

# ASEXUALITY, GENDER AND DISABILITY LAW IN UGANDA

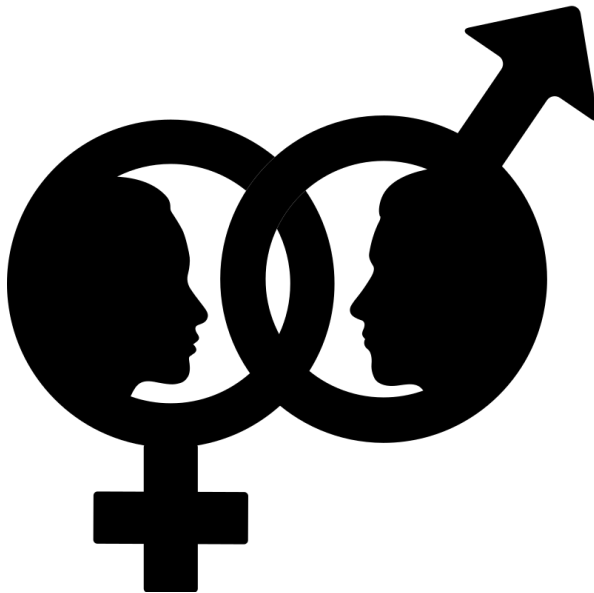
---

Gender Masculinity Sexuality Communication DIVERSITY JUSTICE Lesbian Community  
Peace Race Feminism Trans Class Global INTERSEX POP CULTURE Discrimination  
POVERTY GAY ACTIVISM BISEXUAL EQUALITY FEMININITY POLITICS WAR ETHICS  
Femininity

ISAAC CHRISTOPHER LUBOGO

View my Profile at [www.lubogo.org](http://www.lubogo.org)

# **Asexuality, Gender and the Law in Uganda**



Isaac Christopher Lubogo

# **Asexuality, Gender and the Law in Uganda**

© 2022 Isaac Christopher Lubogo.

The right of Isaac Christopher Lubogo to be identified as the author of this book has been asserted by him in accordance with the Copy right and Neighboring Rights Act, 2006.

All rights reserved. No part of this publication may be reproduced or transmitted in whole or in part in any form or by any means, electronic or mechanical, including photocopy, recording or any information storage and retrieval system, without permission in writing from the author.

**First Edition 2022**

**ISBN: 978-9913-633-26-0**

**First published in Uganda by:**

Jescho Publishing House

A member of Jescho Group Ltd

Maria's Galleria, Level 3 Room 17,

Luwum Street, Kampala (U), East Africa.

Tel: +256 393 256 545, +256 782 395 293

+256 702 055 211, +256 752 055 211

E-mail: [jeschogroupltd@gmail.com](mailto:jeschogroupltd@gmail.com)

Website: [www.jeschogroupltd.co.ug](http://www.jeschogroupltd.co.ug)

**View this author's profile at:**

[www.lubogo.com](http://www.lubogo.com) or [www.suigenerislawapp.com](http://www.suigenerislawapp.com)



*Table of Contents*

**Dedication..... xii**

**CHAPTER ONE ..... 1**

**Introduction to Asexuality ..... 1**

Distinction Between Asexuality and Sexuality..... 5

Types of sexuality.....7

**CHAPTER TWO .....19**

**Why Does Sexuality Matter? .....19**

Distinguishing Romance from Sex and Friendship. .... 23

Intersections: Comparing Identity Categories ..... 29

**CHAPTER THREE .....30**

**History of Asexuality .....30**

In Pop Culture..... 31

**CHAPTER FOUR .....37**

**Sexual Law .....37**

**CHAPTER FIVE .....42**

**Asexual Law .....42**

Conclusion..... 44

**CHAPTER SIX .....46**

**Asexuality In Uganda.....46**

## *Asexuality, Gender and the Law in Uganda*

There is difference between asexuality and celibacy or abstinence.....	49
South Africa.....	50
The challenges faced by asexuals.....	52
<b>CHAPTER SEVEN.....</b>	<b>54</b>
<b>Gender .....</b>	<b>54</b>
Sex and Gender .....	57
What Is the Significance of The Concept of Gender? .....	58
Gender Stereotypes.....	59
Gender Roles .....	60
Gender Identity and Expression.....	61
Common Concepts for Addressing Gender .....	62
<b>CHAPTER EIGHT.....</b>	<b>76</b>
<b>The State of Gender Equality in Uganda.....</b>	<b>76</b>
Gender and Agricultural Productivity in Uganda .....	84
<b>CHAPTER NINE .....</b>	<b>96</b>
<b>Sexual and gender-based violence in Uganda. ....</b>	<b>96</b>
<b>CHAPTER TEN .....</b>	<b>100</b>
<b>Gender Discrimination .....</b>	<b>100</b>
Natural sex differences: .....	103
Psychology .....	104
Gender roles .....	105
Challenges to effective gender equality laws and policy implementation. ....	105
<b>CHAPTER ELEVEN .....</b>	<b>106</b>
<b>Patriarchy .....</b>	<b>106</b>

*Isaac Christopher Lubogo*

Reasons why the patriarchy still subsists in Uganda’s .....	108
Is Gender, women or men and women? .....	109
Recommendations for effective gender laws/policy implementation .....	110
Disadvantages of patriarchy (Patriarchy visa vise Feminism) .....	111
Feminism and Education.....	121
Feminism and politics.....	124
Feminism and Economy.....	125
Feminism And Gender Studies.....	126
Feminism and Employment.....	126
Feminism and Land .....	132
Feminism and Health .....	135
Feminism and Citizenship.....	136
Unity Dow v Attorney General .....	141
Feminism and family .....	142
Challenges affecting feminism in Uganda .....	145
Conclusion.....	150
<b>CHAPTER TWELVE .....</b>	<b>152</b>
<b>Gender on International Law Basis .....</b>	<b>152</b>
Gender in International relations.....	161
Sex or/and gender .....	162
Gendering babies: Is it a boy or a girl? .....	163
International Relations of gender .....	167
Gender and Construction of the Nation-State .....	170
<b>CHAPTER THIRTEEN.....</b>	<b>172</b>
<b>Nationalist Theories of Creating Nations .....</b>	<b>172</b>

*Asexuality, Gender and the Law in Uganda*

Blood and belonging.....	172
Feminism and Nationalism .....	173
<b>The Feminization of International Migration .....</b>	<b>178</b>
<b>CHAPTER FOURTEEN .....</b>	<b>180</b>
<b>Gendering International Relations and Diplomatic Practice .....</b>	<b>180</b>
Gender Diplomacy and Global Politics.....	180
Gender in Diplomacy .....	181
<b>CHAPTER FIFTEEN .....</b>	<b>189</b>
<b>Femininity .....</b>	<b>189</b>
Feminism.....	189
Development of the Feminism Concept. ....	190
Feminism First Wave Women Suffrage and Seneca Falls Convention....	191
The Post Suffrage debates .....	197
Second Wave feminism .....	198
Dissension .....	199
Classes and Race Feminism.....	202
Feminism as a global concern.....	203
Third Wave of Feminism .....	205
<b>CHAPTER SIXTEEN .....</b>	<b>207</b>
<b>Gender and Criminal Law. ....</b>	<b>207</b>
Penetration.....	208
Rape As a Weapon for Destruction.....	208
Law Reform Recommendations. ....	209
Procedurally. ....	209
Prostitution.....	210



There are Four Legal Regimes That Govern Prostitution in The World.	210
Legal Regimes. ....	211
The Developments in The Concept of Abortion. ....	213
<b>CHAPTER SEVENTEEN</b> .....	<b>217</b>
<b>Gender and Family Law.</b> .....	<b>217</b>
Discrimination within the Family.....	218
<b>Legal Foundations of Ugandan Women’s Subordination in Gender</b> .....	<b>219</b>
Religion .....	220
<b>CHAPTER EIGHTEEN</b> .....	<b>223</b>
<b>Disability</b> .....	<b>223</b>
Rights of People with Disability. ....	226
Organizations of Persons with Disabilities. ....	233
CRPD Is Equality and Non-Discrimination .....	239
Discrimination on the Basis of Disability? .....	239
Equality .....	242
The Categories of Persons with Disability Envisaged in The Persons with Disability Act (2020) .....	243
Standard of Living for Persons with Disabilities .....	245
Social Norms and Expectations .....	249
Shocks and Coping Strategies .....	253
Disability Across the Lifecycle .....	254
Persons with Disabilities and Their Rights. ....	265
Inclusion of Persons with Disabilities in Law in Uganda. ....	266
Specific Laws for persons with disabilities.....	269
The UN Convention on the rights of persons with disabilities .....	270

## *Asexuality, Gender and the Law in Uganda*

Challenges Faced by Children while accessing Justice and enjoying their Human Rights .....	271
What is juvenile justice?.....	272
Gaps in the juvenile law.....	273
Apprehension procedures are not fully implemented .....	274
Statutory Implications of Law of Juvenile .....	280
Sentencing.....	296
Separation from parents .....	297
Bodies concerned in promoting rights of Juvenile in Uganda.....	298
Sexual Harassment in Uganda.....	300
Theoretical frame work for sexual harassment .....	303
Dynamics of silencing and non-reporting .....	306
Data collection tools and strategy .....	309
Unwanted sexual attention .....	312
Gender harassment .....	313
Gender Harassment with Unwanted Sexual Advances and Reprisals .....	313
Patients as targets of sexual harassment .....	314
Causes of employee harassment .....	314
Perceived Contributors to Sexual Harassment .....	315
Beliefs about regional, ethnic and gender attributes .....	316
Reactions to sexual harassment.....	317
Perceived consequences.....	317
Sexual predators .....	322
<b>CHAPTER NINETEEN .....</b>	<b>326</b>
<b>Lgbt and the Law .....</b>	<b>326</b>
Criminal Provisions.....	330
Selected Examples on the Crack Down On Some Personalities.....	331

*Isaac Christopher Lubogo*

Uganda Legal Provison.....	337
Homosexuality in Ancient Uganda .....	338
Constitutional provisions.....	343
Recognition of same-sex relationships.....	344
Recognition of transgender identity.....	344
Further 2021 criminalization laws .....	344
Living conditions.....	345
Violence and harassment .....	347
Outings by newspapers.....	347
LGBT rights activism .....	348
Public opinion .....	350
The new bill explained.....	355
Lawmaker finds homosexuality 'contrary to the order of nature.....	356
Church response .....	358
Anti-LGBT legislation in Uganda and violent enforcement.....	367
Exacerbation of anti-LGBT violence and law enforcement during the COVID-19 pandemic.....	368
Violation of international human rights law and standards and the impact on health .....	369
A call to action for Uganda in light of Pride Month.....	370
<b>Scientific Statement from the Ministry of Health on Homosexuality</b> .....	<b>377</b>
<b>CHAPTER TWENTY .....</b>	<b>386</b>
<b>Pornography .....</b>	<b>386</b>
Affection exchange theory .....	388
Psychological effects .....	390
Withdrawal symptoms .....	392

## *Asexuality, Gender and the Law in Uganda*

Body image and self esteem .....	393
Sexual function .....	397
Sexual satisfaction .....	398
Sexual preferences .....	399
Sexual violence .....	402
Epidemiological studies .....	403
Effects on relationships .....	405
Relationship satisfaction .....	406
Communication .....	407
<b>CHAPTER TWENTY ONE .....</b>	<b>409</b>
<b>Prostitution .....</b>	<b>409</b>
HIV .....	412
Sex trafficking .....	412
Should prostitution in Uganda be legalized .....	413
Reasons Prostitution Should Be Legalized .....	415
<b>CHAPTER TWENTY TWO.....</b>	<b>418</b>
<b>Masturbation.....</b>	<b>418</b>
Cultural history .....	418
In modern culture.....	424
Sperm donation .....	424
Encouragement.....	425
Law .....	426
Male.....	429
Female .....	431
Frequency, age, and sex.....	433
Health effects .....	434

<b>CHAPTER TWENTY THREE .....</b>	<b>439</b>
<b>Polygamy.....</b>	<b>439</b>
<b>CHAPTER TWENTY FOUR.....</b>	<b>441</b>
<b>Polygyny.....</b>	<b>441</b>
Types of polygyny.....	442
Household organization.....	443
<b>CHAPTER TWENTY FIVE .....</b>	<b>444</b>
<b>Polyandry.....</b>	<b>444</b>
Types of Polyandry.....	444
Serial monogamy.....	445
Group marriage.....	446
Religious attitudes towards polygamy.....	446
<b>BIBLIOGRAPHY.....</b>	<b>460</b>

## **DEDICATION**



Oh God, even my God my High Tower, my refuge, my Redemeer, my only source of hope. This and many more is for you Oh God of the mighty universe.

# CHAPTER ONE



## INTRODUCTION TO ASEXUALITY

Asexuality is the lack of sexual attraction to others or low or absent interest in or desire for sexual activity.<sup>1</sup> It may be considered a sexual orientation or the lack thereof.<sup>2</sup> It may be categorized more widely to include a broad spectrum of a sexual sub-identities.<sup>3</sup> A sexuality is distinct from abstention from sexual activity and from celibacy<sup>4</sup>, which are behavioral and generally motivated by factors such as an individual's personal, social or religious beliefs. Sexual orientation, unlike sexual behavior is believed to be enduring.<sup>5</sup> Some asexual people engage in sexual activity despite lacking sexual attraction or a desire for

---

<sup>1</sup> Robert L.Crooks;Karla Baur (2016). *Our sexuality*. Cengage learning. P.300. ISBN 978-1305887428. Retrieved January 4, 2017. Last assessed on 24<sup>th</sup> January 2022

<sup>2</sup> Marshall Cavendish,ed.(2010). *Asexuality. Sex and society*. Vol.2. Marshall Cavendish. Pp.82-83. ISBN 978-0-7614-7906-2. Retrieved July 27,2013. Last assessed on 24<sup>th</sup> January 2022

<sup>3</sup> Scherrer,Kristin (2008). "coming to an Asexual identity:Negotiating Identity,Negotiating Desire". *Sexualities*. 11 (5): 621-641. Doi:10.1177/1363460708094269 PMC 2893352. PMID 20593009 last accessed on 24<sup>th</sup> January 2022.

<sup>4</sup> Margaret Jordan Halter;Elizabeth M. Varcarolis (2013). *Varcarolis foundations of Psychiatric Mental Health Nursing Elsevier Health Sciences*.p. 382. ISBN 978-1-4557-5358-1. Retrieved May 7,2014. Last assessed on 24<sup>th</sup> January 2022.

<sup>5</sup> Sexual orientation, homosexuality and bisexuality". American Psychological Association. Retrieved March 30,2013.

## *Asexuality, Gender and the Law in Uganda*

sex, due to a variety of reasons, such as a desire to physically pleasure themselves or romantic partners or a desire to have children.<sup>6</sup>

Acceptance of asexuality as a sexual orientation and field of scientific research is still relatively new, as a growing body of research from both sociological and psychological perspectives has begun to develop. While some researchers assert that asexuality is a sexual orientation, other researchers disagree. Asexual individuals may represent about one percent of the population.

Various asexual communities have started to form since the impact of the internet and social media in the mid-1990s. the most prolific and well-known of these communities is the asexual visibility and education network, which was founded in 2001 by David Jay. Asexuality is sometimes called ace (a phonetic shortening of asexual<sup>7</sup>) while the community is sometimes called the ace community by researchers or asexual<sup>8</sup>.

Because there is significant variation among people who identify as asexual, asexuality can encompass broad definitions<sup>9</sup>. Researchers generally define asexuality as the lack of sexual attraction or the lack of sexual interest but their definitions vary, they may use the term to refer to individuals with low or absent sexual desire or attractions, low or absent sexual behaviours, exclusively romantic non sexual partnerships or a combination of both absent

---

<sup>6</sup> Prause, Nicole; Cynthia A. Graham (August 2004). "Asexuality: Classification and Characterization" (PDF). *Archives of Sexual Behavior*. **36** (3): 341–356. doi:10.1007/s10508-006-9142-3. PMID 17345167. S2CID 12034925. Archived from the original (PDF) on September 27, 2007. Retrieved August 31, 2007.

<sup>7</sup> Decker, Julie S. (2015). *The Invisible Orientation: An Introduction to Asexuality*. Simon and Schuster. ISBN 9781510700642. Retrieved April 20, 2019.

<sup>8</sup> Shira Tarrant (2015). *Gender, Sex, and Politics: In the Streets and Between the Sheets in the 21st Century*. Routledge. pp. 254–256. ISBN 978-1317814764. Retrieved February 8, 2016.

