



# Examining the Socio-Economic and Political Rights of Women under the 1995 Constitution of the Republic of Uganda

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## ABSTRACT

This article examines the socio-economic and political rights of women under the 1995 Constitution of Uganda. The article revealed that a female Ugandan's life is more difficult than for her male counterparts. This article suggests that in order for women to fully realize their Constitutional rights as provided for under the 1995 Constitution, they must be further supported by government. Government should as a priority streamline the formulation and implementation of policies which are gender oriented. In this regard, the Ministry of Gender and Community Development should spearhead this process by initiating and monitoring gender responsive policies in all government sectors and at districts. The Government has to embark on an extensive law reform programme to ensure that all existing laws are in consonance with the constitution as the previous discussion shows that most of the existing laws are clearly not in line with the Constitution.

**Keywords:** Law planners, Political rights, Socioeconomic rights, Statutory provisions, Women's rights

## INTRODUCTION

The constitution came into force on 8th October 1995 after a long period of debate by the Constituent Assembly Delegates. Women are important in their own right Constituting more than half of the adult population and providing 80% of agricultural labour and about 50% of the social service providers[1]. Therefore, planners and policy makers need to know as much as possible about the present situation of women in Uganda so that their future can be well planned for[2]. In all societies, men and women have different responsibilities for the task necessary for survival and development of the community. However, within the existing division of labour, responsibility for the maintenance of human resources falls largely on women's shoulders. Gathering fuel and water, processing food, caring for children, nursing the sick and managing the household is heavy and time consuming. This is widely seen as a woman's role and is economically un recognized[3]. Women have less access to power, wealth, and resources and are less likely to own land or property. In most cases they have inferior status both legally and culturally. They have less access to education and training, and to paid employment. They are less likely to be represented in decision-making bodies and their voices are less likely to be heard. Frequently they have no control over their bodies and fertility"[4]. It should be noted that while much of women's inability to participate equally in society is probably most directly linked to the marginal roles they have in the economic system, "legal discrimination" affects almost all aspects of their lives"[5]. Hicks[6] observed that unless society is first aware of those types of legal discrimination and second, works to eliminate them, women are unlikely to achieve economic and political parity with men. 51% of Uganda's population is women. However, their numerical superiority does not extend to their status in society. They suffer discrimination, subordination and oppression on all fronts be it social, economic, political and cultural. This is so despite the fact that women constitute 60% of the labour force in the agricultural sector and account for 80% in food production. Thus, it is very clear that the country's economy which images on agriculture is supported manly by the rural women who are the major tillers of land - the land that they neither own nor control[7]. Women do not enjoy the rights and freedoms to which they are entitled by the mere fact that they are human. Problems of attaining full recognition and enjoyment of all human rights and fundamental freedoms for women are the main theme of my dissertation. Problems concerning the human rights of women are often subsumed under the terms "status of women" and "advancement of women". The unequal status of women results from gender discrimination. Advancement of women is impossible unless and until equal rights are fully protected [8]. It has been observed that personal laws, such as those governing marriage, divorce, maintenance, custody and succession pose the biggest obstacle to women in Uganda. Many of these laws are foreign and archaic, the reform of which is long overdue. The majority of Ugandan women are illiterate, and as, is the case with their male counterparts, ignorant of the provisions of the written laws. Because of this alienation from the written laws, the majority of Ugandans go about their business in total disregard of the

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written laws. What they in fact understand very well and practice on a daily basis is customary law. It is against this backdrop that this study examines the socio-economic and political rights of women under the 1995 Constitution of the Republic of Uganda

