



Gender Transformation & Empowerment

ACCESS TO JUSTICE FOR WOMEN IN UGANDA

HANDBOOK FOR MEMBERS OF PARLIAMENT

SEPTEMBER 2022

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This Handbook is a publication of Uganda Womens Network (UWONET) and International Development Law Organization (IDLO). The two institutions extend appreciation to current and former members of parliament, parliamentary staff, experts as well as colleagues at (UWONET) and IDLO who contributed their time and energy in conceptualizing, reviewing, and validating the Handbook.

FOREWORD

Access to justice for women is a critical component of delivery of justice both at global and national level. It is necessary for the achievement of peaceful, just, and inclusive societies and as well as achievement of other human rights and sustainable development. Access to Justice is provided for under Goal 5 and 16 of the 2030 global Agenda for Sustainable Development (SDGs). These goals are further embedded in the international and regional legal frameworks in line with gender equality and women's empowerment namely; the Convention the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), 1981; Declaration on Elimination of Violence Against Women (DEVAW), 1993; and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol) and others not listed here.

Uganda has ratified these international and regional legal frame works, which support gender equality and women's empowerment and particularly provided for the right to access justice in the Constitution of Uganda and enacted several local legislations to that effect in line with international human rights standards.

Despite this however, there are several factors that continue to impede access of justice for women in Uganda and key among the factors is the limited gender responsiveness in policy and legal framework formulation, implementation, monitoring, and evaluation. Amidst the numerous interventions to address the above gap has been orientation of strategic Parliamentary Committees and structures on gender justice and gender-responsiveness. Despite such interventions; some of the existing legislations continue to depict a picture of inability by MPs to translate the theory or knowledge acquired into concrete benefits for women and girls.

This cannot be explained by any other hypothesis other than the absence of tools to help MPs appreciate women's rights and gender responsiveness as well support them in their role of influencing substantive access to justice for women through their representation, law, budgets, and oversight.

UWONET would like to address this gap with the design of this handbook to be used as a reference guide by MPs after the orientation sessions on access to Justice.

We hope that MPs will find this handbook informative and a useful guide as they advocate for enhanced access to justice for women in Uganda.

Rita Hope Aciro-Lakor
Executive Director

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights (Banjul Charter)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CSO	Civil Society Organization
DEVAW	Declaration Elimination of violence against women
FGM	Female genital mutilation
GBV	Gender-Based Violence
GEWE	Gender Equality and Women's Empowerment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
JLOS	Justice Law and Order Sector
LCC	LCC Local Council Courts
Maputo	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women
MP	Member of Parliament
NGO	Non-Governmental Organization
SGBV	Sexual and Gender-Based Violence
SDGs	Sustainable Development Goals
SRHRs	Sexual and Reproductive Health Rights
UDHR	Universal Declaration of Human Rights
UN	Women United Nations Entity for Gender Equality and the Empowerment of Women
VAW	Violence Against Women

GLOSSARY

Access to justice	the ability of any person, regardless of income or classification, to use the legal system to advocate for themselves and assert their rights.
Amendment	the process or act of passing legislation to change the text of an existing law.
Bill	a draft law that has been finalized for consideration by parliament.
Cabinet	constituted by the most senior ministers of government, sitting together as a collective decision-making body.
Discriminatory	laws that operate to give men and women unequal status, rights and legislation privileges in law and in practice.
Enactment	the process or act of passing legislation.
Equality	the state of being equal in terms of enjoyment of rights, treatment, quantity or value, access to opportunities and outcomes, including resources.
Gender	refers to the social characteristics, roles, behaviors, and Attributes assigned to men and women in any given socio-cultural context. Gender differences are acquired and learned. Just like society and culture, gender changes over time and varies depending on the socio-cultural context.
Gender Based Violence	any act of violence that is directed against a woman because she is a woman or that affects women disproportionately ¹ .
Gender Discrimination	any action that specifically denies opportunities, privileges, or rewards to a person (or a group) because of gender.
Gender Equality	is the equal enjoyment of rights and the access to opportunities and outcomes, including resources, by women, men, girls and boys. Gender Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and

1 CEDAW, General Recommendation No. 19, para. 6, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

as a precondition for, and indicator of, sustainable people-centred development.

Gender-Responsive Parliament is one whose structures, operations, methods, and work respond to the needs and interests of men and women, and in which both men and women have an equal right to participate in its structures and processes, without discrimination and without recrimination.²

Government (executive) terms used to refer to the group of officials responsible for managing the day-to-day operations of a government. This group includes the head of state, head of government, ministers, and the bureaucracy.

Justice System the justice system includes all institutions that are central to resolving conflicts arising over alleged violations or different interpretations of the rules or law that societies create to govern members.

Law (legislation) terms used interchangeably to refer to a final bill that has and that has been approved by the legislative and executive entered into force.

Nature traits and biological factors inherited and shaped by our genetics.

Nurture the influence of external factors that shape our behavior and traits, such as environmental factors, life experience and learning.

Member of Parliament refers to members of the legislature.

Repeal the process or act of passing legislation to remove a provision or law from operation.

Rules of Procedure the rules that govern how parliament operates and what processes apply to the conduct of its business.

Sex describes the biological differences between men and women, such as sexual and reproductive organs, specific hormones, and specific chromosomes (XY/XX)

Socialisation the process of internalizing the norms and ideologies of society; of learning to behave in a way that is socially acceptable

² Gender-sensitive parliaments: a global review of good practice. Geneva, Inter-Parliamentary Union, 2011). Available at www.ipu.org/resources/publications/reports/2016-07/gender-sensitive-parliaments (accessed on 30 September 2022).

PURPOSE AND STRUCTURE OF HANDBOOK

Uganda Women's Network (UWONET) is an advocacy organization that exists to coordinate collective action among women's rights and gender equality stakeholders for the attainment of gender equality and equity in Uganda. UWONET was born out of the East African Women's Conference held in Kampala in 1993 in preparation for the UN World Conference on Women in Beijing, China in 1995. Uganda Women's Network's membership is comprised of 24 national Women's organizations and 9 individuals.

With support from the International Development Law Organization (IDLO), UWONET is implementing a project titled "Enhancing leadership, influence and movement building for improved gender justice. The Project is an initiative aimed at addressing the systematic problems in the formal and informal justice systems, enhance the ability of the formal and informal justice system to take a women-centered approach to justice delivery and increase cohesion and coordination amongst the formal and customary informal justice systems and their functionality.

Enhancing access to justice requires a holistic involvement of all institutions responsible for law making, adjudication and enforcement of law. At the very beginning of this process is law making. Where law is not gender sensitive and responsive from the beginning, justice for women will be a far goal, impossible to reach.

The Legislature as the arm of Government responsible for law making is therefore a very critical institution that must be engaged and supported first to ensure that its institutional processes and procedures are gender aware and transformative. Secondly, laws and budgets are mainstreamed to respond to the gender gaps existing in society. Thirdly, that the legislators are empowered to be able to carry out oversight on all institutions enforcing law do it in order to achieve gender justice and over all gender equality and empowerment of women in Uganda.

This reference handbook is developed to guide Members of Parliament in enhancing access to justice for women and girls. This handbook seeks to move Members of Parliament (MPs) from being gender aware to gender transformative as we seek gender equality and progress. It highlights key legal and policy frameworks for women's rights and gender equality, as well as tips on gender-responsive parliamentary practices. It aims to increase knowledge of MPs on international human rights standards and regional treaties, national constitution, existing laws relevant to access to justice for women it points out some of the discriminatory laws still in the law books in need of reform in Uganda. It highlights the commonly reported justice issues for which women come into contact with the Justice system. It is hoped that the handbook will shape and nurture a positive gender attitude of MPs to influence procedures, systems, and law legislative processes as well as resource allocation.

The handbook is designed alongside the parliamentary system of the Ugandan Parliament and targets gender justice champions in the Ugandan Parliament. It can however be utilized by any other person that may find it useful for guidance in enhancing women's right to justice.

Section 1 provides a brief review of the key concepts of gender and access to justice.

Section 2 deals with the legal and policy frameworks supportive of women's access to justice. The review focuses on key international standards or principles supportive of women's right. The review also focuses on common areas women in Uganda, report to the justice system but receive less advocacy and attention of law making. The section also raises emerging jurisprudence at international level which can be used to buttress advocacy for access to justice in Uganda. It also highlights important principles that can be used to enhance access to justice based on what is happening at the global and regional terrain. The key provisions of women's rights in the constitution are reviewed as well key National policy frameworks that support access to justice.

Section 3 provides an analysis of gender and power dynamics in the family and community affect access to justice for women in Uganda. and access to justice. The section also reviews the common issues for which women come into contact with the justice system in Uganda. The section also reviews the common gender barriers to access to justice as they are manifested in law, administration, and enforcement.

Section 4 reviews the role and mandate of parliamentarians based on the Ugandan Parliamentary system, highlight what the law-making process is and the representation, budgeting, and oversight.

Section 5 provides general tips for parliamentarians for gender responsive law making, representation, budgeting and over sight functions.

Section 6 provides general tips for women MPs for navigating a male dominated parliaments nd getting success in gender responsive advocacy for laws and budgets.

SECTION 1:

BASIC CONCEPTS OF GENDER AND ACCESS TO JUSTICE

1.0 INTRODUCTION

This introductory section provides a brief explanation of a few key concepts related to gender and access to justice in order to enhance the understanding of legislators or Members of Parliament (MPs) who are expected to work closely with other justice actors for the achievement of the right to justice and other rights for women and girls in Uganda.

Understanding gender concepts is a pre requisite for every legislator since they sit at the place of power in carrying out their roles and mandate under the law. When Legislators utilize this power positively, they can effect changes in the lives of the majority of persons in any given society. Leaders are expected to pay more attention to the marginalised and disadvantaged people in society, by putting in place favorable laws or policies to enhance their status.

In any given, society, women fall in the category of the marginalised people requiring more attention from Legislators. Female Members of Parliament carry a heavier burden to utilize the power they carry positively; so that they can effect changes in the lives of other women and society generally. This section seeks to unpack and simplify the common gender concepts and how they relate to justice. It points out areas of emphasis for MPs in enhancing gender learning and mainstreaming for access to justice.

1.1 WHAT IS GENDER AND SEX?

Gender refers to the social characteristics, roles, behaviors, and attributes assigned to men and women in any given socio-cultural context.³ These gender differences are just acquired or learned by women and men through social learning in homes, community and through other influence of external factors that shape our behavior and traits, such as environmental factors, life experience and learning.

Sex on the other hand describes the biological differences between men and women, such as sexual and reproductive organs, specific hormones, and specific chromosomes (XY/XX).⁴ This also includes the secondary sex characteristics that are specific to each sex following puberty but are not essential to reproduction such as development of facial and body hair, the distribution of muscle mass and fat tissue, and changes in voice pitch.

The social characteristics, roles, behaviors, and attributes as assigned to women and men vary from society to society and are subject to changes over time whereas the biological attributes do not change. The fact that, they vary and are not static means that they are subject to change

³ CEDOVP et al (2020), Gender Based Violence Training Manual for Judicial Officers. CEDOVIP: Kampala

⁴ See also CEDAW General Recommendation No 33, paragraph 20(e) and (f) for a further definition of 'gender' and 'sex'

as society evolves, which means they are not in the nature of human beings but only a factor of nurture. If they are nurtured, then they can be unlearned.

It is important to understand this dichotomy of ascribed social characteristics, roles, behaviors, and attributes as they position women and men differently in society resulting to different opportunities and experiences and how they generally live in society. This social dichotomy is what usually results into what is called gender inequality in society.

The social dichotomy will thus impact and shape how women and men will experience the law and associated systems and programmes just like it impacts all other facets of life in given society.

Being able to make the distinction of gender and sex is important for every legislator as this empowers one with a better understanding usually called gender lens of being able to identify the negative gender stereotypes (about ascribed social characteristics, roles, behaviors, and attributes) affecting women and therefore the gender issues to be addressed as they carry out their duties as Members of Parliament.

MPs DUTY- REMOVING GENDER STEREOTYPES

The role of every legislator is to ensure that social attributes or gender stereotypes that impact negatively on women's experience of life are removed and that the resulting inequalities in society as well are dealt away with.

1.2 WHAT IS A GENDER ISSUE?

A Gender issue has been defined by the European Institute of Gender Equality⁵ as *any issue or concern determined by gender-based and/or sex-based differences between women and men*. A gender issue (s) is thus a real-life situation (s) brought about the unequal gender relations between women and men. The gender issue (s) is the effect of the persistent gender inequalities in society. Examples of gender issues include; gender bias in education and resulting limited representation of women and girls at the policy level, gender gaps in pay, gender disparities in agriculture, limited access to healthcare and poor health outcomes for women, the resulting forms of gender-based violence and limited access to justice amongst other others in the long list.

Therefore, in any society wherever the legislator may be, the primary duty they have; is to consciously and intentionally, look out for all gender issues, they are presented with and be able to do something about it. By doing this, Members of Parliament will be discharging their noble duty of rectifying historical imbalances and inequalities that had been created unconsciously by our cultures, religion, and systems of patriarchy resulting into the many gender gaps and issues or problems that have to be addressed in any given time and community.

Members of Parliament are encouraged to use a tool called gender analysis whenever they are dealing with any matter before them. Gender analysis basically is simply a process of asking reflective questions whilst making any decision on how it will impact women and men differently. When the answer to the questions the MPs is reflecting on impact women and men, to take a

⁵ <https://eige.europa.eu/thesaurus/terms/1184>, accessed on 5th October 2022

further action to rectify the unequal situation. Gender analysis is an essential requirement for any person engaged in decision making that will impact the lives of other people.

MPs DUTY- GENDER ANALYSIS

In any matter presented before you as a legislator; ask yourself; what gender issue (s), gaps or problems are presented in this situation or matter? What can I be able to do about it?

1.3 HUMAN RIGHTS AND WOMEN'S RIGHTS

Human rights are not given by any one, not even by the State. They are inherent and are entitlements we have by virtue of being human. **Article 1 of the Universal Declaration of Human Rights (UDHR)** declares that all human beings are born free and equal in dignity and rights. This is domesticated or found in Uganda's Constitution in article 21 of the constitution.

These rights as embedded in the UDHR for example include the right to live free from violence, slavery, and discrimination; to be educated; to own property; to vote; and to earn a fair and equal wage.⁶ They are to be enjoyed by every human being on the planet as enshrined in the UDHR nearly 70 years ago.

Women's rights are human rights as women as women are entitled to all of these rights just like men. Yet almost everywhere around the world, women and girls are still denied them, often simply because of their gender.

Uganda has signed or ratified the key international and regional treaties that establish these rights and guarantee prosperity of humanity on the globe. These include; Universal Declaration of Human Rights (UDHR), the International Convention on Economic, Social and Cultural Rights, the International Convention on Civil and Political Rights, and the Convention Against Torture as well as the Convention, on the Rights of the Child. At regional level, Uganda has ratified the African Charter on Human and Peoples' Rights (Banjul Charter) and the African charter on the Welfare and Rights of the African Child.

Uganda has also ratified several other United Nations human rights conventions relevant to the rights of women. Key among these is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) popularly known as containing the '*international bill of rights for women*' and also an agenda for action by countries to guarantee the enjoyment of those rights. The Declaration Elimination of violence against women (DEVAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (popularly known as the 'Maputo Protocol') are also part of the key treaties on women's rights that Uganda is party to their obligations under international and domestic law. The Sustainable Development Goals (SDGs) hold real promise to embed advances in women's rights, and include a specific goal (Goal 5) for gender equality.⁷

⁶ <https://www.globalfundforwomen.org/womens-human-rights>

⁷ <https://www.globalfundforwomen.org/womens-human-rights>, accessed on 31st October 2022

When Countries ratify or accede to human rights treaties, States undertake to respect, protect, and fulfil the rights provisions contained therein.⁸ Uganda is required in article 20 of the Constitution of Uganda to promote and protect human rights of every citizen of Uganda. Under article 50 of the constitution, courts are given the role of enforcing the rights and freedoms of people; any person who claims that a fundamental right or freedom guaranteed under the Constitution is being infringed can seek redress from the courts.

Human rights are applicable to all human beings, women and men, girls and boys while a specific set of women's human rights exist which address the dignity, welfare or interests of women.⁹ Article 33 of Uganda's constitution guarantees the rights of women that they shall be accorded full and equal dignity of the person with men. Laws, cultures, customs, and traditions on the other hand which undermine the status of women are prohibited by the Constitution in Article 32 of Uganda's Constitution.

The State, including the legislature, must protect women and their rights. At the beginning of the tenure of Parliament, every MP swears an oath to uphold the Constitution and the laws established which by default means they commit to uphold the rights of every citizen as established by the grand law; - that is the Constitution of Uganda as well as the laws established.¹⁰

MPs DUTY- PROTECTION AND PROMOTION OF WOMEN'S RIGHTS

It is the duty of the MPs to protect and enhance women and their rights as directed by the Constitution of the Republic of Uganda. This is one of the core mandates to which MPs swear the Parliamentary Oath upon assuming office at the beginning of Parliamentary tenure for every MP.

1.4 GENDER DISCRIMINATION AND GENDER EQUALITY

Gender discrimination refers to any action that specifically denies opportunities, privileges, or rewards to a person (or a group) because of their gender. Where one is unable to make a distinction between sex and gender and the consequences of inequality that arise- this person is said to be gender blind.

However, where one is conscious of these differences, acknowledges and considers the specific gender needs of both men and women at all levels of planning, implementation, monitoring and evaluation, it is termed as being gender sensitive or aware or responsive.

Where discrimination between men and women, girls and boys is removed or where gender gaps no longer exist; gender equality would have been achieved and that society, can be described as having equality. Equality is the state of being equal in terms of enjoyment of rights, treatment, value, access to opportunities and outcomes, including resources is the desirable state of society.¹¹

⁸ James R Crawford (2012), *Brownlie Principles of Public International Law* Oxford University Press, 8th edition, cited in the Judiciary (2016), UN Women and Embassy of Sweden in Uganda,

⁹ The Judiciary (2016), UN Women and Embassy of Sweden in Uganda, *The Gender Bench Book: Women's Access to Justice in Uganda*, (The Gender Bench Book)

¹⁰ The Parliamentary Oath is found in the First Schedule to the Act of Parliament Cap..), Laws of the Republic of Uganda

¹¹ CEDOVP et al (2020), *Gender Based Violence Training Manual for Judicial Officers*.

Gender Equality is thus said to exist, where there is equal enjoyment of rights and the access to opportunities and outcomes, including resources, by women, men, girls and boys. A situation where the opposite of this exists, is referred to as gender inequality. Gender discrimination leads to gender inequality. Gender awareness, sensitivity and responsiveness leads to gender transformation and equality in society.

In the cycle of the work that Members of Parliament undertake that is; representation, legislation, budgeting and oversight, gender sensitivity to the needs of women and men is required at every stage. When an MP is aware, conscious, and sensitive to these differences, it will be easy for them to identify any gaps or issues that exist between women and men in society. They will be able to consciously find solutions that rectify or respond or remove these gaps or the discrimination that exists between women and men, girls, and boys in society.

When MPs carry out their roles with gender awareness, sensitivity or responsiveness, their individual and collective actions will result into gender transformation and removal of gender inequalities in society. Every legislator has to therefore ensure that there is equal enjoyment of rights, treatment, value, access to opportunities, resources, and outcomes for all women, men, girls, and boys in society.

It has been concluded that the struggle for gender equality, far from being a women's struggle against men, is a struggle for justice and for human rights.

MPs DUTY – GENDER AWARENESS, SENSITIVITY AND RESPONSIVENESS

Members of Parliament have a duty to be gender sensitive while undertaking their roles of representation, legislation, budgeting and oversight at every stage and work towards transforming and removing any gender gaps or discrimination identified in society.

1.5 GENDER MAINSTREAMING AND AFFIRMATIVE ACTION

Gender mainstreaming is 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 equally.¹² When MPs can easily identify the various experiences of women and men, they are able to ensure that these are placed in the law-making, budgeting and oversight processes at the various stages and in all processes of Parliament and other government institutions.

Where there are persistent and wide inequities, between women and men; there may be need for an affirmative action to work as a booster or an equalization strategy for the addressing the gender gaps.

