



# Critical Analysis on the Effectiveness of Laws Governing the Social and Political Laws on Gender Equality in Uganda

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## ABSTRACT

The article analyses the effectiveness of laws governing the social and political laws on gender equality in Uganda. The article revealed that the Uganda's Ministry of Gender, Labour and Social Development has not prioritized the formulation of the National Action Plan, and as a result there is minimal supervision, monitoring and evaluation of the progress and impact of gender mainstreaming sector activities. The lack of finalized generic gender mainstreaming guidelines has made it difficult to implement gender mainstreaming and as such gender inequalities in society continue to exist. In the absence of an engendered Government M&E framework, Government will continue to monitor its programmes with a gender-blind lens. The assessment tool used by Local Governments encourages evidence-based assessment that is open to manipulation rather than impact analysis of the programmes and projects on gender equality. MoGLSD has failed to utilize synergies with MoLG to develop interventions that will help Local Governments to improve their performance in the assessments with the aid of these reports. It is in this light that the article calls for the MoGLSD to prioritize the formulation of the National Action Plan for the implementation of the national policy on gender in its annual work plans and budgets. The Ministry should expedite the finalization of generic guidelines for Gender Mainstreaming as required by the Uganda Gender Policy.

**Keywords:** Action plan, gender equality, gender mainstreaming, political laws, social laws.

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## INTRODUCTION

In 1995, the country enacted a new Constitution that was significant in that the supreme law made far-reaching gender provisions that have also been replicated in other laws, such as the Local Government Act (LGA) of 1997. Since then, periodic presidential, parliamentary and local government elections have been held every five years with women's participation in this area guaranteed by the law through quotas [1]. After many years of political freeze under the political system where people contested in elections to public offices as individuals, political parties were eventually set free in a referendum held in 2000. The mismatch between Uganda's pro-gender equality legal and policy framework, on one hand, and the persistence of gender-based inequalities, on the other, calls for a deeper evaluation of the effectiveness of existing frameworks to establish what is working, why and how the gaps can be addressed [2]. However, such reflection is still lacking as interventions by state and non-state actors focus more on developing new policies and programmes and less on assessing how existing ones are faring. Hence, the Gender Equality Project (GEP)'s aim of examining the effectiveness of gender equality laws and policies in addressing gender inequality. Overall, the GEP sought to conduct research to inform improvement in gender equality laws and policies [3]. The mapping exercise particularly sought to examine the effectiveness of the local and international regulations for gender equality in Uganda. Specifically, this involved documenting existing gender equality laws and policies in Uganda; providing an analysis of these laws to generate evidence about what is working and the gaps that can be improved; identifying gaps in the existing legal/policy framework; and providing recommendations on necessary improvements [4]. The Government of Uganda is committed to gender equality and the empowerment of women to promote socio-economic transformation. Uganda is a signatory to various international commitments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Platform of Action [5], and subscribes fully to the third MDG of promoting gender equality and empowering women. These and other commitments are domesticated through Uganda's Constitution, which guarantees equality between women and men, and includes affirmative action measures to increase women's role in decision-making and participation in the development process [6].