### **The legal position of women in pre-colonial and colonial Uganda**

The status of women in Uganda draws its inspiration from traditional cultural values. The societies in Uganda, like those in Europe developed through several stages. There is evidence that once, women and men were equal in the real sense except for the physiological differences. In fact, the early production of man's period, during which he was susceptible to formative instruction, the decisive factors were imparted by the females whose material functions in the absence of economic production necessarily placed in control of the group [9, 10]. Tension however, later grew between man and woman when labour started being applied into nature. For instance, the male dominated hunting, and later as a result of hunting, even pastoralism became a male domination as well. The women on the other hand stayed at home to gather fruits and wild roots and later, with the introduction of agriculture, the women undertook to provide food for the families hence her traditional role as a provider of food in society [11]. Matriarchy was also undermined by other conditions, which did not favour its existence like patrilineal succession. In the southern societies like Buganda, the totem is acquired from the father, although formerly, the rule was vice versa it is a traditional form for women not to succeed to neither their fathers' nor their husbands' property. Pre-colonial Uganda became even more of a male dominated society, when women began to be considered as any other man's property [12]. Even in the royal families, the wives were strictly under lock and they were closely guarded. Associating with men could mean heavy torture or even death. In most societies in pre-colonial Uganda, the children belonged to the clan and therefore, to the husbands. They had to be taken away from their mothers so that they grew among the other clans men [13]. At the same time a married woman belonged to the man's family. Thus, at the death of a husband, the wives had to be shared between the heir and the husband's brothers or would sometimes get enslaved. The above serves to illustrate how women were treated in the pre-colonial Uganda and there is no doubt that pre-colonial Uganda was a deeply male dominated society, socially and even politically, the women were the under dogs. It should be noted however, that even if the seeds of the male supremacy had been sown, the role and position of women was more respected than it later became with the coming of colonialism and during the post-colonial era [14]. The coming of the finance capital institutionalized male dominance, which would, may be have taken a longer time. Imperialism took advantage of these outrageous cultural attitudes and practices to build the tension between the two sexes even further to the detriment of the women folk in Uganda. With the emergence of colonialism, came the capitalist social relations as well and the autonomous development of the pre-colonial societies were disrupted. The family structure gradually changed and the hitherto pre-capitalist relations were abandoned. The clan ties were weakened and lineages became social units with a man at its head [15]. Furthermore, colonialism came along with the establishment of an export economy, which resulted into the production of cash crops like cotton and coffee for export, based on peasant agriculture. And in so doing people produced not for themselves and their rulers but for the financial oligarchy that now commanded the former rulers (through the system of indirect rule as their field captains and to whom they now paid part of the surplus value in form of wales and for the services rendered to the colonial state and empire [16]. The economic system affected the women status further as it enhanced private property through the individual amassing of wealth. The women provided free labour on the coffee and cotton shambas and provided gratuitous domestic labour as well. And since traditionally, women rulers were opposed to, even with the coming of imperialism women were not considered in decisive political factors of the country. They were instead kept in the background to look after the children and the families [17]. The coming of missionaries who brought along religion and education widened the gap between the woman and man further. The religious teachings portrayed the woman (Eva) as the cursed one and the cause of all evil and suffering in the world. Most religious teachings in fact discriminate against the women even during worship education too was for the men only for they had all the time to be taught by the colonial masters while the women catered for the families [18]. The enactment of the law (1901 and 1911 Orders in Council) further legalized women oppression and suppression for the law was imposed into women in foreign language, and therefore remained alien to the natives especially the illiterate women folk. Although discriminatory, the women were ill equipped to fight against what they did not understand, hence the continuing of gender inequality [19]. Ogar [20] has said in summary that:

"In most, if not all the neo-colonial governments, political oppression and inequality reflects on the socio-economic infrastructure, for the political masters are legislators too and use their position to enact laws and make policies which maintain the capitalist infrastructures from which their power derives".

The law was introduced through colonial indirect rule and the 1902 and 1911 order-in-council. Among other things, these enactments "respected" traditional beliefs and practices. But the enactment of the bizarre "Repugnancy clause" disqualifies the foregoing statement since under the repugnancy clause, most of these traditional rules and practices were struck out as being "repugnant" after failing to conform to the bourgeoisie

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character. This was shown in the famous *Gwao bin Kilimo v Ifuti* [21] case where this clause was first used. According to the law, women were also private property and could be purchased. In the *Mawji v The Queen* [22] case for example, bride price was equated to "wife purchase" after the penetration of capital in tribal societies. Hence, bride price, which once had good intentions such as cementing the relationship between the two families and as a means of appreciation to the family of the bride, no longer became forever, an instrument of oppression, and an exploitation of a married woman. Also, with colonialism, colonial policy tended to favour men by concentrating socio-economic power in their hands and thereby strengthening their position in the family as heads [23]. These male-based systems of ownership put women in a position where by they were dependent on men. Men on the other hand, gained the power to control the use and distribution of the basic means of survival such as land. The benefit of women's labour on this land depended on the will of the male owners. In most of this system, the use and distribution of the product of women's labour was for the man to decide. "Women lose ownership rights to real and personal property under the existing institutions of inheritance which tend to supersede any law giving women rights to land and other property" [24].

