

United Nations  Nations Unies

**United Nations Division for the Advancement of Women
United Nations Economic Commission for Africa**

**Expert Group Meeting on good practices in legislation
to address harmful practices against women**

United Nations Conference Centre

Addis Ababa, Ethiopia

25 to 28 May 2009

**EFFECTIVENESS OF LEGISLATION
ENACTED TO ADDRESS HARMFUL PRACTICES
AGAINST WOMEN IN UGANDA,
INCLUDING MALTREATMENT OF WIDOWS AND
FEMALE GENITAL MUTILATION**

Hon. Dora C. Kanabahita Byamukama*

Member, East African Legislative Assembly
Director, Law and Advocacy for Women in Uganda

* *The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

1. INTRODUCTION

Harmful practices against women are forms of violence which include Female Genital Mutilation (FGM), female infanticide and prenatal sex selection, early marriage, forced marriage, dowry related violence, acid attacks, crimes against women committed in the name of “honour”, maltreatment of widows and other practices.

All these harmful practices against women exist in Uganda in different degrees. The focus of this paper will be on the maltreatment of widows’ rights, which practice is closely linked to wife inheritance. This paper will also consider FGM which is closely linked to early marriage. Widows’ rights are provided for under the Succession Act, Cap. 162 Laws of Uganda (Succession Act). This Act is ripe for a review after a Constitutional Court Ruling of 2007 nullified several of its provisions. On the other hand, the practice of FGM continues notwithstanding Constitutional provisions that prohibit it. In April 2009, Parliament started the process of enactment of “The Prohibition of FGM law”. As noted, in most communities FGM is a rite of passage that graduates girls into womanhood, as such, it propagates early marriage in instances where girls who undergo it are below eighteen years of age. Early marriage in this context will be discussed in respect to Section 129 of the Penal Code (Amendment) Act, 2007 on “Defilement of Persons under eighteen years of age.”

In 1995, Uganda promulgated a new Constitution (Constitution), this Constitution is recognized as one of the most progressive on human rights in the world, in that, it incorporated human rights principles of International Conventions that Uganda is signatory to.- such as the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW). Constitutional Articles that address harmful practices against women include:

National Objective and Directive Principles of State Policy XXIV on Cultural objectives, which states that:

“Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution may be developed and incorporated in aspects of Ugandan life.”

Article 37 on Right to culture and similar rights which provides that;

“Every Ugandan has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.”

This phrase in “community with others” clearly points to the fact that the right to culture is not absolute. This is further made explicit by Article 43 on General Limitation and fundamental and other human rights and freedoms, which states that:

“In the enjoyment of rights and freedoms provided for under the Constitution, no person shall prejudice the fundamental or other human rights and freedoms of others or public interest.

Most significantly, Article 43 further provides for prohibition of derogation from particular human rights and freedoms, as follows-

ENGLISH only

“Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms-

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;*
- (b) freedom from slavery or servitude;*
- (c) the right to fair hearing;*
- (d) the right to an order of habeas corpus.”*

Article 45 states that –*“Rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms provided for in the Constitution shall not be regarded as excluding others not specifically mentioned.”* Article 24 fortifies Article 43; it states that *“No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment.”*

Some other Constitutional rights which prohibit harmful practices against women include:

Article 2 on supremacy of the Constitution, which stipulates that;

- (1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.*
- (2) If any other law or any custom is inconsistent with any of the provisions of [the] Constitution, the Constitution shall prevail, and that other law or custom, to the extent of the inconsistency, be void.*

Article 32 on affirmative action in favour of marginalized groups, which provides that;

- (1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.*
- (2) Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalized group...or which undermine their status, are prohibited by [the] Constitution.”*

Harmful traditional practices are exercised at mostly the family level of society; they therefore, heavily infringe on rights of the family. Article 31 on Rights of family is significant in this context; it provides as follows:

“(1) A man and a woman are entitled to marry only if they are each of the age of eighteen years and above and are entitled at that age-

- (a) to found a family; and*
- (b) to equal rights at and in marriage, during marriage and at its dissolution.*
- (2) Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit property of their deceased spouses and to enjoy parental rights over their children.*

(3) Marriage shall be entered into with the free consent of the man and woman intending to marry.”

