

Civil Society Alternative Report on the ESCR - Uganda.

The Situation of Cultural Rights in Uganda



The Cross-Cultural
Foundation of Uganda

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This paper was written to contribute to the development of Civil Society’s alternative report on the implementation of the International Convention on Economic, Social and Cultural Rights by the Uganda Government, since the Convention was ratified in 1987. This is a process coordinated by the Human rights Network of Uganda, HURINET.

1. Background

Uganda is a culturally diverse country. The Constitution (Schedule 3) recognises 65 indigenous groups, each claiming a unique identity and aspirations, as manifested through their distinct languages and dialects, oral traditions, creative arts and their indigenous knowledge and skills. The broad definition that ‘culture is a way of life’ fits an environment where identity and customs vary along the lines of ethnicity, geographical location and diverse expressions.

Uganda displays a rich array of physical heritage, including historical monuments, utensils, masterpieces, archeological and cultural sites; as well as intangible heritage including oral traditions, beliefs and indigenous skills that for many years have been passed on from generation to generation.

Three of Uganda’s outstanding sites have been listed by the World Heritage Centre, including Kasubi Royal Tombs which has recently been destroyed by fire, but is currently undergoing reconstruction (see Box). The Art of Bark-cloth making was in 2005 declared a Masterpiece of the Intangible Heritage of Humanity.

2. Provisions for cultural rights in Uganda

2.1. Overall legal Provisions

- In line with the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Uganda in 1987, the Constitution of Uganda (Amended in 2005) under Objective xxiv (a) spells the State’s commitment to ensure the social and cultural well-being of the people. Under the State’s cultural objectives, the Constitution stipulates that the State shall promote and preserve the cultural values and practices that enhance the dignity of Ugandans; and encourage the development, preservation and enrichment of Ugandan languages. Further, in Article 37, the Constitution specifically provides for the right to culture: “Every person has a right as applicable to belong to, enjoy, practice, profess,



A newspaper headline on Wednesday, March 17, 2010.

First built in 1881, the mausoleum shelters the tombs of the last 4 kings of Buganda. On March 16, 2010, the magnificent main house was gutted by fire. Investigations into the cause of the fire are still on-going, but should any culprit arrested, the provisions of the Historical Monuments Act, 1967 may be invoked. The penalty for destruction of an ancient monument, according to the Act, is 2,000/= shs or less than 1 US\$.

maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others”.

- In 2006, Uganda’s first National Culture Policy was launched; it is founded on six core principles, with the first three emphasising unity in diversity, respecting others’ cultures, and ensuring social inclusion for all, in the enjoyment and promotion of the cultural heritage of Uganda. One of the major objectives of the Culture policy is *to conserve, protect and promote Uganda’s tangible and intangible heritage.*
- The Historical Monuments Act (1967) provides for the preservation and protection of historical monuments and objects of archaeological, paleontological, ethnographic and traditional interests.
- The Local Government Act, 1997 (part II, schedule II) lists cultural affairs as one of the decentralised services, activities and functions of the District. The Act mandates the Ministry of Local Government to assess the performance of culture in the local communities and to ensure that culture functions benefit from grants sent to the District.
- In 2005, Uganda became party to the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, which provides for raising awareness at the local, national and international level on the importance of the intangible cultural heritage, and ensuring mutual appreciation thereof, among other provisions.
- The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions which provides for the creation of conditions for cultures to flourish and to freely interact in a mutually beneficial manner has been tabled by cabinet and discussed by civil society but remains un-ratified to date.

2.2. Administrative provisions

The Ministry of Gender, Labour and Social Development (MGLSD) has overall responsibility of cultural affairs in Uganda, with the mandate *to empower communities to harness their potential through cultural growth, skills development and labour productivity for sustainable and gender responsive development*

Specifically, the Department of Culture and Family Affairs has made an effort to improve access to cultural life by decentralizing cultural affairs as part of the responsibility of Community Development Officers (CDOs) at district level. However, the culture component has been often marginalised in favour of other activities and functions, including gender, adult literacy, and youth programmes which attract funding from government and other stakeholders.

Under the Ministry of Trade and Tourism, the Department of Museums and Monuments has the responsibility to:

- i) identify, document and establish an inventory of the sites and monuments in the country;*
- ii) maintain sites and monuments which have been gazetted, preserved and protected as national objects under the Historical monuments Act. 1967;*
- iii) conduct outreach programmes to schools and communities about the importance of cultural heritage preservation and management;*
- iv) carry out paleontological, archaeological, historical, ethnographical, ethno-musicology and*

*anthropological research; and
v) establish, manage and maintain local, regional and national museums.*

While the above-mentioned provisions reveal the State's good intentions towards providing for the right to access and to participate in a cultural life for Ugandans, its obligations to respect, protect and fulfill cultural rights have only very partially been delivered.