#### **The legal status of Ugandan women in relation to 1967 Constitution**

This was the supreme law of the land before the coming into force on the 1995 Constitution. It was the superstructure upon which all other legislations and Ugandan policies were based. Despite the incorporation of the bill of rights in the Constitution, which guarantees equal protection of the law to all Ugandan citizens, there existed provisions in the very constitution that discriminated against women. It provided that: "The provisions of this Article shall have effect subject to the limitations contained in this chapter [1]. This is an example of a "claw-back clause" which purports to give with one hand and removes with the other. Article 4 (1) (c) of the same Constitution laid down the criterion to be followed in determining citizenship of persons born outside Uganda. It is to the effect that every person, born outside Uganda, after the commencement of this constitution, one of whose parents is or was a citizen of Uganda, provided that his father was a citizen of Uganda at the time of the person's birth, or in case of the father's death, before that person's birth, at the time of the father's death. This provision automatically disqualifies a person born of a Ugandan mother with a non-Ugandan father from acquiring a Ugandan citizenship. Furthermore, a minor follows his or her father's citizenship [1]. Finally, where as a 'foreign woman married to a Ugandan man is eligible for registration as a Ugandan citizen, the reverse is not true for a foreign husband of a Ugandan woman. Article 20 of the same constitution provided against the enactment of any "discriminatory" laws. The expression "discriminatory" is defined the same Article to mean affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour, or creed where by persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another description [1]. This provision is silent on the issue of discrimination on the basis of sex. The omission in effect legitimizes and sanctions all the laws that discriminate against women in Uganda. It allowed discrimination in matters of personal laws such as adoption, succession and inheritance. This failure to mention sex as a ground for discrimination was an oversight on the part of the legislature. But, it has been argued that, on reading the constitution further, one tends to think that this omission may have been a deliberate one [25]. From the foregoing discussion therefore, one would be right to assert that the 1967 Constitution held the Ugandan women under a subordinate position. However, some changes favoring women were later to be realized with the assumption of power by National Resistance Movement.

#### **Women under the National Resistance Movement (NRM) Regime**

The National Resistance Army took government power in January 26th, 1986. In his maiden speech at the swearing ceremony, the current president of Uganda and the chairman of NRM promised this country that the NRM's takeover of state power was not a "mere change of guards" but was intended to bring about a fundamental change [26]. Since the NRM assumed power, the issue of women's rights has attained some prominence in Uganda and president himself has on many occasions pledged government support to women. In one address to the nation on International Women's Day March 8th for instance, Museveni said that it is now acknowledged that the involvement of women in the development of women in the development process is not just a matter of ethics but of good economics. The challenges of development enjoin us to pay more than lip service to the core issue of unequal relations in our society" [27]. The government under the NRM has made it a premium concern to uplift the status of women and empower them to cope with the multiplicity of the roles they play in society not only through the local council system but also by strengthening their contribution in all sectors of our community [28]. The NRM took a number of concrete initial steps to put this into practice. For instance, in 1986, it accorded women mandatory seats in all the five structures of the Resistance Committees (Res) and in the National Resistance Council the interim legislature. A woman's desk was also established in the NRM secretariat- the main mobilization body of the movement [29]. Furthermore, a Ministry of Women in Development (the present Ministry of Gender and community Development was created for the first time in march 1988. included in the ministry objectives was the task of formulating and coordinating policies on women as

