

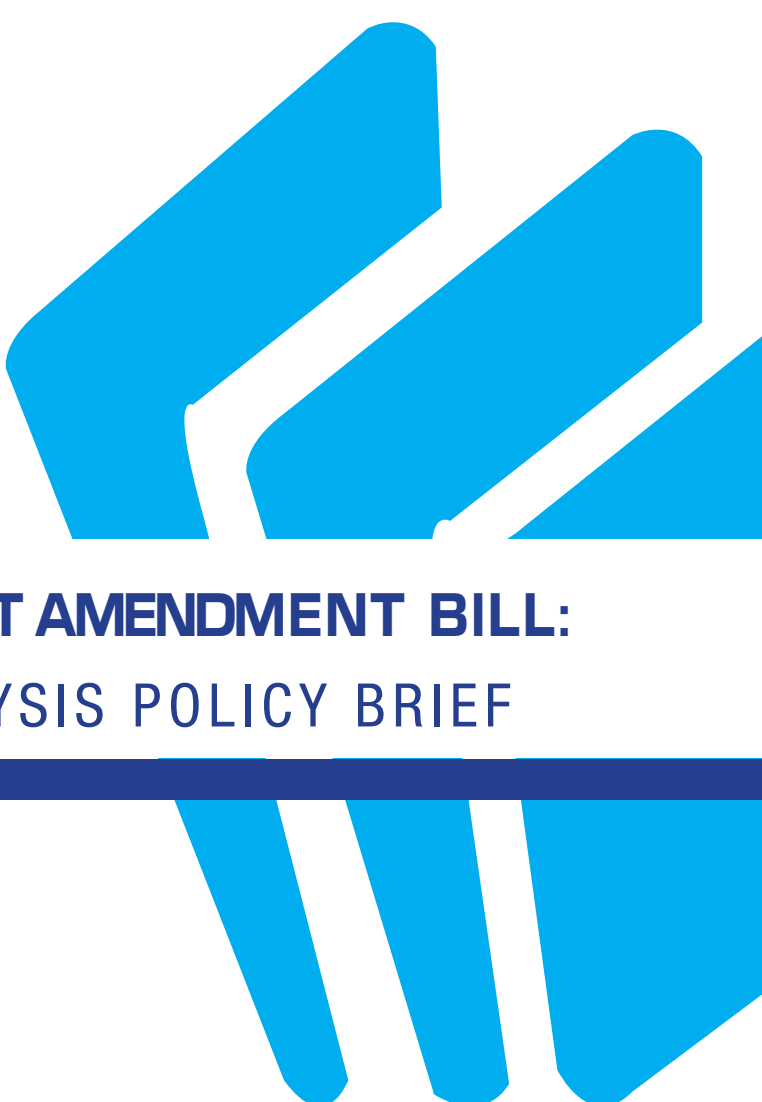


Gender Transformation & Empowerment



THE EMPLOYMENT AMENDMENT BILL: GENDER ANALYSIS POLICY BRIEF

2022



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1.0 INTRODUCTION AND BACKGROUND

1.1 Introduction

Women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on Human and People's Rights, the protocol to the African Charter on Human and People's Rights on the Rights of African Women and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights.

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) laid out a blueprint for women's rights, including commitments to embody the principle of equality between men and women in law and in practice. In the years since, the 1995 Beijing Declaration and Platform for Action and the 2030 Agenda for Sustainable Development have built on these commitments and reinforced the global drive to achieve gender equality and the empowerment of women.

Equality in law is crucial to gender equality, as women and girls look to the laws of their State to protect, fulfill and enforce their rights. Laws that discriminate and deny them equal rights with men and boys betray their trust in society and signal that gender discrimination is acceptable, normal and expected. Women and girls left behind by discriminatory laws are often permanently excluded from the benefits of development.