Article 33 on Rights of women further provides that:

- (1) Women shall be accorded full and equal dignity of the person with men;*

ENGLISH only

(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) Women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

Article 247 of the Constitution of Uganda provides specifically for the Administration of Estates. This provision states that: “Parliament shall –

(a) by law establish an efficient, fair and expeditious machinery for the administration and management of the estates of deceased persons; and

(b) under the law referred to in paragraph (a) of this article, ensure that the services of the department or organization established for the purpose are decentralized and accessible to all persons who may reasonably require those services and that the interests of all beneficiaries are adequately protected.”

Enforcement of Constitutional rights and freedoms is done by Courts; this is premised on Article 50 of the Constitution, which states that;

“(1) Any person who claims that a fundamental or other right or freedom guaranteed by the Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

Enforcement of Constitutional rights and freedoms is reinforced by the establishment of the Uganda Human Rights Commission, which Commission investigates, educates, creates awareness, recommends measures to promote human rights, provides compensation to victims and monitors Government’s compliance with international Treaties and Conventions obligations on human rights. The rights are also enforced by National Machinery, such as the Ministry of Gender, Labour and Social Development; the Equal Opportunities Commission which is yet to be operationalized.

Analysis of legal approach to women’s rights on harmful practices will be done in this existing legal regime context.

2. ANALYSIS OF THE LEGAL APPROACH TO WOMEN’S RIGHTS IN RESPECT TO MALTREATMENT OF WIDOWS AND FEMALE GENITAL MUTILATION

a) MALTREATMENT OF WIDOWS’ RIGHTS

Widows’ rights are specifically provided for under the Succession Act of 1906. Apart from The Succession (Amendment) Decree of 1972; no other amendments have been made to make this law to make it conform to the 1995 Constitution. Most widows continue to be deprived of property by family members notwithstanding Constitutional provisions. Upon realization that the Succession Act was, even after the 1995 Constitution, being applied in a manner that resulted in maltreatment of widows, Law and Advocacy for Women in Uganda (LAW-Uganda) embarked on strategic litigation in order to get discriminatory sections of the Succession Act declared unconstitutional and thus void. It was also envisaged that this

would create a lacuna in the law, which lacuna would oblige Parliament to expeditiously review the law.

Issues raised on Sections of the Succession Act were;

- i. Whether Section 27 which only provided for male intestacy was constitutional. This Section presumed that women in general, and in this case, women who die intestate (without a will) do not have property to bequeath. This was partly premised on stereo-typing “*property cannot own property - women are treated as property because bride price is paid and thus they are impliedly purchased.*” It was also based on the presumption that women, generally, do not own property.
- ii. Whether Section 27 of the Succession Act, which granted a widow/s 15% of the estate; while widower/s enjoyed 100% was constitutional. This Section ignored women’s contribution to the estate. It provided for automatic division of the estate even when a widow was still living and had ability to manage the estate and to continue contributing to it.
- iii. Whether Rule 8(a) of the Second Schedule to the Succession Act which provided that a widow’s right of occupancy in a residential holding terminates upon re-marriage while that of a man terminates upon death is constitutional.
- iv. Whether Section 43 which provided that guardians are appointed by the father undermines a mother’s parental rights. The question raised was - why appoint a guardian when the mother of the child is still alive; and further still, why couldn’t a mother and father jointly appoint a guardian, if a guardian is legally required.
- v. Whether Section 2 (n) (i) and Section 44 of the Succession Act, which gave preference to the male lineage over the female lineage in choosing a legal and statutory guardian is constitutional.
- vi. Whether Section 14 of the Succession Act which awarded automatic acquisition of domicile upon marriage to a woman and not to a man is constitutional.
- vii. Whether Section 15 which terminated a woman’s acquired domicile upon legal separation is constitutional. This Section rendered women second class citizens in that their domicile was transient and dependant on that of their husband whereas that of married men remained permanent.

