


CRITICAL ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK ON
THE ENFORCEMENT OF WOMEN'S RIGHTS IN UGANDA

By

NUWAGABA PATIENCE

LLB/36590/113/DU

A DESSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE AWARD OF THE DEGREE FOR THE BACHELOR OF LAWS OF
KAMPALA INTERNATIONAL UNIVERSITY


Nyaketha N. MARY
HOD L&S
01/07/2015

JUNE, 2015

DECLARATION

I declare that this dissertation is the work of **NUWAGABA PATIENCE** alone, except where due acknowledgement is made in the text. It does not include materials for which any other University degree or diploma has been awarded.

Signature:.....*Patience*.....

Date:.....*20/6/015*.....

APPROVAL BY SUPERVISOR

I certify that I have supervised and read this study and that in my opinion; it conforms to the acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelor of Laws of Kampala International University,

Name of Supervisor: Rose Sengendo

Signature: 

Date: 26/06/2019

ACKNOWLEDGEMENT

I would like to thank all those who contributed and or provided materials and guidance that enabled me come up with this work in such a short time, especially my supervisor.

I thank my colleges most especially Akineze Augustine, Byaruhanga Enock ,Apili Fiona ,Nabatte Sarah,Kagoya Aisha And All my classmates for the support you have given to me towards the accomplishment of my Research work as well as my academic journey.

DEDICATION

This research is dedicated to my parents Mr. and Mrs. **Muramira George**, my sponsor Hon. **Micheal Muwanda** for the financial support, throughout my course .I would not have achieved my goal without you in my life. Iam thankful for your belief in my Academic accomplishment

ABSTRACT

Women have for a long period of time been seen as a weaker sex in society, the reason their rights have violated and men mode to dominate the society , they are given better opportunities because of the fact that they are superior.

The researcher looked at women`s rights, trying to highlight the weaknesses of the various laws, both international and domestic, more specifically relating to their implementation in Uganda

The researcher used the quantitative method of data collection which basically involved the published , unpublished as well as decided and undecided cases.

The researcher looked at the institutions responsible for implementing women rights as mandated in different, statutes and as much are carrying out their responsibilities.

After the viewing of all the above, it was foundation that most of the laws are providing for women rights but their implementation is to a lesser extent as most women rights but their implementation is to a lesser extent as most women rights continue to be violated .

The researcher also made observations and help policy makes and the community in the implementation of women rights in Uganda.

LIST OF CASES

Best Kemigisha V. Mabel Komuntale Civil Suit No. 5 of 1998

Rex V Amkeyo (1914) KLR 14

I v I(1971) EA, 237

Julius Rwabinumi Vs Hope Bahimbisomwe Civil appeal No 30 of 2007

Law and Advocacy For Women In Uganda Case No 13 of 2005/5 Of 2006 (2007)

LIST OF STATUTES

African Charter on Human and Peoples' Rights, 1981
International Convention Civil and Political Rights, 1966
The Constitution of the republic of Uganda, 1995 as amended
The Constitutional (Amendment) Act, 2005
The Local Government Act Cap 243 as amended
The National Youth Council Act Cap 319 as amended
The Parliamentary Elections Act 2005 as amended
Universal Declaration of Human Rights, 1948
The succession Act Cap 162
The Land Act Cap 227 as amended
The Mortgage Act, 2009
The National Women's Council Act, Cap 318
The Domestic Violence Act, 2009

TABLE OF CONTENTS

APPROVAL BY SUPERVISOR.....	iii
ACKNOWLEDGEMENT	iv
DEDICATION	v
ABSTRACT.....	vi
LIST OF CASES.....	vii
LIST OF STATUTES	viii
LIST OF ACRONYMS.....	xii
CHAPTER ONE	1
1.1 INTRODUCTION.....	1
1.2 BACKGROUND OF THE STUDY.	1
1.3 STATEMENT OF THE PROBLEM	2
1.4 OBJECTIVE OF THE STUDY	2
1.4.1GENERAL OBJECTIVES.....	2
1.4.2SPECIFIC OBJECTIVES	3
1.5 SYNOPSIS.....	3
1.6SCOPE OF THE STUDY	3
1.7METHODOLOGY.....	4
1.8LITERATURE REVIEW.....	4
1.9 CONCLUSION.....	7

CHAPTER TWO	8
AN OVERVIEW OF THE INTERNATIONAL AND DOMESTIC INSTITUTIONAL	8
2.0 INTRODUCTION.....	8
2.1.0 THE INSTITUTIONAL FRAMEWORK IN UGANDA ON WOMEN'S RIGHTS.....	8
2.1.1 THE UGANDA HUMAN RIGHTS COMMISSION.....	8
2.1.2 THE EQUAL OPPORTUNITIES COMMISSION	9
2.1.3 THE UGANDA LAW REFORM COMMISSION.....	11
2.1.4 THE NON-GOVERNMENTAL ORGANISATIONS (NGOs).....	12
2.2.0 THE INSTITUTIONAL FRAMEWORK AT THE INTERNATIONAL LEVEL ON	12
2.2.1.0 THE UNITED NATIONS ORGANISATIONS.	12
2.2.1.1 UNITED NATIONS WOMEN.....	12
2.2.1.2 THE BEIJING PLATFORM FOR ACTION.....	13
2.2.1.3 COMMISSION ON THE STATUS OF WOMEN	13
2.2.1.4 THE UNIVERSAL PERIODICAL REVIEW ON HUMAN RIGHTS.....	14
2.2.1.5 THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING OF	14
2.2.1.6 WOMEN AND MILLENNIUM DEVELOPMENT GOALS.	14
2.2.2.0 THE AFRICAN UNION AND ITS ROLE IN THE IMPLEMENTATION OF	16
2.2.2.1 MAIN REGIONAL (AU) INSTITUTIONAL FRAMEWORK	16
2.2.2.2 THE WOMEN AND GENDER DEVELOPMENT	17
2.2.2.3 THE AFRICAN UNION WOMEN'S COMMITTEE (AUWC)	17
2.3 CONCLUSION	17

CHAPTER THREE.....	18
3.0 INTRODUCTION.....	18
3.1 THE OWNERSHIP AND DIVISION OF PROPERTY	18
3.2 DECISION MAKING IN BOTH POLITICAL AND ECONOMIC ASPECTS	22
3.3 WOMEN TREATMENT IN MARRIAGE.....	24
3.4 ACCESSING BASIC SERVICES: EDUCATION AND HEALTH FOR WOMEN AND	26
3.4.1 GIRLS' EDUCATION.....	26
3.4.2 WOMEN'S RIGHT TO ACCESS BASIC HEALTH SERVICES.....	27
3.5 CONCLUSION	28
CHAPTER FOUR.....	30
OBSERVATIONS AND CONCLUSIONS.....	30
OBSERVATIONS	30
Conclusion	32
CHAPTER FIVE.....	33
RECOMMENDATIONS	33
BIBLIOGRAPHY	37

LIST OF ACRONYMS

ICCPR- International Convention on Civil and Political Rights

ACHPR- African Charter on Human and Peoples' Rights

NRM- National Resistance Movement

UDHR- Universal Declaration of Human Rights

UN- United Nations

UHRC-Uganda Human Rights Commission

NGO- Non Governmental Organisations

CEDAW- Convention on all Forms of Discrimination against Women

AU- African Union

FIDA-International Federation of Women lawyers

HIV/ AIDS - Human Immuno Virus/Acquired Immune Deficiency Syndrome

EOC- Equal Opportunities Commission

ULRC- Ugandan Law Reform Commission

UWONET- Uganda Women's Network

FIDH-U -International Federation for Human Rights-Uganda

UNO- United Nations Organisations

CSW- Commission of the Status of Women

ECOSOC- Economic and Social Council,

APRM-African Peer Review Mechanism

WGDD - Women and Gender Development Directorate

AUWC- African Union Women's Committee

AWCP- African Union to transform the African Women Committee in Peace and Development

LC- Local Council

MDGs- Millennium Development Goals

GDP- Gross Domestic Product

CHAPTER ONE

1.1 INTRODUCTION

Before colonialism¹ cultural practices and customs prevailed in Africa and Uganda in particular, whereby each society embarked on its cultural practices. In most of the practices, women were seen as a weaker sex whereby the society was controlled by the patrianeal customary system². Women were taken to be like property where they would be sold and bought at a man's will. In the case of *Rex V Ankeyo*,³ Chief Justice Hamilton while considering a marriage relationship under the native customs of Kenya, he stated that *---the woman was not a free contracting person in the relationship and was treated more in the form of a chattel---*. This situation in Kenya was not different from many African countries including Uganda.