An affirmative action therefore is a policy, programme or measure that seeks to redress past discrimination through active measures to ensure equal opportunity and positive outcomes in all spheres of life in the political, economic, social, cultural, civil or any other field.¹³ Examples of

¹² Ibid

¹³ CEDOVP et al (2020), Gender Based Violence Training Manual for Judicial Officers

Affirmative policies include the extra points given to girls at admission in public universities; the affirmative policy for special seats for women in political leadership at national and local levels. These policies have been responsible in increasing the number of women in higher education and political participation.

MPs DUTY-GENDER MAINSTREAMING AND AFFIRMATIVE ACTION

It is the duty of the MP to ensure the various experiences of women and men are mainstreamed in law making, budgeting and all processes of Parliaments. Where necessary affirmative action is needed, it is the duty of the MPs to propose such action or support such proposed action by the Executive arm of Government.

1.6 ACCESS TO JUSTICE AND ACCESS TO JUSTICE FOR WOMEN

Access to Justice can be narrowly defined as simply the ability to appear in court or be more broadly defined to include wider social context and systemic barriers that affect different individuals to attain justice they seek.

Access to justice is thus the ability of persons or groups within a society to use courts and other legal institutions to obtain a quick, effective, and fair response to protect rights, prevent or resolve disputes, and control the abuse of power.¹⁴ Access to justice is also seen to encompass physical access to justice institutions and services: financial access to justice and procedural or technical access to justice law and order institutions and services.¹⁵ Sometimes, these factors may all come into play constituting the social context forming the systematic barriers to justice. This is the common situation of the poor, vulnerable and marginalized, especially the women.

It follows therefore that the ability to seek and enforce one's rights can only be possible when there are effective justice mechanisms which provide the enabling or conducive environment for enforcement of justice. It has been internationally recognised that for justice systems to be effective and be able to meet the justice needs of the people they serve, they must be available, affordable, and accountable (UNDP, 2011).¹⁶

Access to justice is also understood as a basic human right and a means of implementation of other human rights.¹⁷ It is a basic human right because every human being is entitled to dignity of the person regardless of race, age, gender, ethnicity etc. Where this dignity is abused there should be recourse for one whose rights are infringed upon through the available institutions of justice. On the other hand, access to justice as a right enables the enjoyment of other rights of a person because it enforces the respect of these rights by another person.

¹⁴ Gender Bench Book

¹⁵ LAPSNET, Access to Justice for Women: A Presentation to FIDA – Uganda Advisory Committee, 26th November 2015, Metropole Hotel

¹⁶ Ibid

¹⁷ UN Women (2018), A Practitioner's Toolkit on Women's Access to Justice Programming York. Module 1: The Theory and Practice of Women's Access to Justice Programming; United Nations: New York

Access to justice is a fundamental element of the rule of law and democracy. In a free and democratic society where people enjoy equal rights, rule of law is supreme, and everyone is equal and under the same law. Individuals are entitled to enjoyment of their personal rights, freedoms, and liberties. They are also, however, required to respect the rights, freedoms, and liberties of others. The justice systems are thus the arbiters of these freedoms and liberties where they are abused by individuals against others and/or where the State fails as the guarantor. Under article 50 of the constitution, courts are given the role of enforcing the rights and freedoms of people of any person who claims that a fundamental right or freedom is being infringed.

Access to Justice for Women and its dimensions have been refined by the CEDAW General Recommendation No. 33 on Access to Justice. The Recommendation elaborates the obligations of States Parties in ensuring that women have access to justice. It highlights the important fact that “effective access to justice optimizes the emancipatory and transformative potential of law”.¹⁸

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (“Maputo Protocol”) is also dedicated to the right to access to justice. Under Article 8, it calls on states parties to take appropriate measures to ensure, among others, that women get effective access to judicial and legal services, including legal aid, and that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights. It further calls for the reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

UN Women observes that, for women’s justice needs to be met, there must be an enabling environment within a State for women to access justice systems and for justice actors to effectively respond to women’s justice needs.¹⁹ This environment accordingly; is shaped by the prevailing political, social, economic and cultural climate within a country and supported by international and regional standards and norms, domestic laws, policies and budgets. MPs are key decision makers in the country who can work together with other key state actors in creating the enabling environment for women’s access to justice which is a central goal towards reducing inequality and achieving gender equality in the country. This handbook shares some insights on what MPs can do to achieve this in the next sections.

Gender issues under access to Justice are the gender gaps that exist between women and men in the quest for justice. These will be dealt with conclusively in section 3 of the same handbook. However, it is important to observe that, this is what this handbook is all about-enabling legislators to identify the persisting gender issues in law making, administration and enforcement of justice focusing more on the role of they can play in eliminating these gender issues.

MPs DUTY- TO MONITOR ENFORCEMENT

It is the duty of the MP to ensure access to justice for women as a basic human right is enforced in the laws, budgets, policies and programmes of the State.

¹⁸ CEDAW Committee General Recommendation No.33, para. 2. CEDAW/C/GC/33

¹⁹ UN Women et al, A Practitioner’s Toolkit on Women’s Access to Justice Programming. United Nations: 2018

SECTION 2:

LEGAL AND POLICY FRAMEWORKS FOR WOMEN'S ACCESS TO JUSTICE

2.0 INTRODUCTION

Article 123 of the Constitution of Uganda provides that the president or a person authorized by the president, may make treaties, conventions, agreements or other arrangements between Uganda and any other country. This article of the Constitution is supported by the Ratification of Treaties Act, Cap 204.

Uganda has through this procedure ratified several international and regional human rights instruments that provide for the protection of the rights of women. The instruments contain definitions, set standards, and impose obligations on states parties. Uganda has ratified key international and regional human rights treaties, indicating its willingness to be bound by the standards established in these instruments. When States sign and ratify international conventions, they accept binding obligations to abide by those standards through domestication and implementation.²⁰

These include; Universal Declaration of Human Rights (UDHR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Convention on Civil and Political Rights (ICCPR); *(these core three are known as the International Bill of Human Rights)*. Uganda has also signed the Convention Against Torture as well as the Convention, on the Rights of the Child. At regional level, Uganda has ratified the African Charter on Human and Peoples' Rights (Banjul Charter), the African charter on the Welfare and Rights of the African Child.

In line with women rights, Uganda has ratified the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), containing the 'international bill of rights for women' and also an agenda for action by countries to guarantee the enjoyment of those rights. The Declaration on the Elimination of Violence against Women (DEVAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) form part of the key treaties on women's rights that Uganda is party to.

The Sustainable Development Goals (SDGs) include a specific goal (Goal 5) for gender equality and includes targets on ending gender-based violence, eliminating child marriage and female genital mutilation, and ensuring access to sexual and reproductive health. It also includes equal access to education, expanding women's economic opportunities, and reducing the burdens of unpaid care work on women and girls.

International human rights law represents the broader framework within which domestic laws are set for advancing gender equality and women's empowerment as emphasised in SDG target 10.3 which articulates the linkages between law, policy and practice and reducing inequality, calling on States to 'ensure equal opportunity and reduce inequalities of outcome, including by eliminating

²⁰ UN Women (2018), A Practitioner's Toolkit on Women's Access to Justice Programming York. Module 1: The Theory and Practice of Women's Access to Justice Programming; United Nations: New York

discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard'.²¹

This section reviews the Key international human rights standards and obligations imposed by the instruments Uganda has signed up to in regard to gender equality and women's empowerment (GEWE) and particularly access to justice. It also summarizes provisions of Uganda's Constitution, national legislation and relevant policy framework which are in place for enhancing women's rights particularly access to justice.

2.1 HUMAN RIGHTS STANDARDS UNDER INTERNATIONAL AND REGIONAL FRAMEWORKS

2.1.1 Equality and non-discrimination between women and men

The UDHR echoes the principle of equality between women and men in the following articles; **Article 1**, of the declaration emphasises equality between women and men, providing that; 'all human beings are born free and equal in dignity and in rights'. **Article 2 of the UDHR establishes same rights and freedoms for women and men without any distinction by declaring; 'that everyone is entitled to all the rights and freedoms set forth in the declaration without distinction** of any kind such as race, color, sex, language, religion or other status'. **Article 7** also emphasises the principle of equality and non-discrimination by stating that; 'All are equal before the law and are entitled without discrimination, to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The ICESCR (Article, 2,3) and ICCPR (Article 2,3) as well as the Banjul Charter (Article 2,3) also reaffirm the principle of equality between women and men. Uganda is thus obligated under these legal instruments to ensure the principle of equality and non-discrimination is domesticated in national constitution and national laws that are enacted from time to time.

CEDAW which is the most comprehensive International Instrument on the rights of women, establishes standards on equality and non-discrimination. It defines discrimination against women in **Article 1** and further provides for State obligations under **Article 2** in order to deal away with discrimination and enhance equality between women and men as follows;

Article 1 of CEDAW- Definition of Discrimination

'Discrimination against women' shall mean, any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2 of CEDAW- Obligations of the State on Discrimination

In Article 2, CEDAW condemns discrimination and creates obligations and standards for states parties 'to pursue by all appropriate means and without delay a policy of eliminating discrimination against women'. To this end, state parties are required to:

21 Ibid

- a. embody the principle of the equality of men and women in their national constitutions and other national legislations in order to ensure the practical realization of this principle;
- b. establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions, the effective protection of women against any act of discrimination;
- c. refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation;
- d. take appropriate measures to eliminate discrimination against women by any person, organisation or enterprise; and
- e. repeal all national penal provisions which constitute discrimination against women and to adopt appropriate legislative and other measures, including sanctions where appropriate, to prohibit all forms of discrimination against women.
- f. to take all appropriate measures, including the enactment of legislation, to modify or abolish existing laws, customs and practices that constitute discrimination against women.

Uganda is expected under CEDAW in Article 2 to eliminate any discrimination where it exists in law, policy, and practice to ensure every person, enjoys their rights. This is also provided for under Article 2 in the Maputo Protocol where States Parties are called upon to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. CEDAW under Article 15, further Calls upon States Parties to accord women equality with men before the law.

Article 2 of Maputo- Elimination of Discrimination Against Women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
 - a. include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
 - b. enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
 - c. integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
 - d. take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
 - e. support the local, national, regional, and continental initiatives directed at eradicating all forms of discrimination against women.

Uganda as a State Party has provided for this in the national constitution in article 21, 31, 32, 33 and 50. These articles provide the of women's rights and their protection in Uganda. Article 50 enables any person to enforce their rights in courts of law where they have been infringed.

Article 21 of the Constitution of Uganda

- (1) 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.
- (2) Without prejudice to clause (1) of this Article, 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.
- (3) For the purposes of this Article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.
- (4) Nothing in this Article shall prevent Parliament from enacting laws that are necessary for:
 - (a) implementing policies and programmes aimed at redressing social, economic, educational, or other imbalance in society; or
 - (b) making such provision as is required or authorized to be made under this Constitution; or
 - (c) providing for any matter acceptable and demonstrably justified in a free and democratic society.
- (5) Nothing shall be taken to be inconsistent with this Article which is allowed to be done under any provision of this Constitution.

Other constitutional provisions on equality and non-discrimination include;

Articles 31, 32, 33, 50

2.1.2 Affirmative Action to Enhance Women's Rights

Affirmative action is an established international standard required of State Parties to undertake, in order to remove historical imbalances that have held women down for many generations. Under Article 2 of CEDAW, States parties are enjoined to put in place affirmative policies and programmes in order to level out entrenched historical imbalances resulting from discrimination. Uganda has effected this through its Constitution in Article 32 and gone ahead to establish the Equal opportunities Commission which oversees the Countries efforts in redressing the imbalances created by historical inequalities and discrimination. In political leadership, this has been effected under Article 78 of the Constitution and trickled down to other laws which have resulted to an increased number of women in public service. Under section 13 (11) (e) of the Public Finance and Management Act of 2015, it is a requirement that no budget of a government entity will be

passed without specific evidence of effort to redress inequality and discrimination against women by a government agency. Through the checks that Parliament has done, a number of agencies have progressed towards redressing inequality in representation of women. For example, the Judiciary is close to achieving a 50/50 percent representation of women and men.²² Parliament of Uganda is standing at 34.9% of females compared to males.²³

A lot is still desirable to close the gap in public service in Uganda. In line with access to Justice, Parliament and the Judiciary play a critical role in ensuring women's experiences are represented in the law making and in administration of justice. More needs to be done to ensure all the institutions under Justice, Law and Order Sector (JLOS) achieve as much as possible, equal representation of women and men as required in Article 32 of the Constitution.

Article 32 of the Constitution of Uganda

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.

2.1.3 Equality in Marriage and Family Relations

Equality in marriage and family relations is an established standard in core international instruments which assures every woman equality in marriage and family relations. Whereas there has been considerable progress in involvement of women in public life, there are still a lot of gaps in matters relating to rights of women in the private arena especially in marriage and family relations. This area is where there is still a lot of contestation and has seen less legal reforms in Uganda requiring more attention.

Article 16 of CEDAW, requires States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women have equal rights at marriage, during and

²² According to the Gender Book, 2016 at page 171 (Annex 3), as at September 2016, there was a total of 178 (43.4%) females compared to 232 (56.69%) males in the Judiciary.

²³ Inter Parliamentary Union available at <http://archive.ipu.org/wmn-e/classif.htm>

at its dissolution. The same provision on marriage is buttressed in Article 6 of Maputo Protocol which further strengthens the rights of African women in marriage.

Article 16 of CEDAW (equality at Marriage, during and at its dissolution)

1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

2.1.4 Elimination of Violence Against Women

Elimination of Violence Against Women is an international standard that has been set in key international and region instruments. Article 5 of the UDHR, prohibits subjecting a person to torture, cruel, in human and degrading treatment or punishment. Under Article 7 of the ICCPR, torture or cruel, inhuman, or degrading treatment or punishment is a violation, as well as in the Convention against Torture and Other Forms or Cruel, Inhuman or Degrading Treatment or Punishment (CAT)²⁴

²⁴ Adopted by the General Assembly on 10th December 1984

and analogous regional human rights treaties. This right directly protects women from domestic and related forms of violence they encounter.

The DEVAW adopted in 1993 Under Article 2, CEDAW defines Violence against women to encompass, but not be limited to, the following;

- a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Under Article 3 specifically provides that ‘Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

- a. The right to life;
- b. The right to equality;
- c. The right to liberty and security of person;
- d. The right to equal protection under the law;
- e. The right to be free from all forms of discrimination;
- f. The right to the highest standard attainable of physical and mental health;
- g. The right to just and favourable conditions of work;
- h. The right not to be subjected to torture, or other cruel, inhuman or
- i. degrading treatment or punishment.

Under Article 4, DEVAW requires states to exercise due diligence to prevent, investigate and punish acts of VAW whether these are perpetrated by the state itself or private actors. DEVAW requires States Parties to pursue by all appropriate means and without delay, a policy of eliminating VAW and to inter alia take the following steps:

- a. Refrain from engaging in VAW.
- b. Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of VAW, whether those acts are perpetrated by the state or by private persons.
- c. Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; and provide them with access to the mechanisms of justice and just and effective remedies for the harm suffered as a result of violence.

- d. Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish VAW, receive training to sensitise them to the needs of women victims of violence.
- e. Adopt measures directed towards the elimination of VAW, who are especially vulnerable to such violence.

The Maputo Protocol enhances existing international human rights standards on VAW/GBV by comprehensively dealing with the issue of VAW/GBV in both the public and private spheres, linking it to the violation of women's rights to dignity, life, integrity, and security.

It has been agreed as an international standard in handling cases of VAW, that a victim-centred human rights approach is used. A victim-centred approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a non-judgmental manner.²⁵ The victim's wishes, safety, and well-being take priority in all matters and procedures. The United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence, a partnership by five UN agencies including UN Women, has gone ahead to provide guidelines of essential and quality multi-sectoral services for all women and girls who have experienced gender-based violence covering health, social services, police, and justice sectors.²⁶

A victim-centred approach seeks to minimise re- traumatising associated with the criminal justice process by providing the support of victim advocates and service providers, and empowering victims as engaged participants in the process. Service provider and law enforcement partnerships are crucial to the provision of a comprehensive and victim-centred response. A human rights-based approach requires that the human rights of victims are protected throughout the criminal justice process and in the victim's access to the full range of support services during all stages in which they are in contact with the justice system such as Initial contact Assessment/investigation Pre-trial processes and Trial processes, sentencing and post-trial processes. It requires ensuring victim's safety, confidentiality, and anonymity assistance, support and communication among other essential services.

Uganda must ensure that women enjoy a life that is free of violence, without any discrimination and on a basis of equality with men. The consortium of rights as provided for under Article 3 of DEVAW are already provided for in Uganda's Constitution in Chapter four. Uganda is therefore expected to enforce these rights and further undertake due diligence as required under Article 4 of the same instrument.

2.1.5 Standard of Due Diligence by States for Enforcement of Women's Rights

States carry the responsibility of due diligence for elimination of VAW. General Recommendation No. 19, the CEDAW Committee articulated the due diligence standard and states that;

²⁵ <https://rm.coe.int/eur-justice-eng/168093c14a> accessed on 27th October 2022

²⁶ <https://www.unwomen.org/en/digital-library/publications/2015/12/essential-services-package-for-women-and-girls-subject-to-violence> accessed on 4th November 2022

‘under general international law and specific human rights covenants, states may.... be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation

In matters of VAW, the State holds the highest level of responsibility. Prevent, Investigate and punish perpetrators of these acts. States are therefore required to put in place measures that prevent occurrences of these acts including legislation to outlaw VAW and public sensitizations and trainings for mindset change. States are further expected to ensure investigation into these offences is conducted by the responsible agencies of the justice system. According to CEDAW, punishment is reflected in the laws but requires provision of compensation of victims/survivors where needed.

During CEDAW reporting of Uganda (consolidated 8th and 9th reports)²⁷, the Committee urged government to expeditiously enact bills into law and to raise the awareness of legislators about the need to give priority to legal reforms in order to achieve equality for women and comply with the state party’s international treaty obligations. The CEDAW Committee also recommended that the government takes all appropriate measures to ensure that CEDAW is sufficiently known and applied by all branches of government, as a framework for all laws, court decisions and policies on gender equality and the advancement of women.

Under the obligations created by CEDAW, DEVAW and the Maputo Protocol, Uganda, has gone ahead to put in place specific national laws to prevent, investigate and punish some forms of GBV namely Domestic Violence Act of 2010, Prohibition of Female Genital Mutilation Act of 2010 and the Prevention of Trafficking in Persons Act of 2010. Such laws ensure that women and girls can access justice, and that law enforcement agencies have guidance under the law on how to deal with VAW.

In this area, it is largely argued that Uganda has heeded the recommendation of the CEDAW Committee to “take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act”.²⁸ Although more needs to be done in terms ensuring substantive justice is served as this area is still largely limited by other barriers to access to justice that women face when they come in contact with the justice system. For example, domestic violence, defilement, and other sexual related offences are among the highest number of crimes reported to the police largely women.²⁹ The rate of investigation and case clearance in the judicial system however is generally low largely affecting disputes in which women are the litigants.³⁰

2.1.6 Economic Justice for women

Women’s economic justice is defined as the fulfillment of women’s fundamental human right to economic resources and the power to make decisions that affect their lives. This requires women to have equitable access to, and control over, economic resources, including by having the time

27 Combined eighth and ninth periodic reports submitted by Uganda under article 18 of the Convention, due in 2018 and received on 29th June 2020

28 Gender Bench Book

29 Uganda Police Force, Annual Crime Report, 2021

30 See the Statement of the Hon. Chief Justice at the Launch of the Judiciary annual Performance Report for the F/Y 2020/2021 at the Judiciary Headquarters, High Court Building, Kampala, 15th November 2021 accessible at <http://judiciary.go.ug/files/downloads/CJ%20Notes%20at%20the%20LAUNCH%20OF%20THE%20ANNUAL%20PERFORMANCE%20REPORT%20final.pdf>

and opportunity to engage in economic activities.³¹ It also requires changes to discriminatory social norms and economic structures, laws, policies and practices that marginalize women. The disadvantages and discrimination faced by women and girls severely limits their ability to lift themselves out of poverty and thus limits advancement of gender equality. Barriers to women's economic justice include constraints on time due to care work, social norms that limit women's freedom outside the home, lack of access to finance to start a business, discriminatory policies at work, and the threat of violence or harassment in the workplace.³²

The right of everyone to enjoy just and favourable conditions of work. Article 2 of the ICESCR guarantees economic, social and cultural rights for women and men to be exercised without discrimination of any kind as to race, colour, sex, language, religion or other opinion, national or social origin, property, birth or other status. Article 7 of the ICESCR specifically provides for the right of everyone to enjoy just and favourable conditions of work which requires women to be free from all forms of violence and harassment, including sexual harassment in the workplace. The state has the obligation to legislate against sexual harassment in the workplace.