LAW-Uganda’s strategic litigation case was successful; in April 2007 the Constitutional Court declared all the impugned Sections of the Succession Act unconstitutional and void. This Declaration created a lacuna, which lacuna has to-date not been filled by enactment of a new law.

In addition to this quagmire, one pertinent question still remains -Who is a legally recognized widow? It is envisaged that an amendment to the Succession Act will cross reference to Marriage laws’ definition of a legally recognized wife. Currently, Uganda’s marriage laws are under review; proposed amendments to The Marriage, Separation and Divorce laws, inter alia, - propose recognition of persons who have cohabited for a period of two years and more as legally married. Other proposed amendments include provisions-that bride price should not be an essential element of a customary marriage; wife inheritance should be prohibited; punishment of marital rape; polygyny and determination of spouses’ rights to property.

The process of reviewing marriage and divorce laws has been on since the 1965 Kalema Report! In the period 1995-2009; progress has been made-we women’s rights activists

ENGLISH only

successfully challenged some Sections of the Divorce Act in 2004. These Sections, inter alia, permitted men to seek for divorce on one ground of adultery; while married women had to combine adultery with say cruelty. To-date, there is lack of certainty as to when marriage and divorce that conform to the Constitution will be enacted.

b) FEMALE GENITAL MUTILATION

Religious and Cultural belief underpin the practice of FGM. In most cases, religious doctrines are interpreted by some believers as divine and therefore not subject to challenge or change. It should be noted that most countries are secular, for example, the Constitution of Uganda provides for this principle in its Article 7 on Non-adoption of State religion where it states that “*Uganda shall not adopt a State religion*”. In addition to this, the right to protection of freedom of religion is not absolute; it is not among those rights from which there is no derogation under Article 44. On the right to religion, Article 29 (1) (c) provides that-

“freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with [the] Constitution.”

The obligation to practice religion in a manner consistent with the Constitution means that if a religion contradicts or is inconsistent with the principles of the Constitution, then that religion shall be void.

The Constitution prohibits FGM implicitly; this is done under Article 2 (2) - the customary practice of FGM is void because it is inconsistent with the Constitution. Inconsistency with the Constitution is evident in Article 24 which states that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment; Article 32(2)-Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women ...or which undermine their status are prohibited by the Constitution; Article 33 on rights of women-in particular, women are accorded full and equal dignity of the person with men. Even more significantly, FGM is a torturous, cruel and degrading treatment – this categorizes it as an infringement on rights and freedoms for which there is no derogation under Article 44.

FGM is closely linked to early marriage. The Children Act and the Penal Code Act have specific provisions that can be used to prosecute perpetrators of FGM. For example, the following Sections under the Children Act can be used against FGM:

Section 5(2) – Places a duty on any person having custody of a child to protect the child from discrimination, violence and neglect.

Section 7 – Makes it unlawful to subject a child to social or customary practices that are harmful to the child’s health.

Section 10 – prescribes duties of Local Councils (LCs) in their areas, including mediating in any situation where the rights of a child are infringed in 10(3), and providing assistance and accommodation for any child in need in 10(6).

Under section 109 contravention of any of the provisions of the Children Act is an offence punishable by a fine or imprisonment for six months, or both.

Under the Penal Code Act;

ENGLISH only

Section 216(a) – “Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person.....unlawfully wounds or does any grievous harm to any person by any means; commits a felony and is liable to imprisonment for life.”

Section 219 – “Any person who unlawfully does grievous harm to another commits an offence and is liable to imprisonment for seven years.

Section 2(f) – defines grievous harm as “any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense”.

Section 222(a) – Punishes any person who unlawfully wounds another with three years imprisonment.