The coming of the colonialism in Africa and particularly in Uganda meant that English laws became applicable in Uganda. For example the Married women's Act of England⁴ was applied in the east African case of *I v I*⁵ where it was inter alia stated that women's property Act was a statute of general application and therefore applicable in Uganda.

Promotion and protection of women rights in Uganda has been improving in the recent times and this research is intended to show and advance the understanding of women's rights in relation to ownership of property, decision making and critically examine the implementation of various provisions of various instruments on women rights as provided by the different laws.

1.2 BACKGROUND OF THE STUDY.

In the pre-colonial era, there was little respect for human rights, the individual used to be placed within the societal units and these included the family, villages, clans and respect was given to such units more than the individual human being. During this period women were seen as property of their husbands and given little or no respect.⁶

With the coming of colonialism laws applicable in England became applicable in Uganda by virtue of the orders in council and ordinances⁷. As a result of such, women rights began to be

¹Colonialism is the establishment exploitation maintenance and expansion of colony in one territory by a political power from another territory

² This is system where the men are taken to be in control of the women in most fears of life

³ (1914)KLR 14

⁴ 1882

⁵ (1971) EA, 237

⁶R V Ankeyo(1914)KLR 14

⁷ 1902 East African Order in Council

realized although these were always in conflict with the customary laws which were discriminative against women. This was seen in the case of *Rex VAmkeyo*⁸ where the issue was whether a married woman married under customary law in Kenya would be regarded as a wife. This case recognized that there was a right of free consent of a woman that ought to be respected. The customary laws remained valid subject to the repugnancy test⁹.

Various laws have been enacted for the respect and to promote women's rights such as the Universal Declaration of Human Rights¹⁰ in which women and girls rights were declared part of the universal rights. All forms of violation of rights of women, and exploitation, were declared incompatible with human dignity.

The Constitution of the republic of Uganda, 1995 being the supreme law and other existing laws provide for the protection of women's rights,¹¹ the implementation of such laws by the different institutions and the society at large is what remains to be discussed.

1.3 STATEMENT OF THE PROBLEM

The status of women since pre-colonial period is inferior to that of men. As such many laws have been put in place to provide for protection of women rights and these are provided in different laws. However the problem is that although these laws are in place the situation of women rights has not improved to the much expected levels. The provisions are not implemented or enforced and as such this research is intended to establish whether or not the different institutions and society at large have done their part in implementing the various legal instruments providing for the rights of women in Uganda.

1.4 OBJECTIVE OF THE STUDY

The objectives of the study have been broken down into general and specific objectives.

1.4.1 GENERAL OBJECTIVES

The general objective of the study is to critically analyze the legal and institutional framework on women's rights in Uganda

⁸ 1917 KLR, 14

⁹ Section 8 of the Judicature Act

¹⁰ 1948

¹¹ Article 21 of the Constitution

1.4.2 SPECIFIC OBJECTIVES

The specific objectives of the study will include the following;

To evaluate the role played by various institutions in promotion of the women's rights in Uganda.

To analyze the implementation of women's rights in Uganda as provided in various legal instruments by different institutions charged with responsibility to promote and protect those rights.

To make observations and conclusions on promotion and protection of women rights in Uganda.

To provide the way forward where inadequacies have been observed during the study.

1.5 SYNOPSIS

The study is covered in five chapters which will build upon each other to help the researcher address the objectives of the research on critical analysis of the legal and institutional framework on the enforcement of women's rights in Uganda.

Chapter one is the proposal. it sets the background for the rest of the chapters by providing the basis of women rights in Uganda. It includes sub titles like background of the study, statement of the problem, objectives of the study, methodology, scope of the study and literature review.

Chapter two will cover the discussion of the various institutions and their roles in the promotion and protection of women rights in Uganda.

Chapter three will deal with the implementation of the promotion and protection of women rights in Uganda as provided under various national and international legal instruments.

Chapter four will cover observations and conclusions on the promotion and protection of women rights in Uganda.

Chapter five will highlight the recommendations/the way forward for the full realization and enjoyment of women rights in Uganda.

1.6 SCOPE OF THE STUDY

This research will cover the period from pre-colonial era up to date. This is basically an analysis of how rights have been respected since that period to date. Of course so much have changed

mostly with the coming of colonialism and such this research intended to show how these rights have been implemented from then to-date.

The research will also be geographically confined to the territory of Uganda with some comparisons with regional and international jurisdictions in the course of carrying out this study.

1.7 METHODOLOGY

The researcher will use the qualitative method of research where secondary data will be analyzed. These include reviewing the available literature. The researcher will basically use the written articles on the internet, textbooks, journals, pamphlets, responses, statutes/Acts of parliament as well as judicial decisions pertaining issues in relation to the problem under investigation in order to get the necessary information.

1.8 LITERATURE REVIEW

This concept has been discussed by a number of writers in different articles and these include: **Sylvia Tamale**¹² in an article "*gender and affirmative action in post 1995 Uganda. A new dispensation or business as usual by*". The writer discussed affirmative action in details and gender discrimination. In discussing the affirmative action, she used the analogy of the running race. If a race has started between two runners and one is shackled, simply removing the chains and allowing the runners to continue is insufficient because one runner has had a head start. The race must be started again or more realistically, the previous chained runner must be moved up to an equal position. In this she meant that the discrimination against women has a historical and societal context whereby even during the colonial times women's subordination was most especially in the formal education was upheld. This was seen where the missionary schools not only provided disproportionate opportunities to males but also offered gender circular. White men's education prepared them for work in civil service, law, politics and business, whereas education to women aimed towards molding good house makers¹³.

The writer also pointed at the different articles of the constitution¹⁴ that provided for women rights and pointed out that the implementation of such provisions as far dodged by different

¹² J. Oloka-Onyango: Constitutionalism in Africa: Creating opportunities, facing challenges, 2001

¹³ Staudt, 1981 and Tamale & Oloka-Onyango, 1997

¹⁴ Article 21 of the Constitution of Uganda.

institutions. The writer went ahead to evaluate the impact of affirmative action in the areas of politics¹⁵ and education.¹⁶

In considering the above article, it can be observed that the writer was basically interested in a affirmative action and how it can be used as tool to bring the equality of both men and women. She was also interested in highlighting the articles of the constitution of the republic of Uganda, 1995 that provide for women rights and not considering international legal instruments on women right in Uganda. This research is intended to discuss the extent to which women's rights as provided by international instruments have been implemented by the different institutions responsible to promote and protect the women rights in Uganda.

Asiimwe Jacqueline¹⁷ in an article "*making women's land rights a reality in Uganda*" a paper presented in advocacy for ownership by spouses. The paper highlighted some of the stories of women in many rural areas of Uganda and the discrimination that exists against women in so far as ownership of land is concerned. Asiimwe further commented that women contribute to the income of the home through cultivating cash crops which their husbands sell and get money, keeping the home itself and the upbringing of the children which also encourages men to make more money. Due to the customary practices women have continued to live in an environment where they are denied most of the opportunities like the right to own property.

The researcher observes that the writer was basically interested in the customary practices as major cause to discrimination of women, but this study will show that there other factors like participation of women's in politics and rights other spheres of life that have affected the promotion and protection of women rights in Uganda.

The International Federation of Women lawyers (FIDA) on women rights in Uganda in a report titled "*gaps between policy and practice*".¹⁸ The report considered the different laws and institutions relating to women's rights and how far they have implemented the laws for example, the constitutional court, the role of the human rights commission, equal opportunities commission. It was established that there is still a lot of gaps in as far as implementation of the

¹⁵ NRM is the First Post-Colonial Government in Uganda to Take Productive Measures to Include Women In Politics.

¹⁶ Onyango above, n 12

¹⁷ Property rights and gender equality in Uganda.

¹⁸ February 2012/No 582a

policies is concerned for instance of the constitution¹⁹ provides that men and women are entitled to equal rights in matters relating to marriage and its dissolution and with Uganda's international obligations. However in most rural areas women are still chased away from their matrimonial homes and are left without any property or homes and yet they have been married for many years which shows that this article is not being implemented. Among the recommendations, it was pointed out that there is need to strengthen efforts to eliminate harmful practices and stereotypes that exist against women among other things and adopt laws to increase protection of women rights.