While the right to work is vital, women's economic rights go beyond this. Women have the right to an adequate standard of living, food, housing, access to public healthcare, education, social protection, VAW services. Having an independent income gives women more control and autonomy over their lives. They can get an education, access healthcare, or own a plot of land or control what happens to their land. It gives them financial security and means they can feed their family and make choices in their lives, access to decent work and living free from violence.³³

Many international commitments support women's economic empowerment, including the Beijing Platform for Action, CEDAW and a series of International Labour Organization (ILO) conventions on gender equality. The four key ILO gender equality Conventions are the Equal Remuneration Convention (No.100)³⁴, Discrimination (Employment and Occupation) Convention (No.111),³⁵ Workers with Family Responsibilities Convention (No.156)³⁶ and Maternity Protection Convention (No. 183).³⁷ Conventions 100 and 111 are also among the eight fundamental Conventions and the principles and rights enshrined in those Conventions found in the ILO Declaration on Fundamental Principles and Rights at Work , adopted in 1998 and amended in 2022.

The ILO has established new global standards aimed at ending violence and harassment in the world of work. ILO Convention No. 190 is the first international treaty to recognize the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment adopted in June 2019, and came into force on 25th June 2021. Governments that ratify C190 will be required to put in place the necessary laws and policy measures to prevent and address violence and harassment in the world of work. The Convention represents an historic opportunity to shape a future of work based on dignity and respect for all³⁸ Uganda already has

31 CARE International available on <https://www.care-international.org/what-we-do/womens-economic-justice> accessed on 31st October 2022

32 <https://www.womankind.org.uk/what-we-do/womens-economic-rights/> accessed on 31st October, 2022

33 Ibid

34 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100

35 Ibid

36 Ibid

37 Ibid

38 <https://www.ilo.org/global/topics/violence-harassment/lang--en/index.htm>

provided for freedom from sexual harassment in its Employment Act, 2006. This Act, however, does not provide protection for women migrant workers who report sexual abuse from their employers in countries of destination. So far, only rules and regulations governing the recruitment and employment of Uganda migrant workers abroad exists.³⁹

Economic limitations that women face is part of the barriers women face while accessing justice. It is therefore important to address the economic rights of women as we seek to enhance women's access to justice, because lack of these rights has a bearing on how women experience the justice system altogether with other sectors affecting their lives.

2.1.7 Right to Sexual and Reproductive Health

Women's sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination.⁴⁰ The Committee on Economic, Social and Cultural Rights (CESCR) and the CEDAW Committee have both clearly indicated that women's right to health includes their sexual and reproductive health. This calls upon States to respect, protect and fulfill rights related to women's sexual and reproductive health.

Violations of women's sexual and reproductive health and rights are often due to deeply engrained beliefs and societal values pertaining to women's sexuality.⁴¹ In Uganda, like many other societies, the patriarchal concepts of women's roles within the family mean that women are often valued based on their ability to reproduce. Early marriage and pregnancy, or repeated pregnancies spaced too closely together—often as the result of efforts to produce male offspring because of the preference for sons—has a devastating impact on women's health with sometimes fatal consequences. Women are also often blamed for infertility, suffering ostracism and being subjected to various human rights violations as a result.⁴² The relevant Human rights standards on SRHRs are detailed below.⁴³

International human rights standards on SRHRs

CEDAW (article 16) guarantees women equal rights in deciding “freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”

CEDAW (article 10) also specifies that women's right to education includes “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”

The Beijing Platform for Action states that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”

39 The Rules and Regulations Governing the Recruitment and Employment of Uganda Migrant Workers Abroad available at <https://www.ilo.org/dyn/migpractice/docs/228/Rules>

40 <https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights> accessed on 3rd November 2022

41 Ibid

42 Ibid

43 Ibid

The CEDAW Committee's General Recommendation 24 recommends that States prioritise the "prevention of unwanted pregnancy through family planning and sex education."

The CESCR General Comment 14 has explained that the provision of maternal health services is comparable to a core obligation which cannot be derogated from under any circumstances, and the States have to the immediate obligation to take deliberate, concrete, and targeted steps towards fulfilling the right to health in the context of pregnancy and childbirth.

The CESCR General Comment 22 recommends States "to repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information."

The most significant instrument on the African Continent has been the Maputo protocol which deals with the African specific challenges of women. It is the most specific instrument on the matter of sexual and reproductive health rights for women in Africa and under Article 14, it provides for an extensive bundle of Sexual and Reproductive Health Rights (SHRHs).

Article 14 of the Maputo Protocol

Article 14 of the Maputo Protocol requires States Parties to ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:

- the right to control their fertility;
- the right to decide whether to have children, the number of children and the spacing of children;
- the right to choose any method of contraception;
- the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted
- infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
- the right to have family planning education.

Although Uganda put a reservation on this protocol on article 14, a lot of the issues dealt with in this article affect every Ugandan women and still presents an everyday struggle which affects women's full enjoyment of their rights. Lack of SHRHs and services result into experiences that may lead women to come in contact with the justice system. The result for example in high early pregnancies and resultant defilement cases in Uganda, points to the lack of a supportive legal and

policy framework to protect SHRH rights. The existence of punitive abortion laws result in high abortions case and high deaths related to poor post-abortion care. The gaps in this area act as a push factor to bring women into contact with justice sector. Women also are tied down with roles that result from having too many and frequent pregnancies, which subject them to further violence in relationships, cycle of poverty and unable to pursue their justice rights.

Members of Parliament cannot therefore work in isolation in enhancing access to justice for women without looking at the limitations in law and policies that expose women to unwanted pregnancies and other related sexual and reproductive health issues. Resolving this contentious issue eventually has a trickle-down effect, as enjoyment of women's rights begins with legal reforms to, their administration and enforcement.

2.1.8 Access to Justice for Women

According to the UN Women, the effective implementation of the 2030 Agenda for Sustainable Development is not conceivable without access to justice, if the commitment of leaving no one behind is to be attained, justice services must reach the excluded. It is internationally recognised that justice is a right in itself as well as an enabler of all other rights, yet many women and girls, particularly those who face multiple and intersecting forms of discrimination, experience the justice system not as a bastion for the vulnerable but rather as a preserve of a privileged few.⁴⁴

Throughout the world, women continue to experience discrimination in the exercise of their rights through official bias, corruption, impunity, stigma, indifference, and systematic failures. Access to justice is an important entry point for tackling discrimination against women.⁴⁵

The CEDAW Committee has outlined some of the particular challenges to women's access to justice as including: "the centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender-insensitive judgments/decisions due to the lack of trainings and delays)⁴⁶ The CEDAW Committee also outlined six interrelated components that are essential in establishing functional justice systems that implement women's rights namely: Justiciability, Availability, Accessibility, Good quality, Access to remedies and Accountability.

Justiciability. Requires unhindered access by women to justice and women's ability and empowerment to claim their rights as legal entitlements.

- **Availability.** CEDAW GR 33⁴⁷ requires the establishment of courts, quasi-judicial bodies or other bodies throughout the State party in urban, rural and remote areas, as well as their maintenance and funding. Secondly, requires that the physical environment and location of judicial and quasi-judicial institutions and other services are welcoming, secure and accessible to all women, with consideration given to the creation of gender units as components of justice

44 UN Women et al, A Practitioner's Toolkit on Women's Access to Justice Programming. United Nations: 2018

45 Ibid

46 Women's Access to Justice for Gender-Based Violence: A Practitioners' Guide. International Commission of Jurists: Geneva, 2016

47 Paras. 13, 14(b), 17(e).

institutions and special attention given to covering the costs of transportation to judicial and quasi-judicial institutions and other services for women without sufficient means.

- **Accessibility.** CEDAW GR 33⁴⁸, deals with ensuring both formal and quasi-judicial justice systems are secure, affordable and physically accessible to women. Secondly that all justice systems have to be adapted to the needs of women, including those subject to intersectional or compounded discrimination. Justice system must address the following six aspects of accessibility identified by CEDAW GR 33;⁴⁹
 - **Non-discrimination:** Justice facilities and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, including women from minority groups and illiterate women.
 - **Physical accessibility:** Justice facilities and services must be physically accessible for those with disabilities or mobility challenges. Additionally, they should be secure for all women, including those with young children and the elderly.
 - **Economic accessibility:** Justice must be affordable for all women. Payment for justice services should be based on the principle of equity, which demands that poorer women should not be disproportionately burdened with justice expenses.
 - **Information accessibility:** Accessibility includes the use of ICT by and for women, the right to seek, receive and impart information and ideas about justice and security sector institutions in a way that women with varying needs and education levels can understand.
 - **Linguistic accessibility:** Justice services must be available in the language of the user.
 - **Cultural accessibility:** Justice services must respect diversity and incorporate an intercultural dimension to delivery, including respect for expressions of culture through various means.
- **Good quality.** According to CEDAW GR 33, “good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems be contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive and take account of the increasing demands by women for justice”.¹⁰⁷ Good quality also embraces sector-wide reforms, innovation in justice delivery and protecting the privacy and security of women as claimants and witnesses.
- **Access to remedies.** CEDAW General Recommendation No.33 requires Appropriate and effective remedies, including protection from and meaningful redress to the harm suffered, must be provided and enforced in a timely manner. The provision of remedies requires that justice

⁴⁸ para. 14(c).

⁴⁹ Adopted from, UN Women et al, A Practitioner's Toolkit on Women's Access to Justice Programming. United Nations: 2018

systems provide women with viable protection and meaningful redress for any harm that they may suffer.

- **Accountability.** Accountability of justice systems also refers to the monitoring of the actions of justice and security sector personnel and their legal culpability when they violate the law. Justice actors such as the judiciary, police and prosecutorial services at all levels (national, sub-national and community) and in all settings (formal, informal and semiformal) must be held accountable to all women who access justice services. The figure below summarizes these six components below;

Figure 1: Summaries the key elements of access to justice for women



Figure 1: Dimensions Related to Women's Access to Justice

Source: Gender Bench Book, page 119

Box 1: Summary of International and regional Instruments relevant to GEWE

Key International and regional Instruments relevant to GEWE

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of all forms of Discrimination against Women (CEDAW),
- CEDAW Committee, General recommendation No. 33 on Women's Access to Justice
- Declaration on Elimination of Violence against Women (DEVAW)
- African Charter on Human and People's Rights on the Rights of Women in Africa, 2003 (Maputo Protocol)
- Beijing Declaration and Platform for Action
- Sustainable Development Goals, Goal No. 5
- ILO Declaration on Fundamental Principles and Rights at Work , adopted in 1998 and amended in 2022.

- International Conference on the Great Lakes Region Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children (the SV Protocol), 2006

2.2 THE CONSTITUTION OF UGANDA, 1995

The 1995 Constitution Ugandan Constitution which is the supreme law of Uganda has incorporated most international human rights standards. Article 50 provides for the enforcement of human rights by allowing any person whose Constitutional rights have been violated either by the state or by non-state actors, to seek recourse in the courts of judicature. The standards set by the international, regional and National Constitution can be useful as a guide to Members of Parliament as they fulfil their duties and work towards enhancing women's fundamental rights and access to justice.

The key foundation for women's rights and gender equality and empowerment in Uganda is set out in chapter four of the Constitution, which provides for the rights enjoyed by all. Women's rights are specifically provided for under article 33 below;

Article 33 of the Constitution of Uganda: Rights of Women

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 realize 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.
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.

Uganda has experienced historical marginalization of women and girls in the most profound way. The bill of rights provided for women under Article 33 is a corrective framework for the historical injustices by:

- Providing for the equality of all persons and freedom from discrimination for them;
- Providing for affirmative action in favour of marginalised groups;
- Providing for the rights of women;
- Protecting the rights of minorities and providing for their participation in decision making; and
- Providing for the enforcement of the rights and freedoms by the courts.⁵⁰

⁵⁰ Gender Bench Book

These constitutional provisions on fundamental human rights and freedoms constitute a foundation for gender inclusion in all aspects of social, economic and political life of women. The State is the guarantor of these human rights and freedoms under Article 20 of the Constitution. Members of Parliament play a critical role in doing oversight over government justice institutions administering justice and implementing these provisions.

2.3 NATIONAL LEGISLATION

Uganda's legislative framework has a plethora of laws that promote gender equality and women empowerment in general and access to justice in specific terms. They deal with common areas for which women come into contact with the law and justice system. The Penal Code Cap 120 is the country's chief criminal penal law containing key offences and penal sanctions which deal with personal rights and liberties for women. The short coming with this law, is that it was made during the colonial times and does possess sections which were made without a gender lenses. For example, the law on adultery has long been rendered unconstitutional by courts of law but have never been amended by Parliament.⁵¹

Some of the laws deal with specific forms of gender-based violence like the domestic violence;⁵² trafficking in persons,⁵³ female genital mutilation;⁵⁴ offensive communication⁵⁵, discrimination at work and in pay for women and sexual harassment at work⁵⁶. The other laws largely deal with evidence and procedural issues on where to report matters and evidentiary requirements which largely affect female justice seekers too.⁵⁷ The Land Act, Cap. 227, for example provides for co-ownership of land for spouses in land matters.

Uganda's legislation also boasts of a number of laws that provide guidance on rights to marriage and requirements for contracting particular types of marriage in Uganda.⁵⁸ The laws are however limited in terms of substantive law on the personal rights of women for which they commonly report to the justice systems seeking remedies namely; matrimonial property rights, separation, divorce, and child custody. Although, there have been recent amendments in the Succession Act, Cap 162⁵⁹, which have enhanced the rights of women in succession matters, there are many gaps particularly in the Marriage and Divorce law⁶⁰ that need to be dealt with by the executive and parliament. Below is a summary of the existing laws relevant to women's rights and access to justice in Uganda;

51 Uganda Association of Women Lawyers & Others v Attorney General Constitutional Petition No.2 of 2003.

52 Domestic Violence Act (No. 3 of 2010)

53 The Prevention of Trafficking in Persons' Act (No.7 of 2009)

54 The Prohibition of Female Genital Mutilation Act (No 5 of 2010)

55 The Computer Misuse Act (No 2 of 2011)

56 The Employment Act (No.6 of 2006)

57 Evidence Act, Cap. 6, The Magistrates Courts Act, Cap16

58 The Marriage Act, Cap 251, The Marriage and Divorce of Mohammedans Act, Cap 252; The Customary Marriages (Registration) Act, Cap 248; The Hindu Marriage and Divorce Act, Cap 250

59 Amendments were signed into law in April 2022

60 Divorce Act, Cap 249

Box 2: Summary of key legislations relevant to women's rights in Uganda⁶¹

The Penal Code Act, Cap. 120 as Amended
 The Domestic Violence Act (No. 3 of 2010)
 The Prevention of Trafficking in Persons' Act (No.7 of 2009)
 The Prohibition of Female Genital Mutilation Act (No 5 of 2010)
 The Children Act, Cap 59 as Amended
 The Computer Misuse Act (No 2 of 2011)
 The Employment Act (No.6 of 2006)
 The Trial on Indictment Act, Cap. 23
 The Evidence Act, Cap. 6
 The Magistrates Courts Act, Cap. 16
 The International Criminal Court Act, 2010
 The Public Health Act, Cap 281
 The Land Act, Cap. 227
 The Marriage Act, Cap 251
 The Marriage and Divorce of Mohammedans Act, Cap 252
 The Customary Marriages (Registration) Act, Cap 248
 The Hindu Marriage and Divorce Act, Cap 250
 The Divorce Act, Cap 249
 The Succession Act, Cap 162

2.4 NATIONAL POLICY FRAMEWORK

National Vision 2040. Uganda Vision 2040 provides development paths and strategies to operationalize Uganda's Vision statement which is "A Transformed Ugandan Society from a peasant to a Modern and Prosperous Country within 30 years" as approved by Cabinet in 2007.⁶² It aims at transforming Uganda from a predominantly peasant and low-income country to a competitive upper middle-income country. It is implemented in line with the comprehensive National Development Planning (NDP) Framework sequences interventions in 5-year national development plans and annual budgets. Strengthening the three arms of government is a core strategy of achieving this vision. All other sector plans are derived from this Vision and the 5-year National Development Planning Framework. The country is currently implementing the third (NDP III) for the year ending 2025 (2020/21 – 2024/25).⁶³

⁶¹ Adapted from CEDOV et al (2020), Gender Based Violence Training Manual for Judicial Officers

⁶² Government of Uganda, Uganda Vision, 2040, Para 1

⁶³ Government of Uganda, The Third National Development Plan, 2020/21 – 2024/25

Access to Justice Strategic Development Plan, 2020-2025.⁶⁴ The Justice, Law and Order Sector (JLOS) is implementing the 2020-2025 Strategic plan which is derived from NDP III. The primary goal of this plan is to enhance access to justice. Through this plan, the sector seeks to deepen and broaden access to JLOS services through well targeted interventions aimed at enhancing access to services, mainstreaming human rights and gender equality, fighting corruption and strengthening competitiveness and commercial justice through the following major priorities:

- Widening and deepening access to services of JLOS institutions;
- Eliminating case backlog;
- Addressing the wider civil and criminal justice challenges;
- Development and funding of special Programmes to target gender, age, poverty and other forms of vulnerability;
- Mainstreaming national priorities and the Sustainable Development Goals;
- Innovations to bridge the gap between formal and informal justice systems, whilst being committed to national and international human rights standards;
- Leverage technology to facilitate data driven decision making to solve justice problems and challenges; empower people to have high quality experiences with the justice system; and create e-justice platforms for information access and break barriers associated with access to justice services
- Tackling the growing concerns of corruption and human rights observance;
- Proactive engagement and reaching out to actors outside the constitution of the Sector.

Through these set out priorities, the sector is working to mainstream gender in the 17 implementing institutions as well as strengthening both the formal and informal justice institutions. These are critical combine interventions which should result into increased access to justice for women.

Uganda has also been able to put in place a number of policies aimed at enhancing gender equality and women's empowerment. The following are the key policies for GEWE which are all under review⁶⁵;

- Uganda Gender Policy, 2007
- National Gender Based Violence Policy, 2015-2021
- National Action Plan on the Elimination of Gender Based Violence 2016-2021
- The Gender Policy of the Judiciary

WHAT CAN MPs DO?

1. Ensure principles of equality and non-discrimination are enforced in all laws that are enacted by Parliament.
2. Ensure all other international standards established in the international and regional treaties are domesticated in the legal and judicial systems.

⁶⁴ Government of Uganda, JLOS Strategic Plan 2020/21 – 2024/25

⁶⁵

3. Popularize the international standards on human rights and the obligations that the State has under international and domestic laws on gender equality, women's empowerment and access to justice
4. Ensure that all the rights enshrined in these international legal instruments are enjoyed by all women/girls and men/boys on the basis of equality and non-discrimination.
5. Ensure that the State plays its part in enforcement of all women's rights and where they are infringed upon, to provide effective remedies to female justice seekers.

2.5 SUMMARY OF KEY LEGAL PRECEDENTS

2.5.1 Introduction

The judiciary is the arm of government empowered to interpret law and administer law for the peace and order of society. Under the 1995 Constitution of the Republic of Uganda, judicial power is derived from Article 126 (1) which provides that, *"Judicial power is derived from the people and shall be exercised by the courts established under this constitution in the name of the people and in conformity with law and with the values, norms and aspiration of the people"*. In addition, Article 128(1) states that; *"In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority"*. Other relevant Articles to the functions of dispensing justice include 2, 8, 126 and 274 of the constitution of Uganda.