Uganda Women's Network (UWONET) an advocacy organization that exists to coordinate collective action among women's rights and gender equality stakeholders for the attainment of gender equality and equity in Uganda; has over the years led legal and policy legislative reforms to ensure Gender sensitive and responsive laws. With support from the International Development Law Organisation (IDLO), UWONET has undertaken an analysis of the Bills recently passed and those still pending in Parliament including the Employment Amendment Bill aimed at strengthening efforts for Elimination of Violence Against Women (EVAW) through the protection of women's rights, which is essential for justice.

1.1.1 Objectives of the analysis.

- To conduct an analysis of the Bills for compliance to national, regional and international women's and human rights standards
- To conduct an in depth gender analysis that examines whether conformity to women's and human rights standards of its own is synonymous with responsiveness or sensitivity to women's justice need an access ce.
- To highlight the gains for reinforcing Gender Equality and Women's Empowerment(GEWE) and access to justice proposed by the Bills, as well as gaps, and any areas for further revision/ amendment.



1.2 Background

On 3rd December 2019¹ The Employment Amendment Bill 2019 was presented for the first time on the floor of parliament for the first reading by the workers member of parliament Hon. Agnes Kunihiro. Hon. Agnes was also an executive member of the Uganda Women Parliamentary Association at the time and this legislative reform was part of the broad Legislative Agenda for UWOPA in the 10th Parliament. In the 2020 and 2021, restrictive consultation processes took place with some workers, employers and civil society organizations in Central region, eastern, western and northern region. According to the Private member, the consultation was limited due resource constraints. In 2021 in April, the 10th Parliament passed the Employment Amendment Bill and it was accordingly forwarded to the President to Assent into law. However, since then, the president remained silent on the Bill and the statutory days within which the President is mandated to assent to the Bill into law elapsed. Following the general elections, a new parliament was ushered in under new leadership of the late RT. Hon Jacob Oulanyah who made a pronouncement that unfinished business of the 10th parliament would be considered unless presented afresh to the 11th Parliament. This prompted Hon. Agnes Kunihiro to once again seek leave of parliament to present a private member's Employment Amendment Bill 2022. The motion was granted on 11th May 2022 to the member and she will be presenting the previous Bill for the first reading.

1.2.1 The Object of the Bill

The object to the Bill is to amend the Employment Act 2006, to operationalize the provisions of Article 40 of the Constitution of the Republic of Uganda to all categories of workers in Uganda. Article 40 provides that (1) Parliament shall enact laws; to provide for the right of persons to work under satisfactory, safe and healthy conditions; to ensure equal payment for equal work without discrimination; and to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays.

(2) Every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business.

(3) Every worker has a right; to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests; to collective bargaining and representation; and to withdraw his or her labour according to law.

(4) The employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law.

The Bill specifically makes provision for the regulation of employment of domestic workers and casual employees in Uganda so as to improve their working conditions; to provide for compulsory registration and licensing of recruitment agencies for domestic workers and non-manual labourers; to provide for an explicit formula for calculation of severance pay; to remove the conditions attached to payment of severance pay; to provide for the recruitment and employment of migrant workers in Uganda and Uganda Migrant Workers abroad; to provide for scope of sexual harassment in employment; to provide for the protection of working breast feeding mothers; to require employers to put in place policies and facilities for breast feeding mothers; to provide for the conversion of casual employment to term contract; to provide for the employment of volunteers.

¹ <https://www.parliament.go.ug/news/5040/parliament-fast-track-employment-amendment-bill> Accessed on 14th June 2022



2.0 AN ANALYSIS OF GENDER FOCUSED PROVISIONS UNDER THE BILL AND THEIR COMPLIANCE WITH NATIONAL, REGIONAL AND INTERNATIONAL WOMEN'S AND HUMAN RIGHTS STANDARDS.

2.1 Clause by Clause analysis

Amendment of section 2 of Act 6 of 2006.