The researcher observes that this report was done in 2011 and four years have passed, with indications showing that there have been great changes in the situation of women rights in Uganda, for instance; the operation of the equal opportunities commission which is now active compared to that time and hence it's against this background that the researcher want to evaluate how these rights are implemented since then considering both domestic and international laws and make recommendations where necessary.

Benjamin J. Odoki,²⁰ states---The people wanted a comprehensive Bill of Rights based on international standards of human rights. They agreed that the Bill of Rights should protect the rights of women, children, Persons with Disabilities and other disadvantaged groups in society to alleviate their plight. There was a consensus that the Bill of Rights should be justiciable in courts of law and should provide efficient mechanisms for monitoring and enforcing human rights, for instance, through a Human Rights Commission.

The researcher observes that this was analysis of the process of Constitutional making and therefore does not capture the realities concerned with the implementation of the provisions enshrined in the Constitution providing for promotion and protection of women rights in Uganda. The researcher will provide in this study that whereas there were much hopes in this direction towards promotion and protection of women rights at the time of Constituent Assembly Commission, a lot appears to be missing, which is the objective of this study to identify the gaps and provide recommendations for filling those gaps.

¹⁹ Art 31 of the constitution of the republic of Uganda. 1995.

²⁰ The search for National Consensus: The making of the 1995 constitution of Uganda. 2005, p. 182

Kivutha Kibwana,²¹ observed that, gender politicking has the potential to dismantle the benefits that accrue to men *qua* men in society due to their subordination of the female gender. When men deny women their right to participate in politics, this is not simply because they need women in the kitchen or to rear offspring. Men know that the gender politicking will free women from men shackles just as slaves and serfs were liberated pursuant to their political struggle. Gender politicking, *inter alia*, can potentially strengthen the women's movement and thus the role of women in politics and society.

The researcher observes that Kivutha was describing the situation of women participation in the politics of Kenya whose political dynamics and history are completely different from those of Uganda and the researcher will indicate that the challenges to women participation in politics of Uganda is not the men's fear of women freedom but it's about other factors like inadequate implementation of legal provisions enshrined in the Constitution and other legal instruments both local and national.

Charmaine Pereira²² observes that whilst the formal presence of women rights in constitutional arrangements is a necessary precondition to the realization of women rights, it is clearly not sufficient to bring about that realization. For this to happen, other processes-located in the terrain between social relations and cultural dynamics-are involved. At least areas can be identified which women's organisations have been active: consciousness raising and the transformation of 'culture'. These domains tend to into one another as opposed to being mutually exclusive.

The research observes that the views are based on the Nigerian society which differs from the Ugandan environment and the researcher in this study will show the unique circumstances in Uganda that affect the promotion and protection of women's rights.

1.9 CONCLUSION

It's clear that different scholars have written and done work in relation to women rights, but the researcher observes that the conditions, time of these researches and countries where the studies were undertaken completely differ from the prevailing situation in Uganda today. Therefore the researcher observes that there is need for a fresh study to be carried out in Uganda to establish milestones reached at and challenges affecting the plight of women rights in Uganda.

²¹ Women, Politics and Gender Politicking: Questions from Kenya: Constitutionalism in Africa. Creating opportunities, facing challenges, 2001, p.198

²² Culture, Gender and Constitutional Restructuring in Nigeria: Constitutionalism in Africa, Creating opportunities, facing challenges, 2001, p. 164

CHAPTER TWO

AN OVERVIEW OF THE INTERNATIONAL AND DOMESTIC INSTITUTIONAL FRAMEWORK ON WOMEN'S RIGHTS.

2.0 INTRODUCTION

The researcher in this chapter discusses the international and domestic institution charged with the promotion and protection of women's rights in Uganda and their contributions in implementation of the various provisions as highlighted in various legal instruments both local and international.

2.1.0 THE INSTITUTIONAL FRAMEWORK IN UGANDA ON WOMEN'S RIGHTS

2.1.1 THE UGANDA HUMAN RIGHTS COMMISSION

This is provided under article 51;²³ the Ugandan Human Rights Commission (UHRC) was established under the Uganda Human Rights Commission Act²⁴. It has wide ranging powers, including quasi-judicial and investigative powers and a record of independence from executive power. The UHRC contributed to the government submission to the CEDAW committee in 2010 and is now involved in the dissemination and implementation of the concluding observations. It played an advisory role in a scheduled mid-term review of CEDAW implementation in January 2012.

The UHRC is known for its strong visibility in human rights protection that would easily be known by people from different social economic classes a clear mandate and decentralized approach with officers and functioning tribunals receiving human rights related complaints in different geographical locations of the country.

However it is important to note that a great majority of complaints 70% received by UHRC is lodged by men and only 30% is logged by women²⁵ out of these 30%, 75% focus on maintenance of children and the rights of children. These cases are largely treated through mediation in the presence of all the family members. Issues such as school fees related to the right of education, and child support for cloth, housing and feeding are dealt with. Out of

²³ The Constitution of the republic of Uganda, 1995

²⁴ Cap 24, Laws of Uganda

²⁵ Challenges in the implementation of women's human rights. Field perspectives. Conference paper presented by Sarah Forti, COW I A/S.

remaining 25% only 30% relate to domestic violence, right to property claimed by women. Out of these 30% only 50% relate to sexual harassment.²⁶

The number of women's human rights complaints brought forward before the tribunal of UHRC specially mandated to solve human rights related issues is extremely low compared with the seriousness of the problematic at hand.

The number of women's human rights cases brought before UHRC in regional offices is even lower and some nonexistent it is particularly surprising to find only two women human rights abuse related complaints were brought before the UHRC office in Gulu when it is well known that abuses against women in northern Uganda are rampant and are amounting to tens of thousands.²⁷

Further UHRC officials noted that domestic violence complaints were generally in fear of speaking about HIV/ AIDS as this would result in an increase of verbal and physical abuse from their spouse and jeopardizing their personal security and that of their children²⁸.

It can be said that the commission has been dealing to an unrealistically limited extent on key women's rights issues in Uganda. Without the mandate to punish the perpetrators of violence, battery and assaults the UHRC is effectively limited as to what it can do, beyond denouncing the problem a loud and clear and recognizing it as violation of the fundamental human rights and dignity enshrined in the constitution.

The Commission is constrained in its action in favour of women's rights, as a result of several factors: a very broad mandate; limited funding; staffing constraints; as well as the prevalence of discriminatory traditions and customs, which require long-term human rights education and awareness-raising to reform.

2.1.2 THE EQUAL OPPORTUNITIES COMMISSION

During the process of making policies, programmes and various interventions for the populace it was realised that there were inequalities, marginalization and discrimination. Therefore, it was deemed necessary to create a body that would help people realise their rights and potential to improve their quality of life, challenge and stop persistent discrimination, deprivation and

²⁶ Ibid

²⁷ Ibid

²⁸ Annual Report of Uganda Human Rights Commission of 2014.

exclusion and promote equality and social justice for all. Hence, the establishment of the Equal Opportunities Commission (EOC).²⁹ The Equal Opportunities Commission (EOC) was set up to give effect to the state's constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, color, ethnic origin, tribe, birth, creed, or religion, health status, social or economic standing, political opinion or disability³⁰. The EOC in brief is to enforce compliance with legislation on equal opportunities, promote affirmative action and encourage inclusion into government programmes by all on the basis of equal opportunities.³¹

It is composed of five members representing different constituencies (youth, elderly, persons with disabilities, women).³² The commission has a wide mandate and range of powers, including: conducting investigations, on its own initiative or on receipt of a complaint; educational campaigns; research; issuing recommendations; contributing to legislative processes; preparing and publishing guidelines for implementation of equal opportunities; monitoring compliance with international instruments; settling disputes; and hearing and determining complaints.³³

The National Equal Opportunities Policy³⁴ and the National Action Plan for the National Equal Opportunities Policy³⁵ were the precursors to the Equal Opportunities Commission which was set up in 2010 thus fulfilling the Constitutional and Statutory provisions.

The mandate of the Commission is wide and the constituency is large. It was therefore necessary to start by finding out whether the people know their right to equal opportunities and how much of the population are aware of the interventions which have so far been put in place by the government. It was also important to find out what the effect of those interventions has been.

