

Critical Examination of the Legal framework on Gender Inequality in Uganda

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ABSTRACT

This article assesses the effectiveness of legal framework on gender inequality in Uganda. The article revealed that the importance of gender equality especially in the contemporary world cannot be overemphasized. It is this recognition that the fight against gender-based violence is receiving center stage in recent years. However, low prosecution for perpetrators of wife battery has continued to be a major setback in this quest. Thus, the thrust of this article came from the need to better understand the phenomenon of low prosecution of wife battery by delving deep into the problem and attempt to establish the underlying factors. It is in the light that the study calls for the awareness of legislators about the need to give priority attention to legal reforms to be raised, in order to achieve de jure equality for women and compliance with the State party's international treaty obligations; and continue to increase support for law reform through partnerships and collaboration with religious and community leaders, lawyers, judges, unions, civil society organizations and women's non-governmental organizations.

Keywords: Cultural practices, gender inequality, international treaties, Uganda's law, wife battery.

INTRODUCTION

Gender inequality refers to unequal treatment or perceptions of individuals based on their gender. It arises from differences in socially constructed gender roles. Gender systems are oftendichotomous and hierarchical; gender binary systems may reflect the inequalities that manifest in numerous dimensions of daily life. Gender inequality stems from distinctions, whether empirically grounded or socially constructed [1]. Gender equality is not just a question of justice that women and men should have equal opportunities in all aspects of life, it is a question of good economics and is essential for development. Cross-country experiences have shown that in situations where technology or other economic conditions change rapidly, human capital will have a key impact on growth. Women and men both play substantial though different roles in our economies. One of the key lessons of development experience, is that development activities function much more effectively if all people are empowered. Although the Uganda Government has taken the initiative to examine gender issues and is taking important steps towards redressing gender inequality by integrating gender in its reform policies and programs, stark gender inequalities have persisted [2]. Uganda is a constitutional republic led since 1986 by President Yoweri Museveni of the ruling National Resistance Movement (NRM) party. Voters reelected Museveni to another five-year term in February. While the elections marked an improvement over previous elections, they weremarred by irregularities. State security forces (SSF) generally reported to civilian authorities [3]. The three most important human rights problems in the country were lack of respect for the integrity of the person (including unlawful killings, torture, and other abuse of suspects and detainees); unwarranted restrictions on civil liberties (freedom of assembly, the media, and association); and violence and discrimination against marginalized groups (women, including female genital mutilation victims; children, including victims of sexual abuse and ritual killing; persons with disabilities; and the lesbian, gay, bisexual, and transgender community)[4]. Other human rights problems included mob violence; harsh prison conditions; official corruption; arbitrary and politically motivated arrest and detention; incommunicado and lengthypretrial detention; restrictions on the right to a fair trial; electoral irregularities; trafficking in persons; and forced labor, including child labor [5].

Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights and United Nations values. Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, and realizing women's human rights has not always been a priority. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate suchdiscrimination [6].

The United Nations has a long history of addressing women's human rights and much progress has been made in securing women's rights across the world in recent decades. However, important gaps remain and women's realities are constantly changing, with new manifestations of discrimination against them regularly emerging. Some groups of women face additional forms of discrimination based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socioeconomic status, among other grounds. These intersecting forms of discrimination must be taken into account when developing measures and responses to combat discrimination against women [7]. During this decade there has been a significant shift in approach to women's advancement and empowerment. While previously the advancement of women was regarded as important for outcomes such as economic development or population policies, more than ever the international community has come to consider the empowerment and autonomy of women and the improvement of their political, social, economic and health status as important ends in themselves. This shift in approach reflects a human rights approach to issues of concern to women [8].

Parallel to this shift in approach to women's advancement has been an increased emphasis on the importance of a rights-based approach to planning and programming generally. In his reform proposals, the Secretary-General has made clear that human rights are a cross-cutting element that should be reflected in all United Nations policies and programmes. The High Commissioner for Human Rights is also stressing that human rights are integral to all activities, including peace-making, peace-keeping, peace-building, humanitarian assistance and development. Several United Nations entities, including UNICEF, UNFPA and UNDP have identified the securing of individuals' human rights as a critical first step in addressing global problems, and are now incorporating human rights into their policy making processes and operational activities¹⁰. Several factors explain these developments. First, the framework of international human rights law provides a forum for asserting individual claims of human rights violation. Some victims of human rights violation, including women who have suffered discrimination on the basis of sex, for example, those denied citizenship on the same basis as men, have successfully sought relief in international tribunals. The approach and decisions at international level have shaped decisions of regional and domestic tribunals, which have also provided remedies for individuals, including women, who have encountered denial of their human rights [9].

