



Gender Transformation & Empowerment

A GUIDE FOR JUDICIAL OFFICERS ON GENDER RESPONSIVE JUSTICE

SEPTEMBER 2022

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ACRONYMS

CEDAW	Convention on Elimination of all Forms of Discrimination against Women
ICCPR	International Covenant on Civil and Political Rights
ICESRC	International Covenant on Economic, Social and Cultural Rights
IDLO	International Development Law Organization
JLOS	Justice, Law and Order Sector
NAWJU	National Association of Women Judges – Uganda
UDHR	Universal Declaration of Human Rights
UWONET	Uganda Women’s Network

INTRODUCTION

In order to ensure that women and girls have equal access to justice, legal practitioners should adopt a gender-sensitive approach to their work and ensure that they interpret the law in line with substantive notions of equality and international human rights. Prosecutors and judges should take a pro-active approach to ensuring that barriers that women and girls face in accessing justice are removed.

The Constitution of the Republic of Uganda guarantees the right to equality and liberty of all persons and outlaws discrimination based on sex, colour, race and religion, among others. It requires that special measures be taken by the State to protect women and their rights, taking into account their unique status and natural maternal functions. The Constitution mandates the Judiciary to interpret the law and protect the rights of all individuals.

Courts in Uganda have passed landmark cases in a bid to enhance women's access to justice. This is in addition to reviewing laws, rules, policies and practices that are not gender-responsive, to align them to constitutional provisions, and to international and regional laws that promote justice for women. Special measures and procedures have also been established by the judiciary to specifically address women's access to justice¹. These include, among others, gender-sensitivity training for judicial officers and law enforcement upon appointment; one-stop legal aid service centres; an amended form (Police Form 3A) to improve evidence collection in gender-based violence cases; and non-custodial sentences (such as community service), which help female offenders to continue to take care of their children². The adoption of special gender based violence court sessions which the Judiciary in conjunction with the Justice, Law and Order sector is implementing have increased access to justice for victims and survivors of violence.

Despite this, numerous gender justice gaps remain, and a lot more needs to be done to close these gaps. Women face institutional barriers: from geographically distant justice service locations and technically complex justice procedures, to discriminatory attitudes based on deeply entrenched male bias at all levels of the legal process, insensitivity to women's specific needs, and corruption. When compounded with the socio-cultural challenges that women face – such as lower literacy levels, poverty, access to resources, and strictly proscribed cultural norms that dictate their behaviour in society – women are altogether less likely to be aware of their rights, the remedies available to them, and the relevant justice mechanisms that should be accessed³.

1 The Gender Bench Book: Women's Access to Justice in Uganda

2 Ibid 1

3 Ibid 1

This Guide therefore provides a simple tool that judicial officers can refer to in order to deliver gender responsive justice in Uganda.

Chapter one defines gender and justice and basic gender concepts relevant to gender justice; the section discusses the concept of gender responsive justice.

Chapter two analyses patriarchy; gender power dynamics and its effects on justice while unpacking the link between gender, power and justice.

Chapter three discusses gender roles and their effects on access to justice.

Chapter four summarizes the relevant laws and case law that promote and protect women's rights to access justice at national and international level.

Chapter five highlights practical tips on what to consider and the steps to take in handling cases involving women and girls. (Dos and Don'ts)

Chapter six discusses the factors hindering access to justice for women and girls

CHAPTER ONE

GENDER JUSTICE AND BASIC GENDER CONCEPTS

1.1 Gender Justice

Laws are essential tools for promoting and protecting women's rights and for attaining gender equality. In societies that are governed by the rule of law, with accessible and just legal systems, women tend to thrive. The rule of law requires that laws are free from bias and discrimination equally enforced and independently adjudicated, and consistent with international human rights norms and standards".⁴

1.2 Basic Gender Concepts Relevant To Gender Justice

Gender is learned, sex-related behaviour and attitudes, which include the roles, responsibilities, opportunities, privileges, attributes and status accorded to women and men by society. Gender can be a determinant for the way in which men and women, boys and girls are treated, access opportunities, privileges and the status which they are accorded in society.

The derivative of gender as a social construction of roles and responsibilities is that it confers power, status, opportunities, and privileges, differently to men and women. It creates stereotypes and therefore influences attitudes and biases at a very early stage of the socialisation process. These lessons remain deeply entrenched and part of the norm so much so that even formal education and professional qualifications are more influenced by the socialisation than vice versa⁵. These very attributes of the social set up affect both the legal system and its users with the effect that justice is obstructed for the less powerful, the less privileged, stereotyped as weaker and submissive – invariably women. Since gender is constructed by a given society and varies from one place to another, it is dynamic and can therefore change especially if one group of people is discriminated and treated unfairly.

Gender blind: Failure to recognize that the roles and responsibilities of women/girls and men/boys are ascribed to, or imposed upon them in specific cultural, economic and political contexts. Gender blind justice does not take into account these different roles and diverse needs. They therefore maintain the status quo and will not help to transform the unequal structure of gender relations.

Gender sensitivity: Is a process by which people are made aware of how gender plays a role in life through their treatment of others. Gender sensitivity can also be defined as acknowledging and considering the specific gender needs of both men and women at all levels of planning, implementation, monitoring and evaluation. Gender sensitivity recognizes and addresses the fact that individuals face different, often contextually specific forms of discrimination due to sex, race, religion, age, disability, ethnicity, gender. This recognition should provide the impetus to mainstream gender and to ensure that it is responsive to the diversity of human beings. It should also bear in mind that given the specific physical, mental and psychological developmental

4 IDLO (2013) https://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Full_Report.pdf2 The Justice, Law And Order Sector Programme, Study On Gender And Access To Justice

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needs and vulnerabilities of children, it is important to distinguish them from adults and to adopt both a gender and child-sensitive approach to gender-mainstreaming⁶.

Gender issues: Are problems and concerns arising from discriminatory attitudes and treatment due to unequal social and power relations. They arise from the different treatment given to different individuals or groups of people on the basis of the social and cultural expectations about women and men.

Gender based violence: Harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. Gender based violence can include sexual, physical, mental and economic harm inflicted on an individual in public or private. It also includes threats of violence, manipulation and coercion. This can take many forms such as intimate partner violence, sexual violence, child marriage, female genital mutilation and so-called honor crimes.

Gender stereotypes: A gender stereotype is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by women and men. A gender stereotype is harmful when it limits women's and men's capacity to develop their personal abilities, pursue their professional careers and make choices about their lives and life plans.

Gender analysis: is a tool for understanding how society allocates roles and responsibilities for men and women and the effects of this. Gender analysis can establish which group of people are at a disadvantage because of their gender. Women are more prone to marginalization in most societies. The result is unequal gender relations and their attendant effects which include: disempowerment, negative biases and a wide range of injustices to women. It follows also that men and women's experience of the legal system occurs within complex sets of differing social and cultural expectations⁷. Gender analysis can enable judicial officers to understand the gender issues that affect access to justice for men and women and to positively influence change in the law and practice.

Gender equity: Justice and fairness in the treatment of women and men in order to eventually achieve gender equality, often requesting differential treatment of women and men (or specific measures) in order to compensate for the historical and social disadvantages that prevent women and men from sharing a level playing field.

Gender discrimination: Is giving different treatment to different people on the basis of their gender; or based on the roles and responsibilities given to women and men in any particular society at any given time. It involves systemic and structural discrimination against women and men in the distribution of income, accessing education, health services, money, land, and also their participation in decision making.

Gender mainstreaming: The process of identifying gender gaps and making the concerns and experiences of women, men, girls and boys integral to the design, implementation, monitoring and evaluation of policies and programmes in all spheres so that they benefit men and women, boys and girls equally. Mainstreaming a gender perspective can also be defined as the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes,

⁶ Gender brief for UNODC staff, Mainstreaming Gender in Justice projects (2020)

⁷ Ibid 2

in all areas and at all levels. It is a strategy for making women's as well as girl's, boy's and men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetrated.

Human rights: Entitlements and freedoms that every human being has by virtue of being human. We are born with them and they cannot be taken away.

Patriarchy: Is a social system in which men hold primary power and predominate in roles of political leadership, moral authority and social privilege and control of property. Patriarchy perpetuates oppressive and limiting gender roles, sexism, sexual assault, the political and economic subordination of women.

1.3 Understanding The Concept Of Gender Responsive Justice

1.3.1. The concept of justice

The concept of justice derives from law itself as one of its attributes⁸. Justice in that sense refers to standards of rights set or defined by (substantive and procedural) law and enforced by specific institutions (justice delivery system), with the State bearing primary responsibility for the protection of those rights.

In order to acquire its legitimacy and the force of law, it is important that legal (de jure) justice does to a large extent mirror social ideals and aspirations of rights for all people. In essence, the two forms of justice should be mutually reinforcing, with the role of law being to strengthen the

promotion and protection of social rights and therefore social justice from which the former derives its legitimacy. This is the core on which other forms and components of justice such as safety and security, economic and political justice are founded⁹.

Whereas the body of substantive law is rather broad and diverse, law enforcement institutions are standard and provide the site for how individuals, groups and communities experience the enforcement of substantive law¹⁰.

Close to 60% of respondents are not happy with the outcomes of the legal process in the courts of law¹¹. The majority of these are women. Majority of the women are unable to access and navigate their way through formal legal institutions due to structural as well as social-cultural barriers, including women's inadequate knowledge of rights and remedies, illiteracy or poor literacy, and lack of resources and time to participate in justice processes, especially given the heavy burden of unpaid care work that women bear for their families and threat of sanction or stigma as a result of reporting male relatives to the courts of law.

There has been limited training for justice sector staff on identifying gender issues and how to mainstream gender in their work. This limitation of training greatly affects their services. Geographically distant justice service locations and technically complex justice procedures, discriminatory attitudes based on deeply entrenched male bias at all levels of the legal process, insensitivity to women's specific needs, and corruption among other problems affects women and girls access to justice¹².

⁸ In Legal Theory, law is defined by its attributes as (i) a power relation (ii) a standard of justice (iii) a social process.