The question is, why aren't these laws they effectively utilized to curb FGM? Several reasons are advanced for non-utilization of existing laws and failure to adhere to constitutional provisions, these include;

- i. Lack of knowledge of the laws;
- ii. Misinterpretation that the right to culture permits FGM;
- iii. Enforcement agents are not sensitized about the fact that FGM is criminal and that it can be categorized as grievous harm or unlawful wounding;
- iv. Complainants against FGM do not persist because they lack protection and fear being ostracized from the community;
- v. Lack of a specific law inhibits law enforcement officials who question as to whether FGM can be interpreted as criminal if it has been practiced for generations without any one being persecuted for it and taking into account the Constitutional principle that “no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed by law (Article 28(11)).

Uganda is signatory to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). As such, it has a duty to prohibit and condemn all forms of harmful practices which negatively affect human rights of women and which are contrary to recognized international standards. Under Article 5 on Elimination of Harmful Practices-Uganda is obliged to take all necessary legislative and other measures to eliminate such practices, including:

Creation of public awareness through formal and informal education and outreach programmes; Prohibition, through legislative measures backed by sanctions; Provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self – supporting; and Protection of women who are at risk of being subjected to harmful practices or other forms of violence, abuse and intolerance.

Although Uganda has not ratified the Protocol, it is bound by its principles as per the Vienna Convention on the Law of Treaties. Uganda is commended for taking more positive steps to enact a law that explicitly prohibits FGM. This is evidenced by the Parliament of Uganda, which on April 29, 2009 granted leave to Hon. Dr. Chris Baryomunsi to move a Private Members Bill that will prohibit FGM. The Private Members

ENGLISH only

Bill introduced in the Parliament of Uganda was drafted by LAW-Uganda; it incorporated all the principles enshrined in the African Charter on Women's Rights. LAW-Uganda took the initiative to draft the Prohibition of FGM Bill after working for more than a decade on the issue in conjunction with several partners such as Reproductive, Education and Community Health (REACH) Program. REACH is a community based organization which was supported by UNFPA, inter alia, to create awareness; and to sensitize the community, where it is practiced, about the negative effects of FGM.

c) **EARLY MARRIAGE/DEFILEMENT**

In some instances, FGM leads defilement. Defilement is a criminal offence; Section 129 of the Penal Code Act states that:

- 1) *Any person, who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.*
- 3) *Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court liable to suffer death.*
- 4) *The circumstances referred to in subsection (3) are as follows-*
 - (a) *Where the persons against whom the offence is committed is below the age of fourteen years;*
 - (b) *Where the offender is infected with the Human Immunodeficiency Virus (HIV);*
 - (c) *Where the offender is a parent or guardian of or a person in authority over, the person whom the offence is committed;*
 - (d) *Where the victim of the offence is a person with disability; or*
 - (e) *Where the offender is a serial offender.*

There is also provision for compensation to victims of defilement; Section 129B of the Penal Code Act states that:

- (1) *Where a person is convicted of defilement or aggravated defilement under section 129, the court may, in addition to any sentence imposed on the offender, order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offence.*
- (2) *The amount of compensation shall be determined by the court and the court shall take into account the extent of harm suffered by the victim of the offence, the degree of force used by the offender and the medical and other expenses incurred by the victim as a result of the offence."*

3. REFORMS UNDERTAKEN OVER TIME; AND REASONS FOR SUCH REFORMS

The Government of Uganda has undertaken several reforms on harmful practices against women for a number of reasons. These reasons include but are not limited to the following:

- i. The revolution that ushered the National Resistance Movement (NRM) into power in 1986 was fought by both men and women. This enabled women who had hitherto been marginalized to take their rightful place in decision-making. Promulgation of a progressive constitution was done with the support of gender sensitive men and women of the Constituent Assembly and with the support and initiative of the NRM Government.
- ii. The Uganda Constitution which was promulgated in 1995 was done on the heels of the 1995 Beijing Conference. The Beijing Conference created support which gave the government further justification to enact laws that promote women's rights and gender sensitive Constitution. Constitutional provisions give a sound basis and impetus for reforms to be undertaken to ensure that women's rights are fully respected in all spheres.
- iii. Uganda is signatory to several International Treaties and Conventions which recognize women's rights; these include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms Discrimination Against Women (CEDAW). Uganda's signing onto CEDAW, for example, obliges it to meet specific obligations; these include submission of periodic reports on efforts made to adhere to the commitments. This monitoring and evaluation mechanism to ensure adherence is keeps governments in check and helps in facilitating reforms that prohibit harmful practices against women.
- iv. Regional acknowledgement of women's rights and the need to address them in the African context is another reason why reforms to curb harmful practices against women have been undertaken. The Maputo Protocol adopted in 2003 renewed African States' commitment to implement and take concrete steps to give greater attention to human rights of women in order to eliminate all forms of discrimination and gender – based violence against women. The Protocol takes note of International human rights instruments, UN Security Resolutions, the African Platform for Action, and the Dakar Declaration of 1994, the Beijing Platform for Action of 1995, inter alia.
- v. Another reason for reform is catalyzed by this era, the Information Age. The information Age has made it possible, more than ever, to create awareness about harmful practices against women by using the media, and by effective use of the internet. Exchange of information on who is doing what not only facilitate sharing of best practices but can also be used to mobilize shame on States which do not protect women's rights. The world has indeed become one global village. This fact catalyzes the reform process in order for States to comply with the new world order that advocates for respect and protection of human rights of all irrespective of gender.

ENGLISH only

- vi. Consistent activism by entities such as UNFPA and other Civil Society Organizations has led to change of attitude where FGM is practiced. There has culminated into serious demand by local communities for a law to prohibit cultural practices such as FGM in Uganda.

4. ASSESSMENT OF EFFECTIVENESS OF PARTICULAR LAWS INCLUDING REASONS FOR SUCH EFFECTIVENESS- “Justice must not only be do done; it must be seen to be done”

An assessment of effectiveness of particular legal provisions and reasons for such effectiveness must take into account several factors, including but not limited to- existence of the law and effective penalties there-under; awareness of the law; knowledge of the law; access to justice; law enforcement mechanisms; and dispensation of justice.

Using the example of early marriage under which defilement is committed, there are several practical challenges related to each of these factors.

- i. Existence of the law and effective penalties there-under is exemplified by existence of Constitutional provisions on the age marriage as eighteen years and above. Section 129 penalizes defilement of persons under the age of eighteen years of age and section 129B provides for payment of compensation to victims of defilement. An example of a challenge faced in the case of defilement faces is that of a death penalty. No case to date has attracted this penalty. Reasons for this are not clear. It may be worthwhile to investigate further why courts have not sentenced anyone to death and whether the stiff sentence of a death penalty inhibits prosecution of defilement cases.
- ii. Awareness of the law enables the community to seek for justice; however, this factor must be supported by other factors. For example, awareness of the crime of defilement may not lead to search for justice. In some instances, the prosecution is faced with challenges, such as when victims who are key witness turn into hostile witnesses. Victims do this because they fear the wrath of family members or because they are economically dependant on the defiler or because they lose interest in the case because of emotional ties; or prolonged, scary and complicated court processes. In such cases, the victims of defilement may opt not to press charges; the choice to settle out of court or to abandon the case may seem more attractive.
- iii. Limited knowledge of the law by law enforcement agents. In some cases, law enforcement agents may not be fully aware of the law. This obviously renders the law less effective. There is thus need for refresher courses for law enforcement agents. In some instances, Local Council officials, who are not aware of the law, may try cases of defilement and yet such cases are beyond their jurisdiction. This has the potential to cause miscarriage of justice.
- iv. Existence of Local Council officials and Local Council Courts within communities on the other hand, enables members of the community to access justice easily. Community members easily access justice because those who are in authority are neighbors, they do not have to travel long distances; they are not charged high court