The EOC has set itself a number of priorities, such as the translation of its mandate in simple terms for dissemination; a mapping of the Ugandan legal framework in terms of equal opportunities and non-discrimination; research and data collection and the setting up of a complaint mechanism (for which it was in the process of writing rules of procedure). This

²⁹ Article 32(3,4 and 5), the Constitution of the republic of Uganda, 1995

³⁰ Article 21 (2) of the Constitution of the republic of Uganda, 1995

³¹ S.14 of the Equal Opportunities Act, 2007, Laws of Uganda

³² S.5 ibid

³³ S.14(2)ibid

³⁴ 2006

³⁵ 2009-2013

mechanism would have the power to settle issues through mediation or settlement, order fines or even sentences of imprisonment in instances within the mandate of the Commission.³⁶

However, at the end of 2011, the Commission lacked staff, with only the five commissioners and a couple of support staff. In order to develop the complaint mechanism, the EOC intends to rely on existing government staff at regional level, including in particular, community service officers and it will share office space with the UHRC. In the meantime the EOC has sent the first complaints that it has received to the UHRC.

In the short-term, the EOC needs to pursue a realistic set of concrete objectives, leaving other areas of its mandate for medium and longer term. In this regard, the June 2009 Action plan is obsolete and requires updating. The overlapping mandates of the UHRC (in existence for over 13 years) and the EOC, call for very close cooperation, coordination, as well as shared resources (including office space outside Kampala).

2.1.3 THE UGANDA LAW REFORM COMMISSION

The Responsibility for eliminating law that discriminate against women is shared by the Ugandan Law Reform Commission (ULRC), Parliament and the executive branch of government.

The ULRC is a central institution in the planning, preparation and making of new laws depending on prevailing changes that have affected existing laws.³⁷ Established as a department of the Ministry of Justice in 1975, the Commission became an autonomous statutory body in 1990³⁸ and in 1995 became a constitutional institution.³⁹ The Commission has a wide-ranging mandate to review and update laws “in line with social, cultural and economic needs and values of the People of Uganda”.⁴⁰ Although an autonomous body, it depends on the Attorney General’s consent or initiative for the conduct of most of its mandate.⁴¹ It plays a specific role in relation to implementing CEDAW recommendations on discriminatory legislation, and keeps track of the Ugandan government initiatives in this regard.⁴²

³⁶ The National Equal Opportunities Policy, 2006, pps. 27-31

³⁷ S.10 of the Uganda Law Reform Commission Act, Cap 25

³⁸ S.2 of Cap 25, Laws of Uganda

³⁹ Article 248 of the Constitution of the republic of Uganda, 1995

⁴⁰ S.10 and 11 of Cap 25, Laws of Uganda

⁴¹ S.30-32 of Cap 25, Laws of Uganda

⁴² S.10 of Cap 25, Laws of Uganda

2.1.4 THE NON-GOVERNMENTAL ORGANISATIONS (NGOs)

NGOs have taken a lead role in advocating for legal reform to increase protection for women's rights. In Uganda there are NGOs that offer specialized aid for women suffering from domestic violence, rape and often infected with HIV/AIDS. Some of these organizations have carried out research in poor suburbs of Kampala. These organizations include Uganda Women's Network (UWONET), International Federation for Human Rights-Uganda (FIDH-U), Centre for Domestic Violence and Prevention and found that 2/3 of their total cases on domestic violence include sex without consent, women are unwilling to expose their domestic problems, to external formal institutions and in particular to commend whether they had become infected with HIV/AIDS as a result of sexual violence.⁴³

2.2.0 THE INSTITUTIONAL FRAMEWORK AT THE INTERNATIONAL LEVEL ON WOMEN RIGHTS

2.2.1.0 THE UNITED NATIONS ORGANISATIONS.

The United Nations (UN) is an intergovernmental organization established on 24th October 1945, to promote international co-operation.⁴⁴

The United Nations has different institutions basically established to promote and protect women's rights in as far as empowerment and protection of women is concerned and these are:

2.2.1.1 UNITED NATIONS WOMEN

In July 2010, the UN General Assembly unanimously voted to create a UN single body tasked with accelerating progress in achieving gender and women empowerment⁴⁵ and thus created UN women as, the United Nations Entity for Gender Equality and the Empowerment of women.

UN women was an amalgamation of four previously distinct parts of the United Nations system which focused exclusively on gender equality and women's empowerment. These distinct parts include; division advancement of women, UN international research and training institute for the advancement of women, office of the Special Advisor of Gender Issues and advancement of women, United Nations development fund for women.

The main role of UN women is; to support inter-government bodies such as the commission on the formulation of policies, global standards and norms; to help countries to implement these

⁴³ Information park on the domestic violence, Bill, UWONET, citing surveys and conducted in 2006 and 2008

⁴⁴ United Nations Organisations Charter, 1945

⁴⁵ www.un.org/en/global/issues/women, accessed on 28.04.2014

standards, to provide suitable technical and financial support to these countries; to hold the UN system accountable for its own commitments on gender equality including regular monitoring of system.

2.2.1.2 THE BEIJING PLATFORM FOR ACTION

The Beijing declaration and the Beijing Platform Action were agreed on at the fourth world conference on women in 1995 from a global agenda for women's empowerment⁴⁶. The declaration and the platform for action are the international community's most comprehensive policy document for empowerment of women and gender equality. The Beijing platform for Action and Convention on the Elimination of all forms of Discrimination against Women (CEDEAW) operate together to achieve equality and eliminate discrimination against women.

The 12 areas of concern in the Beijing platform for action are women and poverty, education and training of women. Women and health violence against women, women and the armed conflict, women and the economy, women in power and decision working, institutional mechanism for advancement of women, women and the media, women and the environment as well the girl child.

2.2.1.3 COMMISSION ON THE STATUS OF WOMEN

The commission on the status of women is a functional commission established in 1946 with a mandate to prepare recommendations on promoting women's rights in political, economic, civil, social and educational fields. Commission of the status of women (CSW) is an inter-governmental body that forms part of the UN economic and social council, (ECOSOC) CSW consists of 45 members elected for a period of four years by the ECOSOC. On the 58th session of the United Nations commission on the status of women on 10th to 21st March 2014 the focus of the session was challenges and achievements on the implementation of millennium development goals for women and girls.⁴⁷

In this session, different conclusions were agreed upon which among others include: the commission reaffirms that the conversion on the elimination of all forms of discrimination against women and the conversion on the rights of the child and the optional protocols there to as well as international legal framework and a comprehensive set of measures for the elimination

⁴⁶ www.un.org/womenwatch/daw/beijing/platform, accessed on May 29, 2015

⁴⁷ Agreed Conclusions on the 58th Session of the Commission on the Status of Women

and the prevention of all forms of discrimination and violence against women and girls in the production of gender equality and the empowerment of women. The most recent session of the commission on the status of women is the 59th session which took place between 9th - 20th March 2015. Its main focus was implementing the Beijing platform for action.

It is therefore important to note that with these sessions always organized by the commission on the status of women, the women rights and empowerment are highly promoted.

2.2.1.4 THE UNIVERSAL PERIODICAL REVIEW ON HUMAN RIGHTS

The universal periodic review was created by the UN General Assembly¹⁸ which established the council itself. This is undertaken by the United Nations Human Rights Council. It involves review of the Human Rights Records of all UN Member States once every four years.

Among other countries, Australia appeared before the United Nations human rights council's working group on the universal periodic review (UPR) on 27 January 2001. The Australian Human Rights Commission made a submission for Australia's first UPR review which also addressed women's human rights in Australia. Universal periodic review is also another measure used by the United Nations to monitor the implementation of women's rights.

2.2.1.5 THE UNITED NATIONS SPECIAL RAPPORTEUR ON TRAFFICKING OF PERSONS, ESPECIALLY WOMEN AND CHILDREN.

The special reporter receives information on specific allegations to governments asking for clarification. In 2011, a total of 645 communications were sent to governments in 131 countries. 72% of these were joint communication of two or more mandate holders.

2.2.1.6 WOMEN AND MILLENNIUM DEVELOPMENT GOALS.

At the millennium summit in September 2000, 189 nations agreed a vision for the future or the United Nations millennium declaration each millennium development goal directly related to women's rights. Societies where women are not afforded equal rights with men can never sustainably achieve development. The third millennium development goal so to promote gender equality and empower women. The goal is to be achieved through the elimination of gender disparity on primary and secondary education.

¹⁸ Resolution 60/251 of 15th March 2006

Considering the above mechanisms therefore the United Nations has greatly promoted these women's right;

All states have clear obligation under international laws to enact, implement and monitor legislation addressing elimination of all forms of discrimination against women⁴⁹.