⁹ Justice, Law and Order Sector Program: Study on Gender and Access to Justice

¹⁰ Ibid 5

¹¹ UWONET (2021) Interrogating the factors hindering access to justice for women and children

¹² Ibid 11



1.3.2. The concept of Gender Justice

The UN Committee on the Elimination of Discrimination against Women, has articulated six interrelated elements of access to justice that are considered key for a justice system that is responsive to gender. These are: justiciability; availability; accessibility; good quality; accountability and the provision of remedies for victims.

The Legal/Institutional Level

- Discriminatory or insensitive legal frameworks such as: explicitly discriminatory legal provisions; gender blind provisions that do not take into account women's social position and gaps in legislation concerning issues that disproportionately affect women.
- Problematic interpretation and implementation of the law which discriminates against women.
- Ineffective or problematic legal procedure such as the lack of gender-sensitive procedures in the legal system.
- Poor accountability mechanisms (including corruption)
- Under-representation of women among legal professionals.
- Gender stereotyping and bias by justice actors.

The Socio-Economic and Cultural Levels

- 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, etc.
- Lack of financial resources, including the means to pay for legal representation, legal fees, judicial taxes, transportation to courts, child care, etc.
- Unequal distribution of tasks within the family.
- Gender stereotypes and cultural attitudes.

Gender-responsiveness means understanding and taking account the differences in characteristics and life experiences that women and men bring to the justice system, and adjusting strategies and practices in ways that appropriately respond to those conditions¹³.

Gender-responsiveness within a justice system implies understanding and taking account of the differences in characteristics and life experiences that women and men bring to the justice system, and adjusting strategies and practices in ways that appropriately respond to those conditions.¹⁴

¹³ Bloom, Owen and Covington (2003)

¹⁴ Ibid 11

1.3.4. Factors that must be present for justice to be gender responsive

Adequate Remedies: making remedies work and respond to women's needs

Adequacy is the appropriateness and sufficiency of a given remedy to address the right violated. For a remedy to be considered adequate, three factors need to coexist¹⁵: a) the de jure and de facto existence of remedies; b) the availability of such remedies, and c) their affordability.

De jure and de facto existence of remedies pertain to, first and foremost, the existence of laws or substantive domestic legislation which protect women's rights, these legislations, must not only be in accordance with the International Human Rights standards, but must also be capable of addressing the various types of infringement on women's rights¹⁶.

Secondly, this presupposes the existence of mechanisms and institutions that enable women to seek redress in the event of the violation of their rights. This includes existence of well-funded formal legal system (such as the police, the prosecution service, the courts), informal justice systems and the existence of multi-disciplinary support services (such as counselling, psycho-social, shelters, and medical support etc) especially in cases of violence against women. It likewise includes the availability of competent and gender – sensitive professionals providing both legal and non-legal aid (medical, psycho-social) including the duty bearers, primarily the police, the prosecution services, and the court personnel¹⁷.

Third, the laws of procedure and the rules of evidence followed in these institutions must be gender sensitive and anti-oppressive¹⁸.

Availability, as a factor of adequacy, pertains to the questions of information, non-discrimination, geography, and language. For a remedy to be considered available to the woman seeking the same, information on her rights, on the remedies available, and the institutions and procedures involved must be made accessible to her by the state's institutions and duty bearers. Such remedies must be available to women without discrimination/exclusion on the basis of race, gender, age, class etc. Another consideration of availability would be geography, the distance of state institutions and mechanisms from a woman's abode that hinder a woman's attempt to access justice; just as language, could also prove as a barrier to women whose native tongues differ from the language of duty bearers in the legal system¹⁹.

Affordability takes into account the economic factor of accessing justice. A remedy cannot be adequate and in fact could prove to be ineffective when the same is too costly and expensive. It covers the cost of litigation from filing and docket fees, to attorney's fees, to the cost of transportation, of gathering of evidence, as well as indirect costs of litigation.

15 Ibid 8

16 Ibid 8

17 Ibid 8

18 Ibid 8

19 Ibid 8

Another aspect of affordability would be the opportunity cost of litigation, which looks into the costs which may not be measured monetarily but are nevertheless part of the consequences of litigation e.g. in a case of violence against women, the effects to a woman-survivor's employment and productivity, or even the fact that woman's employment, or the idea of women working remains in part to be culturally unacceptable. Affordability as an element must likewise be viewed in the context of available legal aid mechanisms and the requirements to qualify therefore, the poverty threshold in the country, household expenditures, and the current labor conditions of women which in turn indicate women's capacity to access redress²⁰.

20 Ibid 8

CHAPTER TWO

PATRIARCHY; GENDER POWER DYNAMICS AND ITS EFFECTS ON JUSTICE

2.1. Patriarchy

Patriarchy is a social system in which men hold primary power and predominate in roles of political leadership, moral authority and social privilege and control of property. Patriarchy perpetuates oppressive and limiting gender roles, sexism, and sexual assault, the political and economic subordination of women. Patriarchy therefore determines who has power at different levels of decision making.

Culture and the patriarchal system: Culture and patriarchy uphold values that privilege men in the allocation of roles and resources – which are essential for accessing justice. Culture and patriarchy disadvantage the women especially in allocation of productive resources, which are essential for accessing justice. Further, dispute resolution in the private sphere is male dominated and upholds patriarchal values to the detriment of women's access to justice. It is therefore important to address the subordinated and subjugated identities of women in law and in society.

Adopting a feminist frame, and addressing the gender issues that affect access to justice for women as a product of a hierarchal system of oppression, as beyond limited access to legal resources and multi-disciplinary support services, should be integrated in the justice system.

Acting for and her behalf: Women's critical engagement and participation: Foremost, in Feminist discourse is women's substantive participation and critical engagement in processes and experiences affecting her. In a criminal justice system where the State prosecutes on behalf of the people of Uganda, the offended party, is undermined-rendered invisible and caught in the web of the legal system, with the State prosecutor acting in her behalf and the judge adjudicating her case as if she was a mere subject of the law and the legal system.

In women's access to justice framework, the woman's participation in the decision making with respect to her case is one of the foremost considerations. It includes her critical visibility in the overall process through meaningful substantive participation. Her decision to (or not to) resort to alternative dispute settlements or informal systems, her decision to avail of a specific remedy over the other, must be given consideration by lawyers, and other duty bearers of the legal system. The process, with women's active participation becomes empowering, with the woman able to act for and on her behalf in the claiming of her rights²¹.

Three levels of inquiry are looked upon to measure women's participation²²:

- Whether she is aware of her rights under domestic and international law,
- Whether the legal system and the duty bearers, give active, meaningful, and visible participation on the woman in the pursuit of her case, and

21 Ibid 8

22 Ibid 8

- Whether, the process, as a whole provides empowerment to a woman in having engaged with the system.

2.2. Gender, Power Dynamics and its Effects on Justice

The roles that men and women are prescribed in a given society have an effect on access to justice because gender determines the opportunities, privileges and benefits of women and men.

The National Population and Housing Census Report of 2014, revealed that literacy among Ugandan women is 68 per cent compared to 77 percent for men²³ Further, less women (68 per cent) are engaged in work outside the home than men (74 percent)²⁴. When considered in the context of unequal gendered power relations, these factors indicate that women are less likely than men to have knowledge of their rights, or when necessary to have the financial means to seek enforcement of these rights through the courts of law.

Extensive research globally has revealed that the family unit in most societies is typically organized on the basis of hierarchy and gender inequality, wherein the rights of women to equal status are restricted in marriage, and gendered power relationships dictate that women and girls are treated as subordinate to men and boys. The husband is considered the head of the family (and the household), and the wife (and girl) may suffer discrimination on account of their gender. Oftentimes, Violence against Women and Girls is supported, condoned and even encouraged within this context²⁵.

2.1. The following are different but interlinked aspects of gender and power dynamics that have effects on Women's access to Justice:

- Within the Judiciary by 2022 statistics indicated that there were more male judicial officers than females.

Summary of breakdown of judicial officers by gender as of October 2022

Category	Female	Male	Total
Justices and judges	43 (45.2%)	52 (54.7%)	95
Registrars	21 (57.4%)	23 (42.5%)	54
Magistrates	192 (48.7%)	202 (51%)	394
Total	266 (48.8%)	277 (51.1%)	543

Breakdown

No.	Category	Female	Male	Total
1.	Supreme Court Justices 5	5	3	8
2.	Court of Appeal/Constitutional Court Justices	6	9	15
3.	High Court Judges	25	31	56
4.	Acting Judges	7	9	16

²³ UBOS, 2016

²⁴ Ibid 20

²⁵ The Gender Bench Book-Women's Access to Justice in Uganda

No.	Category	Female	Male	Total
5.	Chief Registrar	1	0	1
6.	Registrars	4	2	6
7.	Deputy Registrars	14	12	26
8.	Acting Deputy Registrars	4	1	5
9.	Assistant Registrars	5	7	12
10.	Acting Assistant Registrars	3	1	4
11.	Chief Magistrates	17	21	38
12.	Acting Chief Magistrates	22	18	40
13.	Acting Senior Principal Magistrates Grade 1	6	4	10
14.	Principal Magistrates Grade 1	0	1	1
15.	Acting Principal Magistrates Grade 1	5	15	20
16.	Senior Magistrates Grade 1	2	0	2
17.	Acting Senior Magistrates Grade 1	15	15	30
18.	Acting Magistrates Grade 1	2	5	7
19.	Magistrates Grade 1	117	105	222
20.	Magistrates Grade II	6	18	24
	TOTAL	266	277	543

Source: <http://www.judiciary.go.ug/data/smenu/91/judicial>

Research by JLOS recently renamed as the Governance and Security sector programme indicates, women are intimidated from using male dominated agencies. Increasing the numbers of women in the judiciary especially the bench and equipping both men and women with knowledge on gender responsive justice can enhance women's access to justice.

