

# Risks to the Human Rights Advocacy in African Constitutions

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**Abstract:** This article presents the results of a comparative legal study of the texts of the constitutions of African states with a view to identifying the rules that minimize human rights risks. The research is based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical methods, analysis and synthesis) and specific scientific methods. African constitutions, in comparison with the constitutions of other states, and in particular European ones, contain a disproportionately large number of rules formalizing special human rights institutions. Typically, these are special councils, human rights commissions (Egypt, Morocco, and Tunisia) or certain categories of the population (three in Egypt, three in Morocco, one in the Central African Republic). In Morocco and Equatorial Guinea, both the Mediator and the Public Defender are established, respectively. The relevance of the study is due to the strategic objectives of creating a secure human rights status of the state, as well as the need to find and update theoretical, methodological, and practical approaches to protecting the rights and freedoms of a human and a citizen. Considering the rules of the African constitutional model of minimizing risks to human right advocacy, objectively in terms of quantity and quality, are considered hyperbolic.

**Keywords:** Human and civil rights and freedoms, state, constitution, risk to human rights.

## INTRODUCTION

Violations of individual rights and freedoms have been more and more associated with the emergence of risks in various fields (Fasterling, 2017). In addition, international risks intervene very aggressively in modern national human rights systems, which poses additional challenges for states, including risk management and minimization (Gould, & Rablen, 2017). It is advisable to look for support here, judging by Russia's reaction to such risks, in constitutional values and norms (Kuksin, *et al.*, 2017; Butko, *et al.*, 2017; Belyaeva, *et al.*, 2017; Makogon, *et al.*, 2018; Makogon, *et al.*, 2019).

This conclusion is justified and applied to 30 states (CIS, European and American federations, African countries) as part of a universal matrix for assessing and comparing constitutional texts with a view to the availability of standards that help minimize human rights risks (Losilkina, *et al.*, 2018).

The specified matrix that integrates doctrinal and formal determinants is based on the certainty of human rights terminology; axiological preference of a human, his rights and freedoms; fixing obligations of the state to protect the rights and freedoms of the individual guaranteeing the protection of human and civil rights

and freedoms, including special statuses and conditions; the imperative of judicial protection of subjective rights and freedoms; reception of specialized human rights structures; human rights stabilization of constitutional norms.

This article presents the results of a comparative legal study of the texts of the constitutions of African states (Algeria, Gabon, Egypt, Mauritania, Morocco, Sahara Arab Democratic Republic, Tunisia, Central African Republic, Chad, and Equatorial Guinea) with a view to identifying the rules that minimize human rights risks. The analysis of the texts of all the constitutions mentioned in this article was carried out according to the publication of the "Constitution of the States of Africa and Oceania: a compilation. Volume 1. North and Central Africa / ed. T.Ia. Khabrieva. M.: Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2018. 952 p".j

## LITERATURE REVIEW

The privilege to dietary consideration can be considered as a basic freedom without anyone else. Abusing the privilege to nourishing consideration may frequently weaken the delight in other basic liberties, for example, the rights to wellbeing or food and the other way around. The primary effect of this acknowledgment is gone to be at the public and worldwide strategies level (Cardenas, Bermudez, & Echeverri, 2019). The business arrangements that Western organizations are as of now investigating to

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formalize artisanal small-scale mining were analyzed (Cremer, 2019).

Interest in the constitutions of foreign countries is mediated by comparative legal results (Gelunenko, *et al.*, 2019, Shvec, 2019), supplementing the theory of human rights risks being developed. The establishment of norms that positively or negatively affect the human rights space and minimize human rights risks is highly relevant in particular (Kornyushkina, *et al.*, 2017, Novikova, 2013).

At the same time, international and state efforts do not ensure an unambiguous positive human rights outcome, and violation of individual rights and freedoms is still relevant in the aspect of prevention and restoration. Modern destruction, including humanitarian, is increasingly associated with a risk factor (Makarova, 2017, Popkova, *et al.* 2018, Beck, 2009). It is believed that it is the axiology of man, his rights and freedoms that focuses on the search for new directions that ensure the proper state of the person in risky conditions. In our opinion, a methodological solution to the problem of the effective functioning of the national mechanism for protecting individual rights and freedoms is to develop a theory of human rights risks (Novikova, 2011).