The Employment Act, 2006, in this Act referred to as the principal Act is amended in section 2—

(b) by inserting immediately after the definition of “dismissal from employment”, the following new definitions—

“domestic work” means work performed in or for a household or households;”

“domestic worker” means a person employed to do domestic work for remuneration for one or more employers by staying at the employer’s household or otherwise and includes, temporary, contractual or a migrant domestic worker;”

The analysis found that the definition adopted by the Bill aligns itself to the definition in the International Labour Organisation Convention No. 189 on decent work for domestic workers under Article 1 (a) & (b). This is key in deminifying the societal based stereotypes and discrimination against the occupation of domestic work and the persons working as domestic workers.

In addition, the proposed definition is a fulfillment of Article 11 of the Convention on the Elimination of All forms of Discrimination against Women which Uganda ratified, which mandates state parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on a basis of equality of men and women the same rights. This right is further protected under Article 13 of Maputo protocol² which calls upon the state to ‘guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force’

At the national level, the definition furthers the realization of the aspirations of Article 40 (2) of the 1995 Constitution of the Republic of Uganda that provides that every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business. The recognition of the occupation of the domestic work in the Bill is a fulfillment of the right for women to choose any occupation recognized as such under law.

2 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa



2.2 Amendment of section 7 of principal Act

The principal Act is amended in section 7 by substituting for subsection (4) the following—

“(4) An employer shall put in place measures to prevent sexual harassment at his or her work place.”

This is a progressive development as it seeks to protect all workers from sexual harassment. The proposed provision seeks to Amend section 7 (4) of the Current Employment Act 2006 that provides; “Every Employer who employs more than twenty five employees is required to have in place measures to prevent sexual harassment occurring at their work place” This provision in the current Act presupposes that sexual harassment only takes place in work places with 25 employees above. This preposition however, does not align itself with the current employment statistic in businesses in Uganda which indicate that on average, 2 persons were employed per business.

The spirit of the proposed provision aligns to the aspiration of the ILO convention on Violence and Harassment Convention, 2019 (No. 190) which Uganda signed³ In its preamble, the convention recognizes the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment, that violence and harassment in the world of work can constitute a human rights violation or abuse, and it is a threat to equal opportunities, is unacceptable and incompatible with decent work.

2.3 Substitution of section 34 of principal Act.

The principal Act is amended by substituting for section 34, the following—

“34.Special categories of employees

Without prejudice to the generality of the preceding sections of this Part, the Minister shall, on the recommendation of the Labour Advisory Board, make regulations governing the employment of persons with disabilities, domestic workers, casual employees, apprentices and other categories of employees, who in his or her opinion, are in need of special protection.”

The proposal in the Bill seeks to include domestic workers and casual workers majority of who are women into the special categories of workers that need special protection under the law. Under the National Employment Policy of 2011, domestic workers and casual workers are one of the vulnerable groups of workers that lack security and/or are susceptible to risk and/or are exploited.

The proposed recognition of the domestic workers and casual workers as a section of workers that require special protection under the law aligns itself to the provisions of ILO convention No. 189 particularly under Article 5 which provides that “Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence”.

3 Signed in June 2019



2.4 “56A. Protection of breast feeding women from discrimination.

- (1) *A female employee shall not be discriminated against on account of being a breast feeding mother.*
- (2) *Upon the expiry of a female employee’s maternity leave, an employer shall, accord the female breast feeding employee a daily thirty minute breastfeeding break in every two hours of continuous work, or a reduction in the contractual hours of daily work to enable the female employee breast feed her child.*
- (3) *The breaks or reduction in daily hours of work referred to in subsection (1) shall be considered as part of the female breast feeding employee’s ordinary working time and shall be remunerated accordingly.*
- (4) *The breaks or reduction of the daily hours of work referred to above shall equally apply to domestic and casual employees.*

Maternity protection at the workplace is a legal and social recognition of the contribution that women make by having babies. The International Labour Organization (ILO) first recognized the importance of maternity protection in 1919 in its third convention (C3). In 1952, a second ILO maternity protection convention was adopted (C103), and in 2000 a third (C183). In particular, the proposed provision mirror the provisions under Article 10 of the ILO convention 183 , which provides

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

In Uganda, Article 33 of the Constitution of Uganda particularly under sub clause (3) provides that ‘The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society’. The constitution further provides for protection of breastfeeding mothers from discrimination under article 40 (4), which state that “The employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law”.