Moreover, the Uganda Gender Policy provides a framework for gender responsive development. These policies and frameworks have resulted in some modest success and the country is on track to achieve some of the key MDG targets. Cislaghi and Heise [7] define "gender issues, negative attitudes, mind-set, cultural practices and perception" as a key binding constraint to socio-economic development in Uganda. Through this Plan, the challenge of women's decision-making at the household level, which is exacerbated by high levels of gender-based violence, will be addressed. It is noted that 59% of ever-married women aged 15 to 49 have experienced some form of physical and/or sexual violence [8]. However, some progress has been made. Notably, the ratio of girls to boys has reached 1 for primary education and recent increases in the ratio for tertiary education mean that this indicator is on track to reach parity by 2015. Progress has also been made at secondary levels of education, where the ratio stood at 0.84 in 2009 compared to 0.79 in 2000, although this is insufficient if this indicator is to be attained [9]. The affirmative action of additional points to female applicants who wished to gain entry to university resulted in an increase in tertiary enrolment for girls, particularly in 2004. The Constitution of the Republic of Uganda, 1995 (as amended) [6], guarantees equality of all persons under the law in all spheres of political, social and cultural life and the enjoyment of equal protection by the law in all aspects. Gender Mainstreaming is a government framework initiative for redressing gender imbalances that MoGLSD is mandated to spearhead and coordinate in all sectors. Uganda's policies on affirmative action have steadily increased the share of women who take part in political decision-making at all levels of society. The share of women in the national Parliament has thus increased from 18% in 2000 to 30% in the current 8th Parliament a remarkable increase, yet still short of fulfilling the gender parity principle established in the African Union's Solemn Declaration on Gender Equality in Africa [8]. Through the National Development Plan, government recognizes that critical gender inequalities remain, the outcomes of which contribute towards stalling progress on many MDGs and overall national development. Many of these gender inequalities are magnified in post conflict areas of the north. The Plan also emphasizes that levels of sexual and gender-based violence are unacceptably high in Uganda, with 40% of women compared to 11% of men having experienced sexual violence in their lifetime [10]. Moreover, access to justice for victims of violence is considered extremely weak, as are prevention and treatment services. While Uganda has made tremendous progress in the area of gender equality, there are challenges in many areas. Despite the enactment of the Domestic Violence Act [11], gender-based violence perpetuated against women and girls is still rife estimated at over 60 percent by various studies. Such violence appears to be socially accepted and accompanied by a culture of impunity. Maternal mortality is still amongst the highest in the region and the division of labour in the household still burdens women rather than men. These issues necessitated the present article that analyses the effectiveness of laws governing the social and political laws on gender equality in Uganda.

#### **Legal frameworks on gender equality in Uganda**

##### **The Constitution of the Republic of Uganda of 1995**

The constitution Uganda has a very progressive and gender-sensitive constitution, which provides for the mainstreaming of gender in many sectors (social, cultural, economic, political and many more). The Uganda Constitution is rated as the most comprehensive legal instrument and it provides for several clauses to address gender inequality [12]. There is also the affirmative action in place to correct the social, cultural and economic mistakes made in the past. Specifically, it provides for gender mainstreaming, the protection of women's rights and the promotion of gender equality. As a result, there have been several pronouncements and gender machinery developed for the promotion of gender equality. The constitution guarantees gender equality through the National Objectives of State Policy. The "Objective recognizes the significant role that women play in society. Gender is mainstreamed throughout the Constitution and within chapters related to the Protection of Human Rights, Land and Environment, and Institution of Traditional or Cultural Leaders [13]. These chapters contain provisions that are directly related to women's equal right to land and that specifically outlaw customs that are against the dignity of women or that undermine their status. The Article 14 states that the Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. In its second clause, it states that: "If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void" [12]. The Article confirms the equal status of all citizens under the law and prohibits discrimination on a number of grounds, including sex. The Article safeguards the allegiance and privileges accorded to traditional and cultural leader which under the Constitution are not regarded as a discriminatory practice prohibited under the Article but only insofar as the custom or practice, usage or tradition relating to a traditional or cultural leader does not detract from the rights of any person as guaranteed by this Constitution [12]. In March 2001, a Constitutional Review Commission of 18 members was appointed. Land issues were included in the agenda of the Commission. Gender sensitive policies and laws enacted The Uganda Government has enacted several good and well-articulated gender sensitive laws and policies. Several legislative Proposals have been drafted to address gaps in the law, with the prominent ones including, among others, the Prohibition of Female Genital Mutilation Act, the Domestic Violence Act, and the Prevention of Trafficking in Persons Act. The government also has a very good National Gender

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Policy to guide gender mainstreaming in the different sectors of government [14]. From this, several sectors have also developed their own gender policies to guide gender mainstreaming in their work. For example, the Gender and Equity Compliance Certificate of Gender and Equity for MDAs, issued by the Ministry of Finance, Planning and Economic Development (MoFPED) upon the advice of the Equal Opportunities Commission (EOC), requires that any MDA seeking appropriation of the National Budget meets the minimum requirements of gender and equality.

#### **The National Action Plan on Women of 1999**

The obligation to eliminate discrimination against women set out under Article of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [15] is reinforced under the Beijing Platform for Action and the African Regional Platform for Action. On these bases, the Government designed and adopted a National Action Plan on Women in December 1999. The goal of this plan is to achieve equal opportunities for women by empowering them to participate in and benefit from social, economic and political development [16].