However significant gaps stills remains⁵⁰ it submitted that over time the treaty bodies established to monitor implementation of the international human rights treaties have increasingly taken up state parties' obligation to address violence against women.⁵¹

As states obligation to address violence against women including through legislation have been clarified, different stake holders have developed model laws, strategies and measures taken to facilitate and encourage action.

In 1996 the special Rapporteur on violence against women, its cause's consequence presented a framework for model legislation on domestic violence⁵².

Legislation should protect women without discrimination as to color languages religion political or other opinions, national or social origin, property marital statues, sexual orientation HIV/ AIDS status migrant or refugees status age or disability⁵³.

Prosecutors play a critical role in the criminal justice response to violence against women and girls. In December 2010 the United Nations General assembly adopted the updated model strategies and practical measures on the Eliminations of violence against Women and girls in field of crime prevention and criminal justice which provides a comprehensive policy framework to assist state in developing responses and carrying out actions to eliminate violence against women within the criminal justice systems.

⁴⁹ For further information regarding legislation enacted see United Nation Secretary General's Data Base on violence against women.

⁵⁰ FIDH's gaps between policy and practice

⁵¹ Committee on the elimination on discrimination against women.

⁵² General Assembly Resolution No.65 / 228.

⁵³ Handbook for legislation against women by United Nations.

2.2.2.0 THE AFRICAN UNION AND ITS ROLE IN THE IMPLEMENTATION OF WOMEN'S RIGHTS

2.2.2.1 MAIN REGIONAL (AU) INSTITUTIONAL FRAMEWORK

The African Union is composed of 53 member states and even regional economic communities (REC) representing Africa's sub-regions, as well as a key programmes and instruments such as NEPAD and APRM all of which reflect commitment of Africa's leaders to gender equality.

At a sub-regional level, the AU has provided guidance to the RECs in complementing and harmonizing global and regional frameworks by integrating and translating various resolutions and commitments into their policies and plans of action.

The RECs have already started implementing some coordination and harmonization mechanisms, which will certainly help eliminate discrepancies; and the establishment of priority areas of focus will assist in producing results.

But bolder action is still needed. The RECs are expected to monitor the implementation of integration-related policies and programmes, to mobilize the necessary resources to support such policies and programmes, and to report on progress.

At the national level, the AU is involved in legislative reviews and amendment process. At a regional level, the AU has encouraged its member states to adopt, ratify, implement, and domesticate treaties, conventions and decisions, has established as consensus on gender equality issues among member states, and plays an important role in supporting research on gender issues and collecting regional data and statistics.

The African union summit in Maputo Mozambique adopted protocol to the African charter on human and people's rights of women in Africa.⁵⁴ The protocol will enter in force after it has been ratified by fifteen states. The posting contains two press releases on this important step to establish a legal framework for protection of women's rights throughout the continent, and a report from a gathering of women's organisations before the African summit noting the needed steps to make women's participation in the African union more effective.

⁵⁴ 11th July 2003

2.2.2.2 THE WOMEN AND GENDER DEVELOPMENT

The Women and Gender Development Directorate was established in 2002 in the office of the chairperson of the African Union Commission. It hosts programmes on women's empowerment and has an overall mandate for ensuring that capacity is built for all AU organisations, the RECs and member states to understand gender and develop skills for achieving mainstreaming targets by 2020 in order to close the existing gender gaps and deliver the promise of equality for all African women.

In this regard, the WGDD has organized several courses. It initiated a gender audit in 2006 (supported by the United Nations Fund for Women UNIFEM) which indicated that although some progress has been made, the African Union Commission needs to do more to achieve the African Union's commitments and objectives on gender equality and women's empowerment.

The WGDD organized a workshop in 2011 for AU member states that had not reported on the SDGEA with the objective of informing them of the process and harmonizing gender policies. The Directorate faces financial challenges and has been unable to implement gender mainstreaming in other policy areas beyond the AU Commission itself. The WGDD presents funding projections to the Assembly every year; nevertheless, funds are not always enough.

2.2.2.3 THE AFRICAN UNION WOMEN'S COMMITTEE (AUWC)

The African Union Women's Committee (AUWC) was established in 2003 following a decision by the executive council of the African Union to transform the African Women Committee in Peace and Development (AWCP) into the AUWC and advisory body to the chairperson on gender and development.

Among its functions is to watch over progress towards gender equality on the continent, working with government and civil society within the framework of the SDEEA and the women's rights protocol.

2.3 CONCLUSION

There are various institutions at national, regional and international level that are mandated to promote and protect women rights in Uganda. The institutions highlighted above have been instrumental in the promotion and protection of women rights and as such their effectiveness in implementation of provision in various legal instruments at national, regional and international level providing for women rights are to be discussed in chapter four under observations and conclusions as discovered by the researcher.

CHAPTER THREE

3.0 INTRODUCTION

This chapter discusses the application of various provisions of the law in promotion and protection of women rights in Uganda. The chapter expounds how the different laws have been implemented by different state agencies and non-state agencies to achieve their purpose of protecting and promoting of women rights in Uganda.

3.1 THE OWNERSHIP AND DIVISION OF PROPERTY

Article 26⁵⁵ provides that every person has a right to own property either individually or in association with others. Article 26 (2)⁵⁶ is to the effect that no person shall be compulsorily deprived of property or interest in or right over property of any description except where its necessary for public use and is made under the law which provide for it.

Article 21⁵⁷ provides that all persons are equal before and under the law in all spheres of political, social, economic and cultural life and every other respect and shall enjoy equal protection of the law. Article 15⁵⁸ provides that there shall be equality between men and women before the law to administer property and access justice when need arises.

In the case of *Best Kemigisha V. Mabel Komuntale*.⁵⁹ It was held that the Toro's queen mother Best Kemigisha is entitled to administer the estate of her late husband Omukama Olimi III.

The aspect of cultural values is provided for in the African charter on Human and people's Rights which is to the effect that: the state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions⁶⁰ and individuals shall have a duty to preserve and strengthen positive African cultural values in relation with other members of the society.⁶¹ This therefore shows that the charter is aware of the cultural practices that are discriminatory and would undermine the rights of women.

⁵⁵ The Constitution of the republic of Uganda, 1995

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ The convention on the elimination of all forms of Discrimination against Women

⁵⁹ Civil Suit No. 5 of 1998

⁶⁰ Article 18(3)

⁶¹ Article 29(7)

In regard to ownership of property by women there is the concept of succession which is governed by the Succession Act Cap 162.

The succession Act defines a legal heir to mean the living relative nearest in degree to intestate kindred of same degree a lineal descendant shall be preferred to a collateral relative and a paternal ancestor shall be preferred to a maternal ancestor⁶².

Section 26⁶³ is to the effect that the residential holding normally occupied by a person dying interstate prior to his or her as a principal residential holding, including the house chattels there in shall be held by his or her principal representative upon trust for his or her legal heir subject to the rights of occupation and terms and conditions set out in the second schedule to the Act. Its construction hence presents a wife as mere occupant of the residential holding as the representative holds the residential holding as a trust for the legal heir.

The above sections however should be read with article 21 and 274⁶⁴ which provide that all persons are equal before and under the law in all spheres of political, social and cultural life and in every other respect and shall enjoy equal protection of the law and all existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution respectively.

The applicability of the succession Act after 1995 was discussed in the case of *Julius Rwabinumi Vs Hope Bahimbisomwe*⁶⁵. In this case one of the grounds of appeal were that learned trial judge erred in law and fact when he ordered that parties share various properties when the respondent never provided any contribution towards acquisition of the same. It was held that regardless of contribution matrimonial property is joint property between husband and wife and should be shared equally on divorce, irrespective of who paid for what and how much was paid that if a property belongs to man at the point exchanging vows in church that property becomes joint property.

Section 29⁶⁶ is to the effect that no wife or child of an intestate occupying a residential holding under section 26⁶⁷ shall be required to bring that occupation into account in assessing a share

⁶² Section 2n 1 and 2 of the succession Act

⁶³ The Succession Act Cap 162

⁶⁴ The Constitution of the republic of Uganda, 1995

⁶⁵ Civil appeal no 30 of 2007

⁶⁶ The Succession Act Cap 162

⁶⁷ Ibid

in the property of an intestate to which the wife or child may be entitled under section 27⁶⁸. The wife is seen as having no saying any matter concerning property holding as her self, she is regarded as forming part of the property more to this even today we see wives of intestate being deprived of such property by their husbands relatives.