3.0 CONFORMITY TO HUMAN RIGHTS STANDARDS VS REALITY OF RESPONSIVENESS TO WOMEN'S JUSTICE NEEDS AND ACCESS TO JUSTICE.

To provide a fair assessment of whether the Gender focused provisions in the Employment Amendment Bill's conformity to the human rights standards respond to the reality of women's justice needs and thereby translating into access to justice for women, we shall first discuss the barriers of women economic justice and whether the proposed provisions will address these barriers.

3.1 Barriers of legal responsiveness to women justice needs and access to justice

3.1.1 Dual responsibilities of women in employment.

Despite the current Bill enhancing the provisions on the maternity protection rights by providing breastfeeding breaks, this provision may not have much impact to the actual needs of the women in the world of work. In absence of provisions requiring breastfeeding rooms at the work places, coupled with the redistribution of the care roles at the household level, the care roles will continue to interfere with the women's economic rights as women neither have the time nor money to pursue justice.

3.1.2 The threat of violence or harassment in the workplace.

Whereas the Proposed amendment seek to repeal the requirement of 25 employees and ensure that every employer regardless of the number of employees must put in place measures to prevent and protect employees from sexual harassment acts at the work place, the threats to sexual harassment shall not cease in the absence of punitive punishments being introduced by law and protection measures for the victims of sexual harassment. The current position of the law under regulation 19⁴ provides that *a person who contravenes these Regulations, commits an offence and is liable on conviction to a fine not exceeding six currency points or imprisonment not exceeding three months or both*. The existence of such lenient penalties in the law has continued to be a breeding ground for harassment and violence in the world of work. further still, despite the extension of the protection against harassment at work to every worker irrespective of the number of workers at the work place, the provisions of Regulations 18 acts as a bar to workers raising these claims in fear of disciplinary actions by the employer that could lead into loss of employment.

3.1.3 Women are still overrepresented in informal and precarious work arrangements in Uganda.

Women continue to work in vulnerable employment characterized by inadequate earnings, low productivity and difficult conditions of work that undermine workers' fundamental rights. At the national level, 67.9% of the women in employment are employed in vulnerable employment⁵.

4 *Employment (Sexual Harassment) Regulations, 2012 (Statutory Instrument 15 of 2012)*

5 *UBOS Uganda National Household Survey 2016/17*



The informalisation of the employment relationship hinders the women from reporting when faced with any justice needs.

3.1.4 Occupational segregation and undervaluation of work in female-dominated sectors persist as do the resulting gender wage and pension gaps.

Despite the existence of the Equal Opportunities Commission Act⁶ which promotes gender equality and women's empowerment, occupational segregation is still high as women are often restricted to low-skilled and lower paying jobs and continue to earn less than their male counterparts. This hampers their empowerment.

3.1.5 Social –Cultural norms attitudes and practices.

The challenges for women in accessing justice are socio-cultural norms, attitudes and practices as well as other social contexts. These include lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, access to information; lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts, child care, etc., which makes it difficult for many women to then access justice

3.2 Do the proposed provisions if passed into law translate into the actual women empowerment and address their justice needs?

Enactment of Laws and policies alone are not enough to improve women's empowerment and their justice needs. There are factors at play that need to be addressed and emphasized to translate legislation into practice and enjoyment of what the laws and policies provide.

- c. **Implementation of laws and policies:** The implementation of good laws that conform to the human rights principles of equality and non-discrimination is a key factor in improving women empowerment and addressing their justice needs.
- d. **Awareness of both existing and proposed legal and policy frameworks:** Once a law has been enacted, the target beneficiaries of the law must be aware of its provisions so as to exercise and demand accordingly. Therefore it is important for women and girls to receive information on their rights so to claim for them same.
- e. **Access to support services is also key to women empowerment and addressing their justice needs.** The women need to have readily available access to support services including legal aid services that can enable women to claim their rights and address their justice needs.