Women remain underrepresented in the criminal justice system as professionals in Uganda, especially at the managerial or decision-making level. It is important to not assume that the presence of women within the law enforcement and justice sector will necessarily result in institutions and structural reforms that are more gender responsive. Justice sector practitioners, men and women alike, need to become more gender sensitive. However, studies have shown that increasing the proportion of women in law enforcement agencies changes the climate and culture of the organization and reduces the prevalence of discrimination against female police officers, as well as their underutilization²⁶.

²⁶ Ibid 6

- **Gender neutral laws:** Gender neutral laws are made by male dominated legislatures and processes thus reflecting male perceptions of justice as the standard. Gender-neutral laws effectively discriminate against women and obstruct justice. It is important to note that existence of legal remedies and mechanisms alone cannot be made to measure women's access to justice when the circumstances of access remains to be affected by factors not only inside the legal system, but outside it. For instance, women's subordinate position in Uganda is reflected in the current laws on land and property rights and employment. In cases where laws like the Succession Act have been amended to conform to the Constitution of Uganda, practices are not in tandem with the law and still affects women's equal enjoyment of rights with men.
- **Gender biased laws:** Men dominate the law –making process and easily influence it with their interests. Most gender – biased laws reflect the dominant power relations and interests of men. However, judicial officers can rely on Human Rights laws to further women's human rights. This includes the use of constitutional guarantees and international norms and standards and mechanisms to hold states accountable for their actions, to expand the core content of the guaranteed rights, and to make the system more responsive and effective²⁷.

The State's obligation under international instruments require observance with due diligence. By due diligence, States are required to undertake all measures to promote and fulfil said rights. Due diligence entails a more comprehensive response at different levels of intervention, from individual women, the community, the State and transnational levels. The due diligence standard should: a) focus on State obligation to transform the societal values and institutions that sustain gender inequality while at the same time effectively respond to cases of infringement of women's rights when they occur, and b) examine the shared responsibilities of State and non-State actors with respect to preventing and responding to violations of women's human rights²⁸.

In looking into the State's compliance of human rights standards, it must be stressed that attention be directed to the State's effort in complying not only with its obligations in relation to women's civil and political rights, but also to the often neglected and taken for granted economic, social and cultural rights of women. This would then shed light to the many barriers experienced by women in terms of social and economic rights (ESCR), barriers that would remain unarticulated should the ESCR be relegated as secondary rights²⁹.

Physical access to justice delivery agencies: Men control household incomes and can afford transport to the agencies. The men are less burdened with domestic chores so they can make time to go to the justice delivery agencies. Majority of women have neither the time nor the money to make it to the justice delivery agencies. The inadequate outreach of formal judicial institutions combined with the poverty of a greater part of the population, which prevents them from being able to afford these institutions, excludes from its ambit both poor rural and urban women and men although not in the same way. Women are more likely to suffer social ostracism if they approach formal institutions to complain about ill-treatment by husbands and other family and community elders.

²⁷ Ibid 8

²⁸ Ibid 8

²⁹ Ibid 8

Training and orientation of persons in justice delivery agencies: Gender issues are not apparent to majority of persons in the justice delivery agencies, to the detriment of women. Training is limited for agencies responsible for the administration of justice on gender sensitivity and how to be responsive to the specific needs of women in the delivery of justice. The implementation of the Bangalore Principles on Judicial Conduct can be especially useful to judicial officers in this regard.

Gender sensitivity of technical and non-technical officers: Technical and support staff in justice delivery agencies have gender biases and stereotypes that invariably discriminate and marginalize women. Male staff, including police officers, Prosecutors and Judges can deter women from reporting disputes or crimes. Especially sensitive issues such as domestic violence and rape are likely to go unreported due to fear of shame and stigma.

Confidence in the system as impartial and transparent: Gender as a social construction accords men status, privileges and power. The effects of poverty and gender oppression leave women more powerless and less confident. This coupled with corruption in the judicial system affects women's access to justice because majority do not have resources to unjustly influence the judicial process in their favor.

Technicalities in the justice delivery system: There are more educated men and they have valuable contacts in the public sphere. Majority of men are in a better financial position to engage the services of lawyers. Women are more illiterate than men and are relegated to the domestic sphere with minimal contacts in the public sphere. Women have limited access to finances for engaging lawyers. The use of legal and highly technical language contributes to the perception of the judiciary as inaccessible, especially for those with language barriers, lower levels of education, and limited access to resources and influence (many of whom are women).

Illiteracy and ignorance: There are more educated men and they have valuable contacts in the public sphere. Women are more illiterate than men and are relegated to the domestic sphere with minimal contacts in the public sphere. Further, high illiteracy levels also affects women's knowledge of the law and how to access justice.

Rules of evidence and procedure play a critical role, as they can entrench gender stereotypes which undermine the credibility of victims³⁰. Below are three evidentiary rules that rely on gender stereotypes and should be avoided:

The prompt complaint requirement: in some jurisdictions, a delay in reporting may be used to question the truthfulness of a victim's allegation. Requiring this form of evidence gives legal form to stereotypical assumptions that a 'real' or 'ideal' victim of sexual violence will report the violence quickly.

The corroboration requirement prohibits convictions based solely on the testimony of the victims and imposes a legal requirement that the victim's testimony must be corroborated by other evidence. This imposes a higher burden of proof on victims of sexual violence in comparison with other violent crimes. In cases of domestic violence, judges always ask for proof and when women complain of having been beaten by the husband, a medical certificate is the proof that they are expected to provide. Health centers most often refuse to provide them for fear that they would have to be witnesses.

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Credibility challenges based on the victim's prior sexual conduct reflect the stereotype that women are more likely to be believed if seen as chaste, moral or respectable. This puts the victim and not the aggressor on trial by focusing on their behaviour instead of the alleged conduct of the defendant.

The context of women's political economic conditions constitutes the underlying circumstances of women's access to justice. The political and economic empowerment (or lack thereof) of women figures not only into the question of access e.g. the agency and economic capability of accessing remedies; but also on what constitutes justice. Women's economic and political independence and women's freedom from violence cannot be compartmentalized. Legal victories for women may be dampened, among others, by a political economic context that keeps women's labor in services, and under flexible/contractual arrangements, and women's low wages.

Cross cutting gender issues for women and men as they seek for justice through the courts of law

Poverty and the cost of justice: Poor men are inhibited by the costs involved in the formal justice system. Women who constitute the majority of the poor are more inhibited than men by the cost of justice.

Public-Private Divide: The divide dictates that dispute resolution is restricted to the private sphere thus restricting women and men from using the justice delivery agencies. Dispute resolution in the private sphere is male dominated and upholds patriarchal values to the detriment of women's access to justice.

The international bill of rights treat the civil, political, economic, social and cultural rights as inalienable and indivisible, yet a hierarchy of rights still prevails. This private and public divide not only affects women's enjoyment of their social, economic and cultural rights, it likewise affects the State's response to issues affecting women's rights and the value accorded to women's labour. First, as women have been traditionally relegated to the "private" sphere of home and family, the typical citizen has been portrayed as male, thus the dominant notions of human rights abuse have implicitly had a man as their archetype-in effect, violations of women that occur between "private" individuals have been made invisible and deemed to be beyond the purview of the state. Second, the gender division of labour within public and private spheres supported by gender ideologies, hold women primarily responsible for unremunerated, and often invisible social reproduction in the family household. This private/public divide further creates inequalities in bargaining power between men and women³¹.

Delayed delivery of justice: Delayed delivery of justice obstructs justice for men and women.

Acknowledging Compounded Reality: Multi-disciplinary strategies and response in women's access to justice. Intersectionality recognizes the often multiple and overlapping forms of discrimination experienced by women victims of violence in their attempts to access justice. Different entry points of discrimination should be recognized, generalizations, and categories avoided in recognition of the diverse lived experiences of women. In recognizing the various ways and the various grounds in which discrimination may manifest, categorization of women's experiences are avoided and the possibility of diversity, acknowledged as well as the compounded and interrelated forms of oppression that women may be subjected to³².

31 Ibid 8

32 Ibid 8

Taking into account intersectionality means to understand the multiple factors that intersect with gender to create a layered experience of equality and discrimination. These factors include: gender identity, gender expression, ethnicity/race, indigenous or minority status, colour, socio-economic status, language, religion or belief, political opinion, national origin, marital and/or paternal status, age, urban/rural location, health status, disability, property ownership, illiteracy, trafficking of people, armed conflict, seeking asylum, being a refugee, internal displacement, statelessness, migration, heading households, widowhood, living with HIV/AIDS, deprivation of liberty, being in prostitution, geographical remoteness and stigmatization of people fighting for their rights, including human rights defenders³³.

The methods of law, law making and law enforcement should be challenged to take into account women's diverse experiences: conscious of the gendered axis of women's access to justice when their rights are violated in comparison to men and conscious of the different experiences of individual women.³⁴

³³ Ibid 6

³⁴ Ibid 8

CHAPTER THREE

GENDER ROLES AND THEIR EFFECTS ON ACCESS TO JUSTICE

The artificial line that society draws to separate public from private life, privileging the public over the private and relegating women to the latter sphere, means that the roles that women perform in the domestic sphere are viewed as inferior. Moreover, the disproportionate responsibilities that women carry in the domestic sphere negatively affect their personal development³⁵. Without skills and knowledge relevant to the job market, most women are engaged in the informal sector with attendant challenges including low wages while others do not have income due to unemployment and failure to get involved in income generating activities. As a result, majority depend on on male relatives for assistance and financial resources. Access to justice is affected when women are unable to afford the costs that come with legal fees to hire the services of a lawyer, transport to and fro to attend court sessions among others. As a result, access to justice is low on their list of priorities even when it's the only solution to a legal predicament in which they may find themselves. Further, litigation is also widely regarded as a masculine practice, and it is considered “uncultured” for women to get involved³⁶.

