is sought to be created pursuant to the recommendations of the CRC.

Include representation from: trade unions and representation from the recognized professional bodies as well as people with relevant professional human resource management qualification and experience.

The article should adopt the recommendation made by the CRC for the commission to be chaired by "... a person of high moral character and proven integrity, Possessing extensive experience of service in the public service or in private sector organisations;" instead of the chair being a "... person qualified to be appointed as Judge of the Supreme Court.

There is a need for a more equitable and inclusive representation on the Board.

There are gross discrepancies in the current civil servant's salary structure and a glaring need to harmonize the inequalities as well as ensure a wage structure that is more responsive to the needs and changes in cost of living.

Art. 248. There shall be Law Reform Commission and shall publish periodic reports and submit annual reports to parliament.

Amend to incorporate the recommendations of the report of the commission of inquiry (constitution review), 2003 regarding the functions of the commission. The report proposed an amendment introducing **Art. 248A.** on functions of the Commission.

<p>Additional comments on Art. 248.</p>	<p>Introduce a provision establishing an organ to monitor the implementation of the Constitution.</p>	<p>Under the existing legal framework, Section 11 of the Uganda Law Reform Commission Acts spells out the functions of the ULRC; it does not include constitution monitoring-no organ currently has that specific mandate and it is constantly left to civil society to continue drumming about unimplemented aspects of the Constitution and although to an extent ULRC exercises that function, it is not an express constitutional mandate.</p> <p>Making constitutional monitoring an express function would ensure that provisions like Article 249 are annually brought to the attention of parliament and the executive and do not lie forgotten-almost two decades after the enactment of the constitution.</p>
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Comment on **Art. 249.**
Government proposal to
repeal Disaster Preparedness
and Management
Commission.

Article 249 be retained and amended to provide
for the composition of the disaster preparedness
and management commission on the same footing
as other constitutional bodies and authorities.

A disaster preparedness and management
commission was envisaged as a national
level body to ensure cohesive disaster
preparedness and response at policy,
planning and implementation stages across
sectors and across the country.

Uganda has seen ever increasing incidents
of natural hazards such as earthquakes,
landslides, drought and floods which
have destroyed economic and social
infrastructure and created environmental
damage due to climate change over the last
ten years. On each occasion, the response of
the government has been scattered, highly
politicized and inadequate. The current
mechanisms under the OPM were largely
designed to do some basic relief work in the
wake of various disasters. Therefore, there
still remains a need for creation of a national
level body to manage all kinds of disasters.

Comment on **Art. 257.**
Government proposal to amend definition of 'financial year' means the period of twelve months, ending on such date in any year as Parliament may by resolution prescribe.

This government proposal should be dropped.

This is a rather redundant proposal. The current provision was intended to harmonize and bring Uganda's fiscal year in line with other countries in the region. In the context of the EAC, Uganda cannot unilaterally make a change to its FY and current arrangements.

Further, it is not clear what the relevance of the proposed change would be: the Public Finance Bill introduces substantial changes to give Parliament sufficient time to debate and pass the budget-which should adequately address solve the practice of government seeking retrospective approvals for first quarter expenditures.

CHAPTER 18: AMENDMENT OF THE CONSTITUTION

Art. 262. Amendments by Parliament.

Amend **Art. 262.** to include **Art. 20** and **28.** which provide for non derogable rights

Human rights guaranteed in **Articles 20** and **28.** are non-derogable rights.

CHAPTER 19: TRANSITIONAL PROVISIONS

Art. 290. Transitional provision relating to Kampala

Art. 290. be repealed and removed from the Constitution.

The requirement has been met.

General comment on Chapter 19

Spent provisions including **Articles 264, 265, 266, 267, 268, 270, 271, 272, 273, 277, 278, 279, 286** and **288** be eliminated from the Constitution.

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Constitutional Development
P.O. Box 3277, Kampala, Uganda
Tel: +256 414 533295/0312 113321
www.kituoachakatiba.org
www.facebook.com/kituoacha.katiba
Facebook email: kituoacha.katiba@facebook.com