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Original Research Article

Evidence in the Shadow of the Constitution: A Case for the Reform of Uganda's Evidence Act (Cap 8)

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Abstract: Uganda's Evidence Act, Cap 8, still carries the architecture of the statute received in 1909, yet it now operates beneath a Constitution that makes fair hearing, freedom from torture, equality and judicial independence governing legal norms rather than aspirations. This article argues that the Act requires comprehensive reform, but for a more exact reason than age or colonial origin alone. Article 274 preserves pre-1995 law only on condition that it is construed with the modifications, adaptations, qualifications and exceptions necessary for constitutional conformity. The inquiry must therefore be provision-specific. Some inherited rules remain serviceable; others can be constitutionally read; still others contain rights-insensitive standards or leave gaps that interpretation cannot responsibly fill. The analysis corrects several common misreadings of the Act. Section 25 does not itself admit a confession obtained by torture; section 102 does not regulate expert opinion; section 118 does not exclude a witness who cannot speak; and section 89 creates a rebuttable presumption only after notice to produce. Electronic evidence is not wholly unregulated: the Electronic Transactions Act 2011 and the Computer Misuse Act 2011 already address admissibility and evidential weight. Those corrections do not weaken the case for reform. They reveal its proper foundation. The present regime is fragmented, its confession rules remain too closely tied to reliability rather than constitutional integrity, its accommodations for vulnerable witnesses are rudimentary, its expert-evidence controls are thin, and its digital rules lack a coherent authentication framework. A modern Evidence Act should therefore combine categorical exclusion of torture-tainted material with a structured rule for other rights violations, meaningful witness accommodation, transparent expert gatekeeping, technology-neutral digital proof, judicial control of public-interest claims and a disciplined review of presumptions and burdens.

Keywords: *Constitutional supremacy; fair hearing; torture; self-incrimination; vulnerable witnesses; expert evidence; electronic evidence.*

1. Introduction

The law of evidence is sometimes described as a technical branch of procedure. That description is too comfortable. Evidentiary rules decide whose account can enter the courtroom, which methods of investigation receive judicial approval, what risks of error the legal system will tolerate and who must bear the cost of proving the truth. A rule on confessions may reward or restrain coercive policing. A rule on witness competence may either hear a person with a communication disability or erase that person from the record. A rule on authentication may protect the court from a fabricated video, but it may also keep reliable proof outside the courtroom. Evidence law is therefore one of the places where constitutional promises either acquire practical force or quietly lose it.

Uganda's Evidence Act commenced on 1 August 1909 and remains the principal general statute governing proof in the ordinary courts (Evidence Act, Cap 8, long title and s 1). Its endurance is not, by itself, proof of constitutional failure. Old rules may be sound, and a recently enacted rule may be oppressive. The serious objection is different. The Act was designed for a legal order that did not recognise the 1995 Constitution's rights-based discipline, and later amendments have not produced a coherent constitutional code. The result is an

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uneven regime. Some provisions are capable of rights-consistent application. Some have been overtaken or supplemented by later legislation. Others use standards that sit uneasily with the absolute prohibition of torture, equal participation in adjudication, privacy and the institutional independence of the courts.

That distinction matters because criticism loses force when it overstates the law it seeks to reform. The definition of a document appears in section 2(1), not section 2(1)(b). Expert opinion is made relevant by section 43, not section 102. The privilege of an accused against compelled testimony appears in article 28(11) of the Constitution, while article 28(3)(a) protects the presumption of innocence. Section 118, despite its unacceptable title, permits a person unable to speak to testify by writing or signs. Section 25 concerns a later confession after the impression created by violence, force, threat, inducement or promise has been fully removed; it does not grant a free-standing discretion to admit a torture-induced confession. The Electronic Transactions Act 2011 and the Computer Misuse Act 2011 expressly address electronic records. A reform argument built on contrary propositions invites an easy answer and leaves the real constitutional problems untouched.

This article rebuilds the case for reform on the text that actually governs. Its central claim is that Uganda does not merely need a cosmetically updated Evidence Act. It needs a constitutionally integrated law of proof. That law should identify which safeguards admit no balancing, especially where torture is involved; which questions require structured judicial discretion; and which modern problems demand legislative rather than judicial design. The argument is doctrinal, but it is also institutional. Courts can interpret an old statute through articles 2 and 274. They cannot, case by case, design a complete architecture for electronic authentication, expert reliability, communication assistance, public-interest privilege and remedies for unlawfully obtained evidence. That work belongs principally to Parliament, informed by the Uganda Law Reform Commission, the judiciary, the Bar and the people whose access to justice is controlled by the rules being written (Nsaza, 2017).

The discussion proceeds from the Constitution rather than from the age of the statute. It first establishes the constitutional standard and the proper role of article 274. It then places the Act's colonial inheritance in perspective before examining confessions, self-incrimination, witness participation, expert proof, electronic and artificial-intelligence evidence, presumptions, cross-examination and official information. The final part proposes a reform architecture. Throughout, the question is not whether a provision sounds old. It is whether the rule distributes power, risk and voice in a manner that the Constitution can defend.

2. The Constitution as the Measure of Evidence Law

Article 2 of the Constitution supplies the starting point. The Constitution is the supreme law and binds all authorities and persons throughout Uganda; a law or custom inconsistent with it is void to the extent of the inconsistency (Constitution of the Republic of Uganda, 1995, art. 2(1)–(2)). Article 20(2) deepens that command by requiring every organ and agency of government, and every person, to respect, uphold and promote the rights in Chapter Four (Constitution of the Republic of Uganda, 1995, art. 20(2)). Courts applying the Evidence Act and investigators generating material for trial are therefore not operating in a constitutional waiting room. Their evidentiary decisions are exercises of public power already governed by the Bill of Rights.

Several guarantees bear directly on proof. Article 28(1) protects a fair, speedy and public hearing before an independent and impartial court or tribunal. In criminal proceedings, article 28(3)(c) requires adequate time and facilities to prepare a defence, while article 28(3)(g) secures facilities to examine witnesses and obtain their attendance. Article 28(11) prohibits compelling either the accused or the accused's spouse to give evidence against the accused (Constitution of the Republic of Uganda, 1995, art. 28(1), (3)(c), (3)(g), (11)). The presumption of innocence in article 28(3)(a) supports those guarantees but is not a substitute for the text of article 28(11). That precision is more than editorial. It prevents different protections, each with its own scope, from being collapsed into one rhetorical claim.

Fair hearing is non-derogable under article 44(c). So too is freedom from torture and cruel, inhuman or degrading treatment or punishment under articles 24 and 44(a) (Constitution of the Republic of Uganda, 1995, arts. 24, 44(a), (c)). Non-derogability does not mean that every evidentiary disagreement becomes a constitutional violation. It means that a court cannot trade the core of fair hearing or the prohibition of torture against administrative convenience, public anxiety or the apparent strength of a case. The distinction is crucial. Excluding a torture-induced statement is not an indulgence granted to an accused person. It is a refusal to turn the courtroom into the final stage of an unconstitutional interrogation.