#### **The National Gender Policy of 1997, revised in 2007**

The government launched the National Gender Policy (NGP) in 1997, which introduced gender mainstreaming into national development policy. Within this policy<sup>21</sup>, the Land Sector Strategic Plan (LSSP) recognized women's unequal status throughout the country regarding land rights and reinforced NGP policy direction. The 2007 policy aims to reduce gender inequalities, to increase knowledge and understanding of human rights among men and women, to improve women's participation in decision-making in administrative and political processes [17].

Land Sector Strategic Plan 2001-2011, final draft issued in November 2001. As to common ownership and inheritance, it states that "further legal amendment is desired to provide for joint/common ownership of family land by spouses, as has been recommended through domestic relations legislation and amendment of the Land Act. There is also need to amend the law on inheritance to eliminate discrimination. The land sector recognizes that strengthening women's land rights in law and in practice is a key strategy for achieving the objectives and purpose of the LSSP, and will work to mainstream gender in its activities as well as making targeted interventions to improve women's land rights [18]. The process of negotiations on the Land Act ensured that the debate on women's land rights moved into the public domain and achieved concrete gains in the Act. As a result, in 2005, the Act [19] which requires spouses to give consent before any transactions on land was amended by broadening the definition of spousal land and preventing a spouse's objection to its sale from lapsing. However, the lack of a clause regarding co-ownership/joint titling between husband and wife in the text of the Law is considered a missed opportunity to guarantee women's equal access to land. A large civil society movement, which included Action Aid International Uganda (AAIU) and Uganda Land Alliance (ULA), negotiated for its installation in the text of the Law before it was passed. This became known as the lost clause. The Land Act [19] partly incorporates the affirmative action provisions that are laid down in the Constitution. The Uganda Land Commission, which holds and manages land in Uganda vested in or acquired by the Government, must have a female member among the four provided for by the Land Act. The District Land Board, established in each district to hold and allocate land in the district, must have one-third of its members be women. For each parish, division or town, a Land Committee is established with a chairperson and three other members. Land Committees assist the District Land Boards in an advisory and facilitating capacity. In addition, they safeguard the rights in land of women, children and persons with disabilities. At least one of the members of a Land Committee must be a woman. Women's land rights are dependent on their relationship to a male, usually a father, husband, brother or son. It is mainly through marriage that women acquire user's rights on land as their husbands allocate plots of land for cultivation to produce mainly food for home consumption [20]. Five types of marriages are recognized: civil, Christian, Hindu, Muslim and customary. Different laws apply to marriage between persons of specific religions: Marriage must be monogamous if contracted under the Marriage Act [21]. Customary marriages are most common and are based on the payment of a dowry or "bride price", a tradition that contributes to the view held by many men that "women are their property" and which is often carried out without the consent of the girl. Since the girl's parents receive the bride price, cases of girls being sold by the parents are frequent. If a woman under a customary marriage wants divorce, she will need to pay back the dowry. While both men and women can apply for divorce, women may apply for divorce only if the husband is adulterous and abandons her for more than two years or commits other specified acts. Men, however, need only to accuse the woman of adultery in order to file for divorce. The ease with which a man can divorce his wife results in less tenure security [22].

#### **The Marriage and Divorce Act**

The main purpose of the Bill is to bring the legislation into compliance with the Article of the Constitution which provides that men and women are entitled to equal rights in matters relating to marriage and its dissolution, and with Uganda's international obligations. the Act governs monogamous marriages, including Christian, Civil, Hindu and Bahai marriages polygamous marriages (customary marriages). The Article prohibits

the customary practice of widow inheritance unless both the man and the widow give their free consent [23]. The Article in polygamous marriages, matrimonial property acquired by the husband and the first wife are owned in common by the husband and the first wife but all subsequent wives take interest only in the husband's share of property. According to the Article, spouses are not allowed to petition for divorce before the expiry of two years from the date of the marriage. The Act aims to provide some legal protection to couples who cohabit without being married, which represent the majority of couples in Uganda [23].

### **The challenges in implanting gender equality laws and policies in Uganda**

#### **A mismatch between policy and practice**

There was a reported mismatch between policy and practice. For example, -several policies and laws on sexual offences have been revised but are still on the shelf. They have never been implemented[24]. Even where they could have been implemented, such as the Penal Code Amendment Act relating to sexual offences, the Local Councils (LCs) are supposed to provide shelters for victims but they are inadequately facilitated. There are laws against trafficking, yet trafficking continues unabated; in the guise of foreign employment companies manned by powerful individuals. There is no mechanism to follow up on the cases.