<sup>9</sup> Karli June Cerankowski; Megan Milks (2014). *A sexuality: Feminist and Queer Perspectives*. Routledge. pp. 89–93. ISBN 978-1-134-69253-8. Retrieved July 3, 2014.



sexual desires and behaviours.<sup>10</sup> Self-identification as a sexual may also be a determining factor.<sup>11</sup> The asexual visibility and education network denies an asexual as someone who does not experience sexual attraction and stated, another small minority will think of themselves as a sexual for a brief period of time while exploring and questioning their own sexuality and that there is no litmus test to determine if someone is asexual. Asexuality is like any other identity at its core, it's just a word that people use to help figure themselves out. If at any point someone finds the word asexual useful to describe themselves, we encourage them to use it for as long as it makes sense to do so.<sup>12</sup>

Asexual people, though lacking sexual attraction to any gender, might engage in purely romantic relationships while others might not<sup>13</sup>. There are asexual –identified individuals who report that they feel sexual attraction but not the inclination to act on it because they have no true desire or need to engage in sexual or non-sexual activity (cuddling, hand-holding etc.), while other asexual engage in cuddling or other non-sexual physical activity. Some asexual participate in sexual activity out of curiosity. Some may masturbate as solitary form of release, while others do not feel a need to do so.<sup>14</sup>

With regard to sexual activity in particular, the need or desire for masturbation is commonly referred to as sex drive by asexual and they disassociate it from sexual attraction and being sexual; asexual who masturbate generally consider it or be normal product of the human body and not a sign of latent sexuality and may not even find it pleasurable.<sup>15</sup> Some asexual men are unable to get an erection and sexual activity by attempting

---

<sup>10</sup> Nancy L. Fischer; Steven Seidman (2016). *Introducing the New Sexuality Studies*. Routledge. p. 183. ISBN 978-1317449188. Retrieved January 4, 2017.

<sup>11</sup> Ibid

<sup>12</sup> The Asexual Visibility and Education Network. 2008. Retrieved January 6, 2016.

<sup>13</sup> Christina Richards; Meg Barker (2013). *Sexuality and Gender for Mental Health Professionals: A Practical Guide*. SAGE. pp. 124–127. ISBN 978-1-4462-9313-3.

<sup>14</sup> [https://en.wikipedia.org/wiki/Asexuality#Definition,\\_identity\\_and\\_relationships](https://en.wikipedia.org/wiki/Asexuality#Definition,_identity_and_relationships)

<sup>15</sup> [https://en.wikipedia.org/wiki/Asexuality#Definition,\\_identity\\_and\\_relationships](https://en.wikipedia.org/wiki/Asexuality#Definition,_identity_and_relationships)

## *Asexuality, Gender and the Law in Uganda*

penetration is impossible for them. Asexual also differ in their feelings toward performing sex acts.: some are indifferent and may have sex for the benefit of a romantic partner; others are more strongly averse to the idea, though they do not typically dislike people for having sex. <sup>16</sup> Many people who identify as asexual also identify with other labels.

These other identities include how they define their gender and their romantic orientation. They will oftentimes integrate these characteristics into a gender label that they identify with. Regarding romantic or emotional aspects of sexual orientation or sexual identity for example asexual may identify as heterosexual, lesbian, gay, bisexual, queer, or by the following terms to indicate that they associate with the romantic, rather than sexual, aspects of sexual orientation.<sup>17</sup>

Aromantic; lack of romantic attraction towards anyone.

Bioromantic; by analogy to bisexual

Heteroromantic; by analogy to heterosexual

Homoromantic; by analogy to homosexual

Panromantic; by analogy to pansexual<sup>18</sup>

People may also identify as a gray-A (such as a gray-romantic, demiromantic, demisexual or semisexual) because they feel that they are between asexuality and sexual attraction. While the term gray-A may cover anyone who occasionally feels romantic or sexual attraction, demisexuals or semisexuals experience sexual attraction only as a secondary component, feeling sexual attraction once a reasonably stable or large emotional connection has been created.<sup>19</sup> Other unique words and phrases used in the asexual community to

---

<sup>16</sup> [https://en.wikipedia.org/wiki/Asexuality#Definition,\\_identity\\_and\\_relationships](https://en.wikipedia.org/wiki/Asexuality#Definition,_identity_and_relationships)

<sup>17</sup> [https://en.wikipedia.org/wiki/Asexuality#Definition,\\_identity\\_and\\_relationships](https://en.wikipedia.org/wiki/Asexuality#Definition,_identity_and_relationships)

<sup>18</sup> Ibid

<sup>19</sup> ibid

elaborate identities and relationships also exist. One term coined by individuals in the asexual community is *friend-focused*, which refers to highly valued, non-romantic relationships.

Other terms include *squishes* and *zucchini*s, which are non-romantic crushes and queer-platonic relationships, respectively. Some asexuals use ace playing card suits as identities of their romantic orientation, such as the ace of spades for aromanticism and the ace of hearts for non-aromanticism. Terms such as *non-asexual* and *allosexual* are used to refer to individuals on the opposite side of the sexuality spectrum<sup>20</sup>

Since around 2000, asexuality conceptualized as a sexual orientation has begun to emerge as an identity and a movement. hypoactive sexual desire disorder (HSDD) which emerged in the late 1970s with the rise of sex therapy and is currently listed in the DSM, has gained increasing attention, promotion and a backlash of criticism with the increased influence of the pharmaceutical industry in sex research.

The relationship of these categories has often been noted but largely unexplored, and when explored, authors have tended to focus only on how much they do or do not overlap.<sup>21</sup>

## **Distinction Between Asexuality and Sexuality.**

Sexuality is the way people experience and express themselves sexually.<sup>22</sup> This involves biological, erotic, physical, emotional, social or spiritual feelings and

---

<sup>20</sup> *ibid*

<sup>21</sup><https://www.tandfonline.com/doi/full/10.1080/19419899.2013.774165?scroll=top&needAccess=true>

<sup>22</sup> Sex and society, volume 2 Marshall Cavendish.2010.p.384.ISBN 978-0-7614-7907-9.Retrieved 21 June 2017. “the term human sexuality broadly refers to how people experience and express themselves as sexual beings.”

## *Asexuality, Gender and the Law in Uganda*

behaviours.<sup>23</sup> A person's sexuality or sexual orientation determines whom they do, or do not, feel attraction toward. Sexual attraction typically describes a person's desire to have sex or form a sexual relationship with other people. It also often describes physical attraction, or lack thereof, toward others.<sup>24</sup> Romantic attraction can describe a person's expression of love within a relationship.

This relationship does not have to be sexual and a person does not have to experience both romantic and sexual attraction in order to have a sexuality.<sup>25</sup> Because it is a broad term, which has varied with historical contexts over time, it lacks a precise definition.

The biological and physical aspects of sexuality largely concern the human reproductive functions including the human sexual response cycle.<sup>26</sup> Someone's sexual orientation is their pattern of sexual interest in the opposite or same sex. Physical and emotional aspects of sexuality include bonds between individuals that are expressed through profound feelings or physical

---

<sup>23</sup> Greenberg, Jerrold S ; Bruess, Clint E; Oswalt, Sara B. (2016). *Exploring the Dimensions of Human Sexuality*. Jones & Bartlett publishers. Pp.4-10. ISBN 978-1-284-08154-1. Retrieved 21 June 2017. "Human sexuality is a part of your total personality. It involves the interrelationship of biological, psychological and sociocultural dimensions. It is the total of our physical, emotional and spiritual responses, thoughts and feelings. Last accessed on 25<sup>th</sup> January 2021

<sup>24</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>25</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>26</sup> Greenberg, Jerrold S ; Bruess, Clint E; Oswalt, Sara B. (2016). *Exploring the Dimensions of Human Sexuality*. Jones & Bartlett publishers. Pp.4-10. ISBN 978-1-284-08154-1. Retrieved 21 June 2017. "Human sexuality is a part of your total personality. It involves the interrelationship of biological, psychological and sociocultural dimensions. It is the total of our physical, emotional and spiritual responses, thoughts and feelings. Last accessed on 25<sup>th</sup> January 2021

manifestations of love, trust and care. Social aspects deal with the effects of human society on one's sexuality, while spirituality concerns an individual's spiritual connection with others. Sexuality also affects and is affected by cultural, political, legal, philosophical, moral, ethical, and religious aspects of life<sup>27</sup>

## **Types of sexuality**

1. ALLOROMANTIC: A person who identifies as alloromantic experiences romantic attraction to others.<sup>28</sup>

2.ALLOSEXUAL. This is an umbrella term. A person who identifies as allosexual typically feels sexual attraction toward other people. They may also want to have sex with a partner.

People who identify with this orientation may also identify with another sexuality, such as being gay, lesbian, or bisexual.<sup>29</sup>

### **Androsexual**

People who consider themselves androsexual feel attraction toward men, males, or perceived masculinity irrespective of whether or not they were assigned male at birth.<sup>30</sup>

### **Aromantic**

A person who identifies as aromantic may not feel any romantic attraction toward anyone. People who are aromantic may not want a relationship beyond friendship. Those who identify with this orientation may also identify with another orientation. A person's romantic attraction can differ

---

<sup>27</sup> Bolin, Anne; Whelehan, Patricia (2009). *Human Sexuality: Biological, Psychological, and Cultural Perspectives*. Taylor & Francis. Pp.32-42. ISBN 978-0-7890-2671-2

<sup>28</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>29</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>30</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

from their sexual attraction. For example, a person may not be romantically attracted to people but can be sexually attracted to some.<sup>31</sup>

## **Asexual**

Asexual is an umbrella term that encompasses a broad spectrum of sexual orientations. According to the LGBTQIA Resource Center, asexuality is a spectrum. Some people may experience no sexual or romantic attraction to anyone, while others may experience varying degrees of sexual or romantic attraction to people.<sup>32</sup>

Those who identify with this orientation do not have to abstain from sex to be asexual. Some orientations that exist within the asexuality spectrum include:

- **Sex-averse:** This is when a person is averse to or entirely disinterested in sex and sexual behavior.
- **Sex-favorable:** This is when a person has positive feelings toward sex in some situations.
- **Sex-indifferent:** This refers to those who feel neutral about sex and sexual behavior.
- **Sex-repulsed:** This refers to those who are repulsed by sex and sexual behavior.

---

<sup>31</sup><https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>32</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

- **Cupiosexual:** If someone identifies as cupiosexual, they do not experience sexual attraction but still desire to engage in sexual behavior or have a sexual relationship.
- **Libidoist asexual:** This term refers to those who are asexual and experience sexual feelings that they can satisfy with masturbation or self-stimulation.
- **Gray sexual:** Those who are gray sexual experience sexual attraction either infrequently or not very intensely.
- **Gray romantic:** People who identify as gray romantic may experience romantic attraction either rarely or not very strongly.<sup>33</sup>

### **Authoromantic**

Those who are autoromantic experience a romantic attraction toward themselves. This does not mean that they do not experience romantic attraction toward others as well.<sup>34</sup>

### **Autosexual**

Those who identify as autosexual experience a sexual attraction toward themselves. Similarly, to those who are autoromantic, people who are autosexual may also experience sexual attraction to other people.<sup>35</sup>

### **Bicurious**

People who identify as bicurious are interested in having a sexual or romantic experience with someone of the same gender. The term indicates that the

---

<sup>33</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>34</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>35</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

## *Asexuality, Gender and the Law in Uganda*

person experiences some uncertainty as to how they identify romantically or sexually.<sup>36</sup>

### **Biromantic**

People who identify as biromantic feel romantic, but not necessarily sexual, attraction to more than one gender.<sup>37</sup>

### **Bisexual**

A person who identifies as bisexual can be any gender.

Bisexuality means that a person feels attraction toward their own gender and other genders or toward anyone regardless of their gender.

Some people may also use the terms bisexual and pansexual at different times to describe their sexual orientation, the LGBTQIA Resource Center note.<sup>38</sup>

In some ways, though, a closer analogy than homosexuality is bisexuality. Many of the common assumptions about a sexuals for instance, that they just haven't come out as gay yet, that they are in denial, or that they just haven't met the right person yet echo those made about bisexuals.

A prominent theme in scholarly writing about bisexuality has been its erasure.<sup>39</sup> Kenji Yoshino has argued that both gays and straights have an interest in erasing bisexuality, because of their shared interests in “the stability of sexual orientation categories,” “the primacy of sex as a diacritical axis,” and “the preservation of monogamy.”

---

<sup>36</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>37</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>38</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>39</sup> Kenji Yoshino's *The Epistemic Contract Erasure*, STAN.L.REV



According to Yoshino, monosexuals (i.e., those who aren't bisexual) believe that bisexuals threaten or undermine these interests in some way and, thus, the monos tacitly agree to pretend that bisexuality doesn't exist. He supports this argument by, *inter alia*, pointing to the vast disparity between the lesser presence of bisexuality in the mainstream media (compared to homosexuality) and the greater percentage of bisexuals in the population (compared to homosexuals).<sup>40</sup>

Relatedly, we might compare the number of people who exhibit asexual orientation with the percentage of people who identify as asexual. Think here of Bogaert's 1% of people who say "I have never felt sexually attracted to anyone at all" compared with the small number of people who identify as asexual, which hasn't been studied but is suggested anecdotally by how few people have heard of asexuality much less met someone who so identifies. This is all the more striking in light of a comparison between the number of people with asexual feelings and the number with gay and bisexual feelings. In Bogaert's study, the percentage of people who reported no attraction ever was very similar to the percentage of those with same-sex attractions, whether homosexual or bisexual.

There is another link between asexuality and bisexuality: Though the data are far from definitive, early studies seem to suggest that a disproportionate number of asexuals identify as bisexual—or biromantic in their romantic attractions. "Bi-asexual" is the term that asexuals use for the combined identities (rather than for people who are sometimes asexual and sometimes not, who are instead labeled "gray-As").

Some asexuals link bisexuality to asexuality, observing that it would make sense if more asexuals were bisexuals "since sexual attraction is not a factor, "or as one subject who so identified put it, "The things I find attractive, I find attractive in both sexes." One researcher observes, "For [some] participants, an asexual identity that conveys a lack of sexual attraction opens the door to

---

<sup>40</sup> Yoshino, *Bisexual Erasure*

## *Asexuality, Gender and the Law in Uganda*

not using gender as a screening mechanism for romantic partners.” In other words, if you don’t care about having sex (as in sexuality), then who compels you would depend less on the person’s sex (as in sex/gender).<sup>41</sup>

This perspective depends, however, on the assumption that bisexuality means not caring about sex/gender, but this is only one strand or view of bisexuality. Some bisexuals report very gendered desires—of whatever sorts—directed toward both men and women.<sup>42</sup>

### **Demiromantic**

People who identify as demiromantic usually do not feel romantic attraction to people with whom they do not have a strong emotional bond.<sup>43</sup>

### **Demisexual**

A person who identifies as demisexual typically only feels sexual attraction toward a person with whom they have already established a strong emotional bond.

Some people who are demisexual may have no interest or only a slight interest in sexual activity.

### **Gay**

A person who identifies as gay typically only feels sexual attraction toward people of the same gender. Socially, people use this term to refer to men who are romantically and sexually attracted to men. However, those in the community use it as an umbrella term.

---

<sup>41</sup> Janet Halley, *Split Decisions* (on the distinction between sex 1 and sex 2)

<sup>42</sup> Emens, *Intimate Discrimination* (discussing these conflicting views).

<sup>43</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

### **Gynesexual or gynosexual**

People who identify as gynesexual feel sexual attraction toward women, females, and perceived femininity irrespective of whether or not they were assigned female at birth.<sup>44</sup>

### **Heteromantic**

Those who are heteromantic may experience romantic attraction, but not necessarily sexual attraction, to those of a different gender.<sup>45</sup>

### **Heterosexuality**

People who are heterosexual, or “straight,” typically feel sexual and romantic attraction toward people who are of a gender different from their own.<sup>46</sup>

### **Homoromantic**

Homoromantic refers to people who are romantically attracted to those of a similar gender to their own. They may not be sexually attracted to people of the same gender.<sup>47</sup>

### **Homosexuality**

Homosexuality is a term describing those who are emotionally and physically attracted to people of the same gender. However, the LGBTQIA Resource Center state that this term is outdated and may have negative connotations due to the past. Gay identity discourse provides key language and models for asexuality, as it has done for other sexual identities. Aces speak of “coming out” about their asexuality, and about the significance of finding other people like them and forming communities. Psychologists explicitly draw on models

---

<sup>44</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>45</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>46</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>47</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

## *Asexuality, Gender and the Law in Uganda*

of identity development for homosexuality to examine the formation of asexual identity.<sup>48</sup> Whether asexual identity is a “queer” identity is another topic for debate within asexual circles.<sup>49</sup> Moreover, as noted above, many of the common responses to asexuality sound familiar: They sound like comments made to gay people not too long ago (or still in some places). For instance, recall these five items from Swankivy’s top-ten list, as comments made to a woman:

- 11) “You hate men.”
- 9) “You can’t get a man.”
- 6) “You just never had me in your bed.
- 4) “You were sexually abused as a child.”
- 2) “You just haven’t met the right guy.”

As one reporter writing about asexuality put it, “[I] isn’t that how people thought about homosexuality 100 years ago, that they could pinpoint the reason as to why it existed?” Of course, one striking difference between the responses to homosexuality and asexuality is the violence of the state’s reaction.