The Constitution also rejects a model of adjudication designed around an imagined, fully resourced and able-bodied litigant. Article 21 guarantees equality before and under the law and equal protection of the law, including against discrimination based on social or economic standing and disability. Article 32 requires affirmative action for groups marginalised by gender, age, disability or other historical causes. Article 34(7) requires special protection for vulnerable children, and article 35 protects the dignity and potential of persons with disabilities (Constitution of the Republic of Uganda, 1995, arts. 21, 32, 34(7), 35). Read together, these provisions demand more than formal permission to enter a witness box. They require procedures through which a person can understand, communicate and be understood without the

accommodation itself becoming a reason to discount the evidence.

Articles 126 and 128 complete the institutional picture. Justice must be done to all irrespective of social or economic status, and substantive justice must be administered without undue regard to technicalities. The courts must remain independent and must receive the assistance required for their effectiveness (Constitution of the Republic of Uganda, 1995, arts. 126(2)(a), 126(2)(e), 128(1)–(3)). Article 126(2)(e), however, is not a licence to disregard an evidentiary safeguard whenever a judge regards it as technical. Authentication, disclosure, privilege and an opportunity to challenge adverse testimony can be the means by which substantive justice is protected. The constitutional vice lies in empty formalism, not in disciplined proof.

The transitional rule in article 274 is equally important and frequently misunderstood. Existing law continues after the Constitution, but it must be construed with the modifications, adaptations, qualifications and exceptions necessary to bring it into conformity (Constitution of the Republic of Uganda, 1995, art. 274(1); see generally Mujuzi, 2022). Article 274 is neither an amnesty for inherited legislation nor a declaration that every pre-1995 statute fell in 1995. It creates a sequence. A court should first ask whether a constitutionally conforming construction is genuinely available. If an irreducible inconsistency remains, article 2 renders the law void to that extent. Where conformity would require a detailed regulatory scheme rather than interpretation, the court should identify the constitutional deficit without pretending that adjudication can perform the full legislative task.

The Constitutional Court's treatment of discriminatory provisions in the inherited Divorce Act demonstrates the consequence of that sequence: longevity does not immunise a rule that cannot be reconciled with constitutional equality (Uganda Association of Women Lawyers and Others v Attorney General, 2004). Article 50, in turn, makes redress available where a protected right has been infringed or threatened (Constitution of the Republic of Uganda, 1995, art. 50(1)). Exclusion of evidence is not named in article 50, but an effective remedy must be capable of addressing the use of unconstitutional investigative conduct in the proceeding where that conduct is offered an advantage.

This sequence disciplines the present inquiry. Colonial genealogy is a warning, not a verdict. A provision should be retained if it remains rational and rights-consistent; read down or adapted if its language permits; and repealed or replaced when its premise cannot survive the Constitution. That is a more demanding approach than branding the whole Act archaic. It requires the analysis to show precisely where the rule fails, what constitutional interest is impaired, whether a narrower reading can cure the defect, and what a replacement should do.

3. Colonial Inheritance Without Historical Determinism

The Evidence Act entered Uganda through a colonial legal order. The Uganda Order in Council 1902 consolidated British authority and furnished the reception framework through which external legal rules were applied in the Protectorate (Mugambwa, 1986; Morris & Read, 1966). The 1909 statute was substantially modelled on the Indian Evidence Act 1872, itself a codification designed within the British imperial project. It was not the product of deliberation by the people who would live under it. That history matters because legislation carries institutional assumptions as well as words: assumptions about official authority, the ideal witness, the material form of a document and the proper distance between a court and the executive.

The Act has not remained literally frozen. It was consolidated and amended through successive revisions, decrees and statutes, including the Law Revision (Miscellaneous Amendments) Act 2023 (Evidence Act, Cap 8, legislative history; Law Revision (Miscellaneous Amendments) Act, 2023). Yet the amendments are largely incremental. They have not reconstituted the law around the 1995 Constitution. By comparison, the United Kingdom, from which many inherited assumptions ultimately came, substantially reorganised criminal hearsay through the Criminal Justice Act 2003 (Criminal Justice Act, 2003, pt. 11 ch. 2). The comparison does not make English reform a template for Uganda. It exposes the irony of treating a transplanted code as untouchable after the originating legal system has moved on.

Traces of the older order remain visible. Section 81 grants evidential treatment to documents by reference to admissibility in the United Kingdom or the Republic of Ireland. Sections 84–86 retain preferential pathways connected to Commonwealth authentication. Section 88 still speaks to telegraphic messages. Section 118 uses the demeaning heading 'Dumb witnesses'. These provisions do not all produce the same constitutional consequence. The telegraph rule is mostly obsolete; the witness heading causes dignitary harm and signals a deficient model of participation; and foreign-document presumptions require a contemporary justification rather than inherited geopolitical loyalty. The proper response is differentiation, not denunciation by date.

The Act's scope also reveals why reform cannot be confined to replacing a few words. Section 1 applies the Act to specified courts but excludes affidavits and arbitral proceedings. Section 4 allows evidence of facts in issue and relevant facts 'subject to any other law' (Evidence Act, Cap 8, ss. 1, 4). Those provisions acknowledge from within the Act that Uganda's evidentiary regime is dispersed. The Evidence Act, the Electronic Transactions Act, the Computer Misuse Act, the Prevention and Prohibition of Torture Act, procedural rules and judge-made doctrine operate together. Fragmentation is not necessarily invalid, but it

becomes dangerous when the instruments use different concepts, duplicate standards or leave the user uncertain which rule controls.

This historical account therefore supports a narrower and stronger conclusion. Uganda needs democratic authorship of its evidence law, but reform should not erase useful doctrine merely to demonstrate a break with the past. It should preserve rules that still serve accurate and fair adjudication, remove rules whose assumptions cannot be justified, and place the whole regime within a coherent constitutional structure. The following sections apply that test.

4. Confessions, Torture and the Integrity of the Court

No part of the Act more clearly exposes the distance between a reliability-centred code and a rights-centred Constitution than sections 23–29. The provisions are often criticised together, but their differences matter. Section 23 regulates confessions made while a person is in police custody. Such a confession may be proved only if made in the immediate presence of a police officer of or above the rank of assistant inspector or a magistrate. Curiously, the express requirement that a conviction not rest solely on the confession without corroboration is attached only to a confession under paragraph (b), the magistrate limb, and not on its face to paragraph (a), the senior-police limb (Evidence Act, Cap 8, s. 23(1)). The asymmetry is difficult to defend. A confession made before a magistrate is not inherently more suspect than one made before a police officer embedded in the investigating institution. At minimum, the drafting creates needless uncertainty at the point where precision is most important.