Culture as a sector is nationally marginalised; with no line ministry of its own, the Culture sub-department within the MOGLSD is entitled to minimum human and financial resource. Further, the Culture and Family Affairs Department and the Department of Museums and Monuments are not structurally linked, making coordination and delivery of cultural programmes difficult.

The culture sector in Uganda commands less than 0.1% of the national budget.¹ With inadequate funding, statutory bodies like the Uganda National Culture Center and the Uganda Museum cannot deliver, in accordance with their mandates. The National Culture Policy remains unimplemented since its launch 4 years ago and there is up to now no plan of action. The National Cultural Policy too often remains a 'policy on paper only'. The few infrastructures largely made available by the private sector are most often limited to the urban centers, are poorly equipped. Access to international funding under the 2005 UNESCO Convention for Cultural Expressions remains a dream so long as Uganda is not party to it.

2.3. Situation of cultural rights in Uganda

Access to concerts, theatre, cinema, sport events and other cultural activities: The Uganda National Culture Centre (UNCC), a statutory body established by an Act of Parliament (UNCC Act Cap 50), is mandated to provide and establish theatres and cultural centers all over the country; encourage and develop cultural and artistic activities; and provide a home to societies, groups and organisations that deal in Art and Culture.

Presently, the UNCC has under its wing the National Theatre, the Nommo Gallery and the Crafts Village all located in Kampala. The National Theatre provides performance space for national arts competitions for primary and secondary schools. Private artistes' performances, concerts, film shows, public and private arts events are accommodated within the main auditorium and the grounds at a fee. The Nommo Gallery exhibits art works by Ugandan and foreign artists while the Crafts Village provides space for small private businesses to sell handicrafts made in Uganda and other parts of Africa. The UNCC has provided a fairly accessible space for young and veteran artists to interact and to showcase their talent and skill.

However, UNCC has not delivered on its mandate of establishing culture centers all over the country, due to lack of financial and human resources. The services of the UNCC including hiring of space for performance and events are only affordable to a small section of the population, often hampering access for all Ugandans to cultural activities.

¹ This percentage is calculated on the basis of recurrent and development expenditure for both the office of culture within the Ministry of Gender, Labour and Social Development, and the Department of Museums and Monuments in the Ministry of Trade and Industry.

Nevertheless, access to arts and performing events has increased over the years, thanks to an unfettered private sector.

Access to the cultural heritage of mankind, including through new information technologies such as the Internet; In 2006 a Ministry of ICT was established with a mandate to provide strategic and technical leadership, overall coordination, support and advocacy on all matters of policy, laws, regulations and strategy for the ICT sector in Uganda.

Internet has since been made more accessible to some sections of the population, particularly to secondary schools, tertiary and higher institutions of learning through the Basic Computer Applications programs. The ICT industry in Uganda today has grown, with the liberalisation of private broadcaster operations, competing telecommunications and internet service providers, thus improving access to information to several sections of the population.

One of the objectives of the National ICT policy (passed by parliament in 2003) is *“To promote a conducive environment for media pluralism that will enhance cultural identity and national sovereignty”*. Further, *Article 29 (a)* of the Constitution of Uganda provides for *freedom of speech and expression* where it stipulates that *‘every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media.*

Thus, it has become easier for Ugandans to express their cultural values and beliefs through written and recorded material, making use of available media including the radio (popular phone-in talk shows), television, newspapers (opinion pages) and the internet (blogging, facebook and other social media).

Yet, comprehensive and accurate information about Ugandan culture is still not readily available, even to people who have access to advanced technology because there is no national database to this effect. However, some steps have been taken by the Uganda Museum and civil society to make information on heritage sites available. In 2008, the Cross-Cultural Foundation of Uganda in collaboration with the Uganda Museum carried out a Mapping Exercise of Community Museums in Uganda; this exercise was made possible by UNESCO.

Encouraging the participation in cultural life by children, including children from poorer families, and migrant or refugee children; The Government of Uganda, through the Ministry of Education, has organised annual arts festivals for primary and secondary schools all over the country. It is mandatory for every public school to participate by competing from parish, to regional and national level, by showcasing music, dance, folklore and theatre of their various cultures.