### **Lesbian**

Those who identify as lesbian are usually women who feel sexual and romantic attraction to other women. Some nonbinary people, who do not identify with the traditional binary sexes (male and female), may also identify

---

<sup>48</sup> V. Cass, *Homosexuality identity Formation: A Theoretical Model*, 4J *Homosexuality* 219 (1979)

<sup>49</sup> AVEN FAQs, <http://www.asexuality.org/home/general.htm#def1>

as lesbians. This may be because they feel a closer connection to womanhood and are mainly attracted to women.<sup>50</sup>

### **Monosexual**

Monosexual is an umbrella term encompassing all sexual orientations that feel a romantic or sexual attraction toward only one gender.

Some sexual orientations under this term include heterosexuality, gay, and lesbian.<sup>51</sup>

### **Multisexual**

Multisexual is a broad term that encompasses all sexual orientations in which people are attracted to more than one gender.

Some sexual orientations under this term include bisexual and omnisexual.<sup>52</sup>

### **Pansexual and omnisexual**

These sexual orientations refer to people who feel attraction toward people of all genders and sexes.

A typical identifier for those who are pansexual is that gender is not a huge factor in sexual or romantic attraction. While there is overlap between these two terms and bisexuality and polysexuality, some people may prefer to use one term over another.<sup>53</sup>

### **Panromantic**

---

<sup>50</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>51</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>52</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>53</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

## *Asexuality, Gender and the Law in Uganda*

This is a term that refers to those who experience romantic attraction, but not sexual attraction, to someone of any gender or sex.

### **Polysexual**

People who identify as polysexual feel sexual or romantic attraction toward more than one gender.<sup>54</sup>

### **Polyamory.**

Asexuality might seem the opposite of polyamory, the term for multiparty sexual loving relationships (distinct from traditional polygamy).<sup>55</sup> Whereas polyamorists typically want more sex with more people than is usual, asexuals want less sex with fewer people than is usual. Interestingly, though, the two sexual forms have more overlap than expected.

Aces and polys can come together around a shared interest in relationship forms other than monogamous sexual pair bonds. The complicated networks of relationships asexuals may embrace is vividly portrayed in the film *(A)sexual*.<sup>56</sup> Midway through the film, asexual activist David Jay makes a presentation at a college about all the different relationship forms and connections we might want to have, if we were asexual, using a diagram of his life and many close connections to others, with different forms and degrees of closeness.<sup>57</sup> The diagram he draws is reminiscent of the graphical illustrations polyamorists may draw of their relationship forms, some of which have names, such as vee and triad.<sup>58</sup> The difference of course is that the polyamorists' relationships are typically organized around sex—which

---

<sup>54</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>55</sup> Emens, *Monogamy's Laws*: Martha Ertman

<sup>56</sup> *(A) SEXUAL* (Dir. Angela Tucker, 2011)

<sup>57</sup> Id.

<sup>58</sup> Emens, *Monogamy's Law*

relationships have it and which do not, and whether those relationships are sexually exclusive—whereas the asexuals’ relationships are less likely to privilege that component. The intersection between asexuals and polyamorists reflects a broader synergy: according to David Jay, people who identify as highly sex-positive, after overcoming their initial skepticism about asexuality, often end up the strongest allies and supporters.

**d) No Sexual Orientation.** Asexuality bears some resemblance to a variety of sexual orientations (and models<sup>59</sup>), but one could also view it as challenging the whole idea of sexual orientation.<sup>60</sup> We will consider this view at the end of this Part.

## **Queer**

People of all sexualities under the LGBTQIA+ umbrella may also identify as queer. They may use the term “queer” to reclaim it, as historically many have used the term as a slur. Unless a person is a member of the LGBTQIA+ community, it is generally not a good idea to use this term.<sup>61</sup>

## **Skoliosexual**

People who identify as skoliosexual typically only feel attraction toward people who are nonbinary.<sup>62</sup>

## **Spectrsexual**

---

<sup>59</sup> Whether polygamory is a sexual orientation is a contested question

<sup>60</sup> (A) SEXUAL (Dir. Angela Tucker, 2011) quoting one AVEN pride marcher, saying. “we are almost like we don’t have asexuality . I always felt like I don’t have asexuality”

<sup>61</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

<sup>62</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

## *Asexuality, Gender and the Law in Uganda*

Spectrasedual is a term that describes those who are romantically and sexually attracted to multiple sexes, genders, and gender identities but not all of them.<sup>63</sup>

---

<sup>63</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>



## CHAPTER TWO



### **WHY DOES SEXUALITY MATTER?**

A person's sexuality determines whom they feel romantic or sexual attraction toward. People may feel that labeling their sexuality helps them deal with any oppression or difficulties they face. It may also help them find a community in which they can share their experiences.

People may also find it helpful to know the terms describing other sexual orientations. By knowing the terminology, people can better understand another person's sexuality.<sup>64</sup>

#### **Defining Asexuality as an Identity: Elements and Distinctions**

This Section defines asexuality by identifying its important elements as well as the key distinctions that form its boundaries. Note that asexuals, in their own terms, have defined everyone else as sexuals. In this way, the previously unmarked (and therefore naturalized) category now has a name, little known though it is thus far.

##### **1) Principal Elements.**

---

<sup>64</sup> <https://www.medicalnewstoday.com/articles/types-of-sexuality#definition>

## *Asexuality, Gender and the Law in Uganda*

The precise contours of asexuality are not easy to establish. Those who identify as asexual sometimes “aces” for short<sup>65</sup> question the boundaries of the category, and a common theme is the “diversity of experience within the community.” But asexual identity is generally defined by two related ideas: lack of sexual attraction and lack of choice.

**a) Lack of Attraction.** First, asexual identity turns on the lack of attraction: “The definition of asexual is ‘someone who does not experience sexual attraction,’” Attraction is often distinguished from arousal (or desire); as one researcher put it, “If sexual desire or arousal were present, asexuals argued that they were not ‘directed’ at anyone.” How little attraction is enough to qualify for asexuality is unclear. Sometimes AVEN characterizes asexuality as if it involves zero attraction, as in the definition just quoted; sometimes, very little attraction suffices, as in this line from the same AVEN page: “This community is [for] people who share the common factor of having very little or absolutely no sexual attraction to other people.”

AVEN’s information pages are quick to assure readers that “there is no hierarchy of asexuality.”<sup>66</sup> But the need to broadcast this claim betrays the particular anxieties of authenticity that haunt this community. Replies to a new-member question about whether most asexuals are “virgins” prompt many relativistic assertions about diversity, but also a few replies attributing false consciousness or excessive compromise to those who have sex. For instance, one member replied, “A lot are. But not all. I think some people try really hard to ‘fit in’ [in] this society, but are never really happy not being true to themselves.” This member implies that having sex with someone else would involve “not being true” to oneself—suggesting that, under one view,

---

<sup>65</sup> Shawn Landis, *Why Are Asexuals Aces?* 101

<sup>66</sup> Genera FAQ, AVEN, <http://www.asexuality.org/home/general.htm1#def1>

the true asexuals have no sexual urges involving other people, and so sex is a pure compromise.

**b) Lack of Choice.** Second, self-identified asexuals understand asexuality to involve no choice about this lack of attraction. “Unlike celibacy, which is a choice,” AVEN reports, “asexuality is a sexual orientation.” The contrast with celibacy is frequently drawn. The following comment, from a participant in a 2008 study, is typical: “**I don’t desire sex, so I am asexual.** I am not celibate, as this implies a desire for sex that is repressed.”<sup>67</sup> An important idea among asexuals is that they are not resisting their desires. Unlike many people who choose celibacy whether for personal or emotional or religious reasons asexuals have not decided to avoid sex despite sexual attraction. They simply do not feel attracted to other people. Note that some asexuals choose to have sex, despite not wanting it, typically because it is important to a partner (as sexuals also choose to do sometimes). Thus, for asexuals, it is a choice whether to do sex, but it is not a choice whether to want sex.<sup>68</sup> Choice is therefore a key axis in the discourse on asexuality. However, the discourse of choice here operates somewhat differently than in the “not a choice” discourse about homosexuality.<sup>69</sup> In the context of homosexuality, gays (sometimes) want to say that gayness isn’t a choice, because anti-gay moralism thinks that the “choice” of gayness is immoral. Gays (sometimes) say, in response, that their indulgence in (what some think is) immoral sexual activity is natural for them and therefore unavoidable. By contrast, rather than making immoral choices, asexuals appear to be aligned with the super-moral celibates who choose not to have sex. Asexuals feel misunderstood by this characterization, with many defending the rights of other people to have whatever sex they like, and defending themselves against charges of repression or prudishness. Like some homosexuals, asexuals typically assert that their “sexual orientation” is an essential identity, not a choice. But unlike

---

<sup>67</sup> Kristin S. Scherrer. Coming to an asexual identity;

<sup>68</sup> Susan Appleton, formulated the distinction

<sup>69</sup> Edward Stein, *Born That way? Not a choice?*

homosexuals, asexuals argue against an implied accusation of hyper-morality rather than against immorality.

## **2) Key Distinctions.**

Two key distinctions also help to shape the category of asexual identity: sex with self-versus sex with others, and romantic versus aromantic.

### **a) Distinguishing Sex with Oneself from Sex with Other People.**

Lack of sexual attraction is importantly distinguished from lack of sexual activity. Some self-identified asexuals are sexually active, whether with themselves or with others, and some are not.<sup>70</sup> One recent study found that the rates of masturbation among asexuals were comparable to the rates in the non-asexual population. The study observed, however, that asexuals talked about masturbation in ways that were highly clinical or mechanical, using metaphors like cleaning out the plumbing. “Physical” urges are distinguished from erotic attraction. For instance, these questions about masturbation posted on AVEN “Do asexuals masturbate? Do they want to?” engender replies like “Sure, many do. Most seem to do it for a physical need, or like I do, to sleep”; or “I don’t. I have no sexual urges or sexual needs. Some asexual people feel physical ‘urges’ and some don’t. I don’t.” On the one hand, one might ask how robust this distinction between sexuals and asexuals is; in other words, how erotic is the language that sexual people use to describe masturbation? On the other hand, some descriptions of masturbation by asexuals would be more surprising among sexuals: for instance, one AVEN member writes, **“Yes, I masturbate... but my mind is blank when I do so. No hot guys or girls or anything in there.”**

---

<sup>70</sup> Kristin S Scherrer Coming to an Asexual identity

## **Distinguishing Romance from Sex and Friendship.**

Asexuals divide themselves into the subtypes of romantic and aromantic. Some asexuals feel romantic attractions, fall in love, and pursue romantic relationships;<sup>71</sup> some do not.<sup>72</sup> (Some also have sexual relationships, but cast in the language of compromise rather than desire, as noted earlier. The axis of romantic versus aromantic is an important one among asexuals.

This axis of identity raises the question of what distinguishes romance from sex, on the one hand, or friendship, on the other. As to what counts as sex, one scholar thinks that asexuals have an unusually narrow idea of what counts as sex. There is something to this. A broad definition of sex would presumably include masturbation, which asexuals generally do not count as sex, and many engage in, as discussed above. Moreover, many asexuals explicitly embrace a traditional definition of sex as requiring penetration. In theory, some asexuals might identify as asexual because they define sex narrowly. But I think it is more likely that many asexuals define sex narrowly because they understand themselves to be asexual. That is, because they are not very interested in sex and its details, they choose the prevailing cultural definition of “sex” which still seems to be vaginal or anal penetration.<sup>73</sup> Other asexuals take a broader definition, however.

On the other side, what distinguishes romance from friendship? One asexual answered this question with another question: “What is the difference between a romantic sexual partner and a friend with benefits?” This rhetorical question draws an analogy to the sexual world, offering only the answer to both that,

---

<sup>71</sup> Scherrer, Bogaert; Chasin; AVEN FAQs

<sup>72</sup> Kristin Scherrerr, *Coming to an Asexual identity: Negotiating identity, Negotiating desire*, 11 *SEXUALITIES* 621,627 (2008)

<sup>7373</sup> Thea Cacchioni, *Heterosexuality and the Labour of Love; A contribution to the recent debates on female sexual dysfunction.*

They're not the same. Romance and friendship just feel qualitatively different, even without involving sexual attraction. The difference between an asexual romance and a friendship is in the type of attraction experienced. This can also translate to behaviour like wanting to give and receive hugs, kisses, cuddles, etc. many asexuals enjoy physical, non-sexual closeness whether they are romantic or aromantic. And no, sex is not necessary for romance.<sup>74</sup>

As this passage suggests, this question appears no easier to answer in the asexual world than in the sexual one. But the asexual context sets the question more starkly into relief, inspiring innovative and interesting thinking. For example, David Jay recently wrote a short essay arguing that we need a more robust vocabulary for distinguishing types of nonsexual touch.

### **3) Identity in Relation.**

“I was twenty-six when I learned I was very tall. For most of my life I had been considered normal height. But at twenty-six, suddenly, strangers in elevators began leaning toward me conspiratorially and asking, ‘How tall are you anyway?’ as if we’d been having a conversation on the subject. . . . What had happened was that I’d started being read by others ‘as a woman.’ . . . In many ways I imagine what happened to me is not so much different from what happens to many teenagers once their bodies hit puberty and are seized by the cultural machine.” Riki Ann Wilchins, *What Does It Cost to Tell the Truth?*<sup>75</sup> Asexuality is importantly shaped by its position on the outside of a sexual society. This interplay has implications both for our understanding of the identity and experience of asexuality, and for our understanding of the contours of the broader culture. This Section analyzes that interaction, laying

---

<sup>74</sup> No longer blogging, *Asexuality 101*, <http://efgreyace.wordpress.com/ace 101/>

<sup>75</sup> Riki Ann Wilchins, *What Does it Cost to Tell the Truth/*, *Read my Lips*.

the groundwork to examine intersections and analogies with other identity categories that have some overlap with asexuality.

For many self-identified asexuals, puberty was a critical developmental moment. The particular importance of that period for aces is less about their own physical changes, though, than about other people's emotional and behavioral changes. "I realized I was asexual about the same time I realized I was short, when I was about 15," said one female asexual, who is 5-foot-1; "I realized I was short when everyone grew taller than me, and I realized I didn't have sexual feelings when everyone else started expressing and experimenting with theirs." Asexuality as an identity need not involve distress, as discussed earlier, but some degree of friction seems to characterize asexuals' interactions with a sexual culture. As one person put it, in response to questions about what it is like to live in a sexual world:

It gets frustrating trying to explain to some people that I just don't have an interest in sex. Some get downright nasty about it, and I constantly have to deal with comments like, "You must have had bad experiences," "You just haven't met the right person yet," or "Your partner must be bad in bed." One guy was absolutely convinced I just hadn't been with a guy with a large enough...er... endowment. I finally just turned and walked away from that one because my message was not sinking in and he wouldn't leave me alone about it.

Many asexuals lament the constant barrage of diagnoses they receive whenever they disclose their asexuality. Indeed, listing the pathologizing attributions made to a sexuals seems a mainstay of asexual community formation. An asexual who goes by the name of Swankivy made a name for herself with what she calls the "Asexuality Top Ten." This list of the "top ten

## *Asexuality, Gender and the Law in Uganda*

most common misconceptions” about asexuals nicely captures the most common interpellations, at least of a female asexual.<sup>76</sup>

- 10) “You hate men.”
- 9) “You can’t get a man.”
- 8) “You have a hormone problem.”
- 7) “You’re overly involved in your busy life.”
- 6) “You just never had me in your bed.”
- 5) “You are afraid of getting into a relationship.”
- 4) “You were sexually abused as a child.”
- 3) “You are a lesbian.”
- 2) “You just haven’t met the right guy.”
- 1) “You just got out of a bad relationship.” . . . Honorable mentions [include] “You must be religious.”<sup>77</sup>

Each item links to a set of responses to the particular accusation. The list has multiple purposes: Swankivy explicitly aims to educate “sexuals” who do not understand asexuality, but also to “help others in similar situations understand that asexuality isn’t an illness and they are not alone.”<sup>78</sup> In this way, the list serves a community and identity building function among

---

<sup>76</sup> A parallel game of asexuality bingo was made by male asexual who goes by jmerry: <http://swankivy.com/LJ/bingo.jpg>.

<sup>77</sup> Swankivy, Asexuality Top Ten, <http://swankivy.com/writing/essay/philosophy/asexual.htm1>

<sup>78</sup> See, e.g., Olly Bootle, No Sex Please: An Asexual Life, The INDEP, Mar.17, 2009



asexuals, through humor and indignation about a common set of interactions with the surrounding sexual world.

The type of comments on Swankivy's list plague many asexuals. For example, in the recent documentary (A)sexual, David Jay confronts a series of questions and challenges at the asexual community's first time participating in an LGBT Pride March. These responses include simple disbelief from one person, "But you do eventually? . . . Not ever?" a guy who asks for Jay's number and whose friends remark, as Jay walks away, "He's a Christian"; and finally, one person who says with real feeling, "I pity you."<sup>79</sup>

Appearing as a talking head in the film, sex columnist Dan Savage describes asexuals' marching in the Pride parade as "hilarious", he observes, "I know from giving advice that there a lot of people who are deeply conflicted about their sexuality . . . and it'd be easier to say I'm not sexual." Disbelief is the usual way to describe the response to asexuality, but the demand for explanation may be a more apt characterization of the typical response.