Section 44⁶⁹ is the effect that on the death of the father of an infant where no guardian has been appointed by the will of the father or if the guardian appointed by will of the father is dead the order of priority of the guardian is a male is preferred to a female

The succession act is also to the effect that the estate of a male person dying interstate excepting his principal residential holding shall be divided among the different classes of people out of which the wives shall receive 15% there of. This is worse in situations where it's a polygamous marriage since this 15% has to be divided among all the deceased's wives irrespective of how many they are⁷⁰.

These provisions are very unfair mostly to women who controls the estate since these women are married at different times and as such have also contributed differently to this estate, women in polygamous marriages are thus at a disadvantage say there are 15 wives each will get 1% share which is almost nothing at all from the husbands estate. Still the division will be unfair where amongst the wives there is one with more children than the others. The percentage given to her will not be able take care of her children.

Important to note on the above section is that it's very discriminatory in the sense that it does not provide for matters relating to inheritance or distribution of estates of deceased women, or females. Hence a woman is seen not to own property on her own.

To the delight of women in Uganda the above sections were declared unconstitutional in the case of *LAW AND ADVOCACY FOR WOMEN IN UGANDA*⁷¹. In this case the petitioner was an association that advocates for women rights in Uganda and filed two separate petitions that were later consolidated. The petitioners sought to challenge the constitutionality of sections 2n(1) and (2), 12, 15, 23, 26, 29, 43 and 44 of the succession act as well as 5, 154 of the penal code act. The petitioner alleged that the above impugned provisions are contrary to articles 20, 21, 24, 26,

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Section 27 of the succession Act

⁷¹ Case no 13 of 2005/5 of 2006 (2007)

31, 33 and 44 of the constitution. In this case it was held that the petitioner is entitled to the following declarations that s. 154 of the penal code act, s. 2n(1) (1), 14, 15, 26, 27, 29, 43, 44 of the succession act and rules 1, 18, 9 of the second schedule of the same act are inconsistent with and contravene articles 21 (1) (2) (3) 31 33(6) of the constitution and they are null and void.

Article 14⁷² requires state parties take into account particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families including their work in non-monetized sectors of the economy and to take appropriate action to ensure rural women protection by this convention. However, this has not implemented fully as most women are chased from their families and at the time of separation they leave without any property. This is increased by the fact that most couples are not legally married and thus they do not follow the right procedure through legal separation and divorce. As such most women miserably leave their families that they have greatly contributed leaving them homeless and property less⁷³.

Section 27⁷⁴ is to the effect that any decision taken in respect of land held under customary tenure, whether it is in respect of land held individually or communally shall be in accordance with the customs, traditions and practices of the community considered except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33,34 and 35 of the constitution shall be null and void.

Section 39⁷⁵ is to the effect that no person shall sell exchanges transfer, pledge, mortgagor, lease any land or enter into any contract in respect of land which the person ordinarily resides with his or her spouse from which they derive substance except with the prior written consent of the spouse.

⁷² The Convention on the Elimination of all forms of Discrimination Against Women

⁷³ Tibatemwa Lillian: Property rights and the gender question in East Africa journal of peace and human rights.

⁷⁴ The Land Act Cap 227

⁷⁵ Ibid

3.2 DECISION MAKING IN BOTH POLITICAL AND ECONOMIC ASPECTS

Article 32⁷⁶ of the constitution provides that the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them since women are among the marginalized groups it has made women to be presented in parliament in significant numbers and as such Uganda among the top 20 countries in terms of women's parliamentary representation⁷⁷.

Article 78 (b)⁷⁸ is to the effect that there shall be a woman representative in each and every district, this is implemented as we see a great number of women in parliament and even there are those who are not women representative but as full members of parliament for example Hon. Namboze and this has increased their involvement in decision making on issues affecting the whole country as a whole. However even when this has been achieved, in some communities women are not allowed to be involved in politics and this is seen where men respect men's views and dispensing those of women.

Article 80⁷⁹ lists a minimum of formal education of advanced level standard or its equivalent as one of the prerequisite for a potential parliamentarian. Imposing such a qualification for eligibility to stand for a parliamentary seat benefits only the elites. To this end this provision at the highest level of decision making institutions has proved to be class centric largely benefiting a minority of the educated elites group of Ugandan women, by eliminating almost 90% of the female population from the status of members of parliament in this way the policy perpetrates the characteristics of politics which has excluded the voices of the largest section of the peasant population.

Affirmative action has played a vital role in improving women's political representation and changing public images in Uganda. First elected under the Parliamentary affirmative action scheme, Ms. Amongi-Ongom later won competitive elections standing against men candidates. She says that the program has contributed to changed perspective on the capacities and skills of women in public office. 'Women are often more concerned with social issues faced by the population, and people recognize that'.

⁷⁶The Constitution of the republic of Uganda, 1995

⁷⁷Inter-parliamentary union of women in national parliaments.

⁷⁸The Constitution of the republic of Uganda, 1995

⁷⁹Ibid

Article 59⁸⁰ guarantees all citizens of Uganda a right to vote and through such women have got involved in the decision making of the country and most specifically on issues affecting them/

Article 33 (4)⁸¹ to the effect that women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

However such a statement does not guarantee women a just and fair share in political economic and social life of our society up to present some cultural aspects still hinder women from the enjoyment of such an article. for example up to now women don't participate in big positions in the country since the society looks at them as a weaker sex supposed to carry out weaker roles

However, Ms Amongi-Ongom⁸² considers that the system needs to be reformed. This view was shared by several other respondents who considered that affirmative action provisions may have had the adverse effect of deterring women from running alongside men. As a result, says Ms Amongi-Ongom, "women are getting stuck in affirmative action seats and the number of women in directly elected seats is decreasing". She suggests that affirmative action should be a temporary measure designed to allow women to be elected initially, then they should be trained to run for competitive elections, thereby freeing affirmative action seats for newcomers.

An evaluation of the affirmative action program should foster implementation in other areas such as managerial positions in public service and the judiciary, where the numbers of women in top level positions remain very low. It should also contribute to designing measures to better accompany affirmative action programs and strengthen their rights. As a result of such, involvement of women in the decision making of the policies that affect them has increased.

The Local Government Act of 1997⁸³, provides for women's quota at all levels to one third. This has improved the situation somewhat as it guaranteed the necessary critical mass for women to substantively influence council deliberations and policies. However there are certain loopholes in the law that seriously limit LC women's participations in decision making these include; the fear to contest for these posts due to inferiority complex in their places as a result of the long

⁸⁰ Ibid

⁸¹ Ibid

⁸² MsAmongi-Ongom is a former deputy registrar for family affairs at the high court in Kampala

⁸³ Section 117

traditional and cultural discriminations and more so this participation does not extend to the executive committees of sub counties and districts where real power lies⁸⁴.

Article 40⁸⁵ is to the effect that parliament shall enact laws to ensure equal payment for equal work with out discrimination and ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as enumeration or public holidays. In employment perspective both men and women are given equal opportunities at work and discrimination is highly condemned this is seen where women have occupied big offices for instance the executive director of Kampala Capital City Authority, Jennifer Musisi who is highly involved in the decision making of the Authority. This is in line with section 6⁸⁶ which discourages discrimination on basis of gender, sex, origin and hence through such work places women are involved in decision making of matters affecting them and the country in general.

3.3 WOMEN TREATMENT IN MARRIAGE

The Domestic Violence Act was assented to on 11 November 2009. It originated from the initially comprehensive “Domestic Relations Bill” which was split during the parliamentary examination process. The adoption of this law was a big step forward. The law recognizes domestic violence in all its forms (physical, economic, emotional, verbal and psychological). It categorically states that there is no excuse for domestic violence and that there can be no ‘consent’ to acts of domestic violence. The latter provision was deemed to be particularly critical given the cultural acceptance of domestic violence as part of the ‘ordinary wear and tear of marriage’⁸⁷. It is unheard of in most communities in Uganda to report a husband to the police over domestic violence issues, let alone for the courts to issue and enforce restraining orders, particularly in rural areas where property generally belongs to men and is usually located within his family compound.