Precedent refers to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues.⁶⁶ When a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court's decision. For this to work in Uganda, the previous deciding-court must have binding authority over the lower court and precedents made by higher courts bind lower courts (See Section 3 for hierarchy of courts in Uganda).

At the international level, it is now an accepted standard for courts of law to use set international human rights standards for legal interpretation. The 1988 Bangalore Principles on the Domestic Application of International Human Rights implore courts to look to international law particularly where there is ambiguity or uncertainty in the Constitution, in legislation or in judicial precedent.⁶⁷ The Bangalore Principles which were endorsed by the UN Commission on Human Rights in 2003 reflect the universality of human rights - inherent in men and women - and the vital duties of an independent judiciary in advancing human rights by interpreting and applying national constitutions and laws in the light of these principles.⁶⁸

In line with enhancing women's rights and access to justice, precedent for high courts in Uganda are important as they provide improvements of legal positions on the status of women. Where precedents exist from other countries they, may provide persuasive guidance to courts of Uganda

⁶⁶ <https://www.law.cornell.edu/wex/precedent#>

⁶⁷ Available at http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

⁶⁸ Gender Bench Book

on various issues which may not be legislated upon or improve the state of law from previous biases and stereotypes that surrounded women's access to justice.

This section reviews a few court decisions in selected thematic areas at international and regional level that have bearing on national jurisprudence on various issues affecting women's rights and access to justice for women in Uganda. It also reviews precedents set by courts of Uganda that have improved the enjoyment of rights of women and their access to justice.

2.5.2 Precedents at regional and international level and lessons for enhancing access to justice for women

State Parties are called upon to eliminate gender stereotypes in law and practice. Article 5 (a) of CEDAW calls upon States Parties shall take all appropriate measures 'To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'. According to **CEDAW Committee General Recommendation No. 33**⁶⁹, gender stereotyping and gender bias in the justice system impede women's access to justice in all areas of law and may have a particularly negative impact on women victims and survivors of violence.

Courts of law from various regional and international bodies have contributed to breaking several stereotypes existing on women's rights and status in society. The principles from these judgments can be applied at national level. In the case of Although, the same situation pertained in Kenya and Tanzania a few years ago, the law in this area has since evolved in our neighboring countries starting with **In Mary Ann Kivuitu vs Samuel Mutua Kivuitu**⁷⁰ Omolo JA said that under sec 17 of Married Women's Property Act the wife's contribution should not be limited to monetary contribution only. If a wife remains in house, prepares food for the family and generally keeps the house going and generally attends to matters which enhance the welfare of family, surely such a woman is contributing to the family welfare and its assets, His Lordship remarked. The principle of equality in marriage contained in this decision, which was made at a time when Kenya had no constitutional provisions on equality is now entrenched in Article 45 (3) of the Constitution of Kenya, 2010. Kenya's recently enacted Matrimonial Property Act, 2013, now recognizes equality principle and provides progressive sections on matrimonial property rights for women at marriage, during and at its dissolution.⁷¹ The Marriage Act of Tanzania also empowers every married woman to acquire, own and dispose of property.⁷² It among other things, provides that the wives of a polygamous man have equal rights and status, a matter which has remained sticky in Uganda since Independence.

Courts of law in Uganda have been proactive in raising principles of equality and non-discrimination in law as seen in these cases recent cases in Uganda's jurisprudence.⁷³ The principles in these cases, however, are yet to engrained in the pending family laws of Uganda.

⁶⁹ paragraph 26

⁷⁰ Civil Appeal No 26 of 1985 (unreported)

⁷¹ Commonwealth Secretariat (2017), Judicial Bench Book on Violence Against Women in Commonwealth East Africa. Commonwealth Secretariat: London

⁷² Ibid

⁷³ Law and Advocacy for Women in Uganda v. Attorney General, Constitutional Petition No.13/05 and No.5/06; Kigongo v Kigongo High Court Civil Suit 295 of 2015; Julius Rwabinumi v. Hope Bahimbisomwe, Civil Appeal No.30 of 2007) [2008] UGCA 19

The state can be held liable where it fails in its due diligence function to enforce women's rights:

The case of **Suzette Irene Nelson v Minister of Safety and Security and Another**⁷⁴ is very instructive in advocacy to engage the State in becoming more gender responsive to cases that directly affect women and girls which have low prosecution in Uganda. In this matter the State failed in its due diligence to prevent violence from happening to the complainant and the State was held accountable to pay damages to Suzette Irene Nelson. In this case, the plaintiff's husband was a licensed firearm holder. He threatened to shoot the plaintiff with his firearm, and she petitioned to court seeking a protection order. The protection order was granted, but the government took no steps to withdraw the firearm and subsequently he shot and injured the plaintiff. Police failed to act with due diligence to prevent and protect the applicant from violence. Court held that the state was liable to compensate the plaintiff, because it was the constitutional duty of the state to give its citizens protection from all forms of violence and by failing to take steps to withdraw the firearm. This case can be adopted for advocacy purposes in Uganda as the many claims coming its way may result more in policy and legal changes to ensure women's rights protection get better due diligence and attention from all justice institutions.

Government can be held responsible for failure of its agencies in ensuring proper investigation of VAW related offences:

It is the duty of government to ensure it applies the same level of commitment in relation to investigating, punishing and providing remedies for offences that affect women's rights as it does other crimes. In the Kenyan celebrated case of **CK (A child) and 11 others v Commissioner of Police (COP) and 2 others**⁷⁵, the Government of Kenya was taken to the High Court of Kenya by 11 girls aged between 5 and 15 years of age, through Ripples International, an organisation that had sheltered 160 girls in the Meru community who were victims of sexual abuse. The petitioners had experienced sexual abuse at the hands of family members, caregivers, neighbors, employers and, in the case of one girl, a police officer. As a result of the abuse, some girls became pregnant; some contracted sexually transmitted diseases, while others sustained physical injuries that required surgery. The girls petition was premised on the failure of police to conduct prompt, effective, proper and professional investigations into the petitioners' complaints of defilement and other forms of sexual violence contrary to Articles of the Constitution which [protected fundamental rights and freedoms and

The High court of Kenya agreed with the petitioners that indeed the rights and freedoms cited as enshrined in the international, regional instruments and the national constitution and laws, including the right to access justice on a basis of equality. Court ordered Police to conduct prompt, effective, proper, and professional investigations into the petitioners' complaints of defilement and other forms of sexual violence international and regional human rights treaties

Courts are demonstrating Judicial creativity to enhance access to justice by providing remedy for women, where there is no legislation on a matter:

As we seek to enhance this basic right of access to justice for women in Uganda, there are some new developments that offer best practices that can be learnt from other jurisdictions. For example, where there is no legislation providing for the grant of a particular order sought by a victim of violence, court can, through judicial activism and

⁷⁴ Commonwealth Secretariat (2017), Judicial Bench Book on Violence Against Women in Commonwealth East Africa. Commonwealth Secretariat: London, on page 73

⁷⁵ High Court Petition No. 8 of 2012

creativity, apply the constitution and grant orders that will protect women and girls from violence. This good practice was cited in the court in 1996 case of **Taleo v Taleo**⁷⁶ from Vanuatu where court found that no rule gave the Magistrate jurisdiction to grant restraining orders, but in absence of a legislation, the Magistrate could grant these orders even if they violated the constitution.

So in a country like Uganda, where there are limited provisions in some areas, courts can still provide remedies for the litigant based on set standards in the international and regional instruments. As seen in other jurisdictions outside, Uganda and East Africa, Courts of law have moved ahead of law makers by ruling on matters not legislated upon by Parliament.

Use of international reporting frameworks. International human rights law represents the broader framework within which domestic laws are set for advancing gender equality and women's empowerment.⁷⁷ There is various reporting international frameworks which can be exploited by human rights defenders at international level to defend the rights of persons who have been aggrieved and have not found a solution with the country's legal frameworks. A range of global and regional human rights treaties and institutions provide standards, procedures and platforms for an individual or a group of individuals to submit complaints when the provisions of a treaty are violated.⁷⁸ Each of the nine-core international human rights instruments are complemented by Optional Protocols, which permit their respective monitoring bodies to consider complaints or communications of violations of rights which are protected under the specific instrument. However, it is a basic requirement before setting such a process in motion, the Optional Protocol in question must have been ratified by the State concerned. Uganda has not ratified the optional protocol on CEDAW, and ratified Maputo with reservation on article 14 which deals with sexual and reproductive health rights.

Use of this international reporting offers enhanced opportunity for promoting enactment of laws on women's rights in areas individual countries are lacking thus resulting to access to justice for women. **Members of Parliament inevitably need to work towards the ratification of the optional protocol on CEDAW in order for women to benefit from these important enforcement mechanisms as well as urge government on full compliance to the Maputo protocol.**

2.5.3 Judicial activism on Women's Right in Uganda

Courts in Uganda have been proactive in modifying laws to conform with the Constitution of Uganda. Article 274 of the Constitution provides for modification of existing laws before the coming into force of the 1995 Constitution; Article 274 provides that;

- (1) *'Subject to the provisions of this article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.'*
- (2) *For the purposes of this article, the expression "existing law" means the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this*

⁷⁶ https://www.law.cornell.edu/women-and-justice/resource/taleo_v_taleo

⁷⁷ UN Women (2018), A Practitioner's Toolkit on Women's Access to Justice Programming York. Module 1: The Theory and Practice of Women's Access to Justice Programming; United Nations: New York

⁷⁸ Ibid

Constitution, including any Act of Parliament or Statute or statutory instrument enacted or made before that date which is to come into force on or after that date.

In **Uganda v. Yiga Hamidu and 4 Others**⁷⁹, where the defendant was indicted for rape, he put up a defence that the victim was his wife whom he could not rape under the law. **Justice Musoke Kibuuka** rejected the accused's defence of mistaken belief that the complainant was his wife stating further that by virtue of Article 31, husband and wife enjoy equal rights in marriage. The court noted that the complainant was subjected to the highest level of human indignity and that her right to human dignity was significantly trampled upon. Through this precedent, the court has enabled women to access justice by construing the existing law on rape through the reasoning that the constitutional provisions on equality in marriage and the recognition of the equal dignity of women and men had effectively amended Sections 9 and 123 of the Penal Code, which originally excluded husbands from being held criminally liable for marital rape. The question of whether a husband can rape his wife has been a contentious issue which has been unresolved by courts of law in Uganda and legislation. The attempt by courts of law in this **Yiga Matovu case** has not either been followed by legislation although there was an attempt in some bills presented before Parliament.⁸⁰

Courts have outlawed differing definition of adultery and grounds for divorce women and men.

Section 154 of the Penal Code Amendments defines adultery differently for men and women. Section 154 (2) punishes any married woman who has sexual intercourse with any man not being her husband, but limits adultery to only men who have sexual intercourse with married women.⁸¹ A married man is thus free to have several sexual partners as long as they are not married women. Furthermore, a wife's complaint must prove two things: (a) that the husband had extra-marital sex; and (b) that the other woman was indeed a married woman. Indeed, this law sought to enact the culturally accepted position in many customs of Uganda, that a man can have several sex partners whereas not for women.

This discrimination and double standards sanctioned by section 154 was challenged in the case of **Law and Advocacy for Women in Uganda v. Attorney General**⁸² in which court found that; it was inconsistent with the constitutional right to equality between spouses in a marriage and at its dissolution and non-discrimination. This kind of law made it difficult for women to prove adultery thus making them unable to leave an abusive marriage. This difficulty was further buttressed in the Divorce Act whose sections 4, 5, 21-24, and 26 provided unequal terms for divorce for women and men. Section 4 of the Act requires a husband to prove only one ground (adultery) when seeking divorce while a wife had to prove than one ground, that:

Grounds for Divorce for Men and Women

- a. her husband has changed his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or
- b. has been guilty of:-
 - i. incestuous adultery;

⁷⁹ High Court Criminal Session Case No 005 of 2002

⁸⁰ Marriage and Divorce Bill, 2009, Sexual Offences Bill, 2019

⁸¹ See Section 154(1) of the PCA

⁸² Constitutional Petition No.13/05 and No.5/06.

- ii. bigamy with adultery;
- iii. marriage with another woman with adultery;
- iv. rape, sodomy or bestiality;
- v. adultery coupled with cruelty; or
- vi. adultery coupled with desertion, without reasonable excuse, for two years or upwards.

These sections of the law were successfully challenged in **Uganda Association of Women Lawyers and Others v. Attorney General**⁸³ Whereas Courts have set precedents on adultery and divorce in these cases, the law is yet to receive amendments in these same sections or otherwise.

Courts outlawed unequal standards for women and men in matters of succession and inheritance.

In the case of **Law & Advocacy for Women In Uganda Vs. Attorney General of Uganda**⁸⁴, the Constitutional Court declared some sections of the Succession Act before the recent amendments null and void. These included; Sections 2(n) on legal heir, (L) (ii), on illegitimate child, 23 (mode of computing degrees of Kindred), 26 (devolution of residential holdings), 27 (distribution on the death of a male intestate), 29 (distribution of principal residential holding), 43 (rights of appointment of testamentary guardianship) and 44 (appointment of statutory guardians only upon death of a father). They were declared to be inconsistent with Articles 20,21,24,26,31 and 44 of the Constitution. declared provisions of the Succession Act relating to the distribution of estates of intestate persons unconstitutional and discriminatory against the female gender. The Succession Act, which was enacted in 1906, provided various discriminatory provisions of law against women. The Succession Act has recently been amended in all these and other areas of law to bring into conformity with international human rights.

Courts have outlawed the common law requirement for corroboration in matters of sexual violence.

This matter first came up in the **Uganda v Peter Matovu**⁸⁵ where court noted that this common law principle was contrary to the definition of discrimination in CEDAW. The court also noted that this common law principle was contradicting section 132 of the Evidence Act, cap 43, which provided that no particular number of witnesses was required in court. Corroborating evidence in sexual offences matters has been a popular common law requirement applied religiously by courts, yet the same principle is not applied in other criminal matters where female witnesses are involved. The requirement that the court warns itself of the danger of convicting an accused person on the uncorroborated evidence of a victim of sexual violence portrays women/girls as liars who should not be believed in the absence of independent evidence to corroborate their claims in sexual offences. There has been a recent attempt by Ugandan Courts to further propose better law in this matter in **Ntambala Fred v Uganda**⁸⁶ at Supreme Court, where **Justice Tibatema- Ekirikubinza** provided an overview of the rule's history, its gender bias and its absurdity. Court held the rule was discriminatory towards women and contrary to international law and the Constitution.

⁸³ Constitutional Petition No.12 of 2007

⁸⁴ Constitutional Petition No. 13 of 2005

⁸⁵ Criminal session case no. 146 of 2001

⁸⁶ Ntambala v Uganda, Supreme Court Case No.1 of 2018

Courts have established that women and men have equal rights to property during cohabitation.

This has been the case in **Kigongo v Kigongo**⁸⁷ where a man and woman lived together as husband and wife for 26 years under cohabitation and had children together. They had lived together in a property as their residential home until when the defendant withdrew due to irreconcilable differences. He now sought to evict the plaintiff from the residential property, claiming there was never a marriage between them. The court found that there was no marriage, but each party had a right to the property. Whereas there is no law to guide on sharing of property of cohabitants in Uganda, court exercised its power and ruled for sharing of property. This ruling is instructive on matters of cohabitants as this matter has been a contention as it affected the enactment of the Marriage and Divorce Bill, 2009. However, this this precedence MPs need to apply these principles in the necessary legislations needed to strengthen laws that protect women's rights

Judicial activism is therefore very relevant and should be relied on to expose of some the gaps in the laws affecting women's rights. However though judicial activism can be applied by courts in Uganda, it entirely depends on the judges' creativity and gender sensitivity at personal level. Where one is not gender responsive, change may be slow compared to where an Act of Parliament clearly defines the offences and penalties.

WHAT CAN MPs DO?

- Popularize positive decisions made by national and international courts on women's rights and access to justice
- Push for enactment of all court decisions point out change in the various laws
- Support groups using public litigation for judicial interpretation of human rights of women.
- Push for the ratification of the optional protocol on CEDAW in order for women to benefit from the available enforcement mechanisms at international levels
- Push for the full ratification and compliance of Uganda to Maputo protocol under article 4 on sexual and reproductive rights of women.

87 High Court Civil Suit 295 of 2015

SECTION 3:

GENDER, POWER AND ACCESS TO JUSTICE

3.1 Introduction

Gender and power relations start at the household level. Unequal power relations affect access to justice in various ways. The divide between the public and private spheres relegates women to the undervalued domestic arena. Men are usually the “heads of households”, breadwinners and ultimate decision makers; they control productive resources such as land, and they participate in public life and because women are financially dependent on men, they are often forced to compromise on their rights. In fact, even where women may be financially independent, social and cultural norms dictate that they still be under the authority of their husbands. When the violation of rights is perpetrated by her spouse, the cultural dictate of male supremacy can prohibit even financially independent women from accessing justice through the formal system.

Historically, women in Uganda have not enjoyed the same rights and opportunities as men due to marginalisation and the negative biases that place women at an inferior position to that of men. They have long been denied access to major economic resources, particularly land and credit. Men acquire land, the most valuable resource, through a protected social system that guarantees passage from father to son. Women own just 16 per cent of the registered land. Apart from a few who are economically advantaged, the majority of women only have user rights determined by the relationship they have with the male land owner – father, husband or brother. Patriarchy continues its control of how people think; their actions; who gets what, where and when – a fact that retards development.

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.⁸⁸

Members of Parliament ought to understand unequal gender relations at household level and how they affect women’s experience of public life including access to justice.

The following are different but interlinked aspects of family relations that intrinsically affect women’s 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 development.

⁸⁸ Gender Bench Book, 2016

- 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 society.
- Negative stereotypes and traditional perceptions of women's roles inhibit women from enjoying equal legal capacities as men, in marriage, divorce, their domicile, succession, inheritance, and child custody rights.
- Polygamous marriages which allow men to marry multiple wives often have wide ranging negative consequences for women. This has implications on how women experience the justice system.
- 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 marriages.

3.2 COMMON WOMEN JUSTICE ISSUES IN UGANDA

In order to address challenges encountered by women as they navigate through the justice system to enforce their rights, it is important to understand the common issues women report and seek justice for in Uganda. This section therefore highlights some of the commonly reported issues by women, which are yet to receive necessary law-making action by legislators as well as necessary support services in Uganda which can enhance access to justice for women. This section also by implication draws the attention of the legislators to the matters in section in terms of prioritization for legislative action.

3.2.1 Marriage and Divorce Disputes

Women are entitled to equal status in marriage, during its existence and at its dissolution. The law on marriage is well established in international and regional frameworks.⁸⁹ CEDAW further emphasizes equal status of men and women in family relations by requiring States parties to ensure that men and women have equal rights in all aspects of marriage and family relations, including the selection of a spouse, ownership and matters related to the birth, adoption, and the raising of children. These laws protect the various rights which accrue to women at marriage and during dissolution of marriage.

Article 31 of the Constitution of Uganda entitles, women and men to equal rights at and in marriage, during marriage and at its dissolution. This includes, among others, the right to equality in the ownership of property during the existence of the marriage and at its dissolution. The right to custody of children and a consortium of rights during the existence of marriage and in the event that it fails; rights at of maintenance, separation and divorce. Where a spouse dies, there are rights associated with inheritance and succession.

Most married women come into contact with the justice system when differences between the spouses have reached irreconcilable proportions and one of the parties is seeking for separation or the dissolution of the marriage.⁹⁰ More often, when the marriage breaks down, battles relating to division of matrimonial property and custody of children end up in courts of law. Many other

⁸⁹ Article 16(1) of the Universal Declaration of Human Rights

⁹⁰ Gender Bench Book 2016

matters of this nature may be reported to family clans through the cultural leaders, religious leaders as well the recently formalized Local council Courts.

Although, this area is one of the most reported by women in the justice system, it is a highly contested area. It is, still embedded with gender stereotypes and limited changes in the law to address the justice needs of women. Taking an example of offence of in marriage created under section 154 of the Penal Code Act which defined adultery differently for men and women. This section was challenged in the case of **Law and Advocacy for Women in Uganda v. Attorney General**.⁹¹ The Divorce Act whose sections 4, 5, 21-24, and 26 provided unequal terms for divorce for women and men were also challenged in **Uganda Association of Women Lawyers and Others v. Attorney General**.⁹² These areas are yet to be amended to reflect the necessary changes as declared by courts of law in Uganda.