⁶ Laws of Uganda 2007



4.0 GAINS REINFORCING GENDER EQUALITY AND WOMEN'S EMPOWERMENT (GEWE) AND ACCESS TO JUSTICE PROPOSED BY THE EMPLOYMENT AMENDMENT BILL

4.1 The Bill legislates on vulnerable and unregulated sectors in the informal economy where women are over represented.

The proposed Amendment of section 2 (a) & (b), section 3(2)(a) and 38(3) of the Bill seeks to extend the applicability of the Act the occupation of domestic work and those working as domestic workers.

4.2 The Bill enhances the right to maternity protection for the working mothers.

The proposal to include breast feeding breaks or a reduction of the contractual working hours to enable the female employee to breast feed is a furtherance of the right to maternity protection beyond the 60 working days of rest. This if passed into, it enhances the women's economic empowerment.

4.3 Enhancement Protection of from sexual harassment at the work places.

The proposal under the Bill that seeks to require employers regardless of the number of people being employed in a given work place to put in place measures to prevent sexual harassment from the occurring at the work place, has benefits of bringing every worker under legal protection from this form of violence. This provides a basis for other processes of enforcing and claiming ones right.



5.0 GAPS AND RECOMMENDATIONS IN THE ONGOING AMENDMENTS

5.1 The Bill still does not address the challenges of reporting and apprehending sexual harassment incidents in work places

- a. The Bill did not increase the scope of sexual harassment as elaborated under the International Labour Organization Convention: Elimination of Violence and Harassment in the World of Work 2019 (190) which Uganda Signed.
- b. The challenges faced in reporting by the survivors of sexual harassment at the work places and procedures of handling complaints of sexual harassment have remained unchanged by the Bill.
- c. Like the current Employment Act 2006, the Bill does not contain punitive penalties for perpetrators of sexual harassment necessary to demonstrate the seriousness of the vice.
- d. The Bill therefore does not cover the acts of sexual harassment at the initial stages of employment where applicants for a job are asked to subdue to the potential employer's sexual demands if he or she must be given a job.

5.2 The Bill does not address other forms violence and harassment in the world of work as envisioned under the ILO convention 190 which Uganda Signed and is the process of ratification.

5.2.1 The Bill still falls short of comprehensive maternity protection and job security for the working mothers.

- a. The Bill lacks provisions under Amendment of section 56 requiring the employer to provide breast feeding facilities or rooms so as to facilitate the breast feeding breaks proposed under the current Bill.
- b. In addition, the provisions in the Bill still do not address some of the emerging issues in maternity protection including employees becoming mothers or giving birth through surrogacy arrangement or adoption of a new born baby which raise complex legal concerns.
- c. The Bill lacks protection provisions to guarantee the employment of women.
- d. Generally the proposed provision only covers female employees who have given birth and are actively breastfeeding their new born. The provision presumes that all female employees who give birth undertake active breast feeding and yet there are mothers who may for various reasons.
- e. The provisions on domestic workers in the Bill cannot independently protect the rights of domestic workers without a regulation.