Unremunerated work: At the household level, women are denied access to justice through the non-recognition of their unremunerated housework. On a daily basis, many women are engaged in any number of activities ranging from cooking, cleaning, garden work, fetching water, grazing animals, to caring for children, the elderly and the sick. None of these activities are recognized as work in commercial terms, and therefore are unremunerated in the domestic sphere. Yet, the same activities, when given commercial names, are recognized as formal work and therefore remunerated in the public sphere³⁷. Judicial officers must value the work performed by women outside formal employment, rather than hold gender-blind or gender-stereotyped beliefs that women (or wives/daughters) who are not in the formal sector “do not work³⁸.” By recognizing unremunerated domestic activities as labour contributing to household income, the courts will be able to promote a better understanding of gender equality in marriage. For example, recognising that women contribute to the household income is the starting point of recognising their right to an equal share in matrimonial property during marriage and at its dissolution³⁹.

The geographical distance of the courts is a challenge, especially in rural areas: The National Service Delivery survey results of 2001 indicated that only 18.2 percent of people in rural areas were able to access a Magistrate Court within a distance of less than five kilometres compared to 56 per cent in urban areas (Mukasa, 2001). Furthermore, it is a common occurrence for witnesses to fail to appear in court due to lack of transport, which delays the progress of cases.⁴⁰ This is especially onerous for women who are already burdened by the triple roles they play.⁴¹

35 Ibid 22

36 Ibid 22

37 Ibid 22

38 Ibid 22

39 Ibid 22

40 Ibid 22

41 Ibid 22

Women, who bear the brunt of domestic responsibilities (caregiving, housework etc.), are expected to complete their daily household chores before attending court sessions and therefore struggle with time poverty when attempting to seek justice. Rural women cannot afford to hire domestic help, and so must carry their children on their backs to justice delivery agencies. Long walking distances may mean women attend late, after court has already adjourned, or not at all for lack of transport. The end result is limited or no access to justice for such women. The situation may not be as challenging for men who typically control the household income and do not shoulder domestic responsibilities⁴².

It is not that women do not get justice from formal institutions but when they do it is on the bases of women performing their traditional roles as good mothers and wives. But when they are sex workers, rape victims who have difficult pasts and are not “good mothers” women generally fail to achieve justice in our courts. This is so for two main reasons. First, when advocating or litigating for gender justice often practical interests of women’s needs (arguing a case in terms of women’s stereotypical roles) takes precedence over strategic arguments such as how to shift and change society and its valuation of women and men over the long term. Secondly, even when thinking and working strategically one is often working with tools that are not of one’s own making. The law itself is a gendered tool that has been shaped by men’s needs and men’s experiences⁴³.

Traditional practices that construct men as the heads of families and households lead to adverse consequences for women when it comes to important issues such as decision – making, equal access to resources, and enjoying equal status within the family and society⁴⁴.

Negative stereotypes and traditional perceptions of women’s roles inhibit women from enjoying equal legal capacities as men, including their domicile, inheritance, and child custody rights⁴⁵.

Polygamous marriages which allow men to marry multiple wives often have wide-ranging negative consequences for women⁴⁶: Regardless of the type of marriage (civil, customary or religious), women disproportionately face dis-empowerment through their marital status. As the majority of women in Uganda substantially depend on their male spouses for financial and social support, they have limited options in seeking justice. Even for wives that are financially independent, who may be able to afford the costs associated with accessing justice, this access may still be impeded by cultural and religious barriers⁴⁷.

While the Constitution outlaws laws, cultures and traditions that go against the dignity, welfare and interests of women, in reality non-enforcement of this constitutional provision perpetuates women’s subordinate status in family matters, including child marriages⁴⁸.

Gender biases entrenched in the law and the reproduction of traditional roles of women as i.e. wives and mothers are reinforced in courts by judges and even by the lawyers advocating for women’s rights. For example, women are mothers and you want to go into court to protect that role and therefore have to rely on quite traditional stereotypes of women’s role. And so women will get justice but justice that

42 Ibid 22

43 Maitrayee Mukhopadhyay (2008) Gender and Access to Justice in Sub-Saharan Africa

44 Ibid 22

45 Ibid 22

46 Ibid 22

47 Ibid 22

48 Ibid 22

suits their practical needs rather than a justice that suits the strategic objectives of how do we begin to shift and change society and its valuation of women and men over the long term⁴⁹.

There are limited skills and capacity of judicial officers and others charged with the administration of the law. For instance, the lack of facilities for breast feeding mothers, lack of playing space for young toddlers who come to court with their mothers⁵⁰.

The Judiciary Gender Policy notes that although these institutional gaps affect all court users, they are more likely to affect those who have less resources, lower levels of education, and less influence – and more often than not, these are women. Lower literacy levels, poverty, and strictly proscribed cultural norms that dictate their behavior, mean that women are less likely to be aware of their rights, the remedies available to them, and the relevant justice mechanisms that should be accessed.⁵¹

Ensuring equal access to justice for men and women, therefore, calls for an appreciation by judicial officers and others within the justice delivery agencies of the socio-economic realities of users of the justice delivery system – particularly the poor, vulnerable and marginalized.

In order to deliver impactful substantive justice, there is also a critical need to improve the representation of all justice delivery agencies throughout the country, bearing in mind that their design and size need to be appropriate for the rural setting.

49 Ibid 32

50 Ibid 22

51 Ibid 22

CHAPTER FOUR

SUMMARY OF THE RELEVANT LAWS AND CASE LAW THAT PROMOTE AND PROTECT WOMEN'S RIGHTS TO ACCESS JUSTICE AT NATIONAL AND INTERNATIONAL LEVEL

Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement among others. Uganda has enacted gender-responsive laws and regulations, including the constitution 1995, 2010 Domestic Violence Act to protect and provide legal solutions for survivors of violence in the home; and the 2011 Domestic Violence Regulations ; the 2010 Prohibition of Female Genital Mutilation Act that criminalises the harmful practice of FGM; the 2012 Employment (Sexual Harassment) Regulations that give effect to the provisions on sexual harassment in the Employment Act; the Public Finance Management Act 2015 which provides for gender and equity responsive planning and budgeting and the 2015 HIV/AIDS Prevention and Control Act that protects women and men living with HIV from discrimination on the basis of their HIV status the Succession Amendment Act 2022, which gives women the same rights as men to the estate of an intestate spouse.⁵²

Moreover, problematic interpretation and implementation of the law, ineffective or problematic legal procedure (the lack of gender-sensitive procedures in the legal system), poor accountability mechanisms (this category can include corruption), under-representation of women among legal professionals, gender stereotyping and bias by justice actors are some of the major factors that have been discussed in the previous Chapters of the Guide and identified as barriers to accessing justice by women and girls.

4.1 National legal framework on women's rights

4.1.1 The Constitution

The rights of women are clearly enumerated in the Constitution of the Republic of Uganda of 1995. This law guarantees non-discrimination and equal rights of women and men within several articles as expounded. The framers of the 1995 constitution incorporated most of the then existing human rights standards, most important being the international Bill of Rights, which provides for the equal status of men and women before the law and outlaws all customs, laws and practices that discriminate against gender. Article 33 provides for the Rights of women as follows:

- (1) Women shall be accorded full and equal dignity of the person with men.
- (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.
- (3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.
- (4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

⁵² FN Combined eighth and ninth periodic reports submitted by Uganda under article 18 of the Convention, due in 2018* ,** [Date received: 29 June 2020] page 8

- (5) Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.
- (6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.

Article 21 of the Constitution provides that:-

“All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law... [A] person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.”

It further provides for access to justice for all under Article 50 which provides that any person who feels that their rights have been violated, has a constitutional right to seek redress in court.

The constitution introduces affirmative action as the only form of discrimination that is legally accepted in international human rights law. CEDAW urges States Parties to adopt “temporary special measures aimed at accelerating de facto equality between men and women”⁵³

Affirmative action is codified in Uganda’s Constitution. The right to affirmative action in favor of marginalized groups, including women, is guaranteed by Article 32. It provides as follows:

- 1. Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised 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.*
- 2. Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or any marginalised group to which clause (1) relates or which undermine their status, are prohibited by this Constitution.*
- 3. There shall be a commission called the Equal Opportunities Commission whose composition and functions shall be determined by an Act of Parliament.*
- 4. The Equal Opportunities Commission shall be established within one year after the coming into force of the Constitution (Amendment) Act, 2005.*
- 5. Parliament shall make relevant laws for the purpose of giving full effect to this Article.*

Therefore, affirmative action is not a privilege but a constitutional right. It is positive discrimination meant to protect the fundamental freedoms and rights of oppressed and marginalized groups. This right must be respected and upheld by the justice-delivering courts. The Ministry of Gender, Labour and Social Services, the Human Rights Commission, and the Equal Opportunities Commission are some of the institutional bodies set up to execute and oversee these initiatives.⁵⁴

The Judicature Act in Section 15 provides that the high court is empowered to enforce customs as long as they are not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law. This provision has been interpreted by

⁵³ Article 4(1) of CEDAW and General Recommendation No. 25.

⁵⁴ Gender Bench Book page 40

courts in a number of cases for example in *Bamwite Nangobi*⁵⁵. Court held that a female child may not only inherit property but can inherit land from their father, and she can also be installed as heir of her deceased father's estate. In *Law & Advocacy for Women in Uganda v Attorney General* (No. 1)⁵⁶, The Court held that sections 2 (n) (i) (ii) which defined the words 'legal heir' and preferred a male heir to a female one,. Section 27 which made no provision for division of property for a female intestate and whose division was oblivious to the contribution of the wife to the wealth in the home and sections 26 and 29 and rules 1, 7, 8, and 9 of schedule 2 to the Act that provided for occupancy rights of the matrimonial home that burdened a woman but not a man if any of them chose to re-marry discriminated against women in contravention of the Constitution. Yet again in *Kolya v Kolya*⁵⁷, where a deceased husband had willed the matrimonial home to his son, court held that the deceased had wrongly prioritized his heir over the widow. The court noted that a cultural practice which allows for an heir to inherit a matrimonial home thus denying the widow her proprietary rights is discriminatory.