Section 26 of the Divorce Act further provided that when a decree of dissolution of marriage or judicial separation is pronounced upon account of adultery by the wife, and the wife is entitled to any property, the court may, notwithstanding the existence of the disability of coverture, order the whole or any part of the property to be settled for the benefit of the husband, or of the children of the marriage, or both. This means that court may order the whole or any part of the property to be settled for the benefit of the husband, or of the children of the marriage, or both, yet this does not apply to the husband in similar adulterous circumstances. This section is also yet to be amended.

Contention has been the order of the day on the topic of sharing matrimonial property during marriage and at divorce in the Ugandan society. The contention has always been on what constitutes matrimonial property; whether parties to a marriage can own property independently and whether matrimonial property can be shared equally. This is one of the major reasons all the proposed reforms in family laws have failed as consensus has not been reached on this matter.

This controversy on matrimonial property has not spared the courts of law as they have made differing judgements as seen in the matter of **Julius Rwabinumi v. Hope Bahimbisomwe**⁹³ At High Court level, court provided for an equal share of the matrimonial property despite the fact that, the woman was a house wife without financial contribution in the accumulation of the property in contention. At appeal, the Court of Appeal maintained the ruling made by the High court that property belonging to either spouse becomes matrimonial property upon the exchange of marriage vows. However, Supreme Court held that a married spouse is free to own personal individual property alone or in association with others under Article 26 of the Constitution and that such property individually owned cannot be treated as matrimonial property upon divorce. It is only matrimonial property that may be equally divided and shared to the extent possible and practicable at divorce. The latest ruling in **Ambayo Joseph Waigo v Aserua Jackline**, has come in with a newer position to indicate that marriage does not give a spouse an automatic half share in matrimonial property, but that it depends on his or her contribution to it. The contribution can take either monetary or non-monetary forms or both and this has to be calculated in valuing contribution.

91 Constitutional Petition No.13/05 and No.5/06.

92 Constitutional Petition No. 12 of 2007.

93 Civil Appeal No.30 of 2007) [2008] UGCA 19.

There have been efforts at reforms in marriage, divorce, and the status of women since independence when the newly independent government established Commission on Marriage, Divorce, and the Status of Women (the Kalema Commission) which published several progressive recommendations related to marriage, divorce, children, and inheritance.⁹⁴ Several attempts have been made towards establishing these reforms through government sponsored bill, first the Domestic Relations Bill and later Marriage and Divorce Bill, 2009, which sought a total overhaul of domestic relations in Uganda capturing many issues ad detailed in the box below.⁹⁵

Key Provisions of the Domestic Relations Bill

- the property rights of married and cohabiting women;
- women's non-monetary contribution as wives, mothers or cohabitees;
- women's right to negotiate sex on health grounds;
- recognition of the concept of 'irretrievable breakdown of marriage;
- the prohibition of "widow inheritance;
- spousal rape and female genital mutilation;
- vetoing bride wealth as an essential element of marriage;
- criminalization of the refund of dowry;
- introduction of conditions to be fulfilled before a polygynous man takes on subsequent wives (e.g., proof of economic capability, keeping wives in separate homes, treating all wives equally and seeking the consent of existing wife or wives before taking on a new one).

Most married women come into contact with the justice system when differences between the spouses have reached irreconcilable proportions and one of the parties is seeking for separation or the dissolution of the marriage.

Law on marriage and related disputes that emerge is still embedded with several gender stereotypes which limit access to justice needs of women.

Whereas courts of law have moved ahead of law makers in this area, a lacuna remains in the law, as the Parliament of Uganda, is yet to enact a Marriage Bill to address these gaps. This is despite the intensive advocacy for it by women MPs and the Women Movement across the country since independence. Members of Parliament must ensure that women enjoy full rights during marriage and at the end of such marriage-in the event of marriage failure.

⁹⁴ Gender Bench Book 2016

⁹⁵ Ibid

3.2.2 Land, Inheritance and Succession Disputes

Land is a fundamentally important resource in Uganda, and is the basis of income, sustenance, and identity for the majority of Ugandans. Agriculture dominates the country's economy, and accounts for 80% of export earnings and an estimated 80% of employment nationwide.⁹⁶ Nationwide, 90% of all rural women work in agriculture, and women produce an estimated 80% of food crops and contribute 90% of all labour for food production.⁹⁷

The Constitution 1995 has significant protections for women's rights which generally enhance women's land rights in Uganda. The Constitution prohibits discrimination based on gender and accords men and women the same status and rights (art 21); provides for the right of every person to own property (26(1); guarantees women equal rights with men (art 33); provides special help/protection for mothers and women because of previous historical discrimination against women (art 33); and prohibits any customary laws, traditions, or customs that discriminate against women (art 33).

The Land Act 1998 details the four forms of land ownership in Uganda as customary, freehold, leasehold, and mailo. It defines customary tenure rights and lays out a process for registration and administration of customary rights. With an estimated 80% of all land in Uganda held under customary tenure, customary rules for land governance play a major role in determining women's land and property rights.⁹⁸

The Land Act provides for some specific protections for women's land rights. Section 38A of the Land (Amendment) Act 2004 provides for a spouse's security of occupancy on family land, and section 39 requires spousal consent prior to entering into any land transaction concerning land on which the spouse resides on and uses for sustenance.⁹⁹ Section 28 of the Act specifically states that any decision that prevents women, children, or persons with disability access to ownership, occupation, or use of any land or that violates Constitutional principles shall be invalid. The 2004 and 2010 amendments to the Land Act further provide protection for spouses by giving them the right **to security of occupancy on family land** which means the right to have access to and live on family land and give or withhold his or her consent to any transaction, which may affect his or her rights. **"Family land" includes** "land on which is situated the ordinary residence of a family" and "on which is situated the ordinary residence of the family and from which the family derives sustenance."¹⁰⁰

Despite constitutional guarantees of equality of men and women and the outlawing of discriminatory practices, customary inheritance and succession practices have continued to pass on properties, most especially land, through the male lineage. The majority of girls and women are denied the opportunity of succeeding their fathers, with land passing only to boy children and male relatives.¹⁰¹ In some clan systems, women cannot own land and can only access it through their male relatives. In some clan systems in Uganda, communal lands can only be distributed by clan leaders who are

96 <https://www.landesa.org/wp-content/uploads/LandWise-Guide-Womens-land-rights-in-Uganda.pdf>

97 Ibid

98 Ibid

99 Ibid

100 Ibid

101 Gender Bench Book

largely men. The result has been large number of land, inheritance, and succession conflicts in the courts of law between individual families and widows holding letters of Administration. Although the Succession Act¹⁰² has been recently amended to address these gaps, some barriers still remain in relation to customary and marriage laws.

A significant barrier to realizing women's land rights In Uganda has to deal with the current marriage laws that do not clearly spell out the property rights of married men and women. In the absence of clear legislation defining women's property rights, courts continue to apply judicial activism which largely is dependent on the individual judges' appreciation of gender issues and international jurisprudence. Thus, MPs need to interrogate this area further and address gaps in the customary and marriage laws of Uganda in order to enhance access to justice for women.

3.2.3 Violence Against Women related Disputes

Violence Against Women (also referred to as Gender Based Violence), is defined by DEVAW to mean *“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”*. DEVAW affirms that Violence Against Women is a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. DEVAW further observes that Violence Against Women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement.

Violence against women as a human rights violation has devastating immediate and long-term consequences on individuals, families, communities and country. It manifests itself in many forms throughout the women's cycle of life and may be perpetrated either by the family, strangers, or the community. It is recorded to occur everywhere within the public and private spheres and is perpetrated by both state and non-state actors.¹⁰³

Some of the specific forms of VAW are the commonest offences reported by women and girls to the justice system.¹⁰⁴ For uniformity, this handbook adopts the types of Gender-based violence (GBV) or Violence Against Women (VAW) as reflected in the United Nations' current classification.¹⁰⁵ Overall, the eight core types of VAW have been listed and defined as presented in the Box 3 below;

Box 3: Types of Gender Based Violence

1. Rape/defilement	2. Sexual assault
3. Psychological abuse	4. Physical assault
5. Economic abuse	6. Female genital mutilation/cutting
7. Forced marriage	8. Other GBV where none of the above types apply

¹⁰² See the amendments in the Succession (Amendment) Act, 2022

¹⁰³ Gender Bench Book

¹⁰⁴ Gender bench Book

¹⁰⁵ Page 44 in the Judicial Bench Book on VAW in Commonwealth East Africa

We isolate VAW here because of its prevalence in Uganda and across the world affecting women and girls throughout their stages of life. Numerous studies have been conducted, books and reports published, laws and policies passed since the 1980s globally, yet the problem persists with impunity.¹⁰⁶ For example, according to the World Health Organisation report of 2014, 1 in 3 women through out the world experience physical and or sexual violence by a partner or non-partner as shown in Box 5 below;

In Uganda, statistics indicate that up to 60% (sixty percent) of married women aged 15-49 have ever experienced some form of violence inflicted by a spouse or intimate partner (UDHS 2011). Wife beating is widely accepted with 58 per cent of women and 44 per cent of men believing that it is justified for a man to beat his wife under certain circumstances. Further, it is estimated that only two in ten Ugandan women report violence or seek help. And even when cases are reported, conviction rates for perpetrators stand at an alarming 6.6 per cent of prosecuted cases.¹⁰⁷

Figures from the most recent 2016 National Demographic and Health Survey show that the situation has not improved at all (UBOS 2017). Women in Uganda are more than twice as likely to experience sexual violence as men. More than 1 in 5 women age 15 - 49 (22%) report that they have experienced sexual violence at some point in time compared with fewer than 1 in 10 (8 %) of men. Women aged 15-19 are less likely (5 percent) to report recent experience of sexual violence than older women (13-16%). Box 4 below shows the various types and manifestations of violence against women presented along the life phases of women, for which many women come in contact with the justice systems.

Box 4: Summary of life phases of violence against women¹⁰⁸

Life phases	Types of violence
Pre-birth	Pregnancy Battering during, denial of medical services, coerced abortion e.g., abortion of female foetuses pregnancy, rape during war, conflict or riots or caste rapes, sex selective.
Infancy	Differential access to food and medical care for girl infants (death from malnutrition), emotional and physical abuse, female infanticide and trafficking.
Childhood	Child marriages, commercial sexual exploitation, differential access to food, medical care and education, female genital mutilation and other forms of harmful traditional practices, honour killings, incest, sexual abuse, human trafficking.
Adolescence	Acid crimes, dating and courtship violence, female genital mutilation and other forms of harmful traditional practices, forced marriage, commercial sexual exploitation, honour killings, rape, sexual abuse in the workplace or other public places, sexual harassment, human trafficking, discrimination in ownership and inheritance of property, including land.

¹⁰⁶ Gender Bench Book

¹⁰⁷ Gender Bench Book

¹⁰⁸ Adapted, from Commonwealth Secretariat (2021), Judicial Bench Book on VAW in Commonwealth East Africa, Commonwealth Secretariat, London, page 15.

Adult period	Abuse by strangers and intimate partners, acid crimes, dowry harassment, harassment/murders, economic violence, forced marriage, commercial sexual exploitation, rape, honour killings and other harmful traditional practices, domestic violence, including marital rape, psychological abuse, human trafficking, stalking, sexual harassment, sexual harassment in the workplace, and denial of ownership and access to property/land and inheritance rights and forced widow inheritance
Old age	Abuse of widows and elder women, denial of shelter or food, loss of economic control, widowhood rituals/forced wife inheritance, rape, forced homelessness, denial of access to land, denial of property ownership and inheritance rights, destruction of personal effects and murder
Cross-cutting	Emotional and physical abuse of females, female infanticide, FGM and other forms of harmful traditional practices, commercial sexual exploitation, sexual harassment and abuse, psychological abuse and honour killings ages

It is important to note that VAW infringes on numerous women's rights which according to CEDAW, General Recommendation 19 include;

- a. The right to life;
- b. The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- c. The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- d. The right to liberty and security of person;
- e. The right to equal protection under the law;
- f. The right to equality in the family;
- g. The right to the highest standard attainable of physical and mental health;
- h. The right to just and favorable conditions of work.

CEDAW Committee recommended regarding actions that States should take to overcome GBV, which include ensuring that laws adequately protect against violence—this includes the existence of criminal penalties and civil remedies for forms of GBV—and that there are appropriate protective and support services in place for victims. Further, the CEDAW Committee recommends that States parties implement a policy of zero tolerance for VAW/GBV.

There a number of laws outlawing female genital mutilation, human trafficking, domestic violence and some forms of sexual violence in Uganda. There is however need for a comprehensive law which consolidates all forms of sexual violence which is the most reported on in Uganda¹⁰⁹ there are several gaps in existing penal code law on sexual offences which need to be addressed if women are to enjoy their rights and access to justice as envisaged in international instruments and constitution.

¹⁰⁹ See the latest police reports

For example, the use of the corroboration rule in all matters of sexual offences before court. The corroboration rule, also known as the cautionary warning, is where a court warns itself or the jury that convicting the defendant on uncorroborated evidence of the complainant can be dangerous. It is based on an assumption that women are inherently untrustworthy.¹¹⁰ These harmful assumptions of a woman's untrustworthiness often puts an unreasonable emphasis on the need for additional evidence to corroborate the woman's evidence, such as medical evidence and independent witness testimony which sets the burden of proof for such offences much higher for women than other kinds of offences.

The CEDAW Committee has recommended that States parties abolish this corroboration rules that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men in order to establish an offence or to seek a remedy. States are required to make legislation that abolishes the corroboration rule, by;

- making it unlawful to require corroboration of the complainant's evidence in sexual violence cases;
- making it unlawful to create an assumption of the complainant's credibility in sexual violence cases;
- Stating that the complainant's credibility in a sexual violence case is the same as in any other criminal proceeding.

The Sexual Offences Bill, 2019 advanced by women parliamentarians was passed into law by the 10th Parliament but signed into law by the President for reasons which were never made public by the Executive.

WHAT CAN MPS DO?

Members of Parliament need to take interest to legislate the area of personal rights for women in marriage and family as the hinder enjoyment of economic, social and political rights.

- Members of Parliament need to take interest in the Land and property rights concerns raised here need legal reforms which.
- Members of Parliament need to know the manifestations of gender-based violence so that, at individual level, they can be able to guide women in the referral pathway to access justice in their constituencies.
- MPs can take appropriate gender transformative advocacy steps in ensuring reforms are made to all justice systems to provide protective and support services to women who report VAW.
- Members of Parliament can ensure that laws are made or cause reforms in existing laws to adequately protect women against violence—this includes providing for criminal penalties and civil remedies for forms of GBV.

110 UN Handbook for Legislation on Violence against Women, above note 511, page 43

- MPs can also ensure the Executive comes up with necessary policies to address gaps in response to VAW /GBV.
- MPs can also ensure that beyond legal reforms, they support the judicial systems to put in place referral services for survivors/victims of VAW in community
- MPs can also individually take up the responsibility of being champions in sensitizing their constituents on causes of VAW and its negative consequences on individuals, families, communities, and country.

3.3 GENDER BARRIERS TO ACCESS JUSTICE

3.3.1 The Justice System and Justice institutions in Uganda

The justice system includes ‘institutions that are central to resolving conflicts arising over alleged violations or different interpretations of the rules that societies create to govern members’ behaviour; and that, as a consequence, are central to strengthening the normative framework (laws and rules) that shapes public and private actions’.¹¹¹ The normative framework in this case are the laws and rules for enforcing women’s rights in Uganda. The judiciary is the main institution on which women’s rights ultimately depend because it is the final authority in criminal and civil matters that enter the justice system.¹¹²

The Government of Uganda brings together institutions with closely linked mandates of administering justice, maintaining law and order and human rights under the Justice, Law and Order Sector (JLOS) which is a sector-wide approach adopted in order to develop a common vision, policy framework, unified objectives and plan of action over the medium term. The sector focuses on a holistic approach to improving access to and administration of justice through the sector-wide approach to planning, budgeting, programme implementation, monitoring and evaluation.¹¹³ The JLOS is implementing the 2020-2025 Strategic plan which is derived from NDP III.

In doing its work, the Parliament of Uganda, has to look out for all the JLOS institutions to ensure they are well facilitated to enable them deliver on the right to access justice for all its citizens in Uganda, particularly for women. It has already been noted in earlier sections that justice is an enabler of other rights. With this in hindsight, the justice system therefore needs to receive sufficient resource allocations to enable it support other sectors for the development of the country. In Uganda, JLOS comprises the following institutions: -

JLOS INSTITUTIONS IN UGANDA

Ministry of Justice and Constitutional Affairs;
Ministry of Internal Affairs;
The Judiciary;
Uganda Police Force;

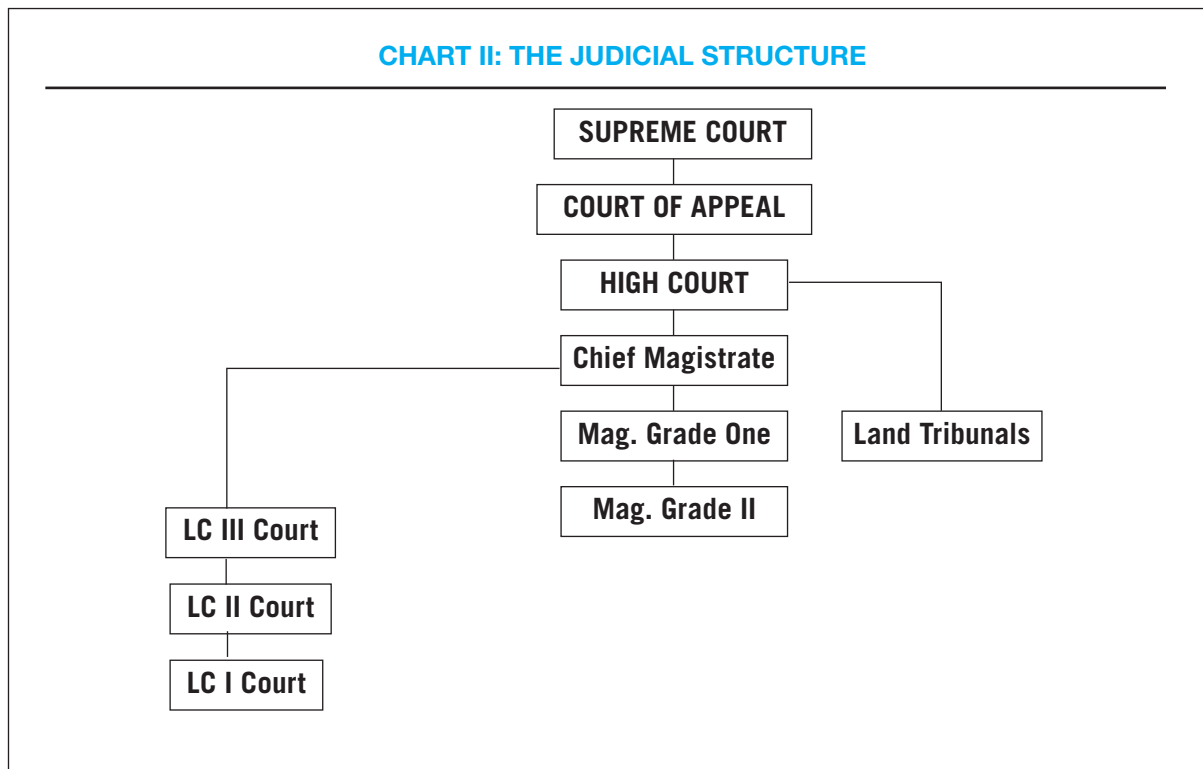
¹¹¹ <https://thedocs.worldbank.org/en/doc/988591611674066944-0090022021/original/JusticeSystem.pdf> accessed on 26th October 2022

¹¹² Gender Bench Book

¹¹³ Ibid

Uganda Prison Service;
 Directorate of Public Prosecutions;
 Judicial Service Commission;
 The Ministry of Local Government (Local Council Courts);
 The Ministry of Gender, Labour and Social Development (Probation and Juvenile Justice);
 The Uganda Law Reform Commission;
 The Uganda Human Rights Commission;
 The Law Development Centre;
 The Tax Appeals Tribunal;
 The Uganda Law Society;
 Centre for Arbitration and Dispute Resolution; and
 The Uganda Registration Services Bureau.