6.0 WHAT THE WOMEN MOVEMENT MUST DO ACHIEVE THE ASSPIRED GENDER SENSITIVE AND RESPONSIVE LEGAL REFORMS

- a. **Re mobilize the Actors to support the proposed legal reforms:** As already noted the Employment Amendment Bill 2022 has been re-tabled for the second time on the floor of parliament. The 10th Parliament had passed the Bill in April 2021 at the close of its tenure. At that time, different stakeholders including but not limited to: Uganda Women Parliamentary Association, Platform for Labour Action, UN Women, and Spot light Initiatives provided support both financial and technical to the Bill then. It is important to re- mobilize these entities and more.
- b. **The women movement should re-engage with the mover and seconders of the Employment Amendment Bill 2022:** It is very important for the broad women movement to engage with the mover of the Bill so as to share broader gender equality legal reform agenda particularly within the Employment and labour sector and how it can be incorporated in the proposed Bill. This engagement will draw consensus on the different reforms that need to be incorporated for the Private member to capture the same.
- c. **Inclusive Consultations on the proposed Bill:** The Bill needs further and broad consultations with key stakeholders including the workers movements and the service providers to the workers particularly the women to capture the lived experiences and realities of the labour market so as to ensure that the Bill responds to the justice needs of the workers in the country.
- d. **Sensitization of the members of Parliament on the importance of the Bill proposed in advancing the Gender equality Agenda for the country:** It should be noted in 2021, the country ushered in a new government including new members of parliament. 24% of the current members of parliament are new entrants into the legislative arm of Government and therefore, they need to be brought on board on the gender equality agenda through legislative reforms.
- e. **Engaging with the Ministry of Gender, Labour and Social Development:** There is need to engage with the Ministry of Gender, Labour and Social Development on the proposed Bill to ensure harmonization of the proposals in the Employment Act 2006. At the close of 2021, Cabinet approved the policy principals for the Amendment of the current Employment Act 2006. Accordingly, a draft Employment Amendment Bill was drafted and presented to the First Parliamentary Council for perusal and guidance. This Bill is soon being presented on the floor of parliament as well. Engaging with the Ministry in the early stages to advance and present comprehensive Gender sensitive proposals for inclusion in the Proposed Government Bill will ensure that the gender related and women justice needs are comprehensively addressed.



7.0 POLICY RECOMMENDATIONS

- a. The Government of Uganda should expedite the ratification of the ILO Convention 190 on violence and harassment at work which has more robust and comprehensive provisions to deal with sexual harassment in the workplace.
- b. The Ministry of Gender, Labour and Social Development should expedite the process of adopting the Employment (Domestic Workers) Regulations to enhance the protection of domestic workers being recognized under the law.
- c. Amend the Employment Act 2006 and Employment (Sexual Harassment) Regulation 2012 to provide comprehensive provisions that expand the scope of sexual harassment and violence including covering both pre- employment, during and post employment period, offer protection to the victims of sexual harassment and violence and provide for punitive punishments as a deterrent measure.
- d. Advocate and empower Parliament to oversee and ensure Budgeting for the implementation of gender-responsive laws and policies.

7.1 CONCLUSION

In conclusion; women constitute the largest group of the poor and marginalized in Uganda. With regards to access to employment, women faces challenges in accessing employment opportunities with a 13.2% unemployment rates among women compared to 5.8% rate for males⁷ due to various factors including low levels of education, limited access to productive resources, discriminatory social norms and subsequently, their empowerment and access to justice is often compromised by many interconnected factors. This may exacerbated by discriminatory or insensitive legal frameworks.

Whereas the proposed Bill seeks to extend further protection to women in the work places ranging from recognition of their occupations, scope of protection against sexual harassment, enhancement of maternity rights and proposal for appropriate mechanisms to access remedies. Therefore there is need to ensure that the Bill contains comprehensive gender sensitive provisions that do take into account women's social position and gaps in the existing Employment Act of 2006 concerning issues that disproportionately affect women in employment; provisions that have problematic interpretation and implementation of the law which discriminates against women; and ineffective or problematic legal procedure such as the lack of gender sensitive procedures in the legal system.

7 UBOS National Household Survey 2016/2017



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21. International Labour Organization Convention No. 190 on the elimination of violence and harassment in the world of work 2019
22. International Labour Organisation Convention: Maternity Protection 2000 (183)
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1. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

National Laws

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- ii. Uganda Gender Policy, 2007
- iii. The National Policy on Gender Based Violence, 2010
- iv. National Action Plan on Elimination of Gender Based Violence 2016-2021
- v. The Constitution of the Republic of Uganda 1995
- vi. Employment Act 2006
- vii. Domestic Violence Act 2010
- viii. The Equal Opportunities Commission Act 2007



With support from



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