Perhaps more importantly, the language of human rights allows legitimate claims to be articulated with a moral authority which other approaches lack. It is a language which is recognized by the powerful, and which stimulates deep chords of response in many. It is a language which has the potential to empower individuals and communities at the grass-roots level to believe that they have a right to education [8], to health care or any other right. Human rights speak in broad terms about the fundamental entitlement of all human beings to live in dignity, and in conditions of social justice and thereby provide a foundation from which to establish a set of demands premised on the intrinsic worth of the individual. The human rights approach justifies legitimate claims, not because the realization of rights such as that to health or life is a means to another end, such as quality child care, environment, development or population policies, but because the realization of their rights is an important goal in itself [10].

Human rights also promise the engagement of the responsibility of the State in a way that other approaches to claims cannot. The conceptualization of a claim as a human right immediately involves the recognition of State and international responsibility if that claim is denied or violated. Concerns, when conceived of as rights, are elevated from the realm of State and international promises premised on good faith, to a level of legal entitlement requiring national and international response. Concerns, when conceived of as claims of human rights, become fundamental, immutable and priority claims [11]. Human rights not only create entitlements for rights-holders, but they also create duties for States. States are required to ensure the fulfillment of human rights by acting in a way that enables rights-holders to enjoy the rights to which they are entitled. Human rights require that actions - of a legislative, administrative, policy or programme nature - are considered in light of the obligations inherent in human rights [12]. Actions which violate or fail to support the realization of human rights contravene human rights obligations. A rights-based approach thus assumes the creation of an enabling environment in which human rights can be enjoyed. A rights-based approach also promises an environment which can prevent the many conflicts based on poverty, discrimination and exclusion [13]. Gender inequality remains a big challenge due to the deeply rooted patriarchal norms and values in Uganda. Most gender indicators point at a deficit regarding possibilities for women to claim their rights. Sexual and domestic violence is widespread with 51 per cent of women having experienced some form of sexual and physical violence. Although much emphasis has been put on provision of education, little has been done to address causes of gender inequality. According to the situation analysis report of the Gender and Equity Responsiveness of the Pre-Primary and Secondary School levels [14], girls have continued to be disadvantaged compared to boys in all aspects of education access, participation and performance at both primary and secondary school levels - something that has limited their chances to grab opportunities in higher institutions of learning.

Conceptual view of gender equality

Gender, unlike sex, refers to the social roles of men and women at a specific time and is influenced by culture. It is influenced by social factors such as culture, traditions, customs and beliefs. Sex is a physical or biological difference

between women and men. Sex roles are unchangeable in space and time and they include human reproduction such as giving birth, breastfeeding, getting pregnant and impregnating. Gender roles, however, are subject to time and space, for instance, social roles such as providing for the family and domestic chores like cooking, house cleaning and child care. The change of gender roles with time and space makes gender a socially constructed phenomenon that can be seen as ideological [15]. Such change needs to be supported by social structures. Thus, gender refers to the attitudinal and behavioral expectations people have about an individual because she or he is either female or male. Different social contexts have different expectations and these expectations change over time [16]. Gender as a social construct and an ideology is reproduced in the private realm, for example, in households, and this in turn influences practices in the community. This means gender is influenced by socialisation, and internal practices in communities that are viewed as norms [17]. Article 1 of the Universal Declaration of Human Rights [18], provide that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person [18]. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel or inhuman treatment [18].

Although the Uganda Government has taken the initiative to examine gender issues and is taking important steps towards redressing gender inequality by integrating gender in its reform policies and programs, stark gender inequalities have persisted. According to Kretschmer and Barber, some feminists believe that a revolutionary and radical approach is required to address gender inequalities which make gender awareness a categorical reversal action which could be referred to as the "war between the sexes". In this view awareness raising would adopt the top-down approach (discussed in detail under theories of learning). The due further observed that the feminist approach to correcting gender inequalities is difficult to achieve because it seeks to change the worldview of the people. The feminist view challenges what people have been socialized in, have internalized and naturalized, to the extent of taking their understandings as given. Ali et al. [19] noted that the lack of control of resources, and the associated lack of decision-making power, is by far the most important, and most complex, of the issues.²⁵ The economic dependence of women their lack of control over productive resources and assets is at the root of the problems women face. At the household level, women's limited decision-making is associated with their insecurity of access to productive resources, especially land, and to their being predominantly engaged in the unpaid care economy. Differences in decision-making power within the household is one of the factors contributing to poor health outcomes in Uganda, including the high levels of maternal and child mortality. The issue of women's lack of control applies to the use of their own time. There is a dark side to the issue of women's lack of control of productive resources: powerlessness in the face of sexual and other forms of violence against women, which is exacerbated by the linkage between violence and the spread of HIV/AIDS [20].