#### **Political interference and inadequate political will**

There is a lot of politicization of issues, which fails whatever good laws the Uganda Law Reform Commission (ULRC) may come up with. ULRC only proposes laws but cannot force Cabinet to make them. They stop at justifying them. While it is the duty of Parliament to enact laws, the MPs do not seem to be aware that it is their duty to follow up on government priorities. They instead personalise themselves in the law. They do not appreciate the law and constitutional standards. This has had the tendency to affect the quality of laws and slacken the speed of their enactment and implementation. Moreover, the political-cultural confluence makes it difficult for politicians to advocate the implementation of certain laws [25]. Strong patriarchal cultures make it difficult for certain practices to be combatted. For example, politicians from areas where FGM is practised have often feared to advocate the abolition of the act as provided by the law for fear of losing socio-political capital.

#### **Weak monitoring and evaluation (M&E) mechanisms**

While we have many laws and policies in place, who monitors and evaluates them? The actors at district/local-government level who should do so are not funded and supported. The only gender budget funded is to enable them to organise the International Women's Day, which is the least of their concerns. There is need to make the roles at lower levels functional [26]. The actors at those levels should be equipped with clear guidelines on how to implement gender equality laws and policies. There should be clear M&E tools, with indicators of progress in the implementation of gender-sensitive laws and policies patriarchy. Patriarchy is resilient, often changing face. The norms and traditional ways of almost all societies in Uganda are patriarchal, making it difficult to address negative cultural issues such as female genital cutting. There is slow attitudinal change, despite the use of politically correct language, compounded by lack of progressive equality laws in some sectors. People use the right language but have the wrong/negative attitude. Culture still upholds patriarchal tendencies. Women are still stereotyped as less competent. Regarding issues of HIV/AIDs, there is a high rate of HIV transmission by especially men who do not believe in testing owing to their patriarchal nature. Most men are not keen on seeking medical attention, so they rely on their partners, which puts them at dire risk of contracting diseases. If society remains rooted in patriarchy, the pro-gender laws cannot be properly implemented. There is limited knowledge and understanding of the available policies by the users. Some laws and policies are voluminous and challenging to understand. For example, the gender policy [4], which is supposed to guide gender mainstreaming in other sectors, is not clearly understood by some of the policy implementers themselves and some duty bearers working in the relevant sectors. There is also lack of knowledge about how to use the international treaties, which would have guided local implementation. The policies should have detailed guidelines to be followed by the enforcers and the wider communities that they affect. Though policies are supposed to be largely appreciated by the implementers, many implementers in Uganda's local government system have challenges appreciating and implementing them. The people that these policies affect do not even know that the policies exist in the first place. Having the community sensitised about the laws and policies will facilitate their implementation [27].

#### **Weak enforcement structures**

The institutions themselves have no capacity to implement the laws and policies. It is one thing to make a policy or law and it is another to embrace it. The institutions in Uganda are not as forthright. The policies that we have on paper do not actually have grounds or means through which they can be implemented. They lack staff who are adequately trained in gender analysis to champion gender mainstreaming. They lack specific individuals or bodies to follow up on behalf of the government to achieve better outcomes. Meanwhile, some of those employed as gender focal point persons still need to be sensitized regarding these laws. For example, in one department, the gender focal point person was a male who had a negative attitude towards gender issues, causing a stagnation of mainstreaming of gender in departmental processes[28]. This, therefore, calls for a gender-specific coordination team composed of gender focal persons from every department to coordinate issues of gender mainstreaming. In

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addition, total commitment by law enforcers is lacking. For example, politicians are not willing to take on FGM for reasons of self-preservation. Most gender focal people are contract staff and full-time staff are often transferred to other sectors, so there is lack of continuity. That is why community sensitization and education is key for them to demand the implementation of gender equality legislation [29]. Apart from staffing, the entities supposed to implement gender-sensitive legislation are also poorly funded. For example, Police Family Units, follow-up and capacity building of implementing structures are not properly facilitated. Besides the facilitation, it is not clear to the implementers how they should enforce the rules and penalize violators, except in cases where there are adverse acts of a criminal nature, such as sexual abuse.