4.1.2 Employment Act 2006

The main law governing the workplace in Uganda is the Employment Act of 2006. It highlights a number of issues likely to arise in the work place. Within the law are tools for access to justice by women. For one, the creates sexual offenses at the work place, giving the offended party (who is usually a woman), avenues to access justice against the sexual offender.

It protects the right of a woman to conceive and carry the pregnancy to term, by criminalising termination for the reason of pregnancy. Section 56 provides for paid maternity leave of 60 days for women, and an additional 30 days in case of medical complications. The Act in section 57 also grants men paid paternity leave of four days, and provides for equal pay for equal work for both men and women in formal employment.

The Act has both a civil and criminal component depending on the remedy sought by the complainant. The standard of proof also changes according to whether it is an administrative or criminal remedy being sought. If it is an administrative remedy, the standard of proof is on a balance of probability; if a criminal prosecution, the standard of proof must be proof beyond reasonable doubt.⁵⁸

The Act creates the office of the Labour Officer with the power to investigate and dispose of complaints, ensure that the working environment is suitable for all employees and meets their unique needs (such as the need for proper disposal sanitary towels for women).

Additionally, it offers women a paid maternity leave of 60 days, with an additional 30 days in case of issues with their health. Additionally, the Act gives men a four working days paid paternity leave and guarantees that men and women in formal employment receive equal compensation for equivalent work.

Equal pay

Article 40(1) (b) of the Ugandan Constitution provides: "Parliament shall enact laws to ensure equal payment for equal work without discrimination." In this respect, Section 6(7) of the Employment Act stipulates: "Every Employer shall pay male and female equal remuneration for work of equal value."

⁵⁵ [1977] HCB 41

⁵⁶ Constitutional Petition Nos. 13/05 and 05/06.

⁵⁷ Civil Suit-2016/150) [2020] UGHCFD 4

⁵⁸ Gender bench book pg.74

Section 6(3) provides for equality of opportunities for men and women and prohibits discrimination on the basis of gender. It provides that

Discrimination in employment shall be unlawful and for the purposes of this Act, discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

It is important to note that women in Uganda only make about 20% of the workforce in the formal sector of employment. Two fundamental issues are noted in this statistic. The laws created for that work environment were (and still are) primarily concerned with the position of men because women only make up a minority in the workplace. The labour laws were cantered on the interests of the men.⁵⁹

Sexual Harassment

The Employment Act (2006) for the first time in the labour law history of Uganda introduces sexual harassment at the work place as an offense and equips women with ammunition to fight it.

Section 7 defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment is committed against an employee if the employer or the representative of an employer does any of the following:-

- a. Directly or indirectly makes a request of that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains: an implied or express promise of preferential treatment in employment; an implied or express threat of detrimental treatment of employment; an implied or express threat about present or future employment status of the employee;
- b. Uses language, whether written or spoken, of a sexual nature;
- c. Uses visual materials of a sexual nature; or
- d. Shows physical behavior of a sexual nature.

Such actions directly or indirectly subject the employee to behavior that is unwelcome or offensive to her/him and, that either by its nature or through repetition, has a detrimental effect on his/her employment, job performance, or job satisfaction.

Under section 7(4) of the Act, an employer who employs more than 25 employees is required to have in place measures to prevent sexual harassment occurring in their work place. This does not mean however, that employers with less than 25 people need not have such measures to prevent sexual harassment occurring in their work place.

At the Instigation of the Labour Officer under section 14 of the Employment Act, the courts are entrusted with the jurisdiction to entertain cases touching on any provision of the Act which includes cases of sexual harassment.

The Industrial Court

The law creates the industrial court, whose composition of the panel is mainly persons without a legal background. The labour officer him/herself is not a person with a legal background and appearances before one need not be with legal representation.

All of the above changes in the labour laws allow women access to justice,

4.1.3 Right to Property

Without specifically mentioning the situation of women, Uganda's 1995 Constitution's Article 26 grants a general right to property. Article 31(2) mandates Parliament to enact the necessary legislation to safeguard the rights of widows and widowers to inherit the property of their deceased husbands and to exercise parental authority over their children. Although there hasn't been much progress made in passing this legislation, several decisions by courts have held laws and practices that deny women the same rights to succession as unconstitutional.

Changes in the law of succession

The law recognizes both male and female intestates under section 14, allows girls to be heirs to their fathers, by redefining the customary heir not to be according to the customs of the tribe of the deceased, the right to challenge a will by a dependent. In addition, women's rights to property of the deceased do not depend on his domicile.

The act upholds Article 32 of the Constitution by allowing married women to dispose of any property which they would be entitled to dispose of during their life or which they are

entitled to under a Will.

Gives widows the right to consent to the disposal of their deceased husband's property by administrators and executors.

The Right to Property

Women's Right to property can be summarized in the following points:

- Women produce 60 percent of the exported crops and 80 percent of the food consumed in Uganda, although they only own less than 30 percent of registered land in Uganda. Further, women make up 70 percent of the labour force in the agricultural sector majority of which activity is done using rudimentary tools like the hand hoe and therefore tedious with limited time for women to engage in other productive activities and self-care.
- The status of women is even more tenuous when it comes to unregistered land, which is typically held under customary law because of customs that essentially bar women from owning land.
- Many women lack access as well as control and ownership of land due to discriminatory cultural norms surrounding ownership, inheritance and succession.
- Despite considerable improvements stipulated in Constitution of Uganda and subsequent land-related laws and policies, women continue to face several challenges under both statutory and customary laws and in practice even where laws are favorable to women's land ownership rights.

Land Laws

With the coming into force of the Constitution of 1995 and the Land Act of 1998, there has been some action to ensure that women are accorded the same access to justice in land matters.

Sec. 27 of the Land Act focusses on the rights of women in regard to customary land. It provides that: Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, ...which denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate Articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void.

The courts have also been supportive of the women's cause. For example, *in Ebiju & Anor v Echodu*⁶⁰: The court held that with respect to customary tenure, although section 27 of the Land Act permits the taking of decisions in accordance with customs, traditions and practices of the concerned community, such decision must not deny women access to ownership, occupation or use. A decision of the lower court that the wife had no proprietary interest in the land left by the husband was found to be contrary to articles 32(2) and 33 of the constitution, as well as article 5 of CEDAW.

In *Edita Nakiyingi v. Merekizadeki*⁶¹ Court held that a wife who has invested in her husband's property was entitled to a share in it. In this case court took into account the "substantial" contribution (which was monetary) made by the wife.

While handling a matter that concerned matrimonial property, Justice Solome Bossa in *John Tom Kintu Muwanga v. Myliouse Gafabusa Kintu*.⁶² defined matrimonial property as property which the parties chose to call home and which they jointly contribute to and that at the termination of a marriage neither spouse walks out of the marriage empty handed, [because] each spouse makes a contribution towards acquisition of matrimonial property and this contribution is not necessarily financial.

In the case of *Julius Rwabinumi v. Hope Bahimbisomwe*' The court held that where a spouse makes a substantial contribution to the property, it will be considered matrimonial property. The contribution may be direct and monetary or indirect and non-monetary. This decision is crucial to women's access to justice since in most cases, women's contribution to matrimonial property is not monetary.

The courts have gone so far as to recognise women's rights over property jointly held by spouses even where the law does not recognise the marriage as legal. Thus in the case of *Baryamureeba v Kabakonjo & 6 Ors*,⁶³ The court while acknowledging that there was no existence of a valid marriage between the parties, pointed out that the land in issue was family land and could not be subjected to sale by the man since the woman ordinarily resided on the land and had been cultivating it same since 1978 when the man acquired it from his father by way of inheritance.

60 Civil Appeal No. 43 of 2012) [2015] UGHCCD 122

61 [1975] HCB 23.

62 High Court Divorce Appeal No. 135 of 1997.

63 Civil Suit-2013/20 [2020] UGHCCD 27

Divorce

Until the ruling of the court in *Uganda Association of Women Lawyers and Others v Attorney General*,⁶⁴ the Divorce Act allowed a husband to divorce his wife if she was guilty of adultery. There was however no similar right to the woman. She was required to prove adultery with any other ground under the Act.

The Constitutional in this case held that these provisions of the Divorce Act were inconsistent with the equality and non-discrimination provisions in articles 21, 31, and 33 of the Constitution, and were in effect null and void.

Similarly, the Supreme Court in *MIFUMI (U) Ltd 12 others versus Attorney General and Kenneth Kakuru.*, held that the customary practice of the refund of bride price as a condition precedent to a valid dissolution of marriage violates articles 31(1)(b), 32(2) and 33(1) of the constitutional.

Justice Jotham Tumwesigye JSC, stated that the custom of refund of bride price devalues the worth, respect and dignity of a woman...if the term bride price is rejected because it wrongly depicts a woman as a chattel, how then can the refund of bride price be accepted?...if a man is not subjected to valuation for the refund of bridal gifts when the marriage breaks down, it is not right or just that a woman should be subjected to valuation. She is not property that she should be valued.

In this way, the court made it possible for women under customary marriage unions to exercise the right to divorce their husbands as easily as the men can do.

In the *Kigongo v Kigongo* (High Court Civil Suit No 295 of 2015): although the couple were not legally married, the woman had acquired an interest in their shared home which she believed to be their matrimonial property. The two had lived as if they were husband and wife for 26 years. In this case, there was proprietary estoppel in favour of the woman and she had the right to co-own the house.

Baryamureeba v Kabakonjo & 6 Ors,⁶⁵ Though Justice Adonyo acknowledged that there was no existence of any valid marriage between the man and Kabakonjo, the land in question was family land and could not be subjected to sale by the man since the woman ordinarily resided on the land and had been cultivating the same since 1978 when the man acquired it from his father by way of inheritance.