As Members of Parliament execute their role of oversight over all these JLOS institutions, their attentions is particulate drawn to the Judiciary which is charged with the duty to directly dispense justice in Uganda. This is with the purpose of reducing or eliminating all barriers that affect access to justice for citizens particularly women. The chart below is a structure detailing the structure of the Judiciary in Uganda.



Source: Hon. Justice Henry Peter Adonyo¹¹⁴

114 A paper Presented during the Induction of New Magistrate Grade one at Ridar Hotel, Seeta, Muono on the 24th September

3.3.2 Common Barriers to Access to Justice for women in Law Making

Women who seek justice are confronted by a complex landscape of laws, systems and institutions.¹¹⁵ Several research reports¹¹⁶ highlight many obstacles or barriers that militate against women's access to justice on the basis of equality of men and women. These are the various challenges that women and girls face as they navigate the justice system to access justice and enforce their rights. For ease of reference in this hand book these barriers are categorized as; barriers at law making, administration and its implementation/enforcement.

Barriers to accessing justice for women begin from the very point of law making. The right to access to justice for women cannot be enjoyed by women if from the beginning the law is drafted in a such a way that it does not recognize women's rights or discriminates or bars them from accessing these rights.

At the level of administration, these barriers are evident at every stage of the legal process starting from the decision by the rights holder to take legal action, to the investigation, prosecution, and litigation of the case, until the issuance of a final decision and its enforcement.¹¹⁷

Law making in Uganda is an extensive process engaged in by persons with the legislative power at the level of legislature and local government level.¹¹⁸ Adjudication in Uganda is done by the courts of law and Local Council courts each according to the power granted to them by the law.¹¹⁹ Enforcement is largely enforced by police and other associated implementing agencies.¹²⁰ In this section, we isolate a non-exhaustive list of these barriers and encourage MPs to address them as they go about fulfilling their key mandates as legislators.

Gender stereotypes in the law, procedure, and practice: At law making, there may be gender stereotypes in law, which trickle down to the procedure emanating from the law and ultimately to the practice of administration of Justice. Where law makers do not deal with gender stereotypes during law making, the result is biased judgements or rulings by the Judicial Officials on the bench. Examples of biased laws in Uganda's and have not been reformed include some of the following;

- **Different essential requirements for entering a marriage for women and men:** Article 16(1) of the UDHR provides that 'Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Similar articles can be found in CEDAW, ACHPR and Maputo Protocol and are domesticated in Uganda's Constitution in Article 31. However, one of the essential requirement in contracting a customary marriage in Uganda is the payment of bride price or dowry which by men and not women. The customary practice is found in almost all tribes in Uganda, and until recently, this requirement of refund of dowry kept many women stuck in abusive marriages because their families were incapable of refunding the dowry. However, with the Supreme court interpretation in *MIFUMI Ltd & 12 Others v Attorney General*¹²¹ refund of bride price at divorce was prohibited but the practice of

2012

115 UN Women et al, A Practitioner's Toolkit on Women's Access to Justice Programming. United Nations: 2018

116 Such as

117 Gender Bench Book, 2016

118 See Article 78 of the Constitution of Uganda and Section 79..... of the Local Government Act

119 See Article.... Of the Constitution, Section.... Of the Local Councils Act

120 See Section of the Police Act cap

121 Constitutional Petition No. 12/2007

paying bride price was maintained. Although the practice has been maintained as necessary, it is a ground which is sustaining gender biases and stereotypes against women.

- **Differing grounds for divorce for women and men:** As noted in the earlier sections, the Divorce Act, Cap 249 set different standards for men and women who seek a termination of their marriage under Section 4. This has not been amended in the law to date despite the Constitutional court ruling in **Uganda Association of Women Lawyers and Others v. Attorney General**.¹²² This area therefore only relies on gender responsive judicial officials to interpret the law with support of international and regional law as well as precedent. This is a bar to women in law in their efforts to access justice.
- **Corroboration required in matters of sexual violence.** This is another bar at law, for many women and may arguably be the biggest barrier in relation to all sexual offences. For example, rules of evidence, which require corroboration in sexual offence cases discriminated against women and child victims of sexual violence portrays women/girls as liars who should not be believed. The requirement that the court warns itself of the danger of convicting an accused person on the uncorroborated evidence of a victim of sexual violence portrays women/girls as liars who should not be believed in the absence of independent evidence to corroborate their claims in sexual offences. This has been a popular common law requirement in resolving matters of sexual offences before courts, yet the same principle is not applied in other criminal matters where female witnesses are involved.¹²³ This jurisprudence can be seen in the following judgements in the East African jurisprudence and local case in Uganda few years.¹²⁴
- There has been a recent attempt by Ugandan Courts to further propose better law in this matter in **Ntambala Fred v Uganda**.¹²⁵ This case clarified the law on corroboration in cases of sexual violence and, in a separate judgement, Justice Tibatema- Ekirikubinza provided an overview of the rule's history, its gender bias and its absurdity. Court held the rule was discriminatory towards women and contrary to international law and the Constitution.

WHAT CAN AN MP DO?

- Gender stereo types deny women and girls the protection of the law on a basis of equality of all according the Constitution of Uganda and international instruments of Human rights. In order to enhance access to justice for women and girls;
- MPs are encouraged amend all laws that still manifest any form of gender stereotypes and align them with international and regional treaties to which Uganda is a state party.
- MPs can also ensure they prescribe punitive penalties required to address some of the notorious offences reported against women such as all forms of VAW.

¹²² Constitutional Petition No. 2 of 2003.

¹²³ Judicial Bench Book on VAW in Commonwealth East Africa

¹²⁴ Maina v Republic [1970] EA 370; which was overruled in Mukungu v Republic as bad law as they conflicted with Article 82 of the Kenyan constitution. Years later, in Uganda v Peter Matovu citations

¹²⁵ Criminal Appeal No. 34 of 2018

- Lobby for gender-sensitivity training as a key element in all vocational or professional training Uganda for all Justice actors

3.3.3 Common Barriers to Access to Justice for women in Administration of Law

Female justice seekers face various challenges before the commencement of a case and during full trial processes making access to justice difficult to achieve for many of them.

- **Gender biases, norms and practices within society affect the justice sector too:** For example, the common perceptions of family matters or domestic violence case being ‘private issues’ not to be discussed in public deny women opportunity for justice. When a woman reports a domestic violence case, it is likely that, she will receive second questions on why she wants to pursue this matter in the justice system rather than go to cultural or religious institutions. Such bias as ‘women lie and make up false allegations about rape to cover up sexual acts they enjoyed or to get revenge’ potentially have a consequence of women’s stories of rape and sexual assault not believed right from the point of investigation to trial. Such a stereotype as “It is women’s main role to be a wife and a mother’ has a potential consequence of women being blamed for marriage break downs. Furthermore; such an assumption ‘that keeping families together or wives staying with their husbands is the goal, rather than the safety of families or the wishes of wife’, can discourage reporting of domestic violence related case.

Such bias, or stereotypes and other many examples that persist in our society are the first bar to access to justice for women as they come in contact with the justice system. Justice actors also do come from the same societies from which women are coming from. Where they are not trained and supported to unlearn these stereotypes, they perpetuate them further into their personal and institutional practices at various points such as investigations, court trails as well as sentencing. These issues cumulatively limit the opportunities women have in accessing justice.

- **Ignorance of the law by some officials during investigation:** At the point of investigation, if the investigating officer does not appreciate the law through a gender lens, it is likely that a female justice seeker will be denied justice as this will shape the direction the case will take. Denial of justice arising out of the investigators bias in handling a case of VAW for example is demonstrated in the case of **CK (A Child) and 11 Ors v The Commissioner of Police and 2 Ors**. Knowledge of the law is important for investigators because, prior to commencing investigation, they are required to establish if the act complained of amounts to an offence.
- **Lack of specialized and friendly police units to investigate and attend to female justice seekers in a gender-sensitive manner:**¹²⁶ This is especially important in matters involving violence against women because such victims/survivors need specialized attention on the issues they suffer from. When a female justice seeker comes to the police station to report a matter and faces stigma and further marginalization, the chances of returning on the same matter become slim. The need for training investigators and specialized units or desks to handle female justice seekers has been a persist demand from women’s; organisations although minimum interventions have been done in this regard. CEDOVIP and the Consortium of organizations Domestic Violence in

Uganda, have advocated this for more than 10 years now which has resulted into the creation of the Directorate of GBV at Police headquarters. Little is, however, visible in terms of replicating this in all police units across the country. This can perhaps explain, why the cases of VAW reported to police are the highest of all offences, yet the level of prosecution stands only at 6%.¹²⁷

- **Hostile and insensitive judiciary:** The public nature of court and associated rigid and hostile procedures are a big dis service to female justice seekers. Given the nature of most of the matters reported which are associated with very personal experiences, it would really take a strong hearted woman to lay bare her entire life in exchange for justice sought. The fear of stigma in most cases causes women to shy away from the judiciary or abandon matters already reported.
- **Gender stereotypes and bias in the court room:** gender stereotypes sometimes find their way into the courtroom and deny women equality before the law and equal protection of the law. Judicial officers also may fail to apply or interpret the law in a gender-sensitive manner.¹²⁸ For example, custom that prohibits daughters – irrespective of their marital status – from inheriting their fathers’ property, particularly land in *Rono v Rono*.¹²⁹
- **Inadequate awareness and gender sensitivity by Judicial Officers:** This makes it difficult for the court to handle cases with a gender-sensitive understanding and can lead to a miscarriage of justice. An insensitive judiciary can be an obstacle to the realization, by female justice seekers of the right to equal protection of the law.
- **Limited application of Judicial creativity some judicial officials:** It has been observed that; one of the emerging ways access to justice for women can be enhanced is through judicial activism. Given the fact that, there are several gaps in some of the existing laws which would enhance women’s justice, judicial officials are enjoined by Article 274 of the Constitution, CEDAW recommendation NO.33 and the Bangalore Principles to find solutions. This is now, however, happening as some judicial officials are still biased and rigid to apply the law with modifications in view of developing jurisprudence in areas of difficulty. This is a serious bar to women’s access to justice, as women issues are decided on a case by case by depending on how progressive the judicial officer is.
- **Ignorance of the law by female justice seekers:** Ignorance of the law and complex court procedures can impede access to justice by female justice seekers. This as a result can easily be convinced to withdraw charges or change their statements, rendering the case weak and successful prosecution difficult. Illiteracy is a general challenge affecting both women and men, but more the female folk who statistics show are less educated than men in Uganda.¹³⁰
- **Accessibility of courts of law:** For female justice seekers, access to justice will also depend upon the availability and accessibility of the courts, as well as their affordability.¹³¹ The geographical

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128 Judicial Bench Book on VAW in Commonwealth East Africa. Commonwealth Secretariat, London 2017

129 KeCA (2005) AHRLR 107

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location of the court, high levels of illiteracy and intricate court procedures which bar their access as well as high court fees may be limiting for the majority of them. This is even more so, for the women whose position at house hold level does not entitle them of the needed financial resources. The multiple roles of women also will limit the time at their disposal to access courts in time and on schedule. Understanding of the court processes is even harder for women because of the high literacy levels.

- **Low representation of women in justice delivery agencies:** The various limitations women face while they encounter the justice system in Uganda, can partly be placed in the limited representation of women at all levels of the justice system. It has been argued by a global UN Women report¹³² that, female justices seekers are comfortable seeing fellow women at critical points of access of justice say at police and court as this gives them more confidence away from the usual patriarchal experiences. CEDAW recommendation NO.33 on access to justice requires that countries consider increasing the number of female judicial officers and in other justice institutions if this particular goal is to be reached. Although the number of female justices has steadily gone up in Uganda, a lot more is needed in the other justice institutions.¹³³
- **Limited support services for female services:** The services especially relate to services needed by survivors of Violence Against Women. The trauma experienced by the victims of VAW leaves them intimidated and vulnerable and, in the absence of such support services to prepare them for court appearance, it becomes extremely difficult for them to engage with the justice system. Also, the distance which victims have to travel in order to access medical and other services all contribute to secondary victimization. Consequently, victims may fail to turn up in court altogether.
- **Reliance customary and religious dispute mechanisms:** Majority of the poorest women rely on informal customary and religious dispute mechanisms which tend to resolve disputes more expeditiously but with less reliance and reference to gender equality principles.¹³⁴ Due to the distance associated with reaching the nearest police stations or magistrates courts, many people especially women opt to use the customary or religious institutions, yet these may not give the best options because the under lying gender stereotypes and lack of guiding rules.

These challenges generally can be transformed by Members of Parliament as they play their cardinal roles of representation in committees, law making, resource allocation and oversight or monitoring to ensure judicial officers.

WHAT CAN MPs DO?

1. Members of Parliament have to pay critical attention to amending or repealing laws that discriminate on the basis of sex, either explicitly or implicitly. Where laws that affirm the gender-equality principle do not exist to enact them. It should be the primary focus of every MP to look out for any explicit or implicit gender bias in law and ensure reform happens.

¹³²

¹³³ The Gender Bench Book, 2016 indicates 43% of the total number of females in the Judiciary is female

¹³⁴ www.unwomen.org

2. Within the proposed enactments, MPs can insist on specific guidelines which can result in better administrative handling of cases affecting women in a more gender responsive manner by the relevant institutions i.e., expeditious handling of VAW, hearing of such matters in camera, dealing with corroboration or cross examination on previous sexual history, safety of victims or survivors of VAW etc.
3. If women's human rights are to be realized then the justice systems institutions require reform in terms of their policies, practices and procedure.¹³⁵ Reforms in areas where there are gaps can be issues raised by MPs on the floor or in committees and general public advocacy they may engage in Parliament. These are the same issues they can take up during law making and reform as well as in the budgeting cycles to ensure such areas receive more budget lines and less cuts. As they carry out their oversight roles MPs can also ensure that they check out to see areas where there are loopholes in the administration and procedures of institutions implementing law or dispensing justice.
4. This can be followed up through allocating sufficient budgets to impactful, yet least prioritized areas which can enhance access to justice for women.
5. Through their representative role, MPs can play a supportive role of raising awareness of the general public on persistent gender stereotypes in society and better operations of justice institutions.
6. MPs can ensure resources are allocated for the training of judicial officers and all those involved in its administration and implementation on the new laws and guidelines regarding thematic areas affecting women and girls.
7. It is the duty of MPs to advocate that the government applies the same level of commitment in relation to investigating, punishing, and providing remedies for offences that affect women's rights as it does other crimes. Evidence seen in earlier sections shows that such offences are the highest reported yet the least prosecuted.
8. These are all issues that MPs and particularly female legislators need to take up and mainstream in their day-to-day functions as they undertake their representation, legislative, oversight, and resource allocation functions in Parliament.
9. Informal institutions like the cultural and religious institutions play a significant role in justice delivery, therefore need to be empowered in order to increase access to justice for women.¹³⁶ MPs can lobby and support that; their capacity is built in matters of the law. Although the local council courts are formal institutions formed and empowered under the laws of Uganda, they too need to be supported and trained in matters of the law.

¹³⁵ This is a key recommendation in Women's Access to Justice for Gender-Based Violence: A Practitioners' Guide. International Commission of Jurists. Geneva(year?)

¹³⁶ This has been reported on in a key UN Women report..... New York, 2018.

SECTION 4:

ROLE AND MANDATE OF MEMBERS OF PARLIAMENT

4.1 Core Mandate of Parliamentarians

Law-making, oversight, representation and outreach are the core business of parliamentarians everywhere, albeit to differing degrees.¹³⁷ In Uganda, these roles, are established by the Constitution and supportive Acts of Parliament. Uganda Legislators are elected every 5 years from various constituencies to perform four core roles on behalf of the people of Uganda, namely; - law-making, oversight, budgeting, representation and outreach. The current Parliament is the 11th since independence and is made of a total of 529 MPs, of which 189 are female constituting 33.81% slightly above the global average of 26.4% and ranking number 33 on the global scene.¹³⁸ Uganda was among the first countries to introduce reserved seats for women as early as 1989, and still enforcing the same policy.

4.2 Representation.

This is a core mandate for all parliamentarians across the world. It is practiced by all representative democracies. Uganda's Parliamentary representative makeup is derived from Article 78 of Uganda's Constitution. As representatives of their communities, parliamentarians are intermediaries between the people and the laws, institutions and systems of government that affect their daily lives. In a representative democracy like we have in Uganda, it requires meaningful participation and representation that integrates all societal groups; – religious, ethnic, tribal, political, gender, socioeconomic, cultural, and other minority groups into the decision-making process. Members of Parliament ideally reflect the diverse communities from which they come; thus, minority groups should not be systematically excluded from being represented.

In executing their role of representation, Members of Parliament have all the power and leverage to raise anything concerning their constituency and wider issues affecting the country. This is an immense opportunity which can be used to draw attention to all pertinent issues in society and county.

4.3 Legislation

Parliament's function to make laws is enshrined in the Constitution of the Republic of Uganda under Article 79(1) which states that: 'Subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for peace, order, development and good governance of Uganda'. One of the core mandates for Members of Parliament is to legislate on different issues. The procedures of legislation by the Parliament of Uganda are laid down in the Rules of Parliament¹³⁹ Any law to be enacted by Parliament is introduced through a bill for an act of Parliament. There

¹³⁷ Gender-responsive law-making: Handbook for Parliamentarians NO.33, UN Women and Inter-Parliamentary Union, 2021

¹³⁸ Compiled by Inter Parliamentary Union available at https://data.ipu.org/node/180/data-on-women?chamber_id=13479 accessed on 27th October 2022

¹³⁹ Rules of Parliament, 2021

are two types of bills; Government bill and a Private Members Bill initiated by the government minister or MP respectively. Whether the bill is introduced by government or a private member/MP, it will go through some distinct stages of legislation.

Introduction of a Government Bill to Parliament. Government has priority in terms of introducing bills for enactments on different issues on the floor of Parliament. The following are the key stages that a government bill goes through;

Before the proposed law is brought to Parliament, a draft bill is prepared at Ministry level and accompanied by a cabinet memorandum which is tabled by the line minister before Cabinet for approval. This is usually a process that MPs do not have control over and may not easily be able to influence since it is within Cabinet circles.

When the bill is approved by the Cabinet, the line minister with the support of the ministry technical team prepares the bill for gazetting and publication and thereafter tabling on the floor of Parliament.

The bill is then scheduled on the Order Paper by the Clerk to Parliament in consultation with the Speaker of Parliament who is in charge of the Business of Parliament. Once the administrative procedures are concluded; the bill will appear on the order paper for the first reading.

The bill is then introduced on the floor by the sector minister through a motion for bill's first reading. After the motion is moved, the Minister will then read out the title of the bill and seeks leave of the House to table the Bill for its first reading.

Where there are no objections from the MPs on the floor, the bill will be forwarded to the sector committee for further scrutiny and report back according to the time frame provided for in the Rules of Procedure.

Where there may be preliminary objections to the bill, these may be debated by the House and consensus reached for onward processing.

Where the objections may be substantial, the bill may be deferred and sent back to the line Ministry for further scrutiny before re-tabling.

Introducing a Private Members Bill: Any other Member of Parliament does have the under the rules of Parliament to introduce a bill (usually

Representation in Uganda

- *Uganda was among the earliest to introduce reserved seats for women in 1989*
- *Globally, 26.4% of the MPs are women, in Uganda's 11th parliament, this rises to 34.9% according to the IPU*
- *Other interest groups are also represented in Uganda's Parliament, such as workers, youth, elderly and army*

known as a private members bill because it is not sponsored by Government. The following are the key stages Member will go through to accomplish this task;

A Private Member/MP intending to introduce a Private Members' Bill seeks leave of the House to introduce a bill by way of motion on the floor of Parliament. The proposed Bill is attached to the motion being presented on the floor of Parliament. Once the motion is scheduled by the Speaker on the Order Paper or business of the House, the members go ahead to move this motion.

The private member moves the motion providing a justification why the bill is necessary, which is followed by a debate by MPs present on its merits. Where the motion is supported by the majority of the House, the Private member goes ahead to have the Bill, gazetted and published. This is usually the work of the Clerk to Parliament.