Section 24 renders a confession irrelevant where, having regard to the accused's state of mind and all the circumstances, it appears to have been caused by violence, force, threat, inducement or promise 'calculated … to cause an untrue confession' (Evidence Act, Cap 8, s. 24). The quoted condition reveals the constitutional defect. It directs attention to whether the pressure was calculated to produce an untrue statement. Article 24 is not confined to unreliable torture. A statement obtained by torture does not become constitutionally clean because investigators happened to extract the truth. Reliability explains one reason coercion is dangerous; human dignity, bodily integrity and the legitimacy of judicial process explain why the prohibition is categorical.

Section 25 must be read more carefully than it often is. It provides that a confession of the kind addressed in section 24 becomes relevant if the impression caused by the violence, force, threat, inducement or promise has, in the court's opinion, been fully removed (Evidence Act, Cap 8, s. 25). The provision concerns a later confession after the taint has dissipated. It does not say that a confession produced by continuing torture may be admitted at the judge's discretion. Even so, 'fully removed' is a conclusion without a statutory method. The Act identifies no burden or standard of proof, no minimum safeguards, no factors for temporal or causal attenuation and no special rule for the enduring effects of torture. A person returned to the same custodial institution may speak without a blow being struck at the second interview while remaining governed by the first assault. Treating the absence of fresh violence as removal of its impression would constitutionalise a fiction.

Section 26 adds further strain. An otherwise relevant confession does not become irrelevant merely because it followed a promise of secrecy, police deception, intoxication, questions the accused need not have answered or the absence of a warning (Evidence Act, Cap 8, s. 26). None of those circumstances invariably proves coercion, and an automatic exclusion rule for every defect would be crude. The statutory formulation nevertheless starts from the wrong direction. It presents serious indicators of impaired choice as reasons that do not matter 'merely' on their own, without requiring the court to evaluate their cumulative effect. Deception, intoxication, isolation, ignorance of the right to silence and earlier violence may be constitutionally decisive in combination even if each item is inconclusive alone.

Section 29 then permits proof of so much information received from an accused as relates distinctly to a fact discovered, notwithstanding sections 23 and 24 (Evidence Act, Cap 8, s. 29). Discovery evidence may be exceptionally probative, but the word 'notwithstanding' cannot displace articles 24 and 44 or section 10 of the Prevention and Prohibition of Torture Act 2012. The later Act states that information, a confession or an admission obtained from a person by means of torture is inadmissible in proceedings against that person, subject to its use against a person accused of torture as evidence that the statement was made (Prevention and Prohibition of Torture Act, 2012, s. 10). Section 29 must therefore be read subject to that categorical rule. Any other construction would allow the State to retain the forensic reward of torture while formally discarding only the confession.

The Constitution and the 2012 Act have already supplied the controlling norm. The remaining problem is that the Evidence Act does not express it coherently. Article 15 of the Convention against Torture similarly requires exclusion of a statement established to have been made as a result of torture, except against an alleged torturer to prove that it was made (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 15). The rationale is not exhausted by accuracy. Exclusion removes an incentive to torture, protects the administration of justice from complicity and recognises that the State cannot ask a court to profit from conduct the Constitution absolutely forbids.

Namulobi Hasadi v Uganda illustrates the need for doctrinal care. The appellant challenged a confession on several grounds, including an allegation of torture and

prolonged unlawful custody. The voluntariness objection, however, had been abandoned in the Court of Appeal, and the Supreme Court accepted the findings below. It also concluded that the conviction remained sustainable even if the confession were left aside (Namulobi Hasadi v Uganda, 1998). It is therefore inaccurate to cite the case as a square holding that a torture-induced confession is admissible. The more searching criticism is procedural. A grave allegation of coercion was absorbed into waiver, appellate posture and the sufficiency of other evidence. Where torture is alleged, a constitutional court should be slow to let procedural abandonment prevent a clear inquiry, referral and remedial response. Harmlessness to the conviction does not make torture harmless to the constitutional order.

The High Court's condemnation of torture in Agaba v Attorney General and Others confirms the normative direction but not the completeness of the evidentiary remedy (Agaba v Attorney General and 3 Others, 2019). Damages after abuse and exclusion at trial serve different functions. A victim may never obtain civil redress; an investigator may still believe that derivative material will survive; and a criminal court may lack a statutory framework for resolving disputed taint. The Evidence Act must address the courtroom consequence directly.

Uganda also lacks in the Act a general rule for material obtained through violations other than torture. Privacy under article 27, unlawful search, denial of access to counsel and manipulation of digital accounts present different questions. Categorical exclusion in every case could impair truth-seeking without proportionate constitutional benefit. Automatic admission would reduce rights to words without remedy. Kenya and South Africa offer a more disciplined middle path: evidence obtained in violation of rights is excluded where admission would render the trial unfair or otherwise damage the administration of justice (Constitution of Kenya, 2010, art. 50(4); Constitution of the Republic of South Africa, 1996, s. 35(5)). Uganda should adopt a statutory rule of that kind while preserving an absolute rule for torture-tainted statements and information.

The distinction should be explicit. For torture and cruel, inhuman or degrading treatment, exclusion must be categorical, extend to directly derived material unless an independent source is proved, and place the burden on the prosecution once a credible foundation is raised. For other constitutional violations, the court should consider the nature and deliberateness of the breach, its causal connection to the evidence, the impact on trial fairness, the availability of lawful alternatives, the reliability of the material and the long-term integrity of justice. Reasons should be given on the record. The seriousness of the charge may explain the public interest in adjudication, but it must not become a reward for serious official misconduct.

Reform should also prevent the dispute from arising. Every custodial interview should, where practicable, be continuously audio-visually recorded from the first caution to the end of the interview. The statute should guarantee access to counsel, an independent interpreter where required, prompt medical examination following any allegation of mistreatment and preservation of custody records. An unrecorded confession should trigger a strong presumption against admission unless the prosecution proves both a compelling reason for the absence of a recording and voluntariness to the applicable criminal standard. These are not decorative safeguards. They create the record on which constitutional adjudication depends.

5. The Accused as a Witness: Choice, Waiver and Self-Incrimination

The original objection to section 53 is intuitively powerful: how can an accused enjoy a privilege against self-incrimination while being required to answer incriminating questions in cross-examination? The answer begins with the constitutional text. Article 28(3)(a) establishes the presumption of innocence. The prohibition on compelled testimony appears separately in article 28(11), which provides that neither the accused nor the spouse of the accused shall be compelled to give evidence against the accused (Constitution of the Republic of Uganda, 1995, art. 28(3)(a), (11)). Section 53 applies only when an accused person is 'giving evidence'. It permits a question in cross-examination tending to incriminate that person as to the offence charged (Evidence Act, Cap 8, s. 53). The provision does not, on its face, compel the accused to enter the witness box.