Many people may be perfectly prepared to believe that asexuals exist; openness to the diversity of human experience may eliminate surprise at any new identity claim that emerges. But, implicitly or explicitly, they may nonetheless want more of an explanation for asexuality than they would expect for other identities.

#### **4) The Problem of Diversity.**

These kinds of comments are a source of great frustration to self-identified asexuals, but they also raise a real issue. There are many reasons that someone might identify as asexual. Some people surely do identify as asexual on the way to some other identity, or because they are struggling with their sexuality due to negative experiences or repressive influences. As one asexual put it in an interview: "I think there are some people who identify themselves as asexual who have a fear of sex, who may have had something traumatic in

---

<sup>79</sup> (A) SEXUAL (Dir. Angela Tucker, 2011).

## *Asexuality, Gender and the Law in Uganda*

their past that's put them off. I'm not denying that they may make up a proportion of the asexual population, but I do think there [are] many who are also physiologically different, wired not to be attracted to other people."<sup>80</sup>

Acknowledging the many paths to asexuality, as this asexual does, is relatively unusual. The conflicted types are a challenge for the asexual community, since they seem to confirm the assumptions that the sexual world typically has about asexuals. Note that it is hard even to call these assumptions "stereotypes" since that term suggests a category that people use to organize the world; asexual is not a widely recognized category yet, so many outsiders' responses to an asexual are the reaction to a first encounter, rather than a developed stereotype about the group.

Thus, AVEN explicitly embraces a diverse community, as noted earlier, and the website tries to embrace most comers, but the site also tries to draw some lines.<sup>81</sup> Consider this question and answer on the site's "Frequently Asked Questions" page:

Qn: I find people attractive and I get horny, but I dislike sex and would never do it. Am I asexual? ANS: If you're turned on by other people then you don't fit the definition. Asexuality is about lack of attraction to other people, not about lack of activity. Asexuals do not get horny toward other people; they would feel completely satisfied if they never shared a single sexual experience for the rest of their lives. . .<sup>82</sup>

Ultimately, acknowledging diversity while drawing boundaries is a challenge for asexuals, as it is for many identity groups. The fact that some people fit

---

<sup>80</sup> Olly Bootle, No Sex Please: An Asexual Life, THE INDEP, Mar. 17, 2009

<sup>81</sup> AVEN FAQ, <http://www.asexuality.org/home/general.htm#def1>

<sup>82</sup> AVEN FAQ, <http://www.asexuality.org/home/general.htm#def1>

the common assumptions about asexuality does not, of course, invalidate the identity of others. But the diversity covered by the label asexual presents particular difficulties because, for many asexuals, explaining themselves in response to widespread disbelief is a defining issue.

### **5) Responding to the Skepticism.**

How might asexuals answer the disbelief? Do any responses cause skeptical sexuals to open up to the idea of asexuality as a plausible human variation? A few possibilities follow.

Quantity Contrasts. We tend to believe that some people are more sexual than others even that some people might be hypersexual so why not less sexual or not at all sexual? Perhaps people vary widely on the quantity axis in both directions.

## **Intersections: Comparing Identity Categories**

Asexuality has a set of intriguing intersections with other identity categories. These relationships between identities open up questions about how to think about asexuality and also how to think about these other categories. This Section compares asexuality with the categories of sexuality, gender, and disability.

## CHAPTER THREE



### HISTORY OF ASEXUALITY

Asexuality first originated as a concept in the late 1890s. In his *Sappho Und Socrates*, German sexologist Magnus Hirschfeld made a reference to people without any sexual desire, referring to them as *anesthesia sexual*. The modern understanding of asexuality was first consolidated in the 20<sup>th</sup> century, particularly with its inclusion in the 1940s sexual orientation rating scale known as the Kinsey Scale.

While category X was created for those with no social-sexual contacts or reactions<sup>83</sup>, psychologists in the 1970s further established the distinction between a lack of sexual behavior and that of sexual attraction. The term slowly gained prominence in the following decades and was used to expand received ideas about sexuality, from appearing in a New York radical feminists' manifesto to featuring in a much-discussed personal essay by Zoe O'Reilly, which provoked responses through the late 1990s and early 2000s.<sup>83</sup>

---

<sup>83</sup><https://feeld.co/blog/feeld-guides/definition-asexual#:~:text=Asexuality%20first%20originated%20as%20a,them%20as%20'anesthesia%20sexual>

In 2001, David Jay founded the Asexual visibility and education Network (AVEN), which became the most prominent platform for asexual communities. The following year, New York passed the sexual orientation Non-Discrimination Act, which was the first and currently only, piece of legislation that mentions asexuality.<sup>84</sup>

## **In Pop Culture.**

One of the iconic mentions of asexuality was in David Bowies 1974 Rolling Stones interview with William S. Burroughs. other celebrities who are believed to be or have been asexual include Isaac Newton, Nikola Tesla, H.P. Lovecraft, Morrissey and Caitlyn Jenner. Asexuality was also explicitly featured in the adult animated series Bojack Horseman, where one of the main characters, Todd Chavez, comes out as asexual. Bojack Horseman changed asexual representation forever by devoting a multi-season arc to Todd and his path to self-discovery and acceptance, which has included him attending an asexual meetup group and going on a date with another asexual, Yolanda Buenaventura (Natalie Morales).<sup>85</sup>

### **Awareness days, events and symbols.**

Asexual Awareness week was founded by Sara Beth Brooks in 2010 and takes place 25-31 october. The asexual flag consists of four horizontal stripes in black, grey, white and purple while wearing a black ring is considered another popular symbol. This is the timeline of the asexual history worldwide. The briefness of this time line can be attributed to the fact that acceptance of asexuality as a sexual orientation and field of scientific research is still

---

<sup>84</sup><https://feeld.co/blog/feeld-guides/definition-asexual#:~:text=Asexuality%20first%20originated%20as%20a,them%20as%20`anesthesia%20sexual`>

<sup>85</sup><https://feeld.co/blog/feeld-guides/definition-asexual#:~:text=Asexuality%20first%20originated%20as%20a,them%20as%20`anesthesia%20sexual`>

## *Asexuality, Gender and the Law in Uganda*

relatively new.<sup>86</sup> Several of these events refer to historical essays and studies on sexual behavior. While modern discussion of asexuality focuses on lack of sexual attraction, rather the research on human sexuality and sexual orientation has recently started making said distinction.<sup>87</sup>

In 1869, Karl-Maria Kertbeny, in the same pamphlets arguing Prussian sodomy law where he coined the terms homosexual and heterosexual also used the word monosexuals to refer to people who only masturbate. In 1896, German sexologist Magnus Hirschfeld wrote the pamphlet *Sappho and Socrates*, which mentions people without any sexual desire and links them to be concept of anesthesia sexual.<sup>88</sup>

In 1897, German sexual reformist Emma Trosse gave the first definition of asexuality in her work *Ein Weib? Psychological biographische: Studie uber eine kontrarsexuelle*. In 1948 the Kinsley scale included the category x for males who reported no socio sexual contacts or reactions; according to research, 1.5 % of adult male subjects fell into this category.

In 1953, the Kinsey Scale included category x for females who reported no socio-sexual contacts or reactions; according to research, 1.9% of female interviewees fell into this category.<sup>89</sup> In 1969, Anton Szandor La Vey in his book *The Satanic Bible* referenced asexual and asexuality, stating that Satanism condones any type of sexual activity which properly satisfies your individual desires be it heterosexual.

---

<sup>86</sup> Katherine M. Helm (2015). *Hooking Up: The Psychology of Sex and Dating*. See also British moel Yasim Benoit is a prominent aromantic asexuality activist who has created the twitter hashtag #ThisIsWhatAsexualLooksLike

<sup>87</sup> Asexuality is not celibact or abstinence. Here is what it is and isn't. Georgia: WarnerMedia

<sup>88</sup> Waters Micheal (March6, 2020) *Finding Asexuality in the Archives*.

<sup>89</sup> Kinsey, Alfred C; Pomeroy, Wardell B, Martin, Clyde E, (1948) *Sexual Behaviour in the human female*

In 1972, the asexual manifesto written by Lisa Orlando is published by the New York Radical Feminists and circulates within feminist circles. In 1973, activists at Barnard College were pictured to include “asexual” on aboard advocating to choose your own label and had their picture featured in February/ March 1973 edition of *off our backs*. In 1974, singer and composer David Bowie discussed asexuality in *Rolling Stone* in the article *David Bowie in the conversation on sexuality with William S. Burroughs*.

In 1977, Myra Johnson wrote one of the first academic papers about asexuality as part of the book *The Sexually Oppressed*. She described asexuality as a complete lack of sexual desire, while those who do experience sexual desire but have no wish to satisfy it with others were labeled as autoerotic. Johnson focused on the problems experienced by such women, who she felt were often ignored by the sexual revolution and feminist movements of the time.

In 1979, in a study published in *advances in study of affect*, Michael D. Storms reimaged the Kinsey Scale as a two-dimensional map which included asexuality, defined as exhibiting little to no homo-eroticism nor hetero eroticism. This type of scale accounted for asexuality for the first time. Storms conjectured that many researchers following Kinsey’s model could be mis-categorizing asexual subject as bisexual, because both were simply defined by a lack of preference for gender in sexual partners.<sup>90</sup> In 1983, the first study that gave empirical data about asexuals was published in 1983 by Paul Nurius, concerning the relationship between sexual orientation and mental health. The study used a variant of Kinsey’s model, the scored participants according to sexual behavior and desire for it. In 1989, American talk show host Sally Jesse Raphael interviewed Toby (alias of Jim Sinclair), a then self-described androgynous and nonsexual person. In 1993, the book *Boston Marriages: a Romantic but Asexual relationship among*

---

<sup>90</sup> Storms, Michael D. (1980) “Theories of Sexual Orientation “

## *Asexuality, Gender and the Law in Uganda*

contemporary lesbians by Esther D. Rothblum and Kathleen A. Brehony was released.

In 1994, Anthony Bogaert, conducted a study published in the *Journal of Sex Research* that concluded that 1 in 100 persons identified as asexual. In 1997, Zoe O'Reilly published the article *My life as an amoeba* in the *StarNet Dispatches* webzine, a first-person exploration of asexuality that sparked responses through the late 90s and early 2000s by people who identified with it.

In 2000, the Yahoo group *Haven for the Human Amoeba* was founded, one of the original online asexual communities. In 2001, David Jay founded the *Asexual Visibility and Education Network (AVEN)*, which became the most prolific and well known of the various asexual communities that started to form since the advent of the world web and social media. In 2002, New York passed the *Sexual Orientation Non-Discrimination Act*, which was the first, and is currently the only piece of legislation that mentions asexuality in the world.

In 2004, psychologist Anthony F. Bogaert published "Asexuality: prevalence and associated factors in a national probability sample in the *Journal of Sex Research*. According to this paper, 1% of a 1994 British probability sample indicated feeling no attraction for males nor females. The new scientist dedicated an issue to asexuality in response to Bogaert's paper.

In 2005, A common symbol for the asexual community is a black ring worn on the middle finger of the right hand. The material and exact design of the ring are not important as long as it is primary black. This symbol started on AVEN in 2005. Stephen Hillenburg revealed that *SpongeBob SquarePants* is sexual.



*Isaac Christopher Lubogo*

IN 2006, In January, David Jay appeared on ABC's *The View* and later in march of that year, he appeared on MSNBC's *Tucker* program, hosted by Tucker Carlson. On both programs he discussed asexuality.

IN 2009, AVEN members participated in the first asexual entry into an American pride parade when they walked in the San Francisco Pride Parade.

2010, The asexual pride flag was introduced to the public. The asexual pride flag consists of four horizontal stripes: black, grey, white, and purple from top to bottom. Asexual Awareness Week, now called Ace week, was founded by Sara Beth Brooks in 2010. It occurs in the latter half of October, and was created to both celebrate asexual, aromantic, demisexual, and grey-asexual pride and promote awareness.

In 2011, *The Carnival of Aces*, a monthly blogging carnival run by *The Asexual Agenda*, was launched in May with the topic of "coming out". *The Carnival of Aces* still runs monthly.

In 2012: The first International Asexual Conference was held at the 2012 World Pride in London.

In 2013, The Diagnostic and statistical Manual of Mental Disorder, Fifth Edition changed the diagnosis of hypoactive sexual desire disorder conditions to include an exception for people who self-identify as sexual.

In 2014, Dr. Pragati Singh, a gray asexual, launched a Facebook Group called "Indian Aces" for Indian asexual. The first Asexual Census is an annual survey of the asexual community run by the AVEN survey team, promoted among various online asexual communities. In survey of the asexual community run by the AVEN survey Team, promoted among various online asexual communities. In 2014 there were 14,210 respondents (1,880 aces and 3,330 non-aces).

In 2015, Dr. Pragati Singh launched "platonicity", an asexual dating platform. The "site" used a Google Form which the user entered their

## *Asexuality, Gender and the Law in Uganda*

information. Singh would match respondent up “manually” with other users by their answers to questions on the form using an “excel sheet “and “template “she had created. Ultimately, she closed the “site” in 2016 due to an overwhelming response saying “I know how to handle so much as I love to do this, it drains me.

In 2016, Todd Chavez, a character on the Netflix series *BoJack Horseman*, came out as asexual in the show’s season 3 finale. Joe Parrish became the United as asexual in the show’s Season 3 finale. Joe Parrish became the United States first openly asexual state election candidate. The *Asexual* journal was launched in October by Michael Paramo as “a way to counteract the invisibilisation and invalidation of asexuality by publishing the perspectives of ace, aro and agender authors.

In 2017, Nabil Allal and A’laa Yasin launched the “Asexuality in Arabic “social media groups. The podcast “Sounds Fake but Okay” is launched, hosted by Sarah Costello and Kayla Kaszyca identifies as aro ace”, while Kaszyca identifies as “demisexual and straight.

Isaac Christopher Lubogo

## CHAPTER FOUR



### SEXUAL LAW

*“It is hard to unthink what you know.” —Catherine A. MacKinnon.<sup>91</sup>*

The rise of asexual identity, discussed in the previous Parts, underscores how powerful a grip sex and sexuality have on our current world. Sex is so important that even those who are not interested in doing it with other people feel a need to organize and express their identity in terms of that lack of interest in sex. The demand that we identify and confess our sexual selves is so powerful that it extends even to those whose deepest sexual secret is that they’re “just not that into [it].”<sup>92</sup> Asexual self-elaboration therefore offers a fascinating lens through which to view our legal system’s relationship to sex. This Part considers what can be learned by looking at our laws through the metaphor of asexual eyes. Asexuals are often seen as lying beyond the law. For instance, one recent critical work observes that, “Possibly as a result of its lack of behavior and desire, [asexuality] does not draw attention to itself, and has not historically been perceived as morally or legally wrong.” On one level this is true. Asexuality has not been subjected to the kinds of coercive restrictions that homosexuals have faced in this country, such as explicit immigration restrictions and criminal prohibitions, as the next Part will

---

<sup>91</sup> Catherine A. Mackinnon, *Sexual Harassment: its first Decade in court* (1986)

<sup>92</sup> Foucault, *The History of Sexuality*, Vol 1

address. On the other hand, the idea that asexuality lies outside of law betrays a rather narrow conception of law. This view assumes that law consists merely of prohibitions, and fails to recognize the range of subtler regulatory functions of law. Many of these operate to the detriment of asexuals, while a few may accrue to their benefit, as the examples presented in this Part show.

## **A. Marriage Law: Exclusions and Omissions.**

### **1) Sexual Requirements.**

As a general rule, marriages are valid even without sexual consummation. But in several ways, legal marriage effectively requires consummation for its fullest ratification. For instance, in some states, non-consummation of a marriage is a ground for voiding the marriage.<sup>93</sup> Failure to consummate renders it voidable, however, not void; the exception that proves this rule is South Carolina, where non consummation can render a marriage void, but cohabitation suffices to prove consummation. In addition, consummation of a marriage seals the marriage off from some attempts to void it.<sup>94</sup> And while fraud is not generally grounds for voiding a marriage, fraudulent intent “not to consummate the marriage or not w2to have intercourse likely to produce progeny” can be. Also striking is the fact that many states make impotence a ground for annulment, whereas infertility is not an independent ground for annulment in any state (unless misrepresented or concealed), suggesting that sex per se matters more to marriage than reproduction. In the immigration context, failure to consummate, by itself, does not render a marriage a “sham marriage.” But under immigration law, “proxy marriages” in which the spouses are not both physically present for the marriage

---

<sup>93</sup> *Darling v Darling*, 335 N.E. 2d 748

<sup>94</sup> *Blair v Blair*, 147 S.W. 3d 882

ceremony are not recognized unless they are subsequently consummated. In various ways, then, marriage law effectively requires sexual activity.