The Domestic Violence Act provides a wide range of remedies to victims, including criminal sanctions, civil remedies and compensatory provisions. The implementation system relies on dual jurisdiction by both the local authorities (Local Council Courts) and the formal courts, as formal Courts are often too remote from populations in rural areas. The local councils are also

⁸⁴ J. Oloka-Onyango: Constitutionalism in Africa: Creating opportunities, facing challenges, 2001, p. 219

⁸⁵ The Constitution of the republic of Uganda, 1995

⁸⁶ The Employment Act, 2006

⁸⁷ Information Park on the domestic violence bill UWONET 2009.

given powers to act to prevent acts of violence. Under the Act⁸⁸, both local councils and the formal justice system are required to act swiftly and to hear cases within 48 hours. The Act also entitles the formal judges to issue protection orders to victims.

Progress towards implementation of this relatively new legislation has been slowed down by the lack of provisions geared towards implementation of the Act. Firstly, at time of writing, the adoption of implementing regulations (certificate of implementation) was still pending, and therefore the Act was not fully in force, although assurances were given to the FIDH/FHRI delegation that work towards drafting these regulations was in progress. The Act was also passed without a budget attached to it, and consequently there is currently no strategy for implementation of the provisions for example on shelters, or necessary training and awareness raising schemes. This, say NGOs, made the passage of the law possible at the time; addressing budgetary implications at the same time would have most certainly killed the Bill. The budgetary implications are now being identified and plans are being made to present them for adoption in the coming year.

Some progress towards implementation had been achieved by government and NGOs working in partnership with the central police authorities, which has led to the establishment of a dedicated Women and Children Unit within the Uganda Police Force. Although these efforts have been primarily conducted at national/ central level, they are aimed at achieving increased police capacity on the ground. The willingness of the central police authorities to take measures to increase its response capacity to domestic violence was seen as a very positive step.

Some significant pre-existing difficulties preventing access to justice for women who have been subjected to violence have not been addressed, such as the costs associated with the complaint process, including in particular medical examination fees⁸⁹. A medical certificate is admitted as evidence only through the Police Form 3 (PF3), which is not readily accessible to all victims.

In addition, the PF3 form has yet to be amended to reflect provisions under the new law. The Local Council Mandate also requires amendment so that it can fulfill new responsibilities under the law.

⁸⁸ The Local Council Courts Act, 2006

⁸⁹ Amnesty International I can't afford Justice Violent against women in Uganda. Un checked and unpublished in 2010.

3.4 ACCESSING BASIC SERVICES: EDUCATION AND HEALTH FOR WOMEN AND GIRLS IN UGANDA

3.4.1 GIRLS' EDUCATION

Article 30⁹⁰ states that all persons have a right to education, however given the illiteracy levels of women in Uganda, affirmative action within the formal education sector is crucial if they are to enjoy their human and constitutional rights

In July 1990 government through the Makerere University council formally introduced an affirmative action policy for female applicants to state funded tertiary institutions. This was to be done by weighing the grade points of each female applicant with an additional 1.5 points. The sole purpose of this policy was to increase formal enrollment in various courses at Makerere university and other public institutions of higher learning.⁹¹

Uganda has a Universal Primary education policy (UPE) which makes primary education free. The mid-point review report (2010) on Uganda's efforts towards attaining the MDGs considered that the country is on track to meet its 2015 targets on universal primary education. Uganda was also assessed as being on track to eliminate gender disparity in primary and secondary education levels by 2015. Gender gaps in enrolment in primary school narrowed significantly, with the proportion of girls in primary school rising to 49.8 percent in 2006 from 44.2 percent in 1990.⁹²

However, this success hides tremendously high and increasing drop-out rates, as well as poor access to schools in most rural areas. Primary education enrolment rates do not reflect the gender disparity in completion rates both at primary and secondary levels. Retention in primary school is low and reveals gender disparity, with 53 per cent of boys and 42 percent of girls completing primary school. Enrolment figures for secondary education show gender disparities, with only one third of girls continuing in school to the age of 18, compared to 50% of boys.⁹³ A common feeling in rural communities in Uganda is that schools are simply unavailable: they are generally too distant from their communities. In rural areas, girls often start schooling at an already advanced age. Risks associated with walking long distances to school are one of the factors

⁹⁰ The Constitution of the republic of Uganda, 1995

⁹¹ Onyango above, n 83, 2001, p.223

⁹² Women's rights in Uganda: gaps between policy and practice, 2012, p.19

⁹³ Uganda National development Plan, 2010/2011-2014/2015

preventing enrolment of girls at a young age. Girls enrolling later tend not to 'fit in' and are often at increased risk of sexual harassment and pregnancy.⁹⁴

3.4.2 WOMEN'S RIGHT TO ACCESS BASIC HEALTH SERVICES

Several measures have been taken recently aimed at improving maternal health (adoption of a Health Sector Strategic Plan and a Road-map for Reduction of Maternal and New-born Mortality and Morbidity). In November 2009 the government launched a campaign to promote family planning and the use of contraceptives among women, with the aim of reducing abortions and thereby reducing maternal mortality, although the campaign was silent on unsafe abortions.⁹⁵

The mid-point review report (2010) on Uganda's efforts towards attaining the MDGs considered that the country is far from reaching goals on reducing maternal mortality. In the last 15 years, there has not been any significant decline in maternal deaths. Only a slight reduction from 505 to 435 deaths per 100,000 live births has been registered, according to the results of the 2006 Uganda Demographic Health Survey conducted by the Uganda National Bureau of Statistics (UNBS). To meet its target under the MDGs, Uganda needs to reduce its mortality rate from 435 to 131 deaths per 100,000 live births by 2015.⁹⁶

In 2011, according to the Coalition to stop maternal mortality in Uganda, 16 women died everyday of preventable death in childbirth. Clandestine abortions are a major cause. The level of access to family planning services and contraception remain very low and the effects of the government campaign are yet to be seen on the ground. According to government data, unmet demand for family planning services was estimated at 41%, and the contraceptive prevalence rate was 24%, with 25% of adolescents being pregnant before age 19⁹⁷. The Uganda National Development Plan⁹⁸ also points to traditional harmful practices, such as early marriage, as partly responsible for the country's high maternal mortality rate. In October 2010, the CEDAW Committee stated its concern "at the very high number of teenage pregnancies [and] women's limited access to quality reproductive and sexual health services, especially in rural areas."

At the time of writing, almost daily accounts of suspected malpractice or other maternal mortality cases involving denial to basic services in childbirth were reported in the media. The

⁹⁴ Women's rights in Uganda, above n 90

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Uganda Development plan, page 56

⁹⁸ Uganda National Development plan 2010/2011-2014/2015

high profile and internationally reported constitutional case on maternal health has also helped galvanize attention on this issue. Specialized NGOs point at the poor governance of the health sector at district level (responsible for health centres) as a major cause for deficiencies.

Measures designed to improve basic health services delivery, including maternal health, are under-way according to the Ministry of Health. These efforts are designed to help health centres better administer and manage their stock of basic supplies, in reaction to widespread cases of expecting women being asked to pay for or provide themselves with basic supplies, such as plastic gloves, cotton, paper sheeting etc. In addition a reporting framework is being developed to monitor maternal and infant mortality, and increase accountability of all health workers.⁹⁹

One of the most challenging realities according to the Ministry of Health is to retain doctors in the public sector. The turn-over was very high among medical professionals, who often leave for more lucrative opportunities in the private sector. According to the Ministry, as of end 2011, only 56% of positions for medical doctors in public health facilities were filled.¹⁰⁰ With a budget below 10% of GDP (it has stagnated between 7 and 9% over the past few years), the Ministry of Health allocation falls far below the promised 15% of GDP.¹⁰¹

3.5 CONCLUSION

It can be observed from the above discussion, there have improvement in the promotion and protection of women rights in Uganda especially since 1995 after the promulgation of the Constitution of the republic of Uganda, 1995. Policies like the affirmative action in education, in electoral processes from local governments to the national assembly, appointment of women at the top of various government parastatals and in private sector like: MUSISI Jennifer the Executive Director of Kampala Capital City Authority, Justice Irene MULYAGONJA the Inspector General of Government, AKOL Rose, the head of Uganda Revenue Authority, KAGINA Allen as the head of the Uganda National Roads Authority, KONDE head of the Nation Television, NSIBIRWA head of marketing at the Vision Group to mention a few and the continued investments in reproductive health to reduce on maternal mortality rates in the country in general. However this has not been achieved without setbacks which still hover around the efforts to enhance the observation of women rights in Uganda like; inadequate funding to

⁹⁹ Women rights in Uganda, above n 93 at p. 20

¹⁰⁰ Ibid

¹⁰¹ The Abuja Declaration on Health, signed by Uganda, enjoins all signatory countries to commit 15% of their total budget to health.

implementing government agencies, corruption, social and cultural practices to mention but a few which have made the achievements in promotion of women rights take a slow pace most of the time.