That starting point alters the analysis. Once an accused voluntarily gives sworn evidence and advances an account, the prosecution must be able to test that account. A right to testify without relevant cross-examination would distort rather than secure adversarial fairness. It would permit the accused to place an exculpatory narrative before the court while insulating its central assertions from scrutiny. Section 53 is therefore not unconstitutional simply because a truthful answer may damage the defence.

The real difficulty is whether the choice and its consequences are sufficiently protected. A waiver of the article 28(11) privilege should be informed, unequivocal and limited to what fair testing of the testimony requires. The Act says none of this. It does not require the court to establish that an unrepresented accused understands the right not to testify. It does not explain whether questions about collateral offences are permitted, what use may later be made of an answer revealing a different offence, or whether an accused can be penalised for declining to answer a question outside the legitimate scope of the waiver. Silence on those matters transfers too much constitutional work to unstructured discretion.

Section 131 shows that the Act already understands the distinction between compulsion and use. A witness generally may not refuse to answer a relevant question

merely because the answer may incriminate that witness. In exchange, the compelled answer cannot lead to arrest or prosecution and cannot be proved in a later criminal proceeding, except in a prosecution for false evidence. The explanation then states that an accused who applies to be called as a witness is not excused from answering a question tending to incriminate that person as to the offence charged (Evidence Act, Cap 8, s. 131). The use immunity is a substantial safeguard for ordinary witnesses. Its relationship with section 53 and with collateral offending by an accused is nevertheless obscure.

The constitutional repair should be precise rather than absolute. A revised Act should require a judicial warning, given in language the accused understands, before the accused elects to testify. It should confirm that the prosecution may ask questions relevant to the offence, credibility and matters opened by the testimony, subject to the ordinary controls on abusive questioning. Answers revealing unrelated criminal conduct should attract express use and derivative-use immunity unless the accused has separately and knowingly waived it. No adverse inference should arise merely from the exercise of the constitutional right not to testify, and no question should be permitted for the dominant purpose of exposing bad character rather than testing a material issue. These rules would preserve effective cross-examination without treating entry into the witness box as surrender of every protection.

The Act must also align spousal evidence with article 28(11). Section 120 makes a spouse competent but not compellable for the prosecution without the accused's consent, and competent and compellable for the defence (Evidence Act, Cap 8, s. 120). Article 28(11) is framed as a prohibition on compelling the spouse to give evidence against the accused. Defence compulsion may usually be consistent because the evidence is called for the accused, but the classification should turn on substance. If a co-accused calls a spouse in a manner materially adverse to the accused, formal labels cannot defeat the constitutional protection. A revised provision should say so.

The same protection appears at international level in article 14(3)(g) of the International Covenant on Civil and Political Rights, which guarantees that an accused is not to be compelled to testify against himself or herself or to confess guilt (International Covenant on Civil and Political Rights, 1966, art. 14(3)(g)). The international text confirms the focus on compulsion. It does not create an entitlement to volunteer evidence and then prevent its fair examination.

The broader point is that self-incrimination cannot be analysed as a contest between an unrestricted prosecution and a silent accused. The law must protect voluntary choice, truthful adjudication and equality of forensic arms at the same time. A categorical ban on incriminating cross-examination would sacrifice truth without being required by article 28(11). The present Act's unexplained waiver, however, is equally unsatisfactory. Constitutional fidelity lies in defining the boundary.

6. Witness Competence Must Become Meaningful Participation

The Act does not exclude all children, older persons or persons with disabilities from testifying. Section 117 begins with an inclusive rule: all persons are competent unless the court considers that tender years, extreme old age, disease of body or mind, or another similar cause prevents the person from understanding questions or giving rational answers (Evidence Act, Cap 8, s. 117). That is an important correction to any claim of categorical exclusion. Sections 67 and 72, sometimes invoked in this context, concern attesting witnesses and comparison of signatures, writing or seals. They have no bearing on vulnerable-witness competence (Evidence Act, Cap 8, ss. 67, 72). Accuracy requires that those provisions be removed from the argument.

The correction does not rescue the present framework. Section 117 treats competence as a threshold located largely within the witness, while the Constitution requires attention to the conditions under which the witness is asked to participate. A person may be fully capable of giving reliable evidence through a qualified sign-language interpreter, an augmentative communication device, simplified questions or a trained intermediary, yet appear unable to answer when the courtroom supplies none of those supports. If the legal system creates the communication failure and then calls the witness incompetent, exclusion has been disguised as assessment.

Section 118 partly recognises the problem. Under the heading 'Dumb witnesses', it permits a witness unable to speak to give evidence in another intelligible manner, including writing or signs made in open court, and deems that evidence oral (Evidence Act, Cap 8, s. 118). The operative permission is inclusive; the label is not. The heading reduces a person to a supposed deficit and belongs to a period before rights-based disability law. More importantly, the section's accommodation is primitive. It says nothing about the qualification and independence of an interpreter, communication technology, pre-trial assessment, support persons, intermediaries or the preservation of the opposing party's ability to test the evidence.

Articles 21, 32 and 35 convert those omissions into a constitutional concern. Equality is not achieved by opening the same witness box on identical terms to people whose communication needs differ. Article 32's affirmative-action command is especially significant because it permits, and sometimes requires, differentiated measures to redress marginalisation. Article 34(7) adds a duty of special protection for vulnerable children. The Convention on the Rights of Persons with Disabilities reinforces the same direction by requiring effective access to justice, including

procedural and age-appropriate accommodations (Convention on the Rights of Persons with Disabilities, 2006, art. 13). Accommodation is not preferential evidence. The witness's testimony remains subject to relevance, oath or affirmation where applicable, cross-examination and evaluation. The accommodation makes those ordinary processes possible.

A revised Act should separate three questions that the current law blurs. First, can the witness understand the obligation to tell the truth and communicate an intelligible account using available support? Secondly, what accommodation is necessary for the witness to participate effectively? Thirdly, how should the court evaluate the evidence after it is received? Disability, age or diagnosis should never answer all three by proxy. Competence should be presumed; a party seeking exclusion should establish a functional inability that cannot be remedied by reasonable accommodation; and the court should give reasons identifying the attempted supports.

The range of statutory measures should be concrete. It should include qualified sign-language and other communication interpreters; augmentative and alternative communication; intermediaries for children and witnesses with cognitive or communication disabilities; remote or screened testimony where necessary to avoid serious harm; frequent breaks; developmentally appropriate questioning; and pre-trial directions settling how evidence will be taken. The record should identify the accommodation so that an appellate court can assess fairness. Questions must still be transmitted accurately, and opposing counsel must retain an effective opportunity to challenge the account. Properly designed accommodation serves both dignity and accuracy because a witness who understands the question is more, not less, capable of giving reliable evidence.