## **2) Marriage's Disparate Impact.**

Marriage confers numerous benefits and responsibilities, some of them unique to marriage and some merely obtained efficiently through marriage.<sup>95</sup> Fewer asexuals marry than sexuals, most studies suggest. For instance, Bogaert found that approximately twice as many sexuals as asexuals were married. If true, then marriage law has a disparate impact on asexuals. That said, asexuals can marry and do marry, particularly those who identify as romantic asexuals. Asexuals may increasingly choose to marry (perhaps especially each other) if they continue to self-identify and grow as a movement. The link between marriage and being a sexual person therefore should not be overstated here, but some disparate impact is hard to ignore.

## **3) Looking Beyond Conjuality.**

Aces may also be prime candidates for the movement to abandon marriage as a legal institution or to replace it with any number of alternatives organized around a principle other than conjuality.<sup>96</sup> The many alternatives that scholars and activists have examined include privileging dyadic caregiver relationships, recognizing friendships or other close familial and non-familial relationships, moving to a contractarian regime, or replacing marriage with a similar domestic partnership or civil union regime.<sup>97</sup>

Important recent work shows how our law's privileging of sex in the context of intimate relationships "devalues both sexual relationships that lack an intimate component and intimate relationships that lack a sexual component."<sup>98</sup> These debates over marriage and its alternatives, which I have

---

<sup>95</sup> *Goodridge v Dept of public Health*, 798 N.E.2d 941

<sup>96</sup> *Beyond conjuality*; Laura A

<sup>97</sup> *Beyond Conjuality*, Mary Lyndon shanely, afterword, in marriage 109

<sup>98</sup> Laura A, Rosenbury & Jennifer E. Rothman, *sex in and out of intimacy*, 59

considered at length elsewhere, therefore have an important, if not a unique, relation to asexuality.<sup>99</sup>

## **B. Sex at Work: Harassment Law and Sex Work**

### **1) Express Disavowal: Sexual Harassment Law.**

Broadly speaking, asexuals appear to be beneficiaries of sexual harassment law. In a relatively short period of time, the law in this area has irreversibly changed our understanding of a set of workplace interactions. Sexual interactions once commonplace have now become inconceivable to many people. This is one area where for better or worse, depending on whom one asks law has undoubtedly had an impact on culture.<sup>100</sup> In the context of sexual harassment, as with many other things, “It is hard to unthink what you know.”

For people who don’t feel sexual attraction, the introduction of laws that deter some subset of sexual behavior or expressions of sexual desire in the workplace would appear to be a welcome change. Vicki Schultz and others have decried the “sanitized workplace” resulting from sexual harassment law.<sup>101</sup> But to those who feel little or no sexual attraction, a sanitized workplace might well look pretty good.

Asexuality has even been mentioned by the Supreme Court in a case in this area. Paradoxically, this explicit mention is an example of how asexuals are written out of law. In **Oncala v. Sundowner Offshore Services, Inc.**, which held that same-sex harassment could be “because of sex” and thus actionable, Scalia tells us that “the prohibition of harassment on the basis of

---

<sup>99</sup> Elizabeth F. Emens, monogamy’s law: compulsory monogamy and polgamous Existence, 29

<sup>100</sup> Directions in sexual harassment (Catherine A. Macinnon &Reva B. Siegel eds.,2003)

<sup>101</sup> Vicki Schulz, The Sanitized work place, 112 YALE LJ. 2003

sex requires neither asexuality nor androgyny in the workplace; it forbids only behavior so objectively offensive as to alter the conditions of the victim's employment." Of course, Scalia doesn't mean the identity asexual, as discussed in this article, but his use of the word here points us to something interesting about an asexual lens on sexual harassment law. Scalia's lines reflect the pervasive sense that the law in this area is a trade-off, where we endure extensive limitations on sexual expression in the workplace in the interest of protecting vulnerable parties from unwelcome sexual content. The asexuality perspective highlights, from a different angle than the sex-as-danger feminists do, how the framing of this debate assumes that sexual expression and interaction are a social and individual good. Courts' particular emphasis on punishing sexual content has been criticized by Schultz,<sup>102</sup> at least in part because courts' "desire dominance paradigm" leads employers to strip the workplace where we spend so much of our lives of a vital part of our being.

Some courts and scholars have argued that we should have something closer to a "reasonable woman" standard for sexual harassment law, to counteract the implicit (and historic) "reasonable man" standard that courts may otherwise employ. Whatever the merits of these arguments, what Scalia's remark in *Oncale* indicates is that we have a reasonable sexual person standard. The whole structure of the tradeoffs we imagine sexual harassment law to attempt to balance (successfully or not) assumes some reasonable level of sexual interaction, which is greater than zero. This is understandable, as most people apparently are sexual, but the perspective of asexuality casts a new light on these debates.

---

<sup>102</sup> Vicki Schulz, *Reconceptualizing sexual harassment* 107, *YALE L J* (1998)

## CHAPTER FIVE



### ASEXUAL LAW

“It’s funny to think about. You know, you’ve got the gays marching for the right to be cocksucking homosexuals, and then you have the asexuals marching for the right to not do anything. Which is hilarious? Look, you didn’t need to march for that right. You just need to stay home, and not do anything.” Dan Savage<sup>103</sup>

These lines from Dan Savage imply that asexuals don’t need anything from the law. His words, though comic, prompt a series of more sober questions: For starters, was Savage right? Do asexuals need nothing from law? Or does taking asexuality seriously mean incorporating asexuality into law? What would it even mean to make law asexual? Asexual law, as it were, might be understood in either of two ways. First, asexual law could mean carving out a particular space in law for asexuals, by creating special protections or exceptions. Second, it could mean making our sexual law less sexual for everyone. We might refer to these, respectively, as “static” versus “dynamic” approaches to accommodating asexuality; drawing on a conceptual

---

<sup>103</sup> ASEXUAL (Dir. Angela Tucker, 2011)



distinction from disability law.<sup>104</sup> **Is antidiscrimination law protection for asexuals a good idea?** One jurisdiction has explicitly included asexuality within its antidiscrimination law: New York’s Sexual Orientation Non-Discrimination Law defines “sexual orientation” to encompass asexuality. This Part begins by telling the story of that legislative innovation, before considering the question of whether other states or the federal government should follow suit. Sexuals often assume that asexuals face no discrimination, as the epigraph from Dan Savage dramatically suggests. Because asexuals have faced no punitive legal regime comparable to that of homosexuals, the assumption is that asexuals should not need help from the law; after all, Savage says, they simply want to “not do anything.” Interestingly, however, recent research on discriminatory bias suggests that heterosexuals show similar levels and types of bias against asexuals, and sometimes even more bias, than against gays and bisexuals.

As this Part discusses, these data combine with other considerations to lead to the conclusion that a plausible argument can be made for antidiscrimination protection for asexuality. But even if a normative case can be made, there is a widespread intuition that asexuality just doesn’t fit with existing antidiscrimination law. This Part concludes by unpacking this intuition, with the aim of illuminating both asexuality and the field of antidiscrimination law. Legal protections against discrimination track whether a category meets a combination of eight criteria, I argue, few of which are currently met by asexuals, though that could change with time.

### **Should Asexuality Be Protected?**

New York law’s formal incorporation of asexuality raises the question of whether other states or federal law should follow its lead. Twenty-one states and the District of Columbia offer antidiscrimination protection on the basis of sexual orientation, with nearly all defining it to include heterosexuality, homosexuality, and bisexuality. And while federal law does not cover sexual

---

<sup>104</sup> Elizabeth F. Emens, *Integrating Accommodation*, 156

orientation, the versions of the proposed Employment Non-Discrimination Act (ENDA) currently in the House and Senate define the protected “sexual orientation” to mean only “homosexuality, heterosexuality, or bisexuality.”<sup>105</sup> Should ENDA and laws in other jurisdictions embrace asexuality within their ambit? This Section considers that question.

### **1) Discrimination against Asexuals.**

A common response, when people encounter the idea of asexuality, is to suppose that it does not inspire discrimination. Why, one might ask, would anyone discriminate against an asexual? Asexuals don’t pose any sexual risk; they aren’t (a) sexual predators, forcing others to participate in their deviant practices. Indeed, they don’t, as a group, represent any physical practices at all, and thus they seem unlikely to trigger disgust. They don’t violate religious prohibitions, at least not in the way that homosexuals or bisexuals do. They don’t have any obvious job-related impairment or perceived need for costly accommodations. The fact that no cases have been filed based on asexuality under New York’s SONDA seems consistent with this view that asexuality doesn’t provoke discrimination.

## **Conclusion**

“Is it not, indeed revealing, what the child’s boredom evokes in the adults? Heard as a demand, sometimes as an accusation of failure or disappointment, it is rarely agreed to, simply acknowledged. How often, in fact, the child’s boredom is met by that most perplexing form of disapproval, the adult’s wish

---

<sup>105</sup> <https://www.gpo.gov/fdsys/pkg/BILLS-112hr1397ih.pdf>

*Isaac Christopher Lubogo*

to distract him—as though the adults have decided that the child’s life must be, or be seen to be, endlessly interesting.” **Adam Phillips, On Boredom**<sup>106</sup>

---

<sup>106</sup> Adam Phillips, *On Boredom*, in *ON KISSING, TICKLING, AND BEING: Psychoanalytic Essays on the Un Examined Life* 68, 69 (1994)

## CHAPTER SIX



### ASEXUALITY IN UGANDA

Asexuality refers to a sexual orientation that is characterized by a lack of sexual attraction or desire. It was further defined by **Yule, Brotto & Gorzalka (2015)** to mean lack of sexual attraction toward anyone or anything. Unlike willful abstinence for example among Catholic priests due to their vow of chastity where they opt not to have sex, the lack of sexual desire by asexuals is not as a result of choice or deprivation. Asexuality is a spectrum therefore this means that all asexual people and their experience of asexuality differs. Asexuality does not therefore affect specific group, generation it rather cuts across all ages, genders, backgrounds and race whether black or white. For instance, some asexual people may have sex without necessarily achieving a goal just like someone eating when he or she is not hungry. Some asexual people consider themselves to have a sex drive, but it is not directed towards a particular partner and they are to as sex positive.

Others refuse sex hence identifying themselves as sex repulse. Lastly, some people feel only indifferent to sex (the sex-neutral or sex indifferent).

Most asexuals experience romantic attraction to others and may therefore be in a relationship. Aromantic asexuals, on the other hand, have no desire to

have sex and no desire to be in a relationship. Finally, some asexuals have never had sexual desire or relationships, while others have had sexual desire and then identified themselves as asexual later in life.

There are two main categories of asexual that is to say aromantic, and romantic. They can also be classified as ABCD types of asexual due to the fact that asexuality being a spectrum, just like sexuality. In contrast asexuality entails affectional orientation while sexuality entails sexual attraction. Asexuality is a sexual orientation, like being gay or straight. The spectrum of asexuality contains much diversity in people's experiences of attraction and arousal and desires for relationships. The experience of being asexual varies among people. Asexuality is a sexual orientation, like other sexual orientations such as homosexuality, bisexuality, heterosexuality among others. It is both an identity and a spectrum. Asexual people are sometimes referred to as **asace**.<sup>107</sup> One percent of the population is thought to be asexual and research suggests that asexuality is best conceptualized as sexual orientation.<sup>108</sup>

---

<sup>107</sup> Decker, Julie S. (2015), *the Invisible Orientation: An Introduction to Asexuality*.

Etaugh, Claire A, Bridges, Judith S. (October 16,2017). *Women's Lives: A psychological Exploration*, Fourth Edition.

<sup>108</sup> Alderson, K. (2014)/*Affectional Orientation and Diversity*. Pukall, C.F.(Eds), *Human sexuality: A contemporary introduction*. (pp.263-286). Don Mills, ON: Oxford University Press.

Type A asexuals, who experience sex drive, but no attraction;

Type B asexuals, who experience romantic or other forms of attraction but do not have sex drives;

Type C asexuals, who experience sex drive and romantic or other forms of attraction, but do not see them as linked;

Type D asexuals, who experience neither.

(ABCD types, Retrieved March29,2015, from <http://www.asexuality.org/wiki/index.php?title=ABCD>)

## *Asexuality, Gender and the Law in Uganda*

The asexuality spectrum is an umbrella term that encompasses a variety of ways in which a person might identify according to the **Trevor Project**.<sup>109</sup> While most asexual people have little interest in having sex, they may experience romantic attraction. Others may not.

Asexual is used as an umbrella term for people who do not feel sexual attraction. Within asexuality there are many nuances on the level of attraction: from none at all to occasional or only under certain circumstances. The key is that all the terms under the umbrella relate to levels of sexual desire below that expected in society. The following are main terms under the ace umbrella.

**Romantic orientation** one distinction between types of asexual people is whether they are romantically attracted to others or desire romantic relationships. Asexual people who are romantically attracted to others are called, predictably, romantic asexual people.<sup>110</sup>

**Aromantic people**, are asexuals who experience little or no romantic attraction to others.<sup>111</sup> In cases such people choose to stay single or engage in non-romantic partnerships of some kind. Aromantic might describe themselves through:

### **Having no romantic drive**

Not finding anyone attractive in a romantic sense Preferring singlehood being satisfied by close friendships.

---

<sup>109</sup><https://www.thetrevorproject.org/wp-content/uploads/2021/07/coming-out-handbook.pdf>.

<sup>110</sup> Decker, Julie S. (2015), *the Invisible Orientation: An Introduction to Asexuality* pg.37.

<sup>111</sup> *Ibid* pg.30.

Not enjoying or relating to partnered life Feeling a general romantic interest.

**Grey asexual** refer to asexuals who only experience sexual attraction on rare occasions. Grey asexual people identify in different ways.<sup>112</sup>It is worth noting that grey aces can also fall into any of the following categories: Those who do not normally experience sexual attraction, but do experience it on occasion Those who experience sexual attraction and drive, but not strongly enough to want to act on them. Those who can enjoy and desire sex, but only under very limited and specific circumstances Just as asexuality is a spectrum, the definitions for grey ace are not just limited to the above. Each of these definitions also have a counterpart for romantic attraction.

**Demisexual people**, only experience sexual attraction after forming a close emotional connection with a person. It is something more commonly seen in romantic relationships but can occur in any type of close emotional relationship with another person. Demisexuals do not choose to abstain from sex, but they simply lack the attraction not until a close emotional relationship is formed. Demisexuality is therefore considered to be part of the grey-asexuality spectrum.<sup>113</sup>

### **There is difference between asexuality and celibacy or abstinence.**

Celibacy or abstinence refers to a situation where a person experiences sexual attraction but decides not to act on it. Abstinence is all about deciding not to have sex. This depends on his or her own choice. This may be the person wants to abstain not until he or she is married or due to difficult period in their life. Celibacy is about deciding to abstain from sex. This can be due to religious, cultural or due to personal reasons. Therefore, in short celibacy or abstinence

---

<sup>112</sup>[www.equality-network.org](http://www.equality-network.org) last accessed on 04/04/2022.

<sup>113</sup> Ibid.

## *Asexuality, Gender and the Law in Uganda*

occur due to a person's choice. This is not the same with asexuality, asexuals simply who do not feel sexual attraction to others.<sup>114</sup>

Most Asexuals in Africa Uganda inclusive have a consistent struggle with identity, since most people in the larger community do not see asexuality as a sexual orientation. The constitution of the Republic of Uganda<sup>115</sup> states that a person has a right to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, creed or religion in community with others. In relation to this article, Asexuals have a right to practice asexuality in Uganda in community with others.

### **South Africa**

Unlike other countries in the Africa and in the world generally South Africa is culturally and ethnically diversity. Her population is one of the most complex and diverse in the World. For instance, of the 51.7 million South Africans, over 41 million are black, 4.5 million are white, 4.6 million are colored and about 1.3 million Indian or Asian.<sup>116</sup>

For instance, it is one of the s leading countries in ensuring that marriage equality and legal protection against discrimination is not taken for granted but properly protected. In fact, it was the first country in the world to protect against discrimination based on sexual orientation. Rights in South Africa is provided for under of the constitution of the country that is to say it forbids discrimination on the basis of sex, gender or sexual orientation, and applies to government and private parties.

---

<sup>114</sup> [www.healthline.com](http://www.healthline.com).

<sup>115</sup> 1995 Uganda Constitution as amended

<sup>116</sup> [www.sa-venues.com](http://www.sa-venues.com).



The Constitutional Court has stated that the section must also be interpreted as prohibiting discrimination against transgender people. These constitutional protections have been reinforced by the jurisprudence of the Constitutional Court and various statutes enacted by Parliament. Therefore **Section 9(1)** of the constitution clearly states that Everyone is equal before the law and has the right to equal protection and benefit of the law.<sup>117</sup>

Section **9(3)** goes ahead to provide that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.<sup>118</sup>

Therefore, in simple terms the constitution prohibits all kinds of unfair discrimination on the basing on one's sex, gender or sexual orientation, whether committed by the government, private party or an individual. The Parliament also enacted the Promotion of Equity and prevention of Unfair Discrimination Act, which restates the constitutional prohibition and establishes special Equality Courts to handle discrimination by private parties. To ensure that this diversity

**The Prevention and Combating of Hate Crimes and Hate Speech Bill**, which is pending within the South African Parliament, would outlaw hate crimes and hate speech on grounds of race, gender identity and sexual orientation, among others. Public consultation on the bill was held between October and December 2016.