ENGLISH only

- fees; they do not have to be represented by expensive lawyers and the court atmosphere is not alien as when they have to use very formal procedures in the Judicial system. Local Council Officials assist in decentralization of legal services. They serve as critical referral centers, witnesses and provide critical information to victims since most cases are first reported to these offices.
- v. Structural challenges include offices, transport, infrastructure, staffing levels of law enforcement officers, communication and other facilities. Structural challenges must be addressed for laws to be effective. These can, to some limited extent, be mitigated by effective use of the media and communication systems.
 - vi. Dispensation of justice is critical. Justice in most African communities entails fines and reconciliation. In all cases, the punishment must fit the crime and justice must not only be done; it must be seen to be done. This may explain why even for the grave offence of defilement of a girl, of say 17 years, family members may prefer to be paid a fine rather than press for criminal charges. Compensation to victims of defilement and the fact that once a person is charged with defilement must undergo a medical examination as to his or her HIV status as per Section 129(6) of the Penal Code Act is a development which has the capacity to increase dispensation of justice.

5. LESSONS LEARNED AND GOOD PRACTICES IN LEGISLATION ADDRESSING HARMFUL PRACTICES AGAINST WOMEN; BASED ON THE IMPACT AND EFFECTIVENESS OF EXISTING LEGISLATION

- i. Constitutional provisions that prohibit harmful practices against women provide a critical foundation for challenging such practices in courts of law and for enactment of specific enabling laws to prohibit such practices;
- ii. Constitutional provisions against harmful practices are not enough to prohibit the practice, specific comprehensive laws must be enacted; penalties must be deterrent, retributive and rehabilitative; communities must be made aware of the law; law enforcement officials equipped and the judiciary facilitated to dispense justice;
- iii. Challenges to harmful practices against women in courts of law must be followed up with amendments to the law within a specific time frame. Advocacy for laws to fill in the lacuna created must be sustained.
- iv. Proposed laws to prohibit harmful practices against women such as FGM must have community, civil society organizations' and government support; they must be accompanied by other actions such as increased girl education; economic empowerment; and continued awareness programs.
- v. Legislation addressing harmful practices against women should be comprehensive; it provides for compensation to victims and provision of necessary support to victims of harmful practices; it should also protect women who are at risk.
- vi. The impact and effectiveness of existing legislation that addresses harmful practices can be best achieved by partnering with other actors at community, national level-with specific involvement of the media; and at a regional and international level

ENGLISH only

where best practices can be shared in order to enrich the law and to make it more effective.

6. PROMISING PRACTICES THAT, ALTHOUGH NOT CURRENTLY IN THE LAW, SHOULD BE CONSIDERED FOR INCLUSION

Promising practices that, although not currently in the law, and should be considered for inclusion:

- i. Legislation that provides for protection units for women at police stations or other law enforcement centers;
- ii. Establishment of women only police units to address harmful practices against women;
- iii. Provision of shelter homes by government for rehabilitation; legal services and protection of potential victims;
- iv. Enactment of specific laws to address new crimes such as acid attacks, pre-natal sex selection.
- v. The need to share information; services and harmonize laws that protect women's rights at the regional level with the introduction of free movement of persons.
- vi. The need to ensure effective enforcement of laws at national and regional levels by using extra territorial jurisdiction. This would ensure that no perpetrators of violence against women escape prosecution.
- vii. In order to ensure effective enforcement of laws, law enforcement officers should, for example, be penalized for not arresting those who practice FGM.
- viii. Codification of customary laws-as long as customary laws are not codified, the tendency to shroud harmful practices against women as customs acceptable to certain communities will continue to be exploited at the expense of women's rights. Codification of customary laws should take into account the dynamic nature of customs and respect for fundamental human rights and freedoms. Rules or a check list should be provided in to determine customary laws that may be applicable.
- ix. There is also need to provide for decentralization of legal services in order to ensure access to justice.
- x. There is also need to provide for a law that compels action after court rulings on strategic litigation cases. A time frame within which laws should be enacted to fill the lacuna after such court ruling should be stipulated.
- xi. Chapter 4 of Uganda's Constitution provides that the State shall promote public awareness of the Constitution by translating it into Ugandan languages and disseminating it as widely as possible; providing for the teaching of the Constitution in all educational institutions and regularly transmitting and publishing programmes through the media generally. These provisions should apply to all other laws within a set timeframe because justice can only be dispensed when members of the community are aware of their rights.