Spouses present a different issue and should not be placed under the vague label of 'vulnerable witnesses'. Sections 120 and 121 regulate competence and compellability according to the relationship and the nature of the proceeding (Evidence Act, Cap 8, ss. 120–121). The policy concerns include marital privacy, prosecution of domestic offending and access to probative testimony. They require their own review against article 28(11) and equality guarantees. Combining them with disability and age obscures rather than strengthens the analysis.

The reform required here is therefore not a declaration that previously excluded people may speak. Much of the statutory door is already open. The task is to build the route through it. Without interpreters, accessible technology, trained intermediaries, judicial guidance and public funding, formal competence remains an invitation that many witnesses cannot use.

7. Expert Evidence: From Status to Demonstrated Reliability

Section 43, not section 102, is the starting point for expert opinion. It makes relevant the opinion of a person specially skilled in foreign law, science or art, or in questions concerning handwriting or finger impressions, when the court must form an opinion on such a matter. Section 44 makes facts supporting or inconsistent with the expert opinion relevant, and section 49 makes the grounds of the opinion relevant (Evidence Act, Cap 8, ss. 43–44, 49). Section 104 performs a different function: it places on the proponent the burden of proving a fact necessary to make other evidence admissible. Section 102 merely states the general proposition that the burden lies on the party who would fail if no evidence were called (Evidence Act, Cap 8, ss. 102, 104). Conflating these provisions conceals the real weakness in the expert regime.

That weakness is not the absence of authority to receive an expert. It is the absence of a developed statutory gatekeeping standard. Being 'specially skilled' establishes expertise in a field; it does not demonstrate that the particular method is valid, that the data are sufficient, that the reasoning was properly applied or that the witness has remained independent. A credential can become a substitute for analysis. The risk is greatest in disciplines that present themselves with scientific confidence but have weak error data, opaque methods or conclusions that outrun the underlying research.

Sections 44 and 49 contain the seeds of a better approach because they make supporting facts and the grounds of opinion relevant. The Act does not turn those seeds into a judicial duty. A modern provision should require the proponent to establish that the evidence will assist the court, rests on sufficient facts or data, uses reliable principles or methods, and applies those methods reliably to the case. The court should consider validation, known limitations and error rates, standards controlling the technique, relevant professional scrutiny and the extent to which the conclusion depends on contestable assumptions. These factors should guide, not mechanise, judgment. Novelty alone should not exclude a sound method, and professional acceptance should not immunise a weak one.

Transparency is equally important. An expert report should disclose instructions, qualifications, material relied upon, methodology, assumptions, limitations, uncertainty, contrary material considered and any financial or institutional interest. The expert's primary duty should be stated to be to the court, not to the party paying the fee. Courts should have power to direct pre-trial expert conferences, narrow disagreements, appoint a neutral expert where necessary and exclude an opinion whose probative value cannot be tested because its basis has not been disclosed. A conclusion that cannot be interrogated is authority, not evidence.

Cost adds a constitutional dimension, but the argument must be kept within the text. Articles 21, 28(1) and 126(2)(a) resist a system in which decisive scientific proof is practically available only to the affluent. Yet

article 28(4)(b) expressly contemplates laws imposing conditions before witnesses called for an accused are paid from public funds (Constitution of the Republic of Uganda, 1995, arts. 21, 28(1), 28(4)(b), 126(2)(a)). The Constitution therefore does not establish an unconditional right to any expert of a party's choosing at State expense. The stronger claim is targeted. Where expert evidence is reasonably necessary to test the prosecution case or determine a material issue, the accused is indigent, and no adequate alternative exists, refusal of assistance may hollow out the facilities for defence and produce a hearing that is equal only on paper.

Reform should create a judicial power to authorise publicly funded expert assistance on defined criteria: materiality, necessity, complexity, the party's means, the likely cost and the availability of a neutral or institutional service. Funding should be adequate to permit independent analysis rather than merely a nominal appearance. In civil proceedings, courts should be able to appoint a neutral expert, order proportionate cost sharing and draw on accredited public laboratories where appropriate. These measures would not guarantee a battle of expensive experts in every case. They would prevent the outcome from turning on an evidentiary resource that one side alone can buy.

The same framework should govern algorithmic and machine-assisted opinions. An expert who relies on software should disclose the system, version, inputs, validation and known limitations to the extent necessary for meaningful challenge. Proprietary secrecy cannot automatically defeat fair hearing. Protective orders, limited disclosure and independent inspection may protect legitimate commercial interests, but the party relying on an opaque output cannot demand both evidentiary weight and immunity from scrutiny. The constitutional burden of opacity should fall on the proponent, not on the person against whom the output is used.

8. Electronic and AI-Generated Evidence: The Gap Is Coherence, Not Recognition

The digital-evidence critique becomes stronger once an important overstatement is removed. Section 2(1) defines a document as matter expressed or described on any substance by letters, figures or marks, or more than one of those means, intended or capable of being used to record that matter (Evidence Act, Cap 8, s. 2(1), definition of 'document'). The language is old, but it is capable of a technologically neutral reading. It does not say that the substance must be paper. A hard drive, memory card or other medium may record matter through marks or their electronic equivalent. The difficulty is not that every email, message or video is legally invisible. It is that a general definition designed around physical documents provides little operational guidance on authenticity, integrity, attribution and the distinction between an original and a copy in networked systems.

Olega v Alidriga demonstrates both the adaptability and the limits of the present law. The High Court held that a video recording is a document and criticised the treatment of the recording as an item merely marked for identification. It also set out concerns bearing on authentication, including the operation of the equipment, authenticity and correctness, absence of alteration, preservation, identification of speakers or persons depicted, and intelligibility (Olega v Alidriga, 2016). The case therefore does not establish that the Act refuses to recognise video evidence. It shows a court constructing an authentication framework from general doctrine because the statute does not provide one in a form readily usable by trial courts and litigants.

Nor is electronic admissibility wholly absent from Ugandan legislation. Section 8 of the Electronic Transactions Act 2011 addresses the admissibility and evidential weight of a data message or electronic record. Section 29 of the Computer Misuse Act 2011 does the same for a data message or electronic record in proceedings under that Act (Electronic Transactions Act, 2011, s. 8; Computer Misuse Act, 2011, s. 29). The claim that these statutes depend entirely on the Evidence Act to make electronic material admissible is therefore unsustainable. The proper criticism is fragmentation. A practitioner should not have to assemble a basic test from a 1909 definition, separate electronic-transactions legislation, cybercrime legislation and case law.