As indicated by the framework boundaries, the article presents the consequences of a relative lawful examination of the constitutions of American government states (Argentina, Brazil, Venezuela, Canada, Mexico, and USA). The work used the text of the constitutions presented on the Internet resources "Constitution of the states (countries) of the world" (<https://worldconstitutions.ru/>) and "Russian legal portal: Pashkov Library" (<https://constitutions.ru/>).

## **METHODOLOGY**

The research was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systematic and logical methods, analysis and synthesis) and specific scientific methods.

The objectives of the study led to the use of special legal methods. Thus, the comparative-legal method contributed to the identification of resources and means of minimizing risks to human right advocacy in the foreign constitutions.

## **RESULTS AND DISCUSSION**

An analysis of the constitutional formalization of axiological preferences in African states allowed us to

conclude that the desired norms in terms of establishing the human person as sacred and inviolable were found in the constituent acts of the Central African Republic of December 14, 2015 (Article 1) and the Republic of Chad (Article 17).

The Central African Republic recognizes the existence of human rights as the foundation of any human community, peace and justice. We believe this setting is substantially broader than state axiology.

In addition, the constitutions of the republics of Gabon and Chad associate the human-oriented value with the recognition of subjective rights. The Preliminary title "On Fundamental Principles and Fundamental Rights" of the Constitution of the Gabon Republic of March 26, 1991, art. 1 establishes that the Republic recognizes ... the inviolable and inalienable human rights that bind public bodies.

Substantial identity can be traced in Art. 12 of Section II "On Freedoms, Fundamental Rights and Obligations" of the Constitution of the Republic of Chad.

By virtue of historical development, affirming the value of the human person, African constitutions establish norms on the elimination of human exploitation by humans, as well as the prohibition of slavery (Article 9 of the Constitution of Algeria, Article 89 of the Constitution of Egypt, Article 13 of the Constitution of Mauritania, Article 20 of the Constitution of Chad).

As for the analytics of formalizing the state obligation to protect the rights and freedoms of the individual (functional aspect), the following results were obtained.

The Constitution of Algeria in Section 1, "General Principles Governing the Activities of Algerian Society," singled out Chapter II "The People" and in its Art. 8, pairing the people and the state, presented teleological provisions that the people establish state institutions in order to ... preserve and strengthen national identity and unity; protection of fundamental civil liberties, social and cultural development of the nation; and elimination of exploitation of man by man.

It is significant that in Section 1, "General Principles Governing the Activities of Algerian Society" of the Algerian Constitution, the chapter on the state (III) follows Chapter II "The People". This fact indicates the humanization of the interests of the state. Here, Art. 11

states that the state serves exclusively the interests of the people.

By analogy with Art. 8 of the Algerian Constitution, in Part One, "General Principles" of the Constitution of the Sahara Arab Democratic Republic, as amended by the 10th Congress of the POLISARIO Front (August 26 - September 4, 1999), a provision has been placed that the people elect state bodies in order to: preserve values of the people, protect their identity and components of a national character; and ensure respect for the fundamental freedoms of man provided for in the Constitution (Article 11).

In addition, Art. 12 indicates that government agencies serve the people. They can only carry out the purposes for which they were established.

Thus, it can be stated that Algeria and the Sahara Arab Democratic Republic have chosen an approach that emphasizes not only the need for state protection of the rights of individual freedoms, but also the direct formation of state institutions by the population.

Art. 5 of the Constitution of the Republic of Equatorial Guinea of November 16, 1991, is close to the indicated trending wordings of the constitutions of Algeria and the Sahara Arab Democratic Republic, since its Section One - "Basic Principles of the State" - defines the foundations of Equatorial-Guinean society. These are a) respect for the human personality, its dignity and freedom, and other fundamental rights; b) family protection - the foundations of Equatorial-Guinean society; c) support of the social and cultural development of the citizens of Equatorial Guinea in order to implement the highest values of the state in their respect.

The indicated rule, of course, provides no direct formulation of the human rights obligation, however, the name of the section indicates that the above-mentioned regulations are nothing but the basic principles of the state.