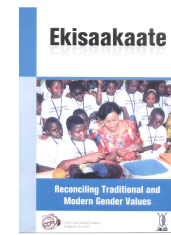
The introduction and subsequent implementation of the Universal Primary Education (UPE) by the NRM Government since 1997 has seen the increase in primary school enrolment, thus significantly reducing the number of non-school going children. This means that a larger number of children participate in the national festivities and are therefore more in touch with their cultural expressions. The introduction of a ‘Thematic curriculum’ and of local language as a teaching medium in lower primary classes have also contributed to an enhanced incorporation of cultural values and practices in schools (see also below).

In rural communities, children are allowed to participate in the cultural festivities such as initiation ceremonies, birth and death rituals, sometimes as observers, at other times as participants for example when they are coming of age, or as heirs to their fathers.

Under its mandate to conduct outreach programmes to schools and communities about the importance of cultural heritage preservation and management, the Uganda Museum organises school tours for primary and secondary school.

There is however less access to spaces for participation for children who are not school-going. There is no cultural programme put in place by the state for vulnerable children. The recent Lord's Resistance Army (LRA) insurgency in northern Uganda has added another significant dimension to worsen the situation; after living for 20 years in camps for displaced people, residents have returned home a culture-less people because no effort had been made to preserve the culture during the time of war. Thus, "...there is a large group of returnee youth and children who have difficulty in adjusting to expected social norms (...) a significant number of Acholi youth are engaging in socially objectionable behaviour according to Acholi cultural norms".²

In 1993, the NRM government under Article 246 of the Constitution reinstated traditional kingdoms (that had been banned since 1966) as institutions of traditional and cultural leaders, giving the people a right to pledge allegiance to a cultural leader in accordance with their culture, and to own communal assets through the institution.³ In some regions, kingdoms have taken the initiative and have shown capability in enhancing participation in cultural life by children, sometimes with the support of civil society. A case in point is *Ekisaakaate* by the Queen of Buganda. (see Box).



The cover of a documentation of a children's programme by Buganda Kingdom

Ekisaakaate ('the enclosure') is an initiative by the Queen of Buganda to nurture young girls and boys into holistic young people by equipping them with traditional and modern values and skills. The programme is rooted in Kiganda traditional culture, and aims at re-orienting a generation that since the abolishing of kingdoms in 1966 has been raised without systematic social and cultural guidance. It is a 2-week holiday camp that takes in both school going and non-school going children aged 6-18 years, and does not discriminate on ethnic or religious grounds.

²Roco Wat I Acoli-Restoring Relationships in Acholiland: Traditional Approaches to Justice and Reintegration. Pg.25, Liu Institute for Global Issues and Gulu District NGO Forum, September 2005

³ Article 246-3(a) The institution of traditional leader or cultural leader shall be a corporation with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned.

There have recently however been clashes between the State government and cultural institutions regarding the role of overseer over regional resources on behalf of local communities⁴.

2.4. Measures taken to protect and promote awareness of cultural heritage in its diversity

In accordance with Article 6 of the 2005 Amended Constitution which provides for the use of any other language other than English as a medium of instruction in schools, the government through the Ministry of Education has rolled out a thematic curriculum (2006) that allows for primary children to be taught in their mother-tongue languages, therefore promoting and developing indigenous languages.

Under the 1967 Historical Monuments Act, the State provides for the protection of heritage against destruction. However, this law is outmoded and largely ineffective as it spells penalties as small as 2000 UG.shs for the destruction of a heritage site. This has subsequently led to the loss of cultural heritage sites and monuments through destruction by fire, violence and investor-led developments.

The 1997 Local Government Act (last amended 2008) in Part 1 of Schedule II describes the responsibility of parliament for the protection of national monuments, antiquities, archives, and public records. The government has also established statutory institutions mandated to promote the awareness of specific aspects of cultural heritage namely the National Library of Uganda and the National Culture Center.

Further, the principles enshrined in the National Culture Policy of Uganda emphasise unity in diversity; respecting others' cultures; and ensuring social inclusion for all, in the enjoyment and promotion of the cultural heritage of Uganda. One of the major objectives of the Culture policy is *to conserve, protect and promote Uganda's tangible and intangible heritage*.

In 2005, Uganda ratified the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, which provides for raising awareness at the local, national and international level of the importance of the intangible cultural heritage, and ensuring mutual appreciation thereof, among other provisions.

However the State has still not ratified the 2005 UNESCO Convention of the Protection and Promotion of Diversity of Cultural Expressions.