CHAPTER FOUR

OBSERVATIONS AND CONCLUSIONS

This chapter deals with observations and conclusion on the current status on the protection and promotion of women rights in Uganda.

OBSERVATIONS

Ownership and Division of Property

Although the international instruments and the constitution of Uganda 1995 provides for protection of women rights , there is much to do for example the rural women who do not own property whatsoever .The property usually belongs to the males or relatives of their husbands. This is done in disregard of their non monetized work that they contribute to the development of their families.

In relation to land, still a few women own land as the land is at times owned culturally and yet culture is against ownership of land by women. It's taken that land belongs to the males since females always get married and hence cannot take this property to the families which they are married to. On the other hand its only the educated women or elite women that are able to own land and yet the elite comprises a little percentage in Uganda. since due to cultural practices ,most women are still not educated.

Decision making is both economic and political aspects .

In Uganda women are involved in into politics although not on the level of men .This is worsened by the concept of Affirmative Action which has made women to keep contesting for the post of only women representative in each district .This leaves men with an opportunity to occupy the other seats in parliament leaving women few in decision making of matters affecting them .

Also most women still face inferiority complex due to the traditional beliefs and as such a small number is able to contest on some of the positions with men and as a result they are not involved in decision making of matters affecting them.

Also important to note is that women are also ignorant of the Laws and their rights for example they are sexually harassed and they do not come out to make complaints to the legal agencies like police since they are not aware of the laws and even some people in these agencies do not believe in protection of women rights. Some women have looked at it as being tried at police station and hence ignorance of such rights and laws has increased violation of such rights.

On a good note however as far as economic aspects are concerned due to the increased number of women in parliament ,women influence the economic Decisions in the decision making of matters affecting them for stance when the Marriage and Divorce Bill was tabled in parliament it got a considerable number of support as compared to the past.

Implementation of the domestic Violence Act

It's important to note that domestic violence has escalated where by women are buttered and they fear to report to legal agencies for recourse for example men always sell the proceeds from the produce that women grow and they are not able to complain due to fear of being buttered by their husbands.

Domestic violence also involves men and of recent some women mistreat their husband mostly the educated women that get married to men that are not educated to their level .Although the domestic violence may not be physical , it's usually psychological for instance failure to give them food , all of which result into mistreatment.

Domestic violence also exists in children where by most children are mistreated by their parents in most cases where they are step children .These children are not given food , beaten all the time and as such they are tortured both physically and psychologically.

Accessing basic facilities like education and Health

In the education sector, there is a great improvement where by most girls are attaining education facilities on the same level with boys. More so with the 1.5 points given to girls joining public universities this has increased the number of girls that are educated. However although this being the case, there a number of girls who do not make it to university level and as such they a re not educated.

In the Health sector women are still facing difficulties most especially on the child mortality rate. most women die at births due to poor facilities in the hospital and even the girls who die as result of using crude methods when they get pregnant at an early Age.

Conclusion

In conclusion, although the 1995 constitution of the republic of Uganda and other international convention to which Uganda ratified give protection to women among other persons against the abuse of their rights. enforcement of those statutory provisions is difficult as they conflict on specific provisions towards women. Therefore women should be sensitized about their legal rights and obligations to enable them seek legal redress where they have been denied their rights. The key issues have to be discussed for example the ownership of property should be clear in the status in order to achieve the women rights guaranteed under the laws.

CHAPTER FIVE

RECOMMENDATIONS

It is noted that majority of women are illiterate and therefore not formally employed hence are not in position to be financially capable of acquiring property on their own.

Section 39 of the land Act should be reviewed in a way that it accords protection to the spouse to live on such land without any right to appeal when her consent has been denied to her by the husband. This is because where the men do not get this consent the wife and the children suffer when they do not have where to go and stay.

On the issue of division of marital property, courts should define what substantial contribution of women for her marital property constitutes. This will help women to claim and prove their claims on the property they have worked for and the principle of equity should be carried on by courts of law to help and encourage the women who have never gotten the chance of not even knowing that this right exists.

There should be a law that two persons in contemplation of a marriage or cohabitation with each other may make an agreement with respect to ownership of property by each cohabitee, property acquired during cohabitation and distribution of such property. This agreement should define the share of the property or any part of the property which each cohabitee is entitled on separation, termination of cohabitation.

Section 200 of the succession Act should specifically state who should apply for the letters of administration of a deceased estate. This will help to prevent the conflicts between the widow and her in-laws as to who should administer the estate. Further the requirements for seeking consent from the administrator general by who ever is applying for the letters of administration should be clearly provided for.

For instance this requirement was waived by the administrator generals Act in the case the widow is the one applying for letter of administration yet the High court of Uganda has made it mandatory for whoever is applying for letters of administration to obtain consent from the administrator General.

Further laws like the marriage Act, among others should clearly provide for how properly should be handled on marriage by amending the laws. This will held to prevent unjust claims by either party to marriage. Because of illiteracy, the women are not aware of the provisions of the law providing for the right to own property. Therefore there should be sensitization mostly to uneducated women through different organisations so that there is awareness.

Other the other hand discrimination against women has its roots in culture and tradition. Therefore there is need for change on the attitudes of men and women in regard to each others rightsm. there is no legislation that can fully achieve genuine gender equality unless there is changing beliefs and stereotyped roles for both men and women on thus a pre-condition for ensuring equal opportunities for education between boys and girls in the absence of free education. This has to start with the young men and women changing their attitudes on women owning property and there shall change the whole perception of the society.

The issue of matrimonial property should be addressed to include for ownership by spouses . house hold property in matrimonial home and any other property whether movable or immovable during the subsistence of marriage. Where movable property has been ascertained as matrimonial property if not already registered should be registered in the names of both the husband and the wife but where such property has been registered in the name of one of spouses shall be taken as matrimonial property and shall be owned in common and in divided shares.

The matrimonial home should be the principal residential holding of the spouses legally owned by one or both of them in which ever form as enumerated in Article 237(3) of the 1995 constitution. The property of a polygamous husband shall be held in common with that of the first wife and in case of separation or divorce, each spouse shall be entitled to part of the matrimonial home.

In as far as decision making is concerned women should be trained to become leaders right from the ground level like allowing a number of them to occupy posts in school not allowing all the posts for boys.

In the economic aspect of it the banking facilities like micro finances should easily give bank loans and other facilities so that the women are able to compete with men at the same footing as far as business is concerned.

The women political involvement should also be increased from one woman district representative to make it open. This is because the women are being stuck in affirmative action and are not participate in the other posts which they leave to be occupied by men.

In the education sector, the need for girl education should be emphasized among the illiterate groups of women and this encouraging the girls to study for example even when they become pregnant at school, they should be allowed to continue with their studies if at all they have someone to take care of their children and so they continue with their studies and this can make them to favorably compete with men. This will help to reduce the levels of illiteracy among women and it will make it easy to sensitize them.

In the health sector, the government should provide basic facilities to both girls and women so as to improve their health for example there should be free sanitary pads given to students at school for this greatly improves their hygiene.

Also there should be increased staff in hospitals so as to reduce the number of women who die while giving birth. This is among millennium development goals and needed its should be implemented so that the women and girls who get pregnant while at school are not exposed to more dangers of death.

When the above discussed is put in practice, women will achieve these long a waited and forgotten rights. Men will be put at the same footing with women and indeed women rights will be realized.

BIBLIOGRAPHY

TEXT BOOKS:

J. Oloka-Onyango: Constitutionalism in Africa: Creating opportunities, facing challenges, 2001

Tibatemwa Lillian: Property rights and the gender question in East Africa journal of peace and human rights.

Benjamin B. Odoki. The search for National Consensus: The making of the 1995 constitution of Uganda. 2005.

Articles:

Annual Report of Uganda Human Rights Commission of 2014.

Women's rights in Uganda: gaps between policy and practice, 2012

Uganda National development Plan, 2010/2011-2014/2015

Handbook for legislation against women by United Nations.

FIDH's gaps between policy and practice, 2012

Challenges in the implementation of women's human rights. Field perspectives. Conference paper presented by Sarah Forti, COWI A/S.

Internet:

www.un.org/womenwatch/daw/beijing/platform, accessed on May 29, 2015

www.un.org/en/global/issues/women, accessed on 28.04.2014