The Libyan constitutional declaration of August 3, 2011, despite its brevity, is also the source of the sought-for norms. Its art. 7 indicates that the state protects human rights and fundamental freedoms, makes efforts to join regional and international declarations and agreements that protect rights and freedoms, and supports the creation of new agreements recognizing human dignity as a divine creation. We focus on the fact that one rule reflects not only the state duty to protect individual rights, but also

the desire for regional and international integration in this regard.

Art. 1 of the said Declaration, which determined the Islam as a state religion, and Islamic Sharia - the main source of legislation, causes interest. At the same time, the state guarantees non-Muslims the freedom to practice their religious rituals. We believe that the above rule has important functional axiological significance for the state, who's Art. 1 of the Constitution reflects the freedom of non-Muslims.

We should note that the chapter on the human rights of the Egyptian Constitution uses the term "protection" in relation to human dignity. Thus, the state respects and protects human dignity (Article 51).

The Constitutions of Gabon (Art. 1), Mauritania, and Tunisia do not have a direct wording on state human rights obligations, but define the state guarantee of individual rights and freedoms. For example, in Section I "General Provisions and Basic Principles" of the Constitution of Mauritania of July 12, 1991, the state guarantees all citizens collective and individual rights and freedoms in a specific list (Article 10).

According to Art. 21 of the Tunisian Constitution of January 26, 2014, the state guaranteed freedoms, as well as personal and collective rights to all citizens with the provision of decent living conditions.

We should also admit that Art. 19 of the Tunisian Constitution states that the national security forces are republican, protect individuals, institutions and property, as well as enforce the law with respect for rights and freedoms, with full impartiality. Thus, national security forces, which are state, in particular, are charged with protecting individuals.

The rules of the Constitution of Equatorial Guinea in the context under consideration in Part 1 of Art. 23 are universal in the sense that the state protects a person since his conception and protects a minor so that he can develop normally and safely in his moral, psychological and physical aspects, as well as his life in the family.

The constitutions of the considered group have the human right advocacy (security) state obligation to citizens of the state outside its borders (Article 24 of the Constitution of Algeria, Article 88 of the Constitution of Egypt, Article 16 of the Constitution of the Kingdom of Morocco of July 29, 2011, Article 55 of the Constitution Republic of Chad.)

We also evaluated the rules of the focus group of constitutions in the aspect of state protection of subjective rights, special statuses or conditions. Moreover, the formalization of not only the term "protection", but also related categories of collateral and guarantee, was subject to assessment. It has been established that the catalog of social statuses and conditions for which the state acts as a guarantor and defender (children, youth, elderly people, people with disabilities, persons with disabilities) is standard for African constitutions.

As for another collective subject the state protection has been established to in many African constitutions is the family connected with the institutions of marriage, paternity, motherhood and childhood (this has been partially demonstrated by the example of the specified rules). Relevant regulations may be located in various parts of the basic laws.

The Constitutional Declaration of Libya contains Art. 5 in Chapter One, General Provisions. In accordance with it, the family is the basis of society and is protected by the state. The state protects and encourages marriage. The state guarantees the protection of motherhood, children and the elderly and takes care of children, youth and people with disabilities.

In Section I, General Provisions and Fundamental Principles of the Constitution of Mauritania, art. 16 states that the family is protected by the state and society.

In the context of minimizing human rights risks, we consider it important to use the terms "citizen", "man" and "woman" in relation to subjective rights and obligations (Article 11 of the Egyptian Constitution, Article 19 of the Moroccan Constitution, Article 41 of the Constitution of the Sahara Arab Democratic Republic, Article 46 of the Constitution of Tunisia, Article 14 of the Constitution of Chad).

In addition, for African constitutions in relation to their history, the rule of solidarity with all peoples fighting for political and economic liberation, for the right to self-determination and against any racial discrimination is standard (for example, Article 27 of the Algerian Constitution).

We should note that the constitutional norms of African constitutions that minimize human rights risks are also formalized in the institutional aspect of the powers of public authorities.

In the classic version, such powers are correlated with parliament. For example, according to Art. 122 of the Algerian Constitution, parliament has legislative powers in the ... protection of personal freedoms and duties of citizens.

Art. 57 of the Constitution of Mauritania states that the scope of legislative regulation covers the protection of individual freedoms, restrictions related to state protection of citizens and their property.