The Private members is also required under section 13 of the Public Finance and Management Act of 2015, to secure a certificate of 'financial implication' which confirms that the proposed law will not add financial burden to Government. Otherwise only the Executive has the mandate to introduce bills with financial implications.

Once the Member is armed with this certificate, they will proceed to seek leave to appear on the Order Paper to table the bill for the 'First reading' on the floor of Parliament. First reading of the bill is usually not complicated unless if there is opposition from government or any other member of the House. In this instance, the objections will first be debated, and consensus reached. Where consensus has been reached for the Member to proceed, the Speaker will forward this bill to the relevant committee for further scrutiny.

This process is followed by printing and publication of the Bill in the gazette which shall be the responsibility of the Clerk to Parliament. The purpose of gazetting is to give notice to the public that, there a bill of such a nature coming to Parliament.

At the committee: The line minister or Private Member responsible for the Bill appears before the Committee upon its invitation to interact with the Committee to answer any questions that the Committee may raise regarding the Bill. Other stakeholders of the public that is; individuals or groups may also appear to interact with the mover of the Bill on scheduled days by the Committees. This process is known as public hearing. The committee, where necessary may extend its public hearings to the communities specifically to be affected by directly going to consult these sections of the public. Sometimes the Committee may also benchmark to other countries that have a similar law to learn best practices which can be applied back home. Once the public hearing is concluded, the committee writes a compressive report which is tabled back to Parliament. The report will contain the findings of the committee from its consultation on the proposed sections of the law as well as proposed amendments to the bill.

Second Reading of the Bill: At this stage the Minister of Private member in charge of the Bill moves a motion that the "Bill be read a second time"; The Chairperson of the Committee to which the Bill was referred, by the Speaker, presents to the House the report from the Committee on the Bill. Debate is held on the merits and principles of the Bill on the basis of the Explanatory Memorandum and the report from the Committee. After the debate, the Speaker puts a question to the motion

for second reading, and if adopted, the Clerk reads aloud the short title of the Bill and the Bill is taken as read the second time; it is then committed to the Committee of the whole House under the Bills Committee Stage.

Bills Committee Stage: The purpose of this stage is to scrutinize the Bill in detail and discuss any suggested amendments. The Committee of the Whole House considers the Bill clause – by – clause and makes a decision on each clause. After consideration of the Bill by the Committee of the whole House, chaired by the Speaker, the House resumes to receive the report from the Committee of the Whole House. Where a Bill is reported with or without amendment, the report may be adopted immediately, or some future time fixed for the purpose. The next stage should be third reading unless there is a motion for recommittal.

Recommittal: After the Committee of the Whole House has reported and the report has been adopted, but before the Bill proceeds to the third reading, a member may move that the Bill be recommitted (taken back to the Committee of the Whole House) either wholly or in respect of a particular clause(s). Where the motion for recommittal is carried, the House goes back to the Committee of the Whole House, chaired by the Speaker, and the Bill or parts thereof (as per motion) are reconsidered.

Bills Third Reading: After the Committee of the Whole House or Select Committee has reported to the House, the House proceeds to the Third Reading of the Bill. At this stage, there is no debate. A final vote is taken and if approved, the Clerk reads aloud the long Title and the Bill is taken to have been passed by parliament.

Assent: After Parliament has enacted the bill into law, the next stage is assent. The Clerk to Parliament forwards the 'Assent bill' which has the amendments as passed by Parliament to the President for his assent, signified by his signature on to the bill. When the assents to the bill as enacted parliament, law will come into force.

What is the purpose of a National Budget?

- *Prioritization of a country's resources*
- *Guiding service delivery*
- *Supporting production of good and services*
- *Promoting macro-economic order and stability*

4.4 Budgeting

The Budget is the most important economic policy tool of the Government and provides a comprehensive statement of the nation's priorities. As the representative of the people, Parliament is the appropriate place to ensure that the Budget best matches the nation's needs with available resources. The role of the legislature in public finances of a country is particularly critical since they are representatives of the people who are also the owners and

beneficiaries of public financial management. The Parliament of Uganda has a parliamentary budget office whose purpose is to ‘provide Parliament and its Committees with objective, independent and timely analysis of the national budget’

Government, like individuals or households, has limited resources in the face of unlimited demands in form of programs for the social and economic wellbeing of the people. This necessitates that Government plans carefully by estimating how much resources will be available in the coming financial year and deciding the activities to be undertaken¹⁴⁰.

A national budget can be used to provide services which are vital to the country and which only Government can do best, such as; security, law and order, infrastructure development and disease control etc.

Budgets also help in increasing the production of goods and services so that the average standard of living improves rapidly, and poverty is correspondingly reduced leading to economic growth. A national budget can be utilized to promote economic order and stability by encouraging competitive efficiency and controlling inflation.

Process of Budgeting in Uganda. The executive plays the chief role in budgeting processes of the country. Parliament checks the government’s proposed budgets through specified processes prior to the passing of the National budget. These stages of budgeting are provided for in table 1 below;

Table 1: Quick guide to the Planning Process in Uganda

Vision 2040	An overview of long-term goals and aspirations by the year 2040
National Development Plan	the 5-year national development planning framework on which to develop detailed sector strategies
Sector planning	technical specifications of sector priorities, disciplined by hard budget constraints
District Planning	implementation plans for sector strategies based on local priorities / needs
MTEF	annual, rolling 5-year expenditure planning, setting out the medium-term expenditure priorities and hard budget constraints against which sector plans can be developed and refined
District MTEF	setting out the medium-term expenditure priorities and hard budget constraints against which district plans can be developed and refined
Annual budgets and district budgets	Annual implementation of the 5-year planning framework
Donor, NGO, Private sector	participating and sharing information / ideas in developing sector plans and budgets.

Participatory process	bottom-up participation of districts in the planning and monitoring process, as well as participatory development assessments, providing essential feedback on progress towards government development goals.
Source: Ministry of Finance, Planning and Economic Development	

Four Stages of the budgeting process. The lifeline of a budget is dictated and regulated by a rigorous framework that supports its approval regularly, usually on an annual basis, in order to ensure that the government continues to operate. Thus, the budget process is governed by a timeline that can broadly be classified into the following four different stages namely; Drafting/Preparation, Legislative/Approval, Implementation/Execution & Monitoring and Audit and evaluation.

Drafting. This stage is led by the executive and little consultation is done at this stage. However, there is a small window of participation through the sectoral and regional workshops conducted, with participation of persons from local government administrative units. Usually, the Members of Parliament from the region are invited to the regional workshops that discuss budget priorities. As the MP you have to be alert to and take advantage of these provisions.

The Executive submits the Budget Framework Paper to Parliament by 31st December and the proposed Annual budget by 1st April. The Budget Framework Paper has to be approved by Parliament by 1st February of each financial year.

Legislative/Approval. This is the stage for budget approval and scrutiny. In Uganda, it is a constitutional requirement, under Articles 152 – 158 of the Constitution that the budget is approved by parliament. Uganda's budget process provides for an early involvement of Parliament to have an effective contribution into the proposed annual budget. This increases the opportunities for direct influence and the demand for effective service delivery and accountability before resources are approved. Given Parliament's role as the representative of citizens, this stage is often considered the most appropriate point for active engagement with the Executive.

According to Section 13 of the Public Finance and Management (PFM), Act 2015, the Executive has to table the proposed Annual Budget to Parliament by 1st April and passed by 31st May. The proposed annual Budget has to be consistent with the Budget Framework Paper and the NDP; it has to be accompanied with a certificate of compliance to the NDP, a certificate of Equity and Gender responsiveness and the Appropriation bill. The proposed budget has to be based on sound analysis and forecasts of macroeconomic developments and fiscal prospects.

Budget Implementation. Budget implementation is largely an Executive function. However, according to the Section 18 of the PFM Act, 2015, the executive is supposed to make periodic reports to Parliament on the Fiscal performance; and under section 77(1) of the PFM Act, the executive is enjoined to make periodic reports to tax exemption. The periodic reporting is meant to provide Parliament with information for their oversight role and to ensure close monitoring and evaluation of government programmes. As a GEWE advocate, at this stage you are looking to see how the

financial commitments turned into actions in respect to GEWE. This enables you make the necessary contributions on the floor of parliament whenever the executive makes a report.

Audit and Evaluation. According to the constitution of Uganda, in addition to the Auditor-General, parliament plays a key role in the budget audit function. The Auditor General is required to report to the Legislature as keeper of the national purse. The major opportunities for members and independent budget organizations follow from the findings of the audit and the legislature procedure to evaluate these. Parliament through the accountability committees (Public Accounts Committee, Committee on State Enterprise and Commissions and the Local Governments Public Accounts Committee) scrutinizes the Auditor General's report and causes the spending agencies to explain the inadequacies.

4.5 Oversight

In addition to enacting law reform, one of parliament's key functions is to scrutinize the implementation of the government's gender-equality agenda. This includes reviewing expenditures to assess whether they achieved their intended gender-equality outcomes and ensuring that the budget properly supports gender-equality priorities¹⁴¹.

The oversight function also entails checking the implementation of laws enacted. Once parliament has repealed or amend discriminatory laws and/or enacted gender-responsive legislation, there is still work to do to ensure the laws enacted are implemented.

The oversight functions entail physical checks to the institutions implementing the law to assess whether the laws passed are having any impact on society.

WHAT CAN MPs DO?

- Through the representation role, MPs can use this space to create awareness of the gender challenges existing in society, dialogue, and negotiations for better outcomes for women and men in the legislation, budgets and government programmes.
- During legislation, MPs can be on the lookout for all Gender Equality and Women's Empowerment (GEWE) and ensure they are addressed
- MPs can also ensure that during the budgeting processes issues of GEWE receive necessary resources
- Through their oversight function, they can check to ensure there is 'value for money' for the planned services by government.

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SECTION 5:

GENDER RESPONSIVE PARLIAMENTARY PROCESSES FOR GENDER JUSTICE

5.0 Introduction

Parliamentary processes entail a series of actions or steps parliaments take in order to achieve their core business of law-making, oversight, budgeting, representation and outreach. Parliaments across the world have a shared agenda with. However, in with slight differences in approach. In order to achieve their goals and fulfill their functions in society, they are usually guided by enabling laws and procedures or standing orders.

The processes or operations of the Parliament of Uganda as an institution, are guided by the Constitution of Uganda, The Administration of Parliament Act, cap 2 57 (as amended); The Acts of Parliament Acts of 2000 and Rules of Procedures of the Parliament of Uganda.

Gender-responsiveness means that particular needs, priorities, power structures, status and relationships between men and women are recognized and adequately addressed in all parliamentary processes or activities¹⁴². Gender responsiveness as an approach seeks to ensure that women and men are given equal opportunities to participate in and benefit from an intervention and promotes targeted measures to address inequalities and promote the empowerment of women in society¹⁴³. Gender-responsiveness is thus the recognition and reaction to the existing gender inequalities in all aspects of life in the case of parliamentary processes; in law-making, oversight, and representation and outreach functions of parliament including support functions by the institution and staff of parliament.

As working organisations, Parliaments operate with rules, norms, internal procedures, and a specific gendered culture like any other working place¹⁴⁴. However, because they are responsible for making decisions which affect the lives of everyone in a society, they need to be gender sensitive and responsive in its actions, processes or procedures.

Gender sensitivity and gender responsiveness mean one and the same thing. Sensitivity and responsiveness both entail two core things becoming aware of or recognizing the gendered norms, roles and relations and how they affect women and men differently; b) taking positive measures to actively reduce the harmful effects of the gender norms, roles and relations in any setting-thus removing inequality.

¹⁴² <https://www.lawinsider.com/dictionary/gender-responsive>

¹⁴³ <https://www.lawinsider.com/dictionary/gender-responsive>

¹⁴⁴ <https://eige.europa.eu/gender-mainstreaming/toolkits/gender-sensitive-parliaments/what-tool>

The Inter-Parliamentary Union (IPU) defines parliament gender-sensitivity as follows:

A parliament that responds to the needs and interests of both men and women in its composition, structures, operations, methods, and work. Gender sensitive parliaments remove the barriers to women's full participation and offer a positive example or model to society at large. They ensure that their operations and resources are used effectively towards promoting gender equality. A gender-sensitive parliament is one in which there are no barriers – substantive, structural or cultural – to women's full participation and to equality between its men and women members and staff. It is not only a place where women can work, but also one where women want to work and contribute. A gender-sensitive parliament sets a positive example by promoting gender equality and women's empowerment among society both nationally and internationally. A gender-sensitive parliament is therefore a modern parliament; one that addresses and reflects the equality demands of a modern society. Ultimately, it is a parliament that is more efficient, effective, and legitimate.

There is not a single path that leads to gender-sensitivity: one country may start from increasing the number of women MPs, while another may focus on creating more gender-sensitive political parties. What is common for all is that gender-sensitive parliamentary institutions are more efficient and able to better respond to the needs of women and men.

In undertaking their roles as MPs, therefore, gender responsiveness or sensitivity is an approach all MPs should utilize in order to have better outcomes for women and men in society. This is important as the actions of parliament have an impact on all facets of life. It also impacts on how women come in contact with the law and their experience with the justice systems. In order to achieve access to justice for women therefore, MPs have to be enlisted in gender sensitivity in all their functions as well as Parliament itself as an institution.

5.1 Tips for MPs on gender responsive representation

Representation is the core role and mandate of MPs in any legislature. In line with access to justice, all the gaps raised in this handbook are issues of discussion that an MP can raise when undertaking their representative role on the floor or in committees of Parliament. In order to be an effective representative who is gender sensitive and responsive, there are a few tips to undertake while discharging this duty;

- **Consultation of women and men.** In order to be able to raise concerns of the people sufficiently on the floor, an effective MP is one who consults his/her constituents regularly on the issues to champion on the floor. In doing these consultations, it is important to women and men, attend these meetings and their perspectives or voices are considered. This will enable the MP to understand the gender issues affecting the people and what gender needs are presented. MPs should endeavor to use a gender lens while doing consultations as these issues affect women and men differently. The gender issues as raised should find their way to the floor of Parliament

- **Undertaking Gender Inclusive presentations and Debates.** While raising these issues on the floor, the legislator, needs to highlight them from a gender perspective emphasizing issues affecting women and men differently. When this is done, an enabling environment would be created in Parliament supporting appreciation of gender issues, which would eventually find their way in the legislative, budgeting, and other process of Parliament. Armed with information in this handbook, the Member can be able to engage on the floor quite effectively make sure that the message in gender equality, women's empowerment and access to justice is heard on both sides
- **Researching prior to coming on the floor.** Every Parliament usually has an Order paper of what business will be discussed on a particular day. This may also show, the business to follow in the coming weeks. This provides notice to the MPs on what is to follow so that they can prepare ahead for the debate to come. With this information, the MP can go ahead and prepare what to mainstream in the discussion to come. With the specific need presented in this handbook which is to mainstream all issues on the order paper with gender issues or gender issues, the MPs can prepare in that direction. Note that, there is always a gender issues to be rectified in any matter on the order paper.
- **Utilizing Research Assistants and Parliamentary library.** Parliament of Uganda does have a research department with research assistants who can be utilized at this point to conduct the necessary research and guide the MP with key points in line with their need on the topic for debate. Staff at the Parliamentary library can also be of use, as they can provide necessary reports in the relevant area, in addition to the information given here, in this handbook. Every item of the legislative agenda must be supported by evidence of the legislative gap that it is seeking to fill. Have well researched presentation backed up with evidence on GEWE issues
- **Consultation government Ministries and Agencies.** It is useful to consult the relevant government Ministry or agency staff in line with the area of interest for debate. This is because they may have relevant recent statistics and status of issues to be raised on the floor. This would support the debate with qualitative and quantitative data which is useful in decision making done during these debates.
- **Getting support from CSOs, Policy thinks tanks.** On the other hand, Civil Society organisations working in the areas of GEWE and gender justice and related policy think tanks can be useful in providing alternative information and proposals which can support the decision making to be done. Such persons working with these organisations are usually very responsive and available to support the MPs.
- **Engaging in committees.** The MP needs to take note of every available opportunity to raise these issues including parliamentary committees. A member of Parliament usually belongs to a designed committee, but they can attend and participate in the activity or meeting of any other committee of Parliament. So, where an issue of interest appears in that committees programme, an MP can take part in and mainstream the committees issues, with their insights.

The challenge is knowing the calendar and workings of the committee, in which one is not officially designated MP.

- **Working within the Parliamentary calendar and events.** Parliament usually has a calendar to follow. The major highlights of this calendar is the discussion of ministerial policy statements, annual sector budgeting presentations taken from the MTEF as well as mainstream committee sittings. There are also parliamentary conferences, and which are organised by different government ministries and agencies which can be used to advocate for the various issues the MPs are championing. Other contemporary ways of engagement by the MP on these issues, is through the various mainstream and social media channels, since these reach out not only to their constituents but also potential policy makers who may be their followers.

Existing opportunities for champion GEWE issues

- Ministerial policy statements
- Annual budget proposals debates
- House Sittings
- Committee sittings
- Parliamentary Conferences
- Mainstream media and social media

5.2 Tips for MPs on gender responsive legislation

Gender-responsive laws address the strategic needs of women and girls¹⁴⁵. Gender-responsive law-making starts with amending or repealing laws that discriminate on the basis of sex, either explicitly or implicitly. It also implies enacting laws that affirm the gender-equality principle and guarantee gender equality in practice¹⁴⁶. Parliamentarians have a critical role to play in advocating, initiating, drafting, debating, and enacting law reforms to strengthen the rights of women and girls¹⁴⁷.

Experience from Parliaments across the world on important things to note in order to enact gender-responsive laws as shared in a recent report by Inter Parliamentary Union¹⁴⁸ With the review of this report, some tips are shared below on how gender responsive legislative and parliamentary processes and ensure access to justice issues addressed begin from legislation.

- **Research on the issues to be legislated upon.** Every item of the legislative agenda must be supported by evidence of the legislative gap that it is seeking to fill. Have well researched presentation backed up with evidence on GEWE issues.
- **Undertaking a comprehensive legal assessment.** Emerging good practice suggests that it is both more effective and more efficient to start a gender-responsive law reform process with a more comprehensive “legal assessment¹⁴⁹” This legal assessment can be commissioned

¹⁴⁵ Gender-responsive law-making: Handbook for Parliamentarians NO.33, UN Women and Inter-Parliamentary Union, 2021

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Gender-responsive law-making: Handbook for Parliamentarians NO.33, UN Women and Inter-Parliamentary Union

by parliament itself or the law reform commission ministry of Gender or justice. This offer Parliament as an institution to propose law reform that promotes gender equality and tackles gender discrimination in law.

This can be done at the beginning of the Parliamentary term or whenever the need is identified. For private movers, identification of these areas early is important and tabling the bills for the first reading is very important since in the third session, MPs begin to get more committed to the constituency work and bills take longer in house. Once clarity has been got on the areas of legal reform, the process to follow under Uganda's Parliamentary process has been enumerated in section 4 above. following are the key steps the legal form can follow¹⁵⁰

- **Ensuring male and female parliamentarians are in House attendance:** Whenever, a law is being enacted, it is important that male and female parliamentarians from across the political spectrum are in attendance. Legal reforms in favour of GEWE can only happen if women and men are represented in the legislative process. It is common to see in the Ugandan Parliament, very few MPs in the House during the time, a law is being debated and enacted. Usually, it is late in the evening hours when most MPs especially women are not in the house. The Speaker and the Clerk to Parliament, therefore, need to be engaged to ensure legislative agenda of the day, is brought earlier in the sitting to ensure members are all engaged. Sometimes female MPs may be challenged if they are nursing mothers and have to attend to new born children during the intervals of house sittings. It is the duty of champions in this area, to ensure parliamentarians are well mobilized whenever a matter that can enhance GEWE and gender justice is on the floor.
- **Gaining Support of key stakeholders:** Within the legislative processes, there are many stakeholders whose assistance and support will be important to ensuring that effective gender-responsive law reforms are enacted¹⁵¹. In line with Uganda's Parliament, gaining support of all the following stakeholders is important before the bill comes onto the floor or during the process of enactment;

The Speaker or presiding officer of parliament often plays an important role in deciding which bills are given priority for debate in which ever sitting of the House. They guide how the debate on bills and amendments to such bills are managed.