The bill provides that any person who intentionally publishes, propagates or advocates anything or communicates to one or more persons in a manner that could reasonably be construed to demonstrate a clear intention to— (i) be

---

<sup>117</sup>Section 9(1) Constitution of Republic of South Africa 1996.

<sup>118</sup>Ibid Section 9(3).

## *Asexuality, Gender and the Law in Uganda*

harmful or to incite harm; or (ii) promote or propagate hatred, based on one or more of the following grounds: age, albinism, birth, color, culture, disability, ethnic or social origin, gender or gender identity, HIV status, language, nationality, migrant or refugee status, occupation or trade, political affiliation or conviction, race, religion, or sex, which includes intersex or sexual orientation. It was approved by the cabinet however the it could not become a law because the bill lapsed when parliament was dissolved on 7<sup>th</sup> of May 2019. The South African National Defence Force (SANDF) in order to ensure there is no discrimination basing on sexual orientation among others such as asexuality in 1996the government stated that in accordance with the Constitution, the South African National Defence Force (SANDF) shall not discriminate against any of its members on the grounds of sexual orientation.

The Department of Defence adopted a Policy on Equal Opportunity and Affirmative Action in 1998. Basing on the Affirmative Action a recruit may not be asked about his or her sexual orientation and the Defence Force officially takes no interest in the lawful sexual behaviour of its members.

The Defence Act<sup>119</sup> of South Africa makes it a criminal offence for any South African Defence Force (SANDF) member to denigrate, humiliate or show hostility or aversion to any person on the grounds of sexual orientation.

### **The challenges faced by asexuals**

A good number of asexuals in Africa still face a problem in that they have always struggled with their identity. This is because the majority of the population in the communities do not recognize it as an independent sexual

---

<sup>119</sup> Defence Act 2002.

*Isaac Christopher Lubogo*

orientation. Others in the community refer to asexuals as people with who are broken or have low self-esteem.<sup>120</sup>

---

<sup>120</sup> [www.pinkadvocate.com](http://www.pinkadvocate.com)

## CHAPTER SEVEN



### GENDER

According to the World Health Organization (WHO) describes ‘**gender**’ as follows, **Gender** refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varied from society to society and can be changed”

Therefore, Gender refers to the role of a male or female in society (gender role), or an individual’s concept of themselves (gender identity).

**According** to Sadiyya Shaikhon in his book morality, justice and gender, stated that one of the crucial principles that flow from tauhidic view is that GOD is one and that all human beings are GODs khalifah, is the notion of the metaphysical **sameness of all** humans as creatures of GOD (AL Hibiri 2005). Each person irrespective of **Gender**, race and nationality, possess the birthright to be Gods khalifah in this world.

According to the Quran, the only real criteria for distinction among human beings is that of taqwa which can be translated as God consciousness and

righteousness (Q49.13)<sup>121</sup>more the Quran repeatedly describes the true believer as one who enacts the moral imperative for justice to the world (Q.4.135) within the Quranic world view the belief in the unity of God explicitly relates to the striving for the unity of humanity for which justice is a prerequisite<sup>122</sup>.

**According to the basic terms in Gender** and women studies, Gender refers to the differences in the social roles and responsibilities of women and men and the social behaviors and characteristics considered to be appropriate for women and men and how these various activities are to be valued and rewarded. **Gender is also** defined as the relations between women and men and to socially sanctioned roles that are acceptable for each sex.

**Furthermore, Gender,** refers to the differences between women and men, boys and girls within the same household and within and between cultures that are socially and culturally constructed and change over time. These differences are reflected in the roles, responsibilities, access to resources, constraints, opportunities, needs, perceptions, views, etc., conceptualized by both women and men and their interdependence relationships<sup>123</sup>and artifacts. These ideas comprise beliefs about the nature of reality, moral judgments about what is right or wrong and evaluations of what is desirable and attractive or disgusting and to be avoided. Some people take for granted,

---

<sup>121</sup> Moreover, in situating Quranic revelation in 7<sup>th</sup> century Meccan society, this notion of taqwa as being the sole criterion for human worth provided a sweeping critique of the very basis of, the social formation that was characterized by social economic, gender and tribal hierarchies.

<sup>122</sup> This synergy is encapsulated by Sufi teacher, Shaykh Bawa Muhaiyadden who states, if we are true believers, we will not see any difference between others and our selves. we will see only one. we will see Allah, one human race and one justice for all. That the justice and truth is the strength of islam (Muhaiyadden 1987.26)

<sup>123</sup> Compendium of concepts and definitions on gender statistics, December 2013: [www.ubos.org](http://www.ubos.org)

## *Asexuality, Gender and the Law in Uganda*

as a cultural belief, that men are naturally superior to women some take for granted that women are naturally superior to men.

Gender is derived from anthropology and refers to group norms rather than to individual realities.

Some cannot understand the dispute at all. In each case, the culture is defining their member that which is to be taken for granted as factual, inalienable and proved. Everyone is born into a culture, a set of ideas shared by a group of people ideas that are symbolically expressed in their behavior. Sometimes a person's genetically assigned sex does not line up with **their gender identity**. These individuals might refer to themselves as transgender, non-binary or gender-nonconforming. Government of Uganda recognizes the need to expand opportunities for men, women, boys and girls not only as a human right but also as a means for sustainable inclusive Development. This is noted from the gender responsive legal and policy environment aimed at reducing gender inequalities and vulnerabilities across different social, political and economic spheres. Some of the instruments at the international level include the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the Beijing Platform of Action (BPfA), and the most recent, Global Agenda 2030 Sustainable Development Goals (SDGs).

At national level, gender issues are encompassed under the 2006 Uganda National Gender Policy. These policies have seen Uganda register some progress in reducing gender inequalities and vulnerabilities through social protection programmers like the Uganda Women Entrepreneurship Programme (UWEP), the Youth Livelihoods Programme (YLP), Labor Works Programme, and Social Assistance Grant for Empowerment (SAGE), among others (MGLSD, 2018). While these policies and programmes have expanded opportunities to attain gender equity and equality, gender biases still remain.

For instance, the Gender Inequality Index (GII) for Uganda of about 0.565 shows a loss in human development between women and men achievements in all the education, reproductive health and empowerment dimensions (UNDP, 2015).

## **Sex and Gender**

**Similarly, there is a dominant cultural** attitude towards sex and gender, a set of ideas we take for granted regardless of our own gender, ethnicity, or family background.

Understanding of the social construction of gender starts with explaining the two concepts, i.e., gender and sex. Often these two terms are used interchangeably, however, they bear different meanings as concepts.

“Sex” refers to the biological and physiological characteristics that define men and women. It is

defined as the anatomical and physiological characteristics that signify the biological maleness and femaleness of an individual.

An adult member of our society, for example, sees the population as composed of two and only two sexes, male and female. We do not permit as the Navajo do, the sex status, Nadler or hermaphrodite (male and female).

Real nads are those born hermaphroditic, but others may pretend they are nads and subsequently be released from sexual division of labor and permitted to take a spouse of either sex.

In culture, from before the cradle to beyond the grave, a person is supposed to be inextricably and forever male or female. There has been a great deal of confusion in both scholarly and popular discussions concerning the meaning of the concepts, sex and gender. In this book, sex refers to the biological aspects of a person, such as the chromosomal, anatomical, hormonal, and

## *Asexuality, Gender and the Law in Uganda*

physiological structure, it is ascribed status in that a person is assigned to one sex or the other at birth.

It is an accomplished in social contexts. The biological sexes are redefined, represented, valued, and channeled into different roles in various culturally dependent ways.

Sex as defined earlier is the concept that emerges from anatomical and physiological characteristics that differentiates males and females biologically whereas gender can be seen as a social construct manifested by masculine and feminine roles prevalent in a culture or a society. Thus, gender can be seen as an artefact of social, cultural and psychological factors which are attained during the process of socialization of an individual.

**In learning gender**, the case history of Agnes described by Garfinkel, vividly underscores how gender is achieved (Garfinkel, 1967) when Agnes at the age 19 first appeared at the UCLA sex change clinic, she appeared to be very attractive, well-endowed young woman. This leads us to a very important insight; Gender behavior is both prescribed and chosen. On the other hand, appropriate behavior is socially shared and transmitted through the culture.<sup>124</sup>

### **What Is the Significance of The Concept of Gender?**

In talking about the social and cultural construction of masculinity and femininity, gender allows us to see these dimensions of human roles and personalities as based not on nature but on social factors. It then allows us to address issues like subordination and discrimination as issues where change is

---

<sup>124</sup> The Dynamics of sex and gender a sociological perspective laurel Richardson Ohio State University.



possible. Therefore, the meaning of sex and gender, femininity and masculinity fluctuate within societies and cultures across the globe.

The key differences between these two terms are:

- Sex is natural while gender is a social construct.
- sex is biological. It denotes to visible differences in genitalia and related differences in procreative function while gender is a social-cultural construct and it refers to masculine and feminine qualities, behavior patterns, related roles and responsibility.
- Sex is a universal term while gender is a variable. It changes under the influence of time, geographical and social-cultural settings.

## **Gender Stereotypes.**

**Gender stereotypes** are simplistic generalizations about the gender attributes, differences, and the roles of individuals and/or groups. Stereotypes can be positive or negative, but they rarely communicate accurate information about others. Gender has appeared in religious, philosophical, and literary works for centuries. Although the past three decades have brought a new level of awareness about the wide range of roles possible for each gender, strong beliefs about gender difference remain.

The commonest female stereotypical role that is prevalent is of the homemaker. It is imperative for her to put her family's welfare before her own; she is loving, compassionate, caring, nurturing, emotional and sympathetic. The male's role on the other hand is to be the provider. He is also to be assertive, competitive, independent, aggressive, courageous, rational, career-oriented and pragmatic. These sorts of stereotypes are quite damaging and can hinder an individual's personal and professional growth as well as expression and creativity. According to research done in the 1960's, researchers came up with a list of what personality characteristics they

consider typical of men and women. Besides these, a list of other gendered lists for physical characteristics (tall, strong, and sturdy for men; soft, dainty and graceful for women), occupations, and activities or behaviours were also tabulated. The variety of these attributes identified as masculine or feminine, till date have a wide acceptance, and their stability over time suggests that gender stereotypes are deep-seated in people's mind.

## **Gender Roles**

**Gender roles** can be defined as the social roles that a person is expected to fulfill based upon his or her gender. These vary in different social, cultural and historical contexts. They vary among different societies and cultures, classes, ages and during different periods in history. Gender –specific roles and responsibilities are often conditioned by household structure, access to resources, specific impacts of the global economy, and other locally relevant factors such as ecological conditions

They represent agreed ideas within that respective society and culture about what is appropriate and 'usual' for a particular sex, group and for society itself.

However, individual women and men may actually occupy gender roles that are typical of the opposite sex. For example, a woman may act as the head of the household even although this is considered a male gender role in the society in which she lives. Rather than being purely assigned by genetics as sex differences generally are, gender roles are adhered to as a response to family interactions, the media, peers and education.

Gender roles in particularly patriarchal societies are much more rigid than those in more liberal countries. In Saudi Arabia for instance, a woman's

gender role is as the home maker, they are subservient to men and not provided certain freedoms such as driving. (This has changes in some areas).

In liberal countries, gender roles are still apparent in many regards – women often spend more time childbearing and men are more likely to be the primary money-earners. However, traditional gender roles are not set in stone and are increasingly reversed in modern societies. For instance, high heeled shoes, now almost unanimously considered feminine in Western societies, were initially designed for upper class men to use when hunting on horseback.

As women caught on and began wearing high heels, male heels slowly became shorter and fatter as female heels grew taller and thinner. Over time, the perception of the high heel changed to its current sociological state: feminine. It is argued that the is nothing intrinsically feminine about the high heel; social norms have made it so.

Another classic example of the malleability of gender roles is the pink/blue girl/boy stereotype that is so prevalent today. To modern eyes, pink is unmistakably feminine; this only show how strong society's impact is on our perceptions of gender roles. Babies were dressed in white until colored garments for babies were introduced in the middle of the 19<sup>th</sup> Century.

## **Gender Identity and Expression**

Gender identity refers to the individual's view of themselves, GLAAD (Gay & Lesbian Alliance Against Defamation) describe gender identity as being:

*“One's internal, personal sense of being a man or woman. Pro transgender people, their own internal gender identity does not match the one they were assigned at birth. Most people have a gender identity of a man or woman. For some people, their gender identity does not fit neatly into one of those two choices”.* Similarly, GLAAD described gender expression as follows:

“External manifestations of gender, expressed through one’s name, pronouns, clothing, haircut, behavior, voice or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine and feminine changes over time and varies by culture”.

## **Common Concepts for Addressing Gender**

**Gender Indicator / Gender sensitive indicators:** This measures gender related changes in society over time. The term gender sensitive indicators incorporate sex disaggregated indicators which provide separate measures for men and women on a specific indicator such as literacy or where the indicator is specific to women or men for example women experiencing physical abuse<sup>125</sup>

**Gender Analysis:** The systematic gathering and examination of information on gender differences and social relations in order to identify understand and redress inequities based on gender. It is the process of identifying and classifying roles of women and men in a given economic activity, their relations, access to and control over resources and benefits<sup>126</sup>.

Furthermore, **Gender Analysis** is a methodology that is the critical starting point for gender mainstreaming; the first step in a mainstreaming strategy is the assessment of how and why gender differences and inequalities are relevant to the subject under discussion. Without this gender mainstreaming is impossible. Gender analysis is a tool that brings to the surface gender disparities of a core problem. It reveals the connections between gender relations and the development challenge to be solved, it indicates exactly what

---

<sup>125</sup> Gender and Indicators Overview Report July 2007: [www.undp.org](http://www.undp.org)).

<sup>126</sup> Compendium of concepts and definitions on gender statistics, December 2013: [www.ubos.org](http://www.ubos.org))

that impact is likely to be, and promotes alternative courses of action. Gender analysis is a systematic analytical process based on sex-disaggregated and gender information. This process is used to identify, understand, and describe gender differences and the relevance of gender roles and power dynamics in a particular context. A gender analysis helps ensure equitable participation of women and men in development processes and projects. In some cases, gender issues may be significant to the process/project, and play a determining role in outcomes. In other instances, they may be less significant, and constitute rather a set of factors to be weighed with others.

It should show the linkages between inequalities at different societal levels. Don't forget that neither women nor men form a homogeneous group. Gender relations intersect with many categories of social identities, such as religious, political affiliation, ethnicity, social status, age, and sexual orientation.

Describes existing gender relations in a particular environment, ranging from within households or firms to a larger scale of community, ethnic group, or nation. It involves collecting and analyzing sex-disaggregated data and other qualitative and quantitative information.

Organizes and interprets, in a systematic way, information about gender relations to make clear the importance of gender differences for achieving development objectives.

Gender Assessment examines how a program or project addresses and responds to gender disparities and inequalities through its objectives, activities, and policies. It responds to two key questions:

**Gender Equity:** Means “fairness of treatment for women and men, according to their respective needs, including the equal treatment or

## *Asexuality, Gender and the Law in Uganda*

treatment considered equivalent in terms of rights, benefits, obligations and opportunities<sup>127</sup>”

**Gender statistics:** This is an area that cuts across traditional fields of statistics to identify, produce and disseminate statistics that reflect the realities of the lives of women and men, and policy issues relating to gender<sup>128</sup>.

**Gender equality** Gender equality is an integral part of national development processes and reinforces the overall development objectives in the country. This policy emphasizes government's commitment to elimination of gender inequalities and empowerment of women in the development process. Gender is the social and cultural construct of roles, responsibilities, attributes, opportunities, privileges, status, access to and control over resources and benefits between women and men, boys and girls in a given society The Constitution of the Republic of Uganda guarantees equality between women and men before and under the law in the spheres of political, social and cultural life. A number of laws have been reformed to be in line with this constitutional provision. These include; the Local Governments Act (Cap 243), the Land Act (Cap 227), Land Acquisition Act (Cap 226) and National Agricultural Advisory Services Act (NAADS).

The Ministry of Gender, Labor and Social Development (MGLSD) was established in 1998 as the national machinery for the advancement of women in Uganda. It is the successor to the Ministry of Women in Development created in 1988 within the presidency<sup>129</sup>. The MGLSD is responsible for coordinating and overseeing the implementation of gender mainstreaming

---

<sup>127</sup> [www.unicef.org/gender/training/content/resources/Glossary.pdf](http://www.unicef.org/gender/training/content/resources/Glossary.pdf).

<sup>128</sup> [www.unece.org/stats/gender](http://www.unece.org/stats/gender).