Forms of gender inequality in Uganda

Uganda has been subject to significant changes in political and legal frameworks which have aimed to promote the rights of women. However, despite these rigid ramifications gender inequality continues to be extremely persistent within the country, which makes Uganda an important area to focus on. The failure of political and legal ramifications suggests that there are other underlying issues within the country which are contributing towards the high level of gender inequality which exists [21]. As one example of gender inequality, the practice of domestic violence has been identified as a severe issue within Uganda. Previous research shows that over 60% of women aged 15 or older have experienced some form of domestic violence, with 24% of these women reporting that their first sexual encounter was a forced one³¹. Thus, this indicates that the practice of domestic violence has a gendered aspect to it which makes it an important point of study within gender development research [22]. Gender is a primary marker of social and economic stratification and, as a result, of exclusion. Regardless of one's socioeconomic class, there are systematic gender differences in material well-being, although the degree of inequality varies across countries and over time. As a result, gender inequality is a characteristic of most societies, with males on average better positioned in social, economic, and political hierarchies³². For more than two decades, the goal of reducing gender inequality has held a prominent place in international organizations and in national strategy statements. Millennium Development Goal 3 reflects the global attention to the issue of gender inequality and has been providing the impetus for governments to eliminate gender inequality in primary and secondary education by 2005 and in all levels by 2015 [22].

According to the 3rd MDG, gender inequality is defined as an issue which has multiple drivers within all aspects of society, from political institutions to cultural traditions. In addition, the report outlines that gender inequality should be viewed as a 'gender' issue as opposed to a woman's issue. This means that the UN acknowledges gender

inequality an issue which impacts both men and women. However, the UN also claims that gender inequality a phenomenon which effects men and women in different manners within different social environments which makes it essential for all development projects to be gender sensitive in all phases of project implementation [23]. Thus, this understanding of gender inequality would suggest that the UN would promote an approach which takes in to consideration the issues and needs of both men and women, whilst also adapting these approaches to different communities. Gender inequality is the idea and situation that women and men are not equal. Gender inequality refers to unequal treatment or perceptions of individuals wholly or partly due to their gender [24]. It arises from differences in gender roles.³⁶ Gender systems are often dichotomous and hierarchical. Gender inequality stems from distinctions, whether empirically grounded or socially constructed. Women lag behind men in many domains, including education, labor market opportunities and political representation and in pay.

Gender Bias in the Distribution of Education and Health

Health and education—the two major forms of human capital—are related to economic development. Human capital gets accumulated as a society advances in education. The contribution of human capital towards Japan's remarkable economic progress attracts our attention. Improvement in health capital also improves the return to investments in education, and vice versa [25]. However, one finds a huge education and health gaps between developed and developing countries. In recent times, despite a large increase in economic advancement in Asia and Africa, these countries lag far behind the developed countries in terms of educational attainment—particularly in respect of women's education. Gender disparity not only hinders economic progress but also exacerbates social inequality. There is enough statistical evidence that the rate of return on women's education is higher than that on men's. It is the mother's education that improves child health and nutrition. It has the potentiality of breaking the vicious circle of poverty and inequality. Education of women is directly related to poverty reduction [26]. In spite of this, male-child bias in third world countries of Asia is palpable. Such bias can be attributed to the following facts. First, being the breadwinner, male child is considered as an 'insurance bond' of the family. Secondly, male child provides security during old age. Thirdly, a male child is deemed to be an asset as it enables parents to garner huge dowry/gift at the marriage time. All these speak about anti-female bias. During marriage of a girl, there occurs a leakage of money from the parents to give dowry to the bride. Above all, investment in women's education is not worthwhile as ultimately a girl child after marriage considers welfare of her husband's family. Unless this mind-set changes gender disparity will continue. To remove such gender gap in education, the role of women's education is undesirable [27]. Further, women suffer from illness more than men. Besides anti-female bias, poor women are deliberately denied basic health care facilities. When they suffer from diseases male members make a plea that a visit to a physician or hospital of a female member may lead to a postponement of the entire day's household jobs, including preparation of food for the family.