Other experience is reflected in the Egyptian Constitution with an emphasis on the human rights powers of the President and the Government. Art. 139 states that the President of the Republic defends the interests of the people. Let us clarify that this approach to the status of the head of state is characteristic of the CIS countries we have examined. However, this rule has also demonstrated African flavor, pointing to the protection of the interests of the collective subject - the people.

Art. 167 of the Egyptian Constitution notes that the Government maintains the security of the nation and protects the rights of citizens and the interests of the state.

Regarding the powers of the head of state, according to art. 42 of the Constitution of Morocco, the king controls the protection of ... the rights and freedoms of citizens...

Let us clarify that the typical public constituent of African states with human rights powers is the police (or similar bodies).

For example, Section XI "On the Protection of the State and National Security" of the Constitution of the Republic of Chad determines that the mission of the National Gendarmerie is to ... ensure the protection of people and property (Article 195).

Art. 196 notes that the competence of the National Gendarmerie is carried out throughout the national territory, in the framework of respect for human rights and freedoms.

The Egyptian Constitution can also be presented in this context, but only in relation to the exercise of duties by the police established by the Constitution and the law, and respecting human rights and fundamental freedoms (Section V "Police", art. 206).

There are numerous rules of the constitutions of African states, dedicated to independent human rights

authorities. Typically, these are special councils, human rights commissions (Egypt, Morocco, and Tunisia) or certain categories of the population (three in Egypt, three in Morocco, one in the Central African Republic). In Morocco and Equatorial Guinea, both the Mediator and the Public Defender are established, respectively.

An interesting fact is that within the framework of the considered group of constitutions, a procedural human rights parameter was identified related to human rights as a limiter of constitutional changes. In this sense, Art. 176 and 178.1 of the Constitution of Algeria, which indicated that if the Constitutional Council considers that the bill on constitutional amendments does not in any way infringe on the basic principles of Algerian society, the rights and freedoms of the individual and citizen, the President of the Republic may enact a law amending the Constitution without submitting it to a popular referendum if approved by three-fourths of the votes of members of both chambers of Parliament.

Any amendments to the Constitution that may violate fundamental freedoms, human rights and citizen rights are forbidden.

Art. 49 of the Constitution of Tunisia is similarly distinctive.

## CONCLUSION

The rules of the African constitutional model for minimizing human rights risks, are objectively considered hyperbolic in quantitative and qualitative aspects. The key parameter of minimizing the state human rights obligation is reflected not only in the universal version of protection, but also detailed in relation to various groups of subjective rights and many legal conditions (motherhood, fatherhood, childhood, parents) and personality statuses (children, adolescents, youth, elderly people, disabled people, persons with disabilities).

The specifics of the historical development of the states of the African continent mediated the formalization of a typical collective subject of human rights relations - the people being of superior importance to individuals (a person or a citizen). The family is also among the collective subjects of state human rights obligations.

As well as the constitutions of other geographical regions, African constituent acts (Algeria, Gabon,

Egypt, Libya, Morocco, Sahara Arab Democratic Republic, Central African Republic, Tunisia, Chad) formalize the rules on judicial protection of individual rights and freedoms in different variations (subjective law in the framework of litigation, instance, justice, etc.).

African constitutions, in comparison with the constitutions of other states, and in particular European ones, contain a disproportionately large number of rules formalizing special human rights institutions. Typically, these are special councils, human rights commissions (Egypt, Morocco, and Tunisia) or certain categories of the population (three in Egypt, three in Morocco, one in the Central African Republic). In Morocco and Equatorial Guinea, both the Mediator and the Public Defender are established, respectively.

All of the above features together are positive for the human rights space in the event of the feasibility of constitutional norms.

## LIMITATION AND STUDY FORWARD

The latter, obviously, require state efforts to bring together actual social relations and ideal constitutional institutions.

## AUTHORS CONTRIBUTION

Marina V. Markhgeym, Evgeniy V. Aristov, Anna A. Bezuglya, Alevtina E. Novikova, Andrey B. Novikov

M.V.M; collected the information, E.V.A; wrote the paper, A.A.B; analyzed the information, A.E.N; collected the data, A.B.N; wrote the paper.

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