The paper-era categories in sections 60–64 illustrate the tension. Primary evidence is 'the document itself'; secondary evidence includes copies made by mechanical processes that ensure accuracy; and documents are generally to be proved by primary evidence subject to listed exceptions (Evidence Act, Cap 8, ss. 60–64). Those concepts can be analogised to digital material, but the analogy becomes unstable. Which instance is 'the document itself' when an email is synchronised across a server, a phone and a cloud backup? Is a forensic image a copy or the most accurate representation available? Does compression create a different document? A modern code should stop forcing these questions through a vocabulary of physical singularity.

The central concept should be integrity, not metaphysical originality. The proponent of electronic material should establish a foundation sufficient to support a finding that the item is what it is claimed to be. Relevant factors should include the reliability of the process or system that generated, stored or transmitted it; the manner in which integrity was maintained; metadata; cryptographic hashes where appropriate; chain of custody; the identity of the originator or account user; evidence of alteration; completeness of the extracted conversation or file; and corroborating circumstances. The required foundation should remain proportionate. A routine text message admitted by its sender may not need forensic imaging, while a contested recording central to a murder trial may require it.

Authentication must also be kept distinct from three later questions. First, does the content contain hearsay, and if so is there a basis for admitting it? Secondly, was it obtained in a manner that violated privacy or another right? Thirdly, what weight should the court give it? A file can be authentic yet unlawfully obtained, or lawfully obtained yet unreliable in what it asserts. Collapsing these inquiries encourages judges either to admit too much because 'it is digital' or to exclude too much because digital material can be manipulated.

Artificial intelligence sharpens, but does not wholly reinvent, the problem. The phrase 'AI evidence' may describe at least three different things: a human communication stored in an AI service; content generated or altered by a model; or an analytical output produced by a model and offered as an expert-like conclusion. Each raises a different foundation. A stored human conversation calls for ordinary attribution and integrity. Synthetic audio or video calls for provenance and manipulation analysis. An analytical output calls for disclosure of inputs, system and version, validation, error characteristics, human oversight and the reasoning by which the output bears on the issue.

The danger of deepfakes does not justify a presumption that all digital media are false. Nor should the novelty of a generative model become a shortcut to admissibility. A revised Act should authorise courts to require provenance information, original or best-available files, relevant metadata, documented transformations and expert assistance where authenticity is genuinely disputed. Where a party knows that content was materially generated or altered by AI, nondisclosure should attract procedural sanctions and may support an adverse inference. The ultimate test remains whether the item's identity and integrity have been shown well enough for the fact-finder to evaluate it fairly.

Privacy must sit inside this framework rather than at its edge. Article 27 protects against unlawful search and interference with correspondence and communication (Constitution of the Republic of Uganda, 1995, art. 27). Phones and cloud accounts contain whole patterns of life, not merely one document. A lawful power to obtain a relevant message should not become authority to expose everything else. Reform should require particularised collection, minimisation, secure preservation, audit trails and judicial control of compelled access. The same statute that welcomes useful digital proof must prevent the evidentiary process from normalising indiscriminate surveillance.

The digital gap is therefore not a complete absence of law. It is the absence of one accessible, constitutionally disciplined account of how electronic material is identified, preserved, challenged and weighed. Recognising that distinction avoids discarding the progress already made under the 2011 Acts while making the case for consolidation impossible to dismiss.

9. Presumptions and Burdens: Convenience Must Remain Answerable to Proof

Presumptions are not a single category and should not be criticised as though they all foreclose challenge. Section 3 carefully distinguishes them. Where the Act says that a court 'may presume' a fact, the court may treat it as proved unless disproved or may require proof. Where the court 'shall presume', the fact must be treated as proved unless disproved. Only a fact declared to be 'conclusive proof' is insulated from evidence to the contrary (Evidence Act, Cap 8, s. 3). The first two forms are rebuttable. A constitutional analysis that calls every statutory presumption 'unchecked' overlooks the very safeguard on which the provisions operate.

Section 89 is a useful example. It directs the court to presume that a document called for and not produced after notice to produce was attested, stamped and executed as the law requires (Evidence Act, Cap 8, s. 89). The presumption is mandatory but rebuttable through section 3(2), and it arises only after notice. It does not grant evidential sanctity to every missing document. Its rationale is intelligible: a party should not gain an advantage by withholding the best evidence of formal execution after being required to produce it.

The provision remains open to criticism, but the criticism must meet the rule as written. Non-production may result from loss, destruction, lack of control, a valid privilege or genuine inability rather than strategic withholding. Section 89 does not expressly require proof that the document was within the party's control, that the notice was reasonable, or that non-production was culpable. Nor does it state how the presumption interacts with a lawful refusal to disclose. The mandatory 'shall' can therefore convert evidentiary obstruction into presumed regularity even where obstruction has not been shown.

A revised rule should permit the presumption only where the court is satisfied that the document existed, was under the control of the person served, the notice was adequate, production was reasonably possible and no lawful basis for refusal applies. The court should consider the explanation for non-production and the prejudice created before selecting a proportionate consequence. In some cases the proper response will be an adverse inference; in others, costs, an order compelling production or exclusion of contrary evidence. Presuming due execution should be reserved for the case in which that inference logically follows.

The wider group in sections 78–90 also deserves provision-by-provision review. Some presumptions facilitate routine proof of certified copies, official records and publications. Others disclose dated assumptions. Section 88 regulates telegraphic messages. Sections 81, 84, 85 and 86 attach significance to the United Kingdom, the Republic of Ireland or Commonwealth governmental authentication (Evidence Act, Cap 8, ss. 81, 84–88). The question is not whether

those links are historically embarrassing. It is whether the listed origin supplies a rational assurance of authenticity that is unavailable to equally reliable records from elsewhere. A modern code should use functional criteria such as certification, secure official systems and verifiable seals, rather than geopolitical categories inherited from empire.

The Constitution itself prevents an overbroad attack on evidential burdens. Article 28(4)(a) provides that a law is not inconsistent with the presumption of innocence merely because it places on an accused the burden of proving particular facts (Constitution of the Republic of Uganda, 1995, art. 28(4)(a)). The general criminal burden nevertheless remains on the prosecution. Section 105 places on an accused the burden of bringing the case within an exception or proving facts especially within that person's knowledge, while preserving the prosecution's obligation to prove the elements of the offence and requiring acquittal where the evidence creates reasonable doubt (Evidence Act, Cap 8, s. 105; see also Woolmington v Director of Public Prosecutions, 1935). This is not a statutory abandonment of the presumption of innocence. It is an attempt to allocate particular factual burdens.