<sup>129</sup> UNDP (2018), Promoting Gender Equality and Women's Development, : Our Journey 1988-2017, <http://www.ug.undp.org/content/dam/uganda/docs/UNDPUG2017%20-%20UNDP%20Uganda%20Gender%20Journey%201988-2017.pdf>, P.10

and women's advancement programs nationally and supervises gender focal persons and units in different ministries<sup>130</sup>. The ministry has Community-Based Service/Gender Department at the local level. The MGLSD's role at the local level spearhead gender mainstreaming in district development plans and budgets<sup>131</sup>. However, it was noted that both the national and decentralized structures have limited staffing and funding. For instance, the technical staff with gender expertise was reduced from 33 in 1995 to 10 in 2014 due to civil service reforms and turnover<sup>132</sup>. Furthermore, the MGLSD's allocation from the national budget has consistently been less than 1% Through the MGLSD's effort, new operational line-agency gender structures are in place, namely: i) Gender-Responsive Budgeting Unit and Technical Working Committee in the Ministry of Finance<sup>133</sup>; ii) Gender Statistics Committee at the Uganda Bureau of Statistics; iii) Gender Task Force at the Justice Law and Order Sector; iv) District Gender Coordination Committees; v) the Gender and Rights Sector or Working Group at the MGLSD; and vi) the Gender Unit at the Ministry of Education, Science and Technology<sup>134</sup>. The Ministry of Finance, Planning and Economic Development (MoFED) working closely with the MLGSD is responsible for Gender-Responsive budgeting (GRB). The mechanism was adopted by the

---

<sup>130</sup>UNDP (2016), Uganda Gender Country Assessment, <http://www.ug.undp.org/content/dam/uganda/docs/UNDPUG2016%20-UNDP%20Uganda%20-%20Country%20Gender%20Assessment.pdf>, P. 16

<sup>131</sup> Ibid:18

<sup>132</sup> Ibid:18

<sup>133</sup> This unit is guided by the Equal Opportunities Commission to assess gender mainstreaming by different sector budgets and plans

<sup>134</sup> UNDP 2016

## *Asexuality, Gender and the Law in Uganda*

Government of Uganda (GoU) in the 2003/04 financial year<sup>135</sup>. MoFED issued a gender and equity budgeting in the Budget Call Circular (BCC), which applies to the districts at the local government level<sup>136</sup>. Furthermore, the Ministry of Public Service, through a Human Resource Call Circular and Manual approved by Cabinet in 2010, appointed gender focal points across line ministries in Water and Environment; Agriculture; Health; Defense and Security; Trade and Cooperatives; Housing and Urban Development; Local Governance; Energy and Mineral Development; Transport and Works; and Internal Affairs<sup>137</sup>.

In 1995, Uganda enacted a new Constitution with far-reaching gender equality provisions that have paved the way for the adoption of various legislations. The Government of Uganda has a host of laws promoting women's rights **and gender equality. At the international level, it has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW<sup>138</sup>)**, The Beijing Platform for Action, and has fully subscribed to the fifth Sustainable Development Goal (SDGs) of gender equality and women's empowerment<sup>139</sup>. The MoFED is the coordinating framework for the implementation of the SDGs in Uganda<sup>140</sup>.

---

<sup>135</sup>Kusambiza, M. (2013), A Case of Gender-Responsive Budgeting in Uganda, [https://consultations.worldbank.org/Data/hub/files/grb\\_papers\\_uganda\\_updf\\_final.pdf](https://consultations.worldbank.org/Data/hub/files/grb_papers_uganda_updf_final.pdf), P.13

<sup>136</sup> Ibid:13

<sup>137</sup> UNDP 2016

<sup>138</sup> signed in 1980, ratified 1985

<sup>139</sup> AfDB op.cit:8

<sup>140</sup> UN (2017), Overview of Institutional Arrangements for Implementing the 2030 Agenda at the National Level.



At the national level, the National Gender Policy adopted in 1997 and revised in 2007, is the primary **legal framework for gender equality** and women's empowerment. Its primary objective is to mainstream gender concerns in national development processes through guiding resource allocation in all sectors to address gender equality<sup>141</sup>. In a 2016 review of Uganda's labor market, income and economic status revealed women's disadvantaged status. The national labor force participation rate (LFPR) was 52%, and the employment to population ratio was 48%<sup>142</sup>. The LFPR for men was higher at 60% than women's 46%, and males also had a higher employment to population ratio at 56% and females at 40%<sup>143</sup>. Uganda's national unemployment was 9% in 2016, with only 38% of the population in paid employment. Of this number, a higher proportion of males, 46%, compared to 28% women had paid jobs<sup>144</sup>

The World Bank released a new report entitled, *Engendering Development*. Released on international women's day, the report basically informed the world that there is a correlation between gender equality and economic development. In other words, that the wider the gender gaps in all spheres of society the slower the pace that society strides towards economic growth. Surprise again! We were reminded for example, that improving rural women's access to productive resources including education, land, and fertilizers in Africa could increase agricultural productivity by as much as one-

---

<sup>141</sup>GoU (ND), National Gender Policy, <http://www.gou.go.ug/about-uganda/government-policies/national-gender-policy>

<sup>142</sup> UNFPA (2017), Worlds Apart in Uganda: Inequalities in Women's Health, Education and Economic Empowerment, [https://uganda.unfpa.org/sites/default/files/pub-pdf/Issue%20Brief%205%20-%20special%20edition.%20inequalities.final\\_.pdf](https://uganda.unfpa.org/sites/default/files/pub-pdf/Issue%20Brief%205%20-%20special%20edition.%20inequalities.final_.pdf), P.6

<sup>143</sup> Ibid:6

<sup>144</sup> Ibid:6

fifth<sup>145</sup> Gender inequality has persisted despite all the scholarship that has highlighted the drawbacks that are associated with it. In circumstances of weak state structures, corrupt leadership and civil instability, African women realize that they need to be more resourceful in order to enhance their access to and control over resources. This is not to suggest that women in Africa have not been ingenious and practical.

**Gender cuts across all sectors and levels.**

Attainment of the gender equality goal will depend on the extent to which public and private sector institutions and agencies engage both women and men as providers and or producers and beneficiaries of services and investments. All actors (state and non-state) shall take appropriate action to address gender inequalities within their areas of mandate, in line with this policy. This requires women as well as men to play an active role in shaping development directions and choices in all sectors and at all levels.

**Affirmative Action, bridging** gender gaps in the various development sectors requires preferential attention for the disadvantaged. Affirmative action as enshrined in the Constitution will be pursued to redress historical and present forms of discrimination against women and girls in political, economic and social spheres.

**Promotion of GAD and WID approaches** Advancement of gender equality requires the promotion of two approaches: The Gender and Development (GAD) approach is based on the understanding of gender roles

---

<sup>145</sup> See EnGendering Development—Through Gender Equality in Rights, Resources and Voice (co-authored by Elizabeth King and Andrew Mason) at <<http://www.worldbank.org/developmentnews/stories/html/030801a.htm>> (accessed March 7, 2002).

and social relations of women and men, with emphasis on the disadvantaged. While the Women in Development (WID) approach focuses specifically on improving the

Conditions of women. This is essential in light of evidence from various sectors showing the disadvantaged position of women. This calls for all data and information that inform planning and decision-making at all levels to be disaggregated by sex, gender, age and other socioeconomic characteristics such as disability.

National Agricultural Advisory Services Act (NAADS), The Government of Uganda's first National Gender Policy (NGP) was approved in 1997. The policy provided a legitimate point of reference for addressing gender inequalities at all levels of government and by all stakeholders. The major achievements of this policy include among others, increased awareness on gender as a development concern among policy makers and implementers at all levels; influencing national, sectoral and local government programmes to address gender issues; strengthened partnerships for the advancement of gender equality and women's empowerment and increased impetus in gender activism.

Gender Mainstreaming, was a major concern hence a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of the policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated<sup>146</sup>.

Furthermore, Gender Mainstreaming is the process of incorporating a gender perspective into policies, strategies, programs, project activities, and administrative functions, as well as into the institutional culture of an organization.

---

<sup>146</sup> [www.unicef.org/gender/training/content/resources/Glossary.pdf](http://www.unicef.org/gender/training/content/resources/Glossary.pdf)

## **Basic Gender terminology**

**Gender Stereotypes** are ideas that people have on masculinity and femininity: what men and women of all generations should be like and are capable of doing. (e.g., girls should be obedient and cute, are allowed to cry, and boys are expected to be brave and not cry, women are better housekeepers and men are better with machines, or boys are better at mathematics and girls more suited to nursing).

**Gender-Based Violence** is violence derived from gender norms and roles as well as from unequal power relations between women and men. Violence is specifically targeted against a person because of his or her gender, and it affects women disproportionately. It includes, but is not limited to, physical, sexual, and psychological harm (including intimidation, suffering, coercion, and/or deprivation of liberty within the family or within the general community). It includes violence perpetuated by the state.

On the other hand, **gender Empowerment** refers to the expansion of people's capacity to make and act upon decisions (agency) and to transform those decisions into desired outcomes, affecting all aspects of their lives, including decisions related to health. It entails overcoming socioeconomic and other power inequalities in a context where this ability was previously denied. Programmatic interventions often focus specifically on empowering women because of the inequalities in their socioeconomic status.<sup>147</sup>

**Homophobia** is the irrational fear of, aversion to, or discrimination against homosexuals or homosexual behavior or cultures. Homophobia also refers to self-loathing by homosexuals, as well as the fear of men or women who do not live up to society's standards of what it is to be a "true man" or "true woman."

---

<sup>147</sup> Adapted from Naila Kabeer's and Ruth Alsop's definition of empowerment.

**Heterosexism** is the presumption that everyone is heterosexual and/or the belief that heterosexual people are naturally superior to homosexual and bisexual people.

Men's Engagement is a programmatic approach that involves men and boys a) as clients and beneficiaries, b) as partners and c) as agents of change, in actively promoting gender equality, women's empowerment and the transformation of inequitable definitions of masculinity. In the health context, this comprises engaging men and boys in addressing their own, and supporting their partners' reproductive, sexual and other health needs. Men's engagement also includes broader efforts to promote equality with respect to caregiving, fatherhood, and division of labor, and ending gender-based violence.

**Sexual orientation** refers to one's sexual or romantic attractions, and includes sexual identity, sexual behaviors and sexual desires.

**Transgender** is an umbrella term referring to individuals who do not identify with the sex category assigned to them at birth or whose identity or behavior falls outside of stereotypical gender norms. The term "transgender" encompasses a diverse array of gender identities and expressions, including identities that fit within a female/male classification and those that do not. Transgender is not the same as intersex, which refers to biological variation in sex characteristics, including chromosomes, gonads and/or genitals that do not allow an individual to be distinctly identified as female/ male at birth.

The constitution of Uganda has a very progressive and gender-sensitive constitution, which provides for the mainstreaming of gender in many sectors (social, cultural, economic, and political). The Uganda Constitution is rated as the most comprehensive legal instrument and it provides for several clauses to address gender inequality as seen in Articles 32 and 33. There is also the affirmative action in place to correct the social, cultural and economic mistakes made in the past. Specifically, it provides for gender mainstreaming, the protection of women's rights and the promotion of gender equality. As a

## *Asexuality, Gender and the Law in Uganda*

result, there have been several pronouncements and gender machinery developed for the promotion of gender equality.

In the case of **Longwe v Intercontinental Hotels Zambia** in 1984, Sara Longwe asked the Zambian ombudsman to order a hotel to stop discriminating against women. The Intercontinental Hotel had been enforcing a policy of refusing women entry unless they were accompanied by a male escort. Longwe had been stopped by a security guard who would not allow her to enter to pick her children up after they had attended a party at the hotel. The ombudsman did find that the hotel policy was discriminatory and forwarded a copy of its ruling to the National Hotels Board, but the policy wasn't changed. In 1992, Longwe was again prevented from entering the same hotel, when she and a group of women's activists tried to meet in the hotel's bar. Longwe went to the Zambian High Court, as she realized the ombudsman's ruling had been completely ineffective. She argued that the hotel's policy violated her right to freedom from discrimination on the basis of sex in Zambia's new constitution. She also argued that the policy violated articles 1, 2 and 3 of the Convention.

The court ruled in Longwe's favor, finding that her constitutional rights had been violated. Because the constitution could be applied in this case, the court did not feel it necessary to rely on CEDAW. However, it did state that the Zambian Government's ratification of CEDAW without reservations meant that the courts should look to the Convention when situations arose that were not covered by domestic law.

The Relationship between Gender and Citizenship in present day is one that is irresistibly inseparable because, Human Rights enjoyment, Societal Development and other national growths cannot smoothly transcend under a blurred Gender lens upon citizens since citizenship gives life and meaning

to livelihood of a national. Some of the laws that make provision of who a citizen is and their rights;

Article 9 of the Constitution of the Republic of Uganda 1995 states that all persons who, at the commencement of the Constitution, were citizens of Uganda, qualify as citizens. Furthermore, the Constitution provides for three main types of citizenship: birth, registration, and naturalization under Articles 10, 11, 12 and 13 respectively and later duo citizenship under Article 15 as amended in 2005.

What the constitution does is to extend formally equality rights of all people as provided under article 21 of the constitution. The problem with such concepts is that they focus on form rather than substance, they promote formal equality because they ignore the social and economic conditions from which come to arrive and at citizenship

The fact that there is a provision in the Grand Norm of the Land in line with Citizenship of her people is a direction to the state's appreciation of Human Rights, and willingly to provide resources. However, the same written Law in this case ignores the deference's within and between people that may act as humps on the road towards citizenship. Even as the constitution states so, there is still need for a switch in the private spheres that for long have been made to only be occupied by female and the public by only men, which has been a big question on a woman's true enjoyment of being a citizen of Uganda. In 1995, Uganda enacted a new Constitution with far-reaching gender equality provisions that have paved the way for the adoption of various legislations. The GoU has a host of laws promoting women's rights and gender equality. At the international level, it has ratified the Convention on the Elimination of All Forms of Discrimination against Women<sup>148</sup> (CEDAW), the Beijing Platform for Action, and has fully subscribed to the

---

<sup>148</sup> . signed in 1980, ratified 1985), the Beijing Platform for Action, and has fully subscribed to the fifth Sustainable Development Goal (SDGs) of gender equality and women's empowerment

## *Asexuality, Gender and the Law in Uganda*

fifth Sustainable Development Goal (SDGs) of gender equality and women's empowerment. The MoFED is the coordinating framework for the implementation of the SDGs in Uganda<sup>149</sup>.

At the national level, the National Gender Policy adopted in 1997 and revised in 2007, is the primary legal framework for gender equality and women's empowerment. Its primary objective is to mainstream gender concerns in national development processes through guiding resource allocation in all sectors to address gender equality<sup>150</sup>.

This Country Gender Profile (CGP) for Uganda has the explicit and limited purpose of informing the operational work of the Bank in Uganda, as it seeks to implement the Ten-Year Strategy (TYS), the Gender Mainstreaming Strategy, and the "High 5" agenda of the President. Specifically, it aims to facilitate the systematic integration of gender considerations into the formulation of the planned 2017-21 Country Strategy paper (CSP) for Uganda, preparation of which began in early 2016. Consequently, it focuses primarily on the operational needs of the Bank, while providing supplemental information on gender and inclusive growth; gender dynamics in key agricultural sectors; and gender and climate change.

Uganda's Ministry of Gender, Labour and Social Development (MGLSD) was established in 1989. MGLSD is mandated to spearhead and coordinate gender-responsive development and provide support to other sectors to mainstream gender. At the local level, MGLSD has Community-Based Services/Gender departments whose role is to spearhead gender mainstreaming in district development plans and budgets. However, both the

---

<sup>149</sup> UN (2017), Overview of Institutional Arrangements for Implementing the 2030 Agenda at the National Level.

<sup>150</sup> GoU (ND), National Gender Policy, <http://www.gou.go.ug/about-uganda/government-policies/national-gender-policy>.



national and decentralised structures have limited staffing and funding. The number of technical staff working on gender in MGLSD fell from 33 in 1995 to 10 in 2014. In addition, MGLSD has consistently been allocated less than 1% of the national budget to cover its entire portfolio (DfID 2014). Although there have been attempts by line ministries to designate gender focal points, in practice, according to stakeholders interviewed, this has often had limited impact, because junior female staff tend to be burdened with the responsibility, with few resources and little training, support, or clarity about their role.

## CHAPTER EIGHT



### THE STATE OF GENDER EQUALITY IN UGANDA

Uganda has made considerable progress in addressing gender inequality. The formal legal framework is progressive, key institutions exist to promote gender equality, and substantial improvements have been made in human development. Notwithstanding, this CGP finds that several inter-related systemic issues exert a profound influence on the state of gender equality in Uganda. These are:

**Law vs. Practice.** There are important gaps between Uganda's very positive legal framework and the lack of effective implementation or enforcement of gender-responsive laws. This means that women's legal status is precarious, their capacity as economic agents is limited, and their rights are not effectively guaranteed.