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well as sensitizing government organs and the public at large about gender related issues [30]. It was also at this time that numerous women NGOs such as FIDA, NA WOU, ACFODF and others were reactivated to take up the challenge of rectifying the traditional and legal inequalities in terms of women's rights [31]. With regard to substantive law, there were no adequate legal protection of women's rights in education, employment, family or health before, the NRM took over power. For instance, as regards inheritance of property, in the event of dissolution of marriage, most customary laws allow women to leave with only few personal effects like clothes and cooking utensils which they came with. Division of the matrimonial property is not recognized by customary law and the same applies to alimony after divorce, payable to the co-wife [32]. It is therefore, clear that as regards property rights on death or divorce of the spouse concerned, customary laws and practices discriminate against women since women lack property ownership status. Further still the realities of matrimonial life in which spouses make different but more or less equal complementary contributions to the welfare of the family are completely ignored by customary law. This contributes to the bondage of men and their disempowerment [33]. Generally, the position of women has been violated mostly by the institution of the family. This institution regardless of its merits has proved to be a bondage to the enslaved woman. According to this institution, the general law addresses itself to three major areas, that is marriage and divorce, guardianship and inheritance and property rights. Under the formal law, a husband may dissolve a marriage by way of petition to the courts on the ground of adultery. On the other hand, for a wife to obtain a divorce certificate, she must be able to prove that since marriage, the husband changed his religion, (Christianity) to another, and married another woman, or was guilty of incestuous adultery, bigamy with adultery, rape, sodomy, bestiality or adultery coupled with desertion for two years without reasonable excuse [34]. On the face of it, it is clear that this law is discriminatory because where as a man can divorce his wife for a single act, the wife must prove several acts some of which are difficult to prove such as incest and bigamy. Successive post-independence governments had pledged to encourage women's participation in politics and to compensate them for the imbalanced situation<sup>55</sup>. However, it was not until the NRM administration assumed power that this pledge was actually honoured. For stance, the Democratic Party (DP) had never attempted to seriously include women among its leadership ranks. This is so in spite of the fact that the DP commission of inquiry set up to examine the reasons why DP had lost in April 1962 elections found, among other reasons that it was because DP had ignored women[35]. The Uganda People's Congress (UPC) another major political party by then had not aired any better. In 1970, president Obote announced that parliamentary elections were scheduled to take place the following year and women under the umbrella organization of the National Council of Women (NCW) prepared to participate in these elections. At their annual general meeting that year, NCW invited Felix Onama, the Secretary General of the UPC to speak to them about the fourth coming elections. The women requested Onama to assure them of UPC'S support in speech-writing transformation and campaigning tactics. "Since they were starters in this type of activity". To this request Onama replied that it would be discriminatory to give women special aids to ensure their election because this action would emphasize the fact that they were women and de-emphasize their political competence [36]. The dictatorial era of Idi Amin (1971-1979) purely and simply considered women to be sexual objects and often treated them with outright hostility. Amin's total dismissal of women as a political people was endorsed in 1973 when the military government banned all women's organizations in Uganda. However, when the NRM took over government power, the situation changed in favour of women. For instance, women were given seats in the NRC - the "interim" legislature and in the Constituent Assembly and a close look at their participation in the RC and C.A is tackled in the following two subsections respectively[37].

### CONCLUSION

A female Ugandan's life is more difficult than for her male counterparts. She works longer hours, has more economic responsibilities, and has additional health risks because of child bearing. One would however, be justified to assert that the 1995 Constitution is a step forward as far as guaranteeing of women's rights is concerned. This is evidenced in the Constitutional provisions which guarantee equal rights for all before the law, equal rights in marriage, during marriage and at its dissolution, equal dignity of person with men, to mention but a few, as the previous chapters have discussed. This article suggests that in order for women to fully realize their Constitutional rights as provided for under the 1995 Constitution, they must be further supported by government. Government should as a priority streamline the formulation and implementation of policies which are gender oriented. In this regard, the Ministry of Gender and Community Development should spearhead this process by initiating and monitoring gender responsive policies in all government sectors and at districts. The Government has to embark on an extensive law reform programme to ensure that all existing laws are in consonance with the constitution as the previous discussion shows that most of the existing laws are clearly not in line with the Constitution.

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**CITE AS: Ingabire Dinah (2024). Examining the Socio-Economic and Political Rights of Women under the 1995 Constitution of the Republic of Uganda. RESEARCH INVENTION JOURNAL OF LAW, COMMUNICATION AND LANGUAGES 3(1):1-6**