4.2 Regional Legal Framework

4.2.1 Protocol to The African Charter on Human & People's Rights on the Rights of Women in Africa commonly referred to as the Maputo Protocol

The Maputo Protocol draws from human rights principles of universality of rights, indivisibility and interdependency of human rights. The Protocol like the African Charter on Human and Peoples Rights responds to African concerns, conditions and traditions. The Protocol draws from various human rights instruments and declarations including: Universal Declaration of Human Rights (UDHR) and United National Human Rights Instruments like the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on Elimination of all Forms of Discrimination against Women (CEDAW) and UN Security Council Resolution 1820 adopted in 2008 on women in armed conflicts. Governments at international level

⁶⁴ Constitutional Petition No. 2/2003

⁶⁵ Civil Suit-2013/20 [2020] UGHCCD 27.

commit to women's rights through these various Covenants to ensure practical realization of gender equality for men and women.

At regional level, the Maputo Protocol which guarantees comprehensive rights for women in Africa was adopted by the African Union (AU) on July 11, 2003, in Maputo, Mozambique. In 2005, the Maputo Protocol herein after referred to as the Protocol entered into force. In the AU Gender Policy, Member States undertook to achieve full ratification and enforcement of the Protocol by 2015 and its domestication by 2020⁶⁶Uganda the Maputo protocol on July 22, 2010.

The rights enumerated in the Protocol include:

- 1. Civil and Political Rights**
- 2. Economic, Social and Cultural Rights**
- 3. The Right to Development and Peace**
- 4. Reproduction and sexual rights**

In the case of the Maputo Protocol, Uganda's legal framework to a large extent has domesticated its provisions in the Constitution and subsidiary laws except for section 14 (2) (c) on the right to abortion which government of Uganda reserved.

4.2.2 Gaps in the implementation of the Maputo Protocol relevant to access to justice for women in Uganda

- Limited implementation of the laws to protect the rights of women due to deeply entrenched traditions and patriarchal attitudes, especially in rural areas (Coalition of the Campaign Africa for Women's Rights).
- Failure by Parliament of Uganda to pass critical laws like M&DB to enhance Article 31 (1) of Uganda Constitution and Article 6 of Maputo Protocol.
- Corruption and its effects on implementation of the provisions of the Protocol to guarantee equal right for women with men.
- Lack of information on the Protocol by duty bearers including those in the judiciary responsible for delivery of justice.
- Limited skills in tracking the implementation of Maputo Protocol by duty bearers partly due to limited knowledge on the Protocol.

4.3 International Legal Framework

Universal Declaration of Human Rights (1948): Motivated by the experiences of the world wars, UDHR was adopted by the UN General Assembly on December 10 1948. UDHR was the first declaration that countries around the world agreed upon to give effect to the fact that human rights are universal and inalienable. The UDHR incorporates civil and political rights and economic, social and cultural rights. However, UDHR is a declaration and not a treaty. It does not directly create legal obligations on countries.

⁶⁶ Justice Lucy Asuagbor (2016)

UDHR gave birth to international instruments which create legal obligations on State parties including: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention of the Rights of the Child (CRC) and Convention on Elimination of all Forms of Discrimination against Women (CEDAW) among others. These treaties create legal obligations on State parties to domesticate, adhere to and report on progress in their implementation.

Convention on the Elimination of all forms of Discrimination against Women (CEDAW): Uganda became a state party to CEDAW in 1985. CEDAW is an international treaty that is part of the UN HR system. CEDAW should in essence be used to improve the status of women. CEDAW establishes rights of women which have previously not been addressed in International law.

- CEDAW draws on three principles including: Substantive equality, Non-discrimination and State obligation. The three principles should always be present whenever CEDAW is applied. Substantive equality looks at: equality of opportunity, equality of access to opportunities which must be secured by laws and supported by institutions of government and equality of results. Under equality of results, the State must show results of the laws it has put in place to secure equal opportunities and access for women's rights. A corrective approach to equality recognizes the marginalization of women and encompasses laws, policies, programs and services which must lead to equality of opportunity, access and results...Article 33 (2) and (4) of Uganda's Constitution
- Non-discrimination: Article 1 of CEDAW defines discrimination against women as distinction, exclusion or restriction made on the basis of sex which has effect of impairing the recognition of and enjoyment or exercise by women irrespective of their marital status, on basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural and civil sphere.
- State obligation: Article 26 of the Vienna Convention on Law on Treaties (1969) states that: Every Treaty in force is binding upon the parties to it and must be performed by them in good faith.
- Article 27 of the Vienna Convention states that: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

State obligations under CEDAW include:

- To refrain from interfering with the enjoyment of women's rights.
- To include an equality and non-discrimination clause in its national constitution—Article 21 of Uganda Constitution
- To protect against violations by State and non-state actors—Article 20, Article 33 (3) of Uganda's Constitution
- To provide enabling policies and the means to attain equality for women with men.
- To take measures to abolish laws that discriminate against women and enact enabling laws in line with CEDAW
- To facilitate access and to provide for the full realization of women's rights human rights
- To prevent the violation of the CEDAW by non-state actors

CHAPTER FIVE

PRACTICAL TIPS ON WHAT TO CONSIDER AND THE STEPS TO TAKE IN HANDLING CASES INVOLVING WOMEN AND GIRLS (DOS AND DON'TS)

Barriers to women's access to justice need to be addressed through a combination of solutions operating at the level of both legal reform and the de facto implementation of laws.⁶⁷ Advocacy for changing legislation is a straightforward approach to reducing socio-cultural obstacles, if these patterns are reflected in the legislation, or if societal imbalances are not adequately addressed in domestic laws through 'positive discrimination' provisions.

Allowing civil society organisations and national human rights institutions to raise representative claims on behalf of vulnerable individuals can be a valuable measure for overcoming socio-cultural barriers to access to justice. There some cases where this has happened in Uganda in ***Law and Advocacy for Women in Uganda v. Attorney General***⁶⁸ and ***Mifumi (U) Ltd & 12 others v Attorney General, Kenneth Kakuru***⁶⁹

DOS

1. Compassionate support

Naturally, judges and prosecutors can have a greater impact on addressing the barriers that are associated with the legal/institutional sphere. Judges can also declare as invalid, laws that replicate gender stereotypes and violate human rights and constitutional guarantees.⁷⁰ Cooperation between judicial and law enforcement organizations, as well as administrative and civil society agencies, is necessary to ensure access to justice.

In ***Maslova v Russia (2009)***, the Court held that *"the manifestly debasing character of rape emphasizes the state's procedural obligation in this context"* (para. 91). The Court went on to hold that: *"The effective official investigation should be capable of leading to the identification and punishment of those responsible ... The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness."* (para. 91)⁷¹

2. Peer Counselling

Peer counsellors use their own stories in helping others develop hope and improve their lives. Adults, youth, parents or legal guardians can provide support to their families

To effectively facilitate access to justice for victims of gender-based violence, requires that the victim is provided adequate legal information, encouraged to report, provide victims with adequate civil remedies, and compensation, ensure that investigations and judicial proceedings are carried out without undue

67 IBA report on Access to Justice Report 2014 page 19

68 Constitutional Petition No. 13 of 2005.

69 Constitutional Petition No.12 of 2007

70 Mifumi case ibid

71 Training Manual on Gender, the Law and Practice (EU) page 38

delay and that prosecutors can initiate and continue proceedings, even if the victim withdraws the complaint. It is also important to ensure that evidence relating to the sexual history and conduct of the victim is permitted only when relevant and necessary, ensure that mandatory alternative dispute resolution processes or sentencing, including mediation and conciliation, are prohibited and ensure the protection of victims at all stages of investigations and judicial proceedings

The use of peers who have successfully litigated their cases can go a long way in supporting others to achieve a desired end. Judicial Officers and prosecutors should explore this avenue.

3. Compassionate Judicial Officer Support

Judges and prosecutors can dispel gender stereotyping in the judicial system by actively challenging stereotypes in a number of ways. They can challenge lower court decisions that are based on stereotypes. Case-law example: In the case of *R v. Ewanchuk*, concerning the sexual assault of a 17-year-old woman the Supreme Court of Canada challenged lower courts' decisions that had acquitted the defendant based on the defense of "implied consent". It found that the lower courts had engaged in gender stereotyping, and that the case was 'not about consent, since none was given'. The Supreme Court held that this case was about myths and stereotypes that it explicitly identified and debunked in its judgment: "either the complainant is less worthy of belief, she invited the sexual assault, or her sexual experience signals probable consent to further sexual activity

[...] the implication is that if the complainant articulates her lack of consent by saying 'no', she really does not mean it and even if she does, her refusal cannot be taken as seriously as if she were a girl of 'good' moral character. 'Inviting' sexual assault, according to those myths, lessens the guilt of the accused...."⁷²

4. Judicial Remedies

Everyone who interacts with the justice delivery system must receive fair and non-discriminatory treatment. In order to maintain public confidence and faith in the legal system, litigants must believe that they are being handled fairly and without any sort of discrimination. People typically turn to mob justice, enforcing the law themselves, when the public loses faith in the system for delivering justice. The judiciary cannot permit the mob to usurp the constitutionally granted judicial authority of the courts of law.

The case of *Airey v. Ireland* (1979)⁷³ demonstrated that the judicial remedies that can allow a victim of domestic violence to escape the violent situation through, inter alia, divorce or separation proceedings which shall be accessible and effective in order to guarantee practical – not just theoretical or illusory protection to the victim in a vulnerable position.

*"Such an effective access can, from time to time, require that the victim is afforded legal aid due to the complexity of the case, the victim's unfamiliarity with the court proceedings but also from the point of view of the victim's weakened capacity to represent her case due to her emotional involvement."*⁷⁴

⁷² Canada, Supreme Court. *R. v. Ewanchuk*. 1999. 1 S.C.R. 330. L'Heureux-Dube J, concurring. para. 95.

⁷³ *Airey v Ireland* 32 Eur. Ct HR Ser A (1979) 2 E.H.R.R 305

⁷⁴ Training Manual on Gender...ibid page 40

5. Respect for the applicant's moral character

The applicant's personal integrity must be respected at all times during the inquiry and legal proceedings. It must be acknowledged that women victims frequently view the criminal justice system for example as an extra trauma, particularly in situations of sexual assault. This is particularly true if the victim woman is coerced into coming face to face with the aggressor against her will.