The constitutional issue is whether a particular allocation remains justified. A fact is not 'especially within' the accused's knowledge merely because the prosecution would find it inconvenient to prove. The court should distinguish an evidential burden, requiring the accused to raise a credible issue, from a legal burden, requiring persuasion to a stated standard. The graver the offence and the more closely the fact resembles an element of liability, the stronger the justification needed for a legal burden. Access to the relevant information, the feasibility of prosecution proof, the risk of wrongful conviction and the importance of the public objective should all be considered.

Presumptions serve justice when they reflect ordinary probability, protect a party from deliberate suppression or make routine proof proportionate. They threaten justice when they substitute inherited convenience for present fact. Reform should not eliminate them. It should require every presumption to disclose its factual foundation, its rebuttal route, the party best placed to adduce the relevant evidence and the consequence of reasonable doubt. That is the difference between an evidentiary tool and a hidden rule of decision.

10. Cross-Examination Between Truth and Dignity

Cross-examination is indispensable because evidence that cannot be tested may acquire authority it has not earned. It is also a point at which legal process can reproduce humiliation, intimidation and stereotypes. Sections 147–151 attempt to hold those concerns together. Section 147 guides the court when a question directed only to credit may injure a witness's character. Section 148 requires reasonable grounds for such a question, and section 149 permits professional referral where an advocate asks it without those grounds. Section 150 permits the court to forbid indecent or scandalous inquiries unless they concern facts in issue or matters necessary to determine them. Section 151 requires the court to forbid a question intended to insult or annoy, or one that is needlessly offensive in form (Evidence Act, Cap 8, ss. 147–151).

Seen in that context, section 151 is not simply a colonial restraint on fearless advocacy. It protects the accuracy and legitimacy of proceedings. A witness who is degraded rather than questioned may become less able to communicate, while an advocate who substitutes insult for a factual challenge contributes little to truth. The mandatory word 'shall' appropriately denies a court permission to tolerate abuse merely because it is theatrically effective.

The provision's weakness lies elsewhere. 'Intended to insult or annoy' directs attention to inferred purpose, while 'needlessly offensive' supplies no express factors by which necessity should be judged. Different courts may draw the line at different places. A difficult but relevant question can be emotionally painful; a politely framed question can rest on a discriminatory stereotype. Tone alone will not identify the constitutional boundary.

The earlier draft placed this criticism under article 41, but that article protects a citizen's access to information held by the State or its agencies, subject to stated exceptions. It does not establish a general constitutional right to plain legislative language or unrestricted questioning (Constitution of the Republic of Uganda, 1995, art. 41). The sounder anchors are fair hearing, equality, dignity and the court's control of its own process. Article 28(3)(g) protects facilities to examine witnesses; it does not protect harassment. Article 21 resists questioning that turns disability, sex, social standing or another protected characteristic into an unsupported credibility attack. Article 28(1) requires the court to maintain a procedure fair to both the party testing evidence and the person giving it.

Reform should retain a strong prohibition while making its operation more transparent. The court should consider relevance, probative value, the availability of a less harmful form, the witness's age and communication needs, the risk of stereotype or intimidation, repetition, the importance of the issue and the effect on the opposing party's ability to test the evidence. A question necessary to determine a fact in issue should ordinarily be allowed in a focused and respectful form. A question whose evidentiary value is slight and whose dominant effect is degradation should be stopped. Where a material line is restricted, the court should give short reasons and permit counsel to reformulate it.

Clear drafting should not pretend that judgment can be eliminated. Terms such as 'relevant', 'necessary' and 'offensive' inevitably require context. The constitutional demand is disciplined discretion, not an impossible dictionary of every permissible question. Training is as

important as text. Judges and advocates need practical guidance on trauma, disability, child development and stereotype without being taught to treat vulnerable witnesses as inherently unreliable. The goal is firm testing without forensic cruelty.

11. Official Information and the Need for Judicial Control

The relationship between proof and executive secrecy is another place where the Act carries an institutional assumption inconsistent with constitutional adjudication. Section 122(1) bars evidence derived from unpublished official records concerning affairs of State without permission from the head of the department, who may grant or withhold it as that officer thinks fit. The 2023 amendment added section 122(2), requiring permission in accordance with the Access to Information Act (Evidence Act, Cap 8, s. 122, as amended by the Law Revision (Miscellaneous Amendments) Act, 2023). That amendment is significant. It ties the evidentiary rule to a statutory disclosure regime rather than leaving subsection (1) entirely alone.

Section 123 remains more troubling. A public officer cannot be compelled to disclose an official communication where that same officer considers that the public interest would suffer (Evidence Act, Cap 8, s. 123). The person resisting disclosure is thus permitted to define the public interest conclusively. The court before which the evidence is needed has no express power to inspect the material, test the claimed harm, order redaction or decide whether nondisclosure would make the proceeding unfair. That arrangement is difficult to reconcile with article 128. Judicial independence is not preserved if the executive can determine, without effective review, what information the court may consider.

Article 41 does not require disclosure of every official record. It permits withholding where release is likely to prejudice State security or sovereignty or interfere with another person's privacy (Constitution of the Republic of Uganda, 1995, art. 41(1)). Those exceptions, however, describe legal reasons for restriction, not executive immunity from adjudication. Article 28 may require access to material necessary for preparation of a defence or effective examination of witnesses. A fair system must therefore allow a court to determine whether the claim is established and whether a less restrictive measure can protect the legitimate interest.

The revised Act should place the initial burden on the State to identify the nature of the interest and the reasonably anticipated harm, with as much specificity as can safely be provided. The court should be empowered to inspect the material privately, receive limited submissions, order redaction or summaries, impose protective conditions and disclose only the portions necessary for justice. Where material is materially exculpatory in a criminal case and no substitute can secure fairness, the State should face a choice between disclosure and an appropriate consequence, including a stay or exclusion of affected prosecution evidence. Security cannot justify a conviction obtained by keeping the answer to the defence hidden.

Section 124, which protects the sources of information received by magistrates, police officers and revenue officers, serves the legitimate purpose of encouraging reporting (Evidence Act, Cap 8, s. 124). Yet informer confidentiality should not be absolute where the source's identity is necessary to demonstrate innocence, expose fabrication or test whether the supposed informant existed. A modern statute should create a narrow innocence exception, determined by the court after protected review. Again, the answer is not indiscriminate disclosure. It is judicial control over the balance.

These reforms would respect both confidentiality and the separation of powers. The executive possesses expertise about genuine security harms, but expertise is evidence for a decision, not ownership of the decision. Once secrecy determines what may be proved in a case, the final judgment must belong to the independent court.

12. A Constitutionally Integrated Reform Architecture

The defects identified above cannot be cured by replacing a few archaic nouns. The Act's scattered relationship with later legislation, its mixture of categorical rules and unstructured discretion, and its paper-centred proof model require a new or comprehensively restated Evidence Act. 'Comprehensive' does not mean maximal. A code crowded with technology-specific detail may age as quickly as the devices it names. The better design combines durable statutory principles with rules capable of careful updating.