Gender Inequality in Freedom Expression

Women are not only subject to income or asset inequality but also in terms of freedom and power deprivation of women goes beyond one's imagination. They lack not only economic freedom at home because of absence of autonomy in household decisions, limited or complete absence of property ownership rights and the poor wages earned but also lack any freedom in airing opinions over education of children [28]. In some backward poor societies, the right of women giving opinion is completely denied. Such un-freedoms, however, are not uncommon even among the educated elites who enjoy enormous power and authority in the male-dominated society. Historically, this sort of low socio-economic status of women has been continuing nowadays. In addition, one finds tremendous apathy in awarding political power and authority—that is participation in administrative decision-making and political decision making—to women. In fact, women are underprivileged and are politically marginalised in many countries. Democracy then falters [29]. In many countries, voting rights to women has been granted, gender inequality, nevertheless, is rather widespread. Although many heads of states of many South Asian countries are women, women's representation in political institutions is indeed minimal. In government offices, administrative decision-making power rests solely on male members. India, however, is fortunate in having 50 p.c. seat reservations for women in gram panchayats in the year 2009. If these are implemented seriously, democracy and participation of women will foster. Public discussion and participation, interaction of all citizens then can act as catalysts of social change [30]. But as in the processes of development and governance in many countries, women are marginalised, the goal of empowerment of women is jeopardized. At the same time, as women's agencies are rather active in India, some sort of politicisation of gender has been taking place and often women have become successful in having their genuine rights. Human capabilities can expand if women are assured of economic and political freedom. Such capability expansion is not hindered by poor income. With the expansion of capabilities of women, not only self-confidence gets a stimulus but also women increase their social status [31]. A final word of caution. Only by guaranteeing participation in elections, socio-political-economic freedom of expression of women cannot be ensured. This is, however, not sufficient to remove the shackles of women's un-freedoms. What is important is the effective implementation of democratic procedures and norms. This requires reforms in the political field. The main opposition here, as usual, comes from the male members of the society. Gender inequality is an ultimate

outcome of any patriarchal society. Only by empowering women, this social and economic barrier of gender inequality cannot be broken. This requires education of women. Effectiveness of political participation of women depends on the state of education. Thus, education acts as a great social change.

Gender Inequality in Respect of Violence and Victimization

Anti-female bias starts before the girl child is born (consequent upon sex-specific abortions) and this attitude of the society a female member carries throughout her life^[32]. It is because of the unequal sharing of income, property, household benefits (health and nutritional deprivation), women are subject to both physical and sexual violence—the opposite of freedom, and an extreme form of coercion. This is common for both poor and not too much uncommon in rich countries as well as among rich people. One in three women in the world is beaten or raped during her lifetimes. Dowry harassment is considered as an 'instrumental use' of violence. Dowry death is the most serious form of domestic violence. Wife beating is not uncommon. Sexual violence is an obnoxious form of human rights violation. In addition, with the increase in poverty level, trafficking of women and children for sexual exploitation has become a high-profit-low-risk trade for those who organise it ^[33]. There are many causes of such violence's but physical prowess of men, dynamics of power and injustice, low or absence of education of women seem to be the most cogent reasons for gender inequality and subordinate status of women globally. Economic independence and social emancipation through creating ability to earn income and gainful employment outside the home, guaranteeing ownership rights, literacy in education is of great importance. Empowerment value of all these is difficult to ignore. All these empower women^[34]. Through women's empowerment, patriarchal dominance and male monopoly of violence and the exploitation of women can be broken. And, above all, women's education can only destroy the institution of 'house-wifisation' of women's labour through marriage and through work legislation.

CONCLUSION

The importance of gender equality especially in the contemporary world cannot be overemphasized. However, in order for gender equality to be attained, there is need to ensure that women are emancipated from the bondage of suppression. It is this recognition that has seen the fight against gender-based violence receive center stage in recent years. However, low prosecution for perpetrators of wife battery has continued to be a major setback in this quest. Thus, the thrust of this article came from the need to better understand the phenomenon of low prosecution of wife battery by delving deep into the problem and attempt to establish the underlying factors. It is in the light that the study calls for the awareness of legislators about the need to give priority attention to legal reforms to be raised, in order to achieve de jure equality for women and compliance with the State party's international treaty obligations; and continue to increase support for law reform through partnerships and collaboration with religious and community leaders, lawyers, judges, unions, civil society organizations and women's non-governmental organizations. More so there is need to strengthen efforts to eliminate harmful practices and stereotypes that discriminate against women. A strategic action plan geared to achieving this objective must be put in place without delay, involving both governmental and non-governmental actors.

Recommendations

Furthermore, there is need to eliminate remaining discriminatory legislation and adopt laws to increase protection of women's rights. Remaining discriminatory laws, including the Succession Act, must be reformed urgently. Implement all relevant decisions of the Constitutional Court on succession, divorce, defilement etc. without delay. Laws including the Marriage and Divorce Bill and the Sexual Offences Bill must be urgently adopted to increase protection of women's rights. A marriage and divorce law protecting Muslim women's rights, in conformity with the Constitution and international law, must also be adopted urgently, with a view to eventually adopting a unified Act. Finally, there is need to take measures to ensure the effective implementation of the Domestic Violence Act. Implementing regulations, the necessary budget, and an implementation scheme must be adopted without delay. Such implementation scheme must include the following as priorities: adoption by government of a training scheme for actors in the justice and law sector; review of the local council act to include the duties under the law as part of their mandate; provision of training to local authorities on their new duties under the law; launch of a media awareness raising campaign on the law, including air-time for NGOs; Include awareness raising/training module on the Law in police standard curriculum, and specialized training for community services officers; improve Ministry of Health/NGO cooperation with a view to enhancing the capacity of health professionals under the law.

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