6. Promotion of Alternative Dispute Resolution (ADR) and traditional forms of justice

The use of Alternative Dispute Resolutions is very key to allowing women and girls to have access to Justice. Using justice delivery strategies that are popular with the public can help restore and preserve public confidence and trust. The examples of mediation and arbitration are provided by retired Chief Justice S.W.W. Wambuzi in his book,⁷⁵ where he points out that the parties' freedom to choose the process and the applicable legislation, as well as the informality of the procedures, are factors that give the parties confidence in the fairness of the arbitrator's decision. Therefore, justice is not only carried out but also shown to be carried out.

7. Use of less technical legal jargon when handling cases in court

Legal rituals during a hearing are alienating, abrupt, too technical, insensitive, and exclusionary, thus leading to lack of participation (WLSA, 2000). This keeps poor and illiterate men and women in the shadow of the law. For women, the situation is aggravated by the compounding effects of gender-based discrimination.⁷⁶ In particular for people with language problems, lower levels of education, and limited access to resources and power, the use of legal and highly technical jargon makes the judiciary appear to be inaccessible (many of whom are women). In reality, even laypeople who understand and speak English find the law, both civil and criminal, as it is written in the statute books, to be opaque.

8. Exercise leniency in sentencing

It is imperative that in some cases involving women and girls Judicial Officers and Prosecutors exercise leniency for example when it comes to sentencing women for criminal offences. It is important to take into account the fact that they are the primary caretakers of children. For this reason, where appropriate, non-custodial punishments should be used for women. The Community Service Act of Uganda (2000)⁷⁷ provides for non-custodial punishments and regulates community service for offenders in certain cases.

In the case of *Uganda v Apio Agnes*⁷⁸ The convict was indicted for the murder of her husband. She was convicted on her own plea of guilty and sentenced by Hon. Justice Dr. Winfred Nabisinde to community service of 240 hours. The facts revealed that she had started cohabiting with the deceased when she was barely 15 years old. The deceased infected her with HIV/AIDS, and they had three children, two of whom tested HIV-positive. The deceased had an affair with her younger sister who had come to help them nurse the sick children. On learning of this affair, Apio got angry, picked up a club, hit her husband on the head and he died instantly. At sentencing, court took cognizance of the circumstances under which the offence was committed, and noted most specifically, the pain of a woman who had been suffering from HIV/AIDS since a very early age, with two children to care for

⁷⁵ The Odyssey of a Judicial Career in Precarious Times: My Trials and Triumphs as a Three-Time Chief Justice of Uganda 2014

⁷⁶ UN Women Gender Bench Book page 132 para 65

⁷⁷ Cap 115 Laws of Uganda

⁷⁸

who were suffering from the same disease, and then finding out that the man who should have shared this burden was having a sexual relationship with her own sister who would now then most likely also be infected by HIV/AIDS. Importantly, Court stated that women, such as the defendant, needed more support than punishment, and that the mitigating factors outweighed the aggravating factors in this case. Court condemned the acts of sexual relations with young girls, and especially with relatives of one's spouse. Court reasoned therefore that the convict, a 24-year-old mother of three children, two of whom were sickly, deserved mercy and support instead of imprisonment.⁷⁹

9. Privacy and appropriate language gender sensitivity and empathy

On August 4 2022 at a training organized by UWONET and IDLO for NAWJU, the judicial officers shared some of the best practices that they have adopted to make their courts child friendly. The best practices adopted include:

- Some judges have adopted simple language in the court processes and in their rulings to ensure access to justice for women and children and men.
- In cases involving children some judicial officers use facial expressions that enlist children to trust them as they give evidence in the courts of law.
- Some judicial officers appreciate the importance of networking with other actors relevant to the dispensation of justice including: NGOs, Resident District Commissioners and religious leaders among others. Networking has ensured that some courts get access to in kind support like donations for child friendly spaces in the courts.
- Some judicial officers have adopted outreaches to the communities to provide legal education to citizens. Legal knowledge within the citizenry is important in reducing cases before the courts.
- Some judicial officers use time within a court session to sensitize the people within the court on the rights of especially women and children in regard to cases where the two interest groups are involved.
- Addressing their own gender stereotypes and looking at the people before them in the court as human beings.
- Allowing litigants in the courts to participate in their cases by allowing them to say something as the case progresses can ensure justice. The contribution of the litigant as the case proceeds may provide the judicial officer information necessary to dispense justice.
- Considering the situation of litigants. For instance, charging a husband and wife together will leave the children without parents to care for them. Gathering facts about litigants improves the dispensation of justice.
- Learning the local language of the jurisdiction in which one is posted as a judicial officer improves communication with the citizens and creates more trust between the judicial officer and litigants.
- Adopting open days to give legal education and legal aid using language which the citizens in one's jurisdiction understand. This will demystify the law and increase appreciation for the judicial system and improve access to justice for especially women and children who are less likely in comparison to men to use the formal legal process.

⁷⁹ UN Women Gender Bench Book page 142 – Uganda v Apio Agnes High Court Criminal Session Case No. 0123 of 2014 at Lira

- Working with NGOs who work on similar issues to support the courts to provide legal education to citizens.

10. Women and child friendly spaces

On August 4 2022 at a training organized by UWONET and IDLO for NAWJU, the judicial officers shared some of the best practices that they have adopted to make their courts women and child friendly. The best practices adopted include:

- Some judicial officers have adopted child friendly spaces in the courts to ensure that children relax within the court premises as the courts dispense justice. Prioritization of cases involving children
- Making laws in absence of legislation.
- Some judicial officers have established child friendly waiting rooms equipped with toys, snacks and sweets for children.
- NAWJU is encouraging judges to look at the checklist of court cases that are due for hearing before them and to ensure that cases involving children and breast feeding mothers have priority.
- In cases involving women, some judicial officers inquire about the most convenient time for female litigants. This enhances their attendance of court sessions and improves the dispensation of justice.
- Informing litigants especially women about their right to express themselves in the local language has also increased access to justice. This is important because more women in comparison to men in Uganda are illiterate.
- Creating functional family committees in the communities links the courts with the citizens. For instance, in cases where a defiled child may need to be taken care of outside his/her family where a perpetrator resides requires functional family committees that can assist the courts to identify temporary residence for such children.

DON'TS

1. Prioritizing legal solutions

Everyday legal issues are a reality for many people since law defines and permeates all aspects of citizens' and businesses' life, regardless of how wealthy or unsuccessful they are. Social, economic, and health concerns are experienced in conjunction with legal challenges, and these problems can combine in ways that have an additive or cascading negative impact. For instance, social difficulties can trigger legal action, whereas legal issues including domestic violence, family/relationship dissolution, and injury from an accident, housing, employment, and discrimination may trigger social problems or intensify those that are already present.⁸⁰

Enhancing responsiveness and making ensuring that the “correct” mix of services are provided to the “right” customers, in the “right” circumstances, is the main difficulty in providing citizen-oriented access to legal services. This is something to take into account in handling cases involving women and girls given the multitude of social and economic challenges they face in society.

⁸⁰ Understanding Effective Access to Justice: Workshop Paper 2016 OECD Conference Centre Paris. Pages 13, 21-22

2. Avoid open court and hold session in camera

Sexual assault victims frequently refuse to report or provide proof that they were sexually assaulted, as well as seek the appropriate therapy and treatment, due to stigma and fear of negative social consequences (such as community revenge, ostracization, or even re-victimization).

It is important to recognize that culture and religion significantly influence what women are allowed to do and say in patriarchal nations like Uganda, where the vast majority of women reside in rural areas where this patriarchal value system is most loved and practiced.⁸¹ These regulations include the prevailing silence that prevents women from reporting sexual assault publicly and pursuing redress.

⁸¹ Ibid page 131

Barriers to access justice start from outside the formal systems and within these institutions. Economic, structural and institutional factors hinder access to justice including the cost associated with provision of legal services, time it takes to get legal redress.

6.1 A summary of the barriers hindering access to justice for women and girls include:

- i) The legal framework and institutional barriers: Gender blind provisions that do not take into account women's social position and gaps in legislation concerning issues that disproportionately affect women; 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. Other challenges that may make access to justice difficult for women include poor accountability mechanisms (including corruption); under-representation of women among legal professionals, which makes it harder to create gender sensitive laws and environments within the justice system; limited access to legal aid which makes access to justice unaffordable for many women that lack control over resources; Gender stereotyping and bias by justice actors/lack of gender training which also makes the environment unfriendly and hence many women may fear the humiliation of interfacing with a hostile justice system.⁸²
- ii) Women and children are the primary victims of marginalization, discrimination, exclusion and exploitation⁸³. Historical lower social positioning of women and children compared to men in many socio-cultural contexts, often means that women and children lack access to and control over household resources, opportunities, and voice in a household as well as at community level compared to their male counterparts. Poor people face attitudinal barriers, technical and complex practices that are confusing for lay persons that may be literate. As such, for the poor and vulnerable, already faced with multiple problems, interacting with the legal procedures is a daunting task.⁸⁴ Also, many who are poor and vulnerable cannot afford to retain the services of lawyers, and thus interacting with the adversarial system of justice combined with several procedures and rules can be distressing and disempowering.
- iii) Other barriers 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, etc.; lack of financial resources, including the means to pay for legal representation, legal

⁸² Lucy Fiske and Rita Shackel (2016), Uganda Country Report: Making Transitional Justice Work for Women: Rights, Resilience, and Responses to Violence Against Women in Democratic Republic of the Congo, Northern Uganda, and Kenya, University of Sydney, Sydney; IDLO. 2013. Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment, available at: http://www.idlo.int/sites/default/files/Womens_Access_to_Justice_Full_Report.pdf; Women's Access to Justice for Gender-Based Violence: A Practitioners' Guide (International Commission of Jurists, 2016) <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womensaccesss-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>

⁸³ LASPNET 2015 'Access to Justice for the Poor, Vulnerable and Marginalised People of Uganda. 15

⁸⁴ ibid

fees, judicial taxes, transportation to courts, child care, etc., which makes it difficult for many women to then access justice; Unequal distribution of tasks within the family which may mean no time to follow up cases; Unequal power relations in the family that may mean difficulties in making decisions or make household resource allocations that are in women's favour – including decisions that relate to justice seeking.