The business committee also has a key role in determining which bills are placed on the legislative agenda. Members of this committee should be engaged early on to discuss and understand the proposed law reform, especially if the bill is being initiated by an ordinary parliamentarian as opposed to a government minister.

General Counsel of Parliament and First Parliamentary counsel, play an important role to play in supporting parliamentarians in their law reform efforts. In this case, the MP has to work closely with the legal assistant assigned to their bill, to ensure the bill proposed is gender-responsive law reform bill

Members of parliamentary committees can play a key role in analyzing and debating a bill into more detail. Members of relevant committees may draw on advice from parliamentary staff, government

¹⁵⁰ Ibid

¹⁵¹ Ibid

ministries, as well as expertise from women's rights non-governmental organizations, academics and/or other professionals.

Women's caucus can be important vehicles for driving forward gender-responsive law reforms and building support for such reforms across the broader cohort of parliamentarians.

Parliamentary forums can also be an important for a for building support for such gender responsive reforms across the broader cohort of parliamentarians.

Political Party forums can also provide another space through which support for the gender responsive laws can built gained and built

- **Engaging the public in law-making processes:** It is a requirement that before adoption, every law with a far-reaching impact should be subjected to broad consultations with all potentially affected groups. These consultations should take place at every stage of the legislative process – not just when there is already a fully drafted legislative text¹⁵².

As representatives of their communities, parliamentarians are in a rare position as intermediaries between the people and the laws, institutions and systems of government that affect their daily lives. Parliamentarians can hear directly from their constituents and use information gathered to shape their lawmaking priorities and agendas, including progressive gender-responsive law reforms that promote the principles of non-discrimination and equality before the law.

Under Uganda's system, the committee investigating the bill will usually invites the general public for public hearings in the committee. The committees will also go for community visits where necessary. All this is meant to ensure a good law is enacted. There Therefore an MP who is moving a bill should always work with all stakeholders affected to ensure their views are capture through consultations'.

- **Media Engagement for wider public engagement.** Use of the media is good to change mindsets and build support for gender-sensitive law reforms as well as inform the wider public of the impending law. It is however important to note that, there are associated pit falls with using the media especially in regard to gender responsive legal reforms and amendments¹⁵³. The media can turn the public and parliamentarians against the proposed law because the media comes from the wider public which still encumbered with gender stereotypes. One way around it, is to train the media especially the parliamentary reporters to break gender bias and the proposed sections of the law.
- **Prepare and use strategic messages.** Care must be taken to avoid the impression that the law or laws under consideration will benefit only women. Even where the basic policy considerations address gender inequality, messaging on the reform process must stress the intended impacts on all of society, including men and boys. There will always be opposition to GEWE proposals in some sections of MPs, be respectful and tolerant to differing views and keep the dialogue

¹⁵² Ibid

¹⁵³ This has been seen in the advocacy by Uganda Women Parliamentary Association (UWOPA) and Women's Organisations in gender related bills in Uganda.

open. Know that change of attitudes for some people comes slow and thus the oppositions experience now may not be there tomorrow,

- **Celebrate every small achievement:** Comprehensive legal reforms take time and do not come easily; however, small milestones and amendments are as important as the big ones. Deal with the easier reforms first and allow the harder areas to change come in time as society changes.
- **Budgeting for gender-responsive laws:** In addition to enacting law reform, one of parliament's key functions is to scrutinize the implementation of the government's gender-equality agenda. This includes reviewing expenditures to assess whether they achieved the intended gender-equality outcomes and ensuring that the budget properly supports gender-equality priorities¹⁵⁴.
- **Overseeing implementation of laws:** Once parliament has passed bills to repeal or amend discriminatory laws and/or enact gender-responsive legislation, there are still procedural steps to be taken to ensure that bills become law and are implemented accordingly. In Uganda, the President, approve the bill by assenting to it before they become law. However, after it has become law, Parliament again plays the role of oversight to ensure the enactments of the law in put into place.

5.3 Tips for MPs on Gender Responsive Budgeting

- The Budgeting cycle has some distinct stages to be engaged in as shown in table 1 on a quick guide to the Planning Process in Uganda.
- The budgeting cycle requires every institution to adhere to gender sensitivity in their budgets. Every sector submits its budgets to the Equal Opportunities Commission, which then issues them with a gender and equity certificate. Members of Parliament are encouraged to scrutinize each sectors budget further to confirm or otherwise even where there is a certificate of Equity and Gender responsiveness.
- The following provide a general guide for ensuring gender budgeting happens which can result into access to justice for women. During all these stages, gender justice can be mainstreamed in the budget strategically. A few highlights are provided below on what can be mainstreamed.
- Government budgets are guided by pre-set priorities, outlined in the Vision 2040 and the National Development Plans. MPs should look for GEWE priorities in these two overarching frameworks to push forward any GEWE lobby points
- For women's access to justice to be realistic, all agencies responsible for the administration of justice should receive specialized training on gender sensitivity and human rights and how to be responsive to the specific needs of women. Therefore, during the budgeting cycle MPs should look out for such areas and ensure they receive sufficient allocations.
- Investment in the JLOS institutions sector should target infrastructure development to develop and improve user-friendly facilities liken Family Courts, Family and Sexual Violence Desks and Units to improve women's access to justice, particularly at the community level.

¹⁵⁴ Ibid

- Legal aid continues to depend almost entirely on funding from donor programmes it is a necessary service like all other social services especially for the marginalised. While making budgetary allocations, pay attention to establishing a legal aid fund.
- Budget allocations should focus on awareness campaigns about new or amended gender-sensitive laws and judicial processes, for the public targeting women and men.
- Ensure allocations go to support the introduction of compulsory studies on gender and human rights in school curricula at all levels (from primary through university). Integrating these issues into the formal education system will go a long way towards transforming societal attitudes about women and helping to break down gender stereotypes.
- Budget allocations should go to support training and operation of Local Council Courts, religious and cultural institutions to be integrated in the formal judicial system as these will result in enhanced access to justice for women.
- Allocate budgets to support the establishment of witness rooms with ICT facilities in all courts of Uganda to enable witnesses to testify in privacy.
- Allocate budgets to ensure an equal number or bigger number of female judges in the judiciary

5.4 Tips for MPs on gender responsive Oversight

This oversight work of MPs can largely be undertaken, before the budget debates, during and after the budget is passed. The pre-budget scrutiny relates to work that MPs do in terms of gender analysis and identification of priority areas for consideration in the budget. This entails studying government policy, plans and previous budgets. Mapping the impact of such interventions in terms of impact on women and men. This analysis may certainly be too extensive for an individual MP to afford the time. Once can be supported by the research department of Parliament or any other useful source.

Once the MP has sufficient information, they can go ahead and raise relevant oversight questions on the same matter on the floor of Parliament whenever there is opportunity. This is important, in order to pre-empt discussion and consideration of the issues in the next budgeting cycle for a new financial year.

During the budgeting cycle, oversight can be undertaken during the several processes of budget planning as indicated in table 1 above. In all these stages, an opportunity is offered to MPs to check areas of intervention by government in terms of successes and limitations. Members of Parliament need to engage in all these processes with a gender lens. Generally, for an MP to be effective in gender responsive oversight, a few tips below may be relevant;

- **Understanding and applying gender mainstreaming:** Gender mainstreaming ensures that policy-making and legislative work is of higher quality and has a greater relevance for society, because it makes policies respond more effectively to the needs of all citizens – women and men, girls and boys¹⁵⁵. Gender mainstreaming makes public interventions more effective and ensures that inequalities ensuring that gender inequalities are identified, and solutions found in all stages of

155 <https://eige.europa.eu/gender-mainstreaming/what-is-gender-mainstreaming>

decision making and implementation. This will work for access to justice as much as any other areas or sector life. It is important for every MP to understand and apply gender mainstreaming in all they do; - including in, conducting oversight on government budgets and interventions.

- **Engaging in all stages of budgeting:** Doing oversight to achieve gender equality will require engaging in all levels of budgeting processes and stages to ensure issues are raised and maintained through out the cycle. Although formally, MPs have an opportunity to scrutinize the budgets at committee to check for gender and equity compliance, it is useful to engage at all stages of budgeting-even at the district and sector level.
- **Checking for some priority issues:** It is important to identify priorities to follow through the budgeting cycle as this enables one to be focused. In this sector of access to justice, there are many challenges or barriers affecting women. These are the issues to look out for and move while doing oversight role in committees or during outreach visits conducted by committees.
- **Providing qualitative and quantitative data:** Getting qualitative and quantitative data on the issue and how it affects women and men differently is important. Being well prepared with the key facts enables one to be more compelling in their submissions during committee meetings and at levels of engagement.
- **Raise the matter during Ministerial Policy Statement and Annual budget discussions:** This offers an opportunity for an MP to do oversight on previous and proposed government expenditure in particular sectors. Usually, previous government expenditure is presented before the new proposals are adopted. This offers an opportunity to evaluate government previous annual allocations and impact as well as present areas of emphasis and where adjustments can be made at committee level.
- **Follow up with technocrats:** Where in the committee, an MP proposes an issue for improvement in the Ministerial Policy Statement or annual budget, ensure to follow up with the committee staff of Parliament and technocrats of the line sector so that necessary adjustments as proposed in the committee are made to the proposals.
- **Attend Budget Committee discussions:** It is in the Committee of Budget meetings where the actual re-adjustments are made, and budget lines cut or rearranged. It is therefore important to attend the Budget committee discussions on the proposed budget lines to ensure the areas where improvement is needed are addressed.
- **Budget committee report debate:** This is when the report of the budget committee is considered by the whole House. During the debate of the report, it is important to attend the House sitting and raise the matter during the debate that follows. Doing so ensures that the matter stays on the radar during this critical decision making.
- **Appropriation stage:** At this stage, the whole House is basically adopting what the Committee of Budget has already allocated per budget line. It is important to follow through clause by clause to ensure the adopted budget lines is what was appropriated

Post budget scrutiny is required after the budget has been passed to assess the level of implementation of government programmes and impact on women and men. This can also entail physical checks and assessments of interventions of government at district level or other service points.

Possible Questions to ask during Oversight inquiry

- Ask questions that enlist quantitative, sex-disaggregated statistical data - facts and figures
- Ask questions of Qualitative changes – for example, judgements and feelings, or perception.
- Measurements of gender equality might address changes in the relations between men and women, the outcomes of a particular budget, law, policy, programme or activity for women and men, or changes in the status or situation of men and women.
- Is this budget, law, policy, programme or activity the most appropriate and effective activity for achieving an improvement in gender equality in line with the access to justice or any other sector under inquiry?
- Will the budget, law, policy, programme or activity result in a reduction in the equality gap between women and men in the sector?

5.5 Achieving a Gender Responsive Institution of Parliament

- **Increasing number of women in Parliament:** Parliaments as institutions play a crucial role in advancing gender equality, and women in parliaments are known to be the “main drivers of change in terms of gender equality in parliament” ¹⁵⁶. However, the numbers of women in Parliaments are generally still very low compared to men.

Women represent only 24.9 per cent of Members of Parliament worldwide and 33.8% in Uganda¹⁵⁷. This not only makes change more difficult but implies that laws, budgets, and policies are not as effective and can produce discriminatory outcomes because of male domination. Gender inequality in politics correlates with broader gender inequalities in society. Improving women’s representation and leadership in parliaments is closely intertwined with supporting parliaments’ role -through their legislative, budgetary, oversight and representation functions to make societies more inclusive and equal¹⁵⁸. This means that in order for Parliaments to achieve broader gender equality in society, they must first increase numbers of women or achieve parity as institutions. As the law makers themselves, they should legislate to ensure more women are well represented in parliament.

- **Creating the conditions for women’s leadership:** The working conditions for women MPs need to improve. Such small detail like favorable time for sitting, having baby corners or centres, convenient office space, pantries, or washroom affect their productivity while at work. Ensuring that the parliamentary culture is supportive to women, combatting online violence and sexual

¹⁵⁶ <https://www.idea.int/news-media/news/role-parliaments-advancing-gender-equality>

¹⁵⁷ https://data.ipu.org/node/180/data-on-women?chamber_id=13479

¹⁵⁸ <https://www.idea.int/news-media/news/role-parliaments-advancing-gender-equality>

harassment amongst colleagues are some of the dimensions that need to be addressed¹⁵⁹. These are initiatives Parliament as an institution can spearhead in order for women's leadership to thrive and impact the legislative processes and other functions of Parliament.

- **Engage in gender mainstreaming:** Parliament has to mainstream gender through its programming and activities, ensuring all activities are gender-inclusive and responsive, and secondly, focus on specific initiatives to support gender-sensitivity and equal participation of women in all aspects of parliamentary work¹⁶⁰.
- **Analyzing the actual impact of laws and budgets:** This can be done as a matter of policy through gender-sensitive scrutiny in committees and House sittings which is the routine work that parliament of Uganda does. This is an important step that parliaments can take in becoming more gender-sensitive¹⁶¹.
- **Dialogue and Consultation:** Parliament is a forum that utilizes dialogue and discussion to find workable solutions for problems within communities especially for the benefit of the less privileged. Parliament must engage in consultation on a range of issues and prioritize addressing issues of the marginalized groups or sections of public whenever they are raised.
- **Addressing capacity gaps of its members and staff of Parliament:** Parliament as an institution should actively remove every barrier to women's participation in all parliamentary processes. One of the prominent barriers to women's effective participation is limited knowledge and understanding of procedures and other relevant areas. There should be continuous trainings on emerging issues for female and male MPs and particularly skills of reviewing budgets and bills from a gender perspective¹⁶². This should not be approached as a one-off event at the beginning of Parliament.
- **Maintaining gender as a criteria in assessing government performance or evaluation of policy implementation:** This is ongoing in the Ugandan Parliament and therefore needs to be sustained. Sessional Committees of Parliament assess the budget compliance for many things under section 13 of the Public Finance and Management Act of 2011. Among the key issues to be assessed is compliance to gender and equity. The Ugandan Parliament is thus on track with this significant assessment criteria but needs to be sustained. This is especially important to note because there were attempts to scrap it off in the 10th Parliament by a section of Parliament.
- **Strengthening mandates of gender bodies to scrutinize government performance and policy implementation.** Parliament of Uganda has in place some relevant bodies that can further scrutinize government performance and policy implementation namely; - the Sessional Committee on Gender, Standing Committees of Equal Opportunities and Human Rights. The Equal opportunities and Human rights Committees work together with the Commission of Equal Opportunities and Human Rights Commission. These need to be strengthened in the area of monitoring gender equity issues in the country. The committee Restricting mandates of gender bodies to only scrutinize gender-related policy;

159 Ibid

160 Ibid

161 Ibid

162 <https://www.oecd.org/gender/governance/toolkit/parliament/integrating-a-gender-perspective/oversight-and-accountability>

SECTION 6:

NAVIGATING A MALE DOMINATED PARLIAMENT

6.1 General Tips for Women MPs

The agenda of GEWE and specifically access to justice for women is an area expected that ever female parliamentarian would be preoccupied with through out their term of Parliament. This is so, because as discussed in the beginning, it is an enabler of all other rights that women enjoy. So as extensive as the area looks, it is important for the female parliamentarian to understand it and know all the entry points for engagement.

Gender related issues should indeed be the major concern of all female parliamentarian since they are the voices of other women on the decision-making table. They are expected to be the first point of support for all gender related issues and in this instance access to justice.

A lot of times, the Parliament may still be dominated by male MPs some of whom do not appreciate gender issues or are still on the learning and unlearning curve. The female parliamentarians therefore need to muster every good skill of engagement and navigate the male dominated parliament in order to mainstream the agenda of Parliament with these issues. A few tips are provided below for the female MPs;

- **Gain more knowledge and understanding:** Male MPs will usually take you for the level of knowledge and grounding you have in the area of training and qualifications and other general perspectives of life. Try not to focus more on outer appearance and smartness but rather on intellectual grounding. With this in place they will be engaging with you at an intellectual level rather than on female biological and gender attributes. Your message will also always be taken more seriously. By doing so, you will be breaking the gender stereotypes that may permeate parliamentary culture.
- **Preparation:** This helps in dealing away with hidden fears for presentation and confidence issues. All public speaking engagements require preparation in order to have a smooth presentation. This is true for new and even more experienced MPs. For female MPs, the scrutiny is usually more, as the patriarchal systems may be justified by failure of MPs to effectively communicate in their day-to-day engagements. Female MPs should not give patriarchal attitudes to thrive against women. One way to achieve this is through prior preparation for excellent and effective public presentations.
- **Be the champion of gender issues at all times:** Be not silent any time any gender related matter comes before you in any circumstance. If you let it pass, you will have allowed the status quo to continue. Remember another woman or girl depends on this. Therefore, there will always be sexist comments on the floor, committees and across all spaces you may find yourself in. Be ready to challenge such comments and apply procedure where it is necessary.

- **Break every stereotypes and culture that promotes gender inequality:** Be on the lookout for any persisting stereotypes in the parliamentary processes and culture at all times. By doing this, you will be pushing back against patriarchy and building a better future for women and girls who will come after you. For example, bringing children on floor or in meetings will break protocol sometimes. Let the male MPs know, the hurdles female MPs go through to be able to perform equally well as MPs and using such acts as advocacy points.
- **Carry out gender mainstreaming at all times:** As a champion, you need to be alert to ensure everything that comes on the floor Parliament, in committee or in other parliamentary conferences is mainstreamed with gender. Add gender perspectives to everything that is within your circle of influence and engagement. By doing this, you will be carrying our gender activism on word and practice. Collectively, yours and other persons' action will result into a better world for women and girls.
- **Working in groups and with others:** This gives a bigger and firmer voice on issues affecting women. When there is wider support on a matter other than one voice speaking, it gains credibility and more support. Every time, there is a gender issue on the floor requiring attention, ensure to mobilize women and men that can support it to attend the House sitting in which it can be considered.
- **Working with Supportive women CSO Networks:** These organisations provide the much-needed support on the outside of Parliament. These CSOs can even go as far as lobbying individual MPs to support a matter that is coming on the floor. So whenever, there is an issue in which you will need support from MPs, it helps to engage CSOs on the outside who then also engage individual MPs on the matter before Parliament.
- **Using the Media:** By and large, it is important for every MP to update, their constituency on their work in Parliament through the contemporary social media as well as the mainstream 'old age media'. Use of the media, however, has to be done with moderation. Sometimes there are issues, which you do not want to blow up before they reach the floor of Parliament (more like opening a can of worms). Some gender issues can be contentious; therefore it may be better to engage MPs directly than relying on secondary audience through the media to put pressure on MPs for enactment.
- **Being assertive and resilient.** Know what you want in advance and ask for it clearly. Engaging with colleagues in the corridors of Parliament can be daunting and exhausting when championing a matter on the floor. One way round it is being assertive with what you desire and resilient at the same time. Resiliency requires consistency and not giving up even when you come across difficult colleagues. In due course, your matter will be successful through assertiveness, resiliency, and consistency.
- **Being respectful and tolerant of differing views and keep the dialogue open.** There will always be difficult colleagues who may not appreciate your perspective of things. Being respectful and tolerant of their views is very important. When you do not take offence, you build trust and confidence with them. It is very easy, for one to change their views about something if

they feel respected, honored and safe with another person. Advocacy in Parliament is about interpersonal relations with colleagues' which requires respect and tolerance.

- **Build Influence and numbers:** Sometimes, it is important not to rush things on the floor, but rather to build influence of the matter and support. You need support and numbers to back you up when the matter comes up for debate. If the issue you require to pass is of a contentious and sensitive nature, it is important to take time building support for it over time, so that when it finally comes on the floor, you have the necessary. Rushed gender issues, usually face a still birth, because, the Members have not internalized it.
- **Communicate effectively:** It will do your advocacy no good if, after all the preparation, research, building support of the matter, you fail to communicate effectively. Always prepare your key points. State them early in the presentation and justify with a few qualitative and quantitatively arguments. Also do note, that in communications, the message is as good as the communicator. In other words, be at your best, in mind, body and soul on the day of your presentation on the floor of Parliament. Smartness boasts confidence and enhances your mental balance.

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