#### **Duplication of roles**

Policies would be easily implemented if different sectors and departments were willing to partner and not duplicate what is already being done. For example with regard to the police and related sectors, while it is easy to enforce laws in collaboration, it is more common to find two or more government entities competing instead of complementing one another to achieve similar results [30]. As a result, a great deal of resources is spent in the different sectors to achieve the same outputs.

#### **Limited political will**

The government is quick to adopt public policies which are not controversial but avoids those that seek to challenge unequal gender power relations [31]. The government agrees with the policies in principle but not in practice. The principle of indivisibility of rights where some rights cannot be subscribed to is still a challenge. Some government officials think that it is not yet time for women to be liberated, leading to failure to implement the available policies. Consequently, legislating on gender equality and failing to commit resources- human and financial - has steadily emerged as a new form of resistance to gender equality.

#### **Tokenism**

Women are only taken into consideration as a token to account for their inclusion. For example, of all the 25 directorates of the Uganda Police only the Criminal Investigation Department (CIID) has a lady director, yet there are very many competent women in the force.

#### **Poverty and inequality**

25% of Ugandans are in wage employment where taxes are levied on their income, and only 20% are engaged in non-agriculture enterprises. Majority of Ugandans in the labour force, therefore, work in the agriculture sector [32]. Any shocks to the agriculture sector, therefore, means more Ugandans majority of whom are women engaged in subsistence farming to earn a livelihood will likely slide into poverty.

#### **Harmful Cultural practices**

Prevalence of child marriage in Uganda is 40 %. Prevalence of child marriages is highest in northern Uganda estimated at 59%, followed by Western region (58%), Eastern region (52%), East-central (52%), West Nile (50%), Central (41%), Southwest (37%), and lowest in Kampala (21%). 25 percent of adolescents aged 15-19 have begun childbearing and 19 percent of women aged 15-19 have given birth. Adolescent childbearing is more common in rural than in urban areas (27 versus 19 percent, respectively), 56% of women age 15 to 29 have experienced physical violence since the age of 15, and 28 percent of women have experienced sexual violence in their lifetime. That means that more than half of Ugandan women have been abused at home, at school, or at work [33]. The estimated prevalence of FGM/C among girls and women between 15-49 years of age is 1.4%. Up to 134,000 women are affected [34].

#### **CONCLUSION**

The Ministry of Gender, Labour and Social Development has not prioritized the formulation of the National Action Plan, and as a result there is minimal supervision, monitoring and evaluation of the progress and impact of gender mainstreaming sector activities. The lack of finalized generic gender mainstreaming guidelines has made it difficult to implement gender mainstreaming and as such gender inequalities in society continue to exist. In the absence of an engendered Government M&E framework, Government will continue to monitor its programmes with a gender-blind lens. The assessment tool used by Local Governments encourages evidence-based assessment that is open to manipulation rather than impact analysis of the programmes and projects on gender equality. MoGLSD has failed to utilize synergies with MoLG to develop interventions that will help Local Governments to improve their performance in the assessments with the aid of these reports.

#### **RECOMMENDATIONS**

The article calls for the MoGLSD to prioritize the formulation of the National Action Plan for the implementation of the national policy on gender in its annual work plans and budgets. The Ministry should expedite the finalization of generic guidelines for Gender Mainstreaming as required by the Uganda Gender Policy. MoGLSD should prioritize the development of gender indicators for incorporation in National Integrated Monitoring and Evaluation Strategy. The tool should be amended to reflect measurable indicators, for instance, the tool should specify a percentage of the district budget that should be allocated to gender and thus discourage tokenism. MoGLSD should use Local Government assessment reports to set up strategies to ensure that assessment findings

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are used to develop a follow-up mechanism to address the identified gaps. Local Government officers and assessors should be trained, sensitised and mentored to enhance the appreciation of gender mainstreaming. More so, gender equality should be mentioned in the preamble of the law or in the definition of the context of the policy or programme as well as in the legal framework referring to it. Gender equality should be also be remarked in the objective(s) so as to set a starting point and encourage the commitment of all stakeholders involved in the development of the initiative. Similarly, actions to reduce imbalances and inequalities and measures to promote gender equality should be included among the different aspects of the law, policy or programme.

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