The following priorities emerge from the analysis:

Existing rule or field	Doctrinal problem	Required reform	Constitutional anchor
Sections 23–29: confessions	Reliability language does not fully express the absolute prohibition of torture; attenuation and derivative evidence are under-regulated	Categorical exclusion of torture-tainted statements and derivative material; prosecution burden; recorded interviews; counsel, interpreter and medical safeguards	Articles 24, 28 and 44

Unlawfully obtained evidence generally	No integrated statutory remedy for privacy and other rights violations	Exclude where admission would render the proceeding unfair or damage the administration of justice, with stated factors and reasons	Articles 2, 27, 28 and 50
Sections 53 and 131: incriminating answers	Scope of waiver and treatment of collateral offences are unclear	Informed election to testify; relevant cross-examination; use and derivative-use immunity for collateral offending; no adverse inference from silence	Article 28(3)(a) and (11)
Sections 117–118: witness participation	Inclusive competence is undermined by outdated language and inadequate accommodation	Presumed competence; functional assessment; qualified interpreters, intermediaries, communication technology and reasoned accommodation orders	Articles 21, 32, 34(7) and 35
Sections 43–49 and 104: experts	Expertise is recognised, but reliability, disclosure and independence are not sufficiently controlled	Reliability gatekeeping; report disclosure; duty to court; neutral experts; targeted public funding where necessary	Articles 21, 28 and 126(2)(a)
Sections 2 and 60–64 plus the 2011 Acts: electronic evidence	Recognition exists, but authentication and the original/copy rules are fragmented	Technology-neutral integrity standard; provenance, metadata, system reliability and proportional foundations; harmonisation of statutes	Articles 27 and 28
AI-generated or AI-analysed material	No express disclosure or validation framework	Disclose material generation or alteration; identify system, version, inputs and human validation; allow independent testing	Articles 27, 28 and 126
Sections 78–90: presumptions	Some rules are useful; others rest on obsolete media or inherited geopolitical categories	Review each presumption; require rational factual basis, clear rebuttal and fair consequences for non-production	Articles 21 and 28(4)(a)
Sections 147–151: questioning	Protection from abuse is sound but governed by sparse factors	Retain mandatory control; add relevance, necessity, proportionality and vulnerability factors; require reasons for material restrictions	Articles 21 and 28
Sections 122–124: official information	Executive officers largely control claims of public-interest secrecy	Judicial inspection and balancing; burden on State; redaction and protective orders; innocence exception for source privilege	Articles 28, 41 and 128
Section 1 and dispersed statutes	Courts, affidavits, arbitration and digital rules sit in separate regimes without a clear relationship	State the code's scope, interaction with specialist statutes and minimum constitutional safeguards across proceedings	Articles 2, 20 and 274

The drafting process should begin with an audit of every provision, not only the subjects that attract controversy. Each rule should be classified as retained, adapted, relocated or repealed, with a publicly stated reason. That exercise would prevent reform from reproducing old numbering and concepts under a modern title. It would also expose consequential links: changing the definition of a document without changing rules on originals, notice to produce, certification and presumptions would create a new layer of contradiction.

Accessibility should be treated as part of legal effectiveness. The present Act's language often conceals a sound idea behind long sentences and inherited terminology. Plain drafting would serve lawyers, self-represented litigants, police officers and trial courts, but article 41 should not be misquoted as the source of a freestanding plain-language right. The constitutional basis lies more convincingly in the obligations to respect rights, provide equal protection, secure a fair hearing and administer justice to all irrespective of social or economic status (Constitution of the Republic of Uganda, 1995, arts. 20(2), 21, 28, 126(2)(a)). A rule cannot guide conduct if its intended users cannot reasonably identify what it requires.

Implementation must accompany enactment. Digital-authentication rules without forensic capacity will widen the distance between well-funded and ordinary litigants. Accommodation rights without interpreters and

accessible technology will remain declaratory. Expert gatekeeping without judicial training may replace one unexplained intuition with another. Reform should therefore include accredited interpreter systems, continuing judicial and professional education, secure evidence-storage standards, legal-aid funding, laboratory quality assurance and standard directions for common evidentiary disputes.

The new Act should also allocate rule-making power carefully. Technical schedules may set formats for electronic certificates, recording standards and expert reports, but core rights and exclusionary rules must remain in primary legislation. Delegated rules should be published, periodically reviewed and made subject to consultation. Technology evolves quickly; constitutional principle should not.

Finally, reform should create a review cycle. The law of evidence now sits in an environment of rapid changes in communications, biometrics, automated decision-making and forensic science. A statutory review every five years, supported by published data on exclusion rulings, interpreter use, expert appointments and digital-evidence disputes, would allow Parliament to respond before gaps harden into routine injustice. Periodic review is not an admission that the law lacks authority. It is an acknowledgment that authority must remain answerable to experience.

13. Conclusion

Uganda's Evidence Act stands in the shadow of the Constitution because it continues to exercise enormous practical power without having been comprehensively remade in the Constitution's image. The answer is not to declare every inherited rule invalid. That approach would mistake history for doctrine and would weaken the reform it seeks. Article 274 preserves existing law conditionally; article 2 supplies the consequence when genuine inconsistency remains. The task is to identify the condition, provision by provision, and refuse both nostalgia and exaggeration.

That method produces a case for reform more compelling than the claim that the Act is simply old. Section 24 still frames coerced confession through the risk of untruth when the Constitution condemns torture whether or not it succeeds. Sections 25 and 29 do not adequately regulate continuing taint and derivative benefit. Sections 53 and 131 leave the scope of testimonial waiver uncertain. Sections 117 and 118 permit testimony but fail to provide the infrastructure of equal participation. Section 43 recognises expertise without requiring a sufficient account of reliability. Electronic evidence is recognised across the law, yet no single framework makes authenticity, integrity, attribution and privacy intelligible. Presumptions, cross-examination controls and official-information privileges each contain legitimate purposes, but their exercise needs reasons, limits and independent judicial control.

The constitutional ambition is not an evidentiary system in which every item is admitted in the name of substance, or excluded whenever a right is invoked. It is a system candid about the values that proof serves. Torture admits no compromise. Other rights violations require a structured judgment attentive to fairness and institutional integrity. Vulnerability calls for accommodation, not lowered standards. Expertise calls for demonstration, not deference. Digital novelty calls for verifiable provenance, not fear or fascination. State secrecy calls for judicial scrutiny, not executive finality.

Evidence law should enable courts to find facts without making constitutional rights casualties of the search. Lawful investigation, accessible testimony, testable scientific and digital claims, and judicial control over secrecy can make truth and rights allies rather than rivals. A revised Evidence Act would give Uganda's constitutional democracy an evidentiary language of its own.

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