School and professional education in the field of culture and the arts. Civil society and the private sector have been supported by government to provide professional training in the field of culture and the arts through private tertiary institutes, theatres, radio and television stations and community based organisations. Public higher institutions of learning in Uganda have fully

⁴ The Kampala riots of September 2009 were ostensibly the result of the state's intervention in Buganda's affairs, sabotaging a planned visit of the Kabaka to an area within the kingdom, and subsequently abusing the rights of the Baganda to express their concerns on the issue. Three local radio stations were closed and one, belonging to the kingdom, was only re-opened a year later.

fledged departments and faculties for advanced academic training in the performing arts (music, dance, folklore and theatre), visual and creative arts, linguistics and social sciences.

Measures taken to ensure affordable access to the benefits of scientific progress and its applications for everyone, including disadvantaged and marginalized individuals and groups. In Uganda, the Disability Act 2006 section 21 (1) urges government authorities to promote the right of Persons with Disabilities (PWDs) to access information through;

- a) The development and use of sign language, tactile, sign language interpreters in all public institutions and at public functions;
- b) Brailing of public information such as government documents, government newspapers and other publications.

It further stipulates in Sub-section (2) that; *Any person who owns a television station shall provide sign language inset or sub titles in at least one major news cast program each day and in all special programs of national significance.*

This provision remains vague and does not necessarily put into consideration issues of access and affordability for persons with disabilities.

Measures to protect the right of authors to be recognized as the creators and for the protection of the integrity of their scientific, literary and artistic productions The Copyright and Neighboring Rights Act was enacted in 2006 to provide for the protection of literary, scientific and artistic works and their neighboring rights; and to provide for other related matters.

In Part II, the Copyright Act provides for the right of protection for any author's work *where work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it is created.* Further, the basic material interests of authors resulting from their productions, which enable them to enjoy an adequate standard of living are protected.

Part II, clause 9 states that *the owner of a protected work shall have, in relation to that work, the exclusive right to do or authorise other persons to (b)...distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership; and (g) to commercially rent or sell the original or copies of the work.*

However, the Copyright and Neighbouring Rights Act is relatively new and so far remains largely unimplemented.

Measures to ensure the protection of the moral and material interests of indigenous peoples relating to their cultural heritage and traditional knowledge. The Constitution of Uganda states in Article 21 (1) All persons are equal before and under the law in all spheres of political, social and cultural life *and in every other respect and shall enjoy equal protection of the law'*

Article 36 spells the rights of minorities to protection: *minorities have the right to participate in decision making processes, and make their views and interests shall be taken into account in the making of national plans and programmes.*

There is no specific law that protects the cultural rights of indigenous people against exploitation and dispossession from their cultural environment by government programs and investor developments. A case in point is the marginalization of the Batwa, a minority group in Bwindi Impenetrable Forest who have suffered exploitation and displacement because of the Gorilla Tourism Industry.

3. Way forward

In line with the ICESCR, and in consideration of Uganda's status as a member state, it is paramount that after 23 years since the ratification of this convention, Uganda makes its report on the state of affairs concerning the provision for cultural rights for its people. As civil society, we propose that the state of Uganda takes urgent measures to consciously protect, promote and manage our cultural heritage, while ensuring its sustainable utilization for our human and national development. Policies that have been put in place must be implemented; obsolete laws updated and specific action taken to protect the cultural rights of access and participation of all Ugandans.

Civil society in particular proposes that the Government of Uganda urgently acts on the following issues:

1. Earmark at least- as a starting point- 1% of the national annual budget for development of the culture sector and related programmes
2. Incorporate heritage education and culture in development approaches in the mainstream education curriculum, from primary to professional level.
3. Establish state and support non-state training centers to promote and develop indigenous knowledge and skills.
4. Ensure scientific and culture cooperation in order to support research and documentation on national cultural heritage, both tangible and intangible. Create a national database of monuments and sites, including those of ethnic minorities. Document and make available through multimedia the customs, oral traditions and indigenous skills of the all Ugandans in their diversity.
5. Establish new and equip the available infrastructure to provide space for Ugandans to appreciate and participate in cultural activities of their choice.
6. Formulate national by-laws to protect and conserve intangible heritage, including patent laws to protect innovations
7. Recognise and facilitate cultural institutions in their entirety, including returning their assets and granting overseer benefits on all profits from regional resources.
8. Ratify and implement relevant international conventions, through which some of the above may be realized
9. Establish a specific national structure (Ministry of Culture) to ensure proper planning and implementation of cultural development programs.
10. Popularise and operationalise the National Culture Policy
11. Form a Cultural Heritage Authority to act as a regulatory body to preserve and promote our cultural heritage.