CONCLUSION

In order to effectively legislate on harmful practices against women; several actions need to be taken concurrently, these include:

ENGLISH only

- i. The origin of some harmful practices against women is both religious and customary; whose doctrines are interpreted by some believers as divine; or sacred and therefore not subject to challenge or change. It should be noted that the right to religion and culture is not absolute; it is not among those rights from which there is no derogation under Article 44 of the Uganda Constitution. Religion and culture must be practiced in a manner consistent with the Constitution; as such if a religion or custom contradicts or is inconsistent with the principles of the Constitution, then that religion or custom is void and prohibited by the Constitution which is the Supreme law.
- ii. Identification of harmful practices' origin; gate keepers; and other stakeholders interested in preserving and perpetuating harmful practices. Such identification assists devising meaningful strategies for legal redress. It also gives legitimacy to proposed laws; which process ensures effective enforcement of the law. The identification process also effectively bridges the gap between practical reality or existence of the harmful practice and theory or the law or the gap between *de facto* and the *de jure*.
- iii. It is worth noting that most religious doctrines are founded on respect for human rights. Religious doctrines are not as dynamic as culture. There is thus need to identify and promote interpretation of religious doctrines in a manner that respects human rights of both women and men since most religions promote respect for human dignity in the credo—"all human beings are created in the image of God."
- iv. Considering that religion and culture have the potential to originate harmful practices against women; there is need to involve religious and traditional leaders and where possible to convert them into effective agents for change. Promotion of positive religious and customary practices and discarding of harmful ones can be effectively done by the respective leaders. This has worked very well for Uganda in the bid to eradicate FGM. Request that Parliament enacts a law that prohibits FGM by the Sabiny Elders Association (SEA) is a very credible and unimpeachable sign that the community is ready for change. Likewise, declaration by religious leaders to believers that early marriage is forbidden would be a very powerful tool and deterrent.
- v. Culture and religion are nurtured consistently into one's life right from child birth; thus, although there are written laws, most Ugandan adhere to customary and religious laws. In most cases, these laws are not clearly articulated nor are they known. This lack of certainty gives leaders a leeway to invent and manipulate religious and customary laws in order to promote certain patriarchal interests-which treat women as inferior to men. Apart from the need to codify religious and cultural laws for clarity, certainty and consistency with the Constitution, there is also need to consistently effect attitudinal change.
- vi. Attitudinal change can be effected in the nurturing process so that society unlearns and reconstructs its patriarchal beliefs-which perceive women as inferior to men.

ENGLISH only

- There is dire need for parents and guardians to embrace human rights principles which treat girl and boy children with equal respect. Role models who champion equal treatment of girls and boys should be promoted and given visibility in order to create a multiplier effect. This can be further enhanced by ensuring that the media and education curriculum includes respect for human rights in the syllabus as a mandatory subject for all students in all educational institutions.
- vii. Education is the master key; it strategically ensures support for legislation on harmful practices against women. Education of the girl child in particular, enables her to qualify for employment, which in turn lends to economic empowerment. Economic empowerment enables women to acquire a status in society, which status cannot be abused by harmful practices. Educated women have capacity to participate at all levels of society and they serve as critical role models. Patriarchal principles cannot be applied to an educated woman; her education and economic security challenge and negate the patriarchal notion bestowed upon woman as inferior.