- iv) Other barriers include Gender stereotypes and cultural attitudes about women's social place in the household and community hierarchy, which can be discriminatory and block access to justice by trivializing women's rights and turning them into private affairs to be handled domestically and often not in the best interests of the women or girls.
- v) Further, women may be subsumed beneath men's power and hence remain under men's authority at household or community level, based on cultural norms and expectations regarding power between men and women. As such, decisions about whether or not a case should be taken to court may not be made by the women and this not only disempowers the woman but also makes access to justice much more difficult.⁸⁵

Below is a specific discussion of the barriers:

- a) **Social and cultural barriers:** This includes religion, education, poverty, culture and customs. Due to the social and cultural restrictions they face, a variety of categories of women show signs of vulnerability and regularly endure violence and marginalization. PWDs, widows, elderly women—particularly those in “generation gap” families with grandchildren to care for and older widows. The way communities interact and socialize may hinder or influence help seeking behavior. There is lack of privacy in communal settings, feeling of shame and fear of stigmatization.
- b) **Institutional barriers:** Insufficient government resources to guarantee or facilitate access of justice, limited human resource in justice institutions, limited legal aid service and legal representative, poor or lack of willingness to enforce decisions. Because of the ubiquitous gender inequality that occurs in all aspects of life and is founded on unequal power relations, women are always at risk., and female prisoners—including those detained on suspicion of crimes, those found guilty, and those serving time for civil debt—are all particularly vulnerable populations of women. Convicted women who are pregnant have unique challenges. Disempowerment of women is observable at the national, community, and family levels as well as in the private and public arenas as a result of harmful traditional and cultural practices, social constructions of gender roles, and other factors.

“The grossly inadequate infrastructure for legal and judicial services entails costs that the poor, rural populations and especially women can ill afford. As Likhapa Mbatha (South Africa) pointed out you have to have money to go to a particular forum as for example in order to get to the magistrate court a woman would need transport which many cannot afford.”⁸⁶

85 Ibid.; Compilation of good practices from member states to reduce existing obstacles and facilitate women's access to justice (2015): <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680597b12>
National studies on barriers, remedies and good practices for women's access to justice in five Eastern Partnership countries (2016): <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b0f41>

86 46 Report on KIT-CALS Conference 29 – 30 October 2008, Johannesburg South Africa page 3

Multiple reasons that appear in de facto discrimination against women push women's rights to the margins. Due to gender and cultural norms, female victims of gender-based and domestic violence frequently are unable to receive effective relief in the public realm, particularly in Justice Law and Order Sector institutions like the Police⁸⁷. For weak women, access to justice is hampered by these institutionalized patriarchal attitudes. The above factors coupled with inadequate outreach of formal judicial institutions combined with the poverty of a greater part of the populations, prevents women from being able to afford these institutions and excludes them from its ambit. This includes both poor rural and urban women and/or girls.

c) Corruption: is a key barrier to access to justice. Corruption in the justice system leads to lack of trust in judges and lawyers due to apparent and perceived corruption. The above barriers operate simultaneously and have reciprocal effects on each other that intensify their impact.

Other key factors to consider that affect access to justice for women include:

i) Poverty: Most poor Ugandans are not only poor, but they are chronically poor. Chronic poverty is the type that traps households into severe and multi-dimensional poverty and can take on an intergenerational form to the effect that those born in poverty live in it and bestow it on their children. Similarly, it can also be said that the majority of Ugandans are trapped in absolute poverty. The World Bank describes "absolute poverty lines as being based on a baseline of basic essentials that households needs". Female headed and widow headed households are more likely to be chronically poor and nearly two out of three people living in chronic poverty are children. Being an orphan further increases the likelihood of being chronically poor.

*"Joanna Osvalda (Mozambique) said that in her country people have to travel long distances to access district courts. Women are poor, they cannot afford to pay for the attorney, and cannot afford to travel long distances"*⁸⁸

The Uganda Poverty Alleviation Program report of 2002 also notes the absence of social support, unequal gender relations and geographical isolation as factors leading to poverty and resulting in isolation and exclusion, powerlessness, deprivation of basic human rights and a feeling of helplessness to influence the conditions around themselves⁸⁹

Poverty is a cause of inadequate levels of access to justice. The poor have no access to proper representation in court, they cannot enforce their economic and social right and cannot avoid exploitation. Socially they have no access to information, stigmatization and discrimination. Women tend to fall in the category as a result of lack of access to financial resources.

ii) Discrimination: Article 21 of the Uganda Constitution 1995 enjoins all persons to be equal before the law. The twin principles of equality and non-discrimination are intrinsically linked to the concept of access to justice in Article 2 of CEDAW⁹⁰. Such obligation is not limited to

⁸⁷ Access to Justice for the Poor Marginalized and Vulnerable People of Uganda – Study by LAPSNET Uganda page 37 & 40

⁸⁸ Ibid

⁸⁹ Uganda Participatory Poverty Assessment Report 2002 page 69

⁹⁰ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights. In 1985, government of Uganda ratified CEDAW. Upon ratification, in 1995 it domesticated the provisions of CEDAW in its Constitution.

constitutional or legislative measures but also those that ensure the practical realization of the elimination of discrimination against women, and women's equality to men. There is an oft-quoted legal principle which states: "Justice should not only be done; it must also be seen to be done." In this context, it is important to distinguish between de jure or formal equality and de facto or substantive equality. A good example of an acknowledgement by courts of law of the existence of inequality can be found in the judgment of **Justice Claire L'Heureux-Dubé** in the Canadian case of **Egan v. Canada**, where she held:-

"Together, our overarching goal must be to ensure that substantive equality and impartiality are the predominant reality in our courts and in our communities, rather than a mythical ideal. The more we strive to reach this goal, the more myths and stereotypes will be eradicated from the law, where they have no rightful place. With every success, we will be one step closer to attaining our goal of doing justice for all."

Discrimination affects all aspects of access to justice. There is discrimination due to lack of awareness and understanding. Women and girls face tremendous levels of discrimination in accessing justice mechanisms yet gender issues are of little to no concern to government budgets. Women and girls tend to face compound discrimination due to being poor and marginalized.

iii) Literacy and education: Empowering individuals increasing their capacity to understand and insist on the enforcement of their rights can go a long way in supporting women to access justice. The reverse reduces the access to economic resources and capacity to understand and enforce rights leading to decreased levels of access to justice.

iv) Gender Stereotyping: Gender stereotypes are preconceived notions in which duties and qualities are arbitrarily given to males and females based on their sex. Due to the differing physical, biological, sexual, and social functions of men and women, gender stereotypes are social and cultural constructs of these two genders. Gender stereotyping is the practice of ascribing specific attributes, characteristics or roles to an individual man or woman by reason only of her or his membership in a social group of men or women, respectively. It involves over-generalizations about the characteristics of a group based on gender. The UN Office of the High Commissioner for Human Rights defines it thus:-

'A gender stereotype is a generalized view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by women and men. A gender stereotype is harmful when it limits women's and men's capacity to develop their personal abilities, pursue their professional careers and make choices about their lives and life plans'.⁹¹

Gender stereotyping affects the distribution of political power, resources, wealth, work, decision-making and the enjoyment of rights and entitlements within the family, as well as public life. A particular characteristic of gender stereotypes is that they are resilient, pervasive and persistent. The issue of social and cultural attitudes around women tends to cloud their attempts at accessing justice

91 UN Women Gender Bench Book – Women's Access to Justice in Uganda page 15

and these biases trickle down to the laws. Many cases have been decided based on the traditional stereotypes of women and men.

“Women do get justice and women do get judgements in their favour but on the bases of women performing their traditional roles i.e. being mothers, wives. Hence, in cases where women find themselves living outside their typical roles, e.g. when they are in cohabiting relations, when they are sex workers, when they are rape victims who have difficult pasts and when they are not “good mothers” women generally fail to achieve justice in our courts”.⁹²

- v) **Geographical location:** The geographical location of the women and girls determines how fast and efficient it will be for them to access or reach the various services for obtaining justice.
- vi) **Costs:** This is mostly associated with accessing legal services some of which is actual and in some cases perceived. The cost of getting legal representation some is direct cost (legal counsel) and some is indirect, such as transportation, filing fees and court fees.
- vii) **Shortage in service delivery:** Few legal professionals reside and practice in rural areas where majority of women reside.
- viii) **Digital divide:** Rural communities have little access to digital communication technologies. They are also not that comfortable in using these new techniques so they cannot be up to date with legal information.

92 Report on KIT-CALS ibid page 13

CONCLUSION

Government of Uganda has made some progress to ensure access to justice for women and children, by protecting and promoting of their rights through various legal frameworks. The judiciary has also made some strides in ensuring access to justice for women and children especially, by adopting a gender policy and strategy, a Gender Bench book and some judicial officers have adopted judicial activism to improve access to justice for women and girls as seen in the guide.

Despite the progress realized in improving access to justice for women and children, there are still some gaps that hinder progress towards achievement of the constitutional provisions for equal justice for all. Many people in Uganda, particularly the poor and marginalized groups like women, and children have, limited access to justice and little protection within the justice system to ensure their safety and security. Women and children face additional and specific obstacles to justice that arise because of their status as women and children. The barriers to access to justice for women and children affect men differently due to other existing contextual factors in the community including access to resources, mobility constraints, decision making power, cultural expectations and identity issues that affect women and children more than they affect men.

It is therefore urgent that judicial officers abreast themselves with the Gender Bench book and information shared in this Guide including some of the best practices that some judicial officers have adopted to ensure that access to justice for women and children improves. Working on one's attitudes and beliefs together with application of progressive legal frameworks and case law, networking and commitment through taking action to improve access to justice through some of the best practices shared in the Guide by judicial officers from different parts of Uganda will improve access to justice for women and children in particular.

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