**Rapid Population Growth.** Uganda's population is growing at a rapid rate (3.02%), with high total fertility, high dependency ratios, and a significant "youth bulge," where 50% of the population is under age 15, and nearly 70% under age 25. This means that the country's demo-graphic dynamics will have

a profound effect on the ability of the country to meet the ambitious *Vision 2040* goals of becoming a modern and inclusive middle-income country.

**Socio-Cultural Norms and Attitudes.** Attitudes, beliefs and practices that serve to exclude women are still deeply entrenched throughout the country. This means that unbalanced power relations between men and women continue to have a negative impact on women's agency, their human capital development, and their ability to contribute equitably to, and benefit equitably from, Uganda's growth and prosperity.

**Persistence of Sexual and Gender-Based Violence.** The country suffers from a persistent high level of sexual and gender-based violence. This means that Ugandan society pays a high price in lost workdays, foregone economic capacity, and in the cost of providing essential services to victims, over and above the severe detrimental effects on individual women, their families, and the society at large.

**Gender differences affect economic opportunity.** Both men and women are active in Uganda's economy. Women's labor force participation is constrained both by socio-cultural norms and by the burdens of domestic work that disproportionately fall on women. Men and women face different incentives, which in turn act as a brake on output and productivity. There is a disconnect between the work done (by women) and the benefit obtained (by men), which is particularly the case in the cash (export) crop value chains.

**The "overburden" of women persists.** Women's active role in the economy is coupled with the disproportionate burden they bear of unpaid "care" work in the household, including child and elder care, and provisioning of food, fuel, and water. This means that women are more labor constrained than men, and face trade-offs among competing uses of time, which in turn limits their ability to engage as full partners in realizing Uganda's development goals.

**Land rights differ.** Women are still disadvantaged in terms of land ownership. Women represent one-third of owners or co-owners of land, though in Kampala women comprise 18% of land owners. Almost one in three Ugandans believes that women should not have the same access to land as men, and 67% of the population in Uganda thinks that land matters should be the responsibility of men.

**Progress and Challenges in Human Development.** Uganda has made considerable progress in improving the health and education status of its citizens. There is near parity at primary level, though gaps widen at the higher levels. Maternal mortality remains high, and there are marked age- and gender-specific differences in HIV prevalence, to the detriment of young girls. Around 49% of girls are married by the age of 18, compared with 9% of boys, and nearly one-quarter of teenage girls (15-19) have begun childbearing.

This gender profile identifies several underlying, or systemic, issues that are mutually reinforcing, and that have a defining influence on the state of gender equality in Uganda. These are discussed below. Summary gender-relevant data for. Uganda ranks 13th overall in Africa on the Bank's *2015 Gender Equality Index* (AfDB 2015b).

***Uganda has established a largely gender-responsive legal and regulatory framework, but effective implementation is lagging, and important gaps remain***

By early 2000, Uganda had established policies and legislation to advance gender equality. **Article 33(6) of the 1995 Constitution** "prohibits laws, customs or traditions which are against the dignity, welfare, or interest of women." **The Constitution states that men and women are equal before the law and, where gender** inequalities exist, provides for implementation of affirmative measures. In the last few years, several sector-specific legal

reforms, focused on improving women's access to justice and protecting women's and girls' rights, have been put in place.

The legal reforms were **including: the 2010 law on Domestic Violence (2010) and the Domestic Violence regulations (2011); the anti-Female Genital Mutilation Act (2010); the anti-trafficking in Persons Act (2009); and the Equal Opportunities Commission Act (2007).**

**However, both the Beijing+20 review (MGLSD 2014b) and the most recent *Progress of the World's Women* report (UN Women 2015) acknowledge that gender-sensitive legal reform has not made rights and economic transformation sufficiently real for women and girls.** Notwithstanding progress in some key areas, other important bills have never become law—the Marriage and Divorce Bill has remained stalled in Parliament; if passed into law, this Bill would contribute to securing women's property rights during and after marriage

Similarly, **the Sexual Offences Bill has not progressed in Parliament, despite the persistence of high levels of rape and defilement**, as discussed below. More importantly, and as stakeholders pointed out during the preparation of this CGP, "the law alone is not enough." What is missing is effective implementation and enforcement of these gender-positive laws and regulations. Consequently, much of the achievement in Uganda in this arena provides formal, but not substantive, equality.

### **Easing Domestic Workloads is Key to Improving Women's Economic Opportunities**

Expanding women's economic opportunity is sustainable primarily when their overall workloads are reduced: many time- and labor-intensive domestic tasks reduce household members' time to engage in economic activities, in particular in low-income rural communities where women are responsible for fetching water and firewood, in addition to other household chores such as cooking and cleaning. Women ... are less likely to be able to take advantage of

## *Asexuality, Gender and the Law in Uganda*

economic opportunities, respond to changing market conditions and incentives, or participate in income-generating activities. Consequently, a core component of an enabling environment for women's economic opportunity is lowering women's disproportionate burden of unpaid work.

It is, therefore, important to help women and men balance domestic responsibilities with economic activities and to invest in interventions that alleviate women's domestic workload<sup>151</sup>.

In Uganda, as elsewhere in Africa, both men and women are active in the economy. Labor force participation is high, but there is marked segmentation along gender lines. men and women have approximately the same share of their workforce in agriculture, while women comprise a greater share in manufacturing. Construction and transport are male-dominated sectors, with women representing between 2 and 5 percent of the male workforce. Women comprise the majority in trade and other services. Women are also under-represented among executives and professionals, and the monthly wage for women paid workers is one-half that of men. In view of the demographic dynamics discussed above, labor absorption will be critical for Uganda, as around 400,000 young Ugandans enter the labor force each year (World Bank 2012). Since inclusive growth is one of the two core goals of the Bank, a preliminary analysis of the relationship between gender inequality and growth is presented in Annex 8.

### **Women are more engaged in agriculture than men, but have more limited opportunities in the sector and face different incentives**

The importance of agriculture in Uganda's economy, where, in 2012/13, the sector accounted for 25 percent of GDP, and employed about 72% of the labor force. Its analysis suggests that women comprise 77% of the sector's

---

<sup>151</sup>UNDP 2008

labor force, and 63% are youth. Over the NDP period, the sector registered sluggish growth from 1.0% in 2010/11, to 1.33% during 2013/14. Farming is still dominated by smallholder farmers engaged in food and cash crops, horticulture, fishing, and livestock farming (GOU 2015).

Men's and women's roles in agriculture often diverge. Some sources suggest that women provide nearly 80% of agricultural labor (GOU 2015), while other estimates portray a more balanced gender distribution of labor. A World Bank study estimated that women make up the majority of Uganda's agricultural labor force (53%) and a higher proportion of female workers are employed in agriculture (76%) than are male workers (62%) (Ali et al. 2015). A 2011 FAO study suggests that women comprise 49.5% of the labor force that is economically active in agriculture in Uganda. These differences matter because the gap in productivity between male- and female-managed plots is "of meaningful concern both to GDP growth and to the distribution of income between men and women" (Ali et al. 2015:5). The cost to Uganda of the gender gap in agriculture is estimated at US\$67 million/year (UN Women et al. 2015; Box 2.4).

**Section 6(7)**<sup>152</sup> stipulates that every employer shall pay male and female equal remuneration for work of equal value. This is under the doctrine of comparable worth.

Unequal payment between men and women is discrimination and marginalization of women which is prohibited by law that provides for equal pay between male and female. The subject of equal pay stems from the broader issues of equality of treatment under the law in general and more specifically with respect to the place of work. According to **Article 23**<sup>153</sup> everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone without any discrimination has a right to equal pay for equal work.

---

<sup>152</sup> Employment Act

<sup>153</sup> Constitution of the Republic of Uganda

## *Asexuality, Gender and the Law in Uganda*

However, **Article 11(1) (d)** states parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women the same rights, in particular the right to equal remuneration including benefits and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of quality of work.

The subject of equal pay stems from the broader issues of equality of treatment under the law in general and more specifically with respect to the press of work. **Section 6(3)** stipulates that ; discrimination in employment shall be unlawful and for the purposes of this Act, discrimination includes; Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

The question of equal pay lies at the core of the employment contract and is designed to ensure that the work of equal value is rewarded with equal remuneration. It is considered to be the essential tenet of non-discrimination within the employment relationship, confirmed by **Article 2(1)** which provides that each member state shall, by means appropriate to the methods in operation for determining rates of remuneration, promotes and in so far as is consistence with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value in addition, a reflection of the principle is covered under the international statutes to which **Article 7 and Article 15**.

**Domestically, Article 40(1) b of the constitution provides that parliament shall enact laws to ensure equal payment for equal work without discrimination. In this respect, section 6(7) provides that every**



employer shall pay male and female equal remuneration for work of equal value and also under **Article 2(2)** of the provides that persons shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, religion, social or economic standing, political opinion or disability.

**Section 6(6) of the employment act provides that the minister and the labor advisory board shall, in performing their duties, seek to give effect to the principle of equal remuneration** for male and female employees for work of equal value.

Research has shown that a significant cause of the gap in male and female earnings is the fact that women have been segregated into certain positions, which have been devalued precisely because they are considered “female jobs” for example nurses, librarians and secretaries are examples of workers who have been found to suffer a wage penalty because they work in female dominated professions. One way that some countries have tackled the problem of sex discrimination within the formal labor force is through the application of the concept of comparable worth or pay equity.

However, the doctrine of comparable worth essentially goes beyond equal pay for equal work and provides that sex discrimination includes not only a situation in which a woman is paid less than a man in precisely the same job, but also a situation in which a woman is paid less than a man performing a different job that is comparable in terms of education, skills, working conditions and other factors. In other words, the concept focuses on playing an entire profession or occupation the same wage rate as a second profession or occupation, both of which are determined by some outside authority to be of the same worth or value to an employer.

**Section 6** of the employment act and **Article 40** of the constitution of Uganda introduce the principle of comparable worth. Comparable worth legislation is a positive mechanism is assisting employers to avoid unlawful devaluation of female dominated positions. It is especially useful in jurisdictions like Uganda which have neither minimum wage legislation, nor

strong unions and collective bargaining. While the Equal Opportunities Commission is the body to implement equal pay for work of equal value, courts of law can also play an important role in this regard.

In a KCCA case where Akello and Okello were both employees of KCCA working as a librarian and a garbage truck driver respectively, Okello's monthly salary is 25% higher than that of Akello. This is a total discrimination against Akello because she is a woman. Applying the principle of comparable worth, Akello and Okello should be paid equally for doing work of equal value.

## **Gender and Agricultural Productivity in Uganda**

A recent World Bank study of gender differences in productivity finds that, controlling for other factors, the unexplained difference in yield between male and female farmers is 29.6%. The authors attribute 2/5 of this difference to what they refer to as the "child dependency ratio," concluding that "child-care activities differentially constrain female farmers' ability to supervise or perform labor activities on their plots." An additional 1/5 of the gender gap can be explained by the greater difficulty women face in accessing markets. Female productivity is also affected differentially by distance to the nearest major road. This may reflect lower mobility due to household obligations, access to transport, or informal social institutions regarding female travel. Many factors conspire to bring about gender-based differences in economic opportunity and outcomes in agriculture. Women generally have smaller plots, have less access to inputs and technology, as well as to market information and networks, as is the case in the cotton sector

Access to and control over land differs for men and women with implications for readiness to invest in land capacity. Differences in labor burdens (when household work is included) and in access to labor for economic activities also

affect women differently<sup>154</sup>. Lack of mobility and poor access to transport services affect women's ability to reach markets and sell their produce. As can be seen in the export crop value chains, including those prioritized by NDP II, women are largely excluded from the transport and sale of coffee and other commodities (Ahmed 2012; Baffes 2006; Hill and Vigneri 2011).

**Access to and rights over land have more to do with culture than economics**

Uganda has four systems of land tenure: customary, Mailo, leasehold, and freehold. The customary system predominates, which largely vests land control and management rights in men. Under customary law, a woman is not entitled to inherit land on the death of her husband, but land is shared among male relatives. This practice leaves women without property and vulnerable (MGLSD 2014). The National Land Policy of 2013 recognises the difficulties of women accessing land traditionally and the lack of resources for them to purchase it on the market. Section 65 (a) of the National Land Policy states that Government shall protect the right to inheritance and ownership of land for women and children and shall ensure that both men and women enjoy equal rights to land before during, and after marriage, and at succession.

Whereas both the international and domestic are gender sensitive, the intestate Succession law still displays elements of customary law ideology in its provisions still emphasize male dominance that disregards a woman's contribution to the home. Sometimes customary leaders or family members make decisions about the deceased's property that deny women and girls their equal rights to inherit property for example Top officials in Buganda Kingdom of the Effumbe clan asserted that modernity cannot supersede tradition as they insisted it was wrong for former Prime Minister Apollo Nsibambi to choose an heiress.

---

<sup>154</sup> See Hill and Vigneri 2011

**It should be stressed in the case of Ephrahim v. Pastory and Kaizingele**, the respondent, Ms. Pastor, inherited clan land from her father by a valid will and sold the land to a man who was not a member of her clan. The next day, the appellant, Mr. Ephrahim, filed suit seeking a declaration that the sale of land by Ms. Pastory was void under the customary law that a woman has no power to sell clan land. The Court held that the customary law regarding women's property rights discriminated on the ground of sex in violation of CEDAW, the African Charter on Human and Peoples' Rights and the ICCPR as well as the Tanzania Constitution.

**Article 12 of the CEDAW** is to the effect that state parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of men and women, access to health care services including those related to family planning. The same is also provided for under Article 15 of the Maputo Protocol. According to objective 20 of the 1995 constitution it puts an obligation onto the state to ensure all practical measures for the essence of availing the medical services to the population without segregation. According to the case of **Law and Advocacy v AG** where among the issues that were raised by the petitioner was that the act of female genital mutilation jeopardized the right to health of the women since it put their life in the position of contracting HIV easily, the constitutional court agreed with the petitioners and annulled and declared the custom of female genital mutilation as a void practice.

Gender equality, sexual equality or equality of the genders, is the view that all sexes, including men and women, should receive equal treatment, and should not be discriminated against based on their gender. This is enshrined in the United Nations Universal Declaration of Human Rights and the Constitutions of Nations, which seek to create equality in law and in social situations, such as in democratic activities and securing equal pay for equal work. Gender equality requires equal enjoyment by women and men of

socially-valued goods, opportunities, resources and rewards. Gender equality does not mean that men and women become the same, but that their opportunities and life chances are equal. In a nut shell, Gender Equality means that women and men enjoy the same status. When you have women or men who are left out of or mistreated by their societies, those societies are less stable, less secure, certainly less democratic. Gender-based violence significantly hinders the ability of individuals to participate fully in and contribute to their families and communities – economically, politically, and socially. Gender Equality is not only the right thing to do: It's also smart economics and vital to ending poverty and boosting shared prosperity around the world. According to a 2007 Pew survey, 65% of respondents believed that men and women were equally capable as political leaders.

Women in Uganda like most African countries have the same rights to vote and stand for election as men in Uganda.

The Constitution of Uganda upholds women's rights to have access to property other than land.

Drafted in 2003, the Domestic Relations Bill attempted to address these issues, but failed to pass.

In 2020, the global gender equality community is sounding the alarm about a new and growing backlash against women's rights. Nevertheless, there has been some progress on shifting gender norms in recent years and it is important to understand how this progress has been achieved, as well as just how long it can take. Understanding the history of norm change can both enhance our knowledge of change processes as well as inspire future generations, as Harper (2020) describes in a companion think piece to this series. It is because we face a backlash that we need to take this longer historical view. It reminds everyone engaged in the struggle for gender equality that their actions can make a difference, even if they don't live to see it; that courage and persistence are essential parts of successful change; that dominant narratives about how we got to where we are often hide many

## *Asexuality, Gender and the Law in Uganda*

crucial and untold histories of change. Ideally, of course, grassroots action coincides with gender transformative political will and leadership and strong transformative policy reforms. But the long view shows us that even without committed leadership, people can take the lead, particularly through civil society organizations (CSOs) and social movements. The practical areas of focus are pivotal legal and cross-sector policy reforms, education, the role of social movements, including their, and others, action to address harmful masculinities. All of these are bedrocks enabling further empowerment and are part of the wider picture of transformative change.

As of January 2012, the adoption of legislation to regulate marriage and divorce, has been pending for over 14 years. In the absence of such a law, protection is piecemeal and fractured and significant gaps exist. For example, although the Ugandan Constitution provides that the minimum legal age for marriage for both men and women is fixed at 18 years, according to customary laws marriages are frequently arranged for minors, especially in rural areas. Furthermore, polygamy is authorized under customary and Islamic laws and women in polygamous relationships have no protection in the event of dissolution of the union. In some ethnic groups, custom also provides for men to “inherit” the widows of their deceased brothers (*levirat*), which is not prohibited by law. The **Marriage and Divorce Bill**, which should come back before parliament in 2012, fixes the minimum legal age for marriage for both sexes at 18, grants women the right to choose their spouse and the right to divorce spouses for cruelty and prohibits the practice of “widow inheritance”.

It also defines matrimonial property, provides for equitable distribution of property in case of divorce and recognises some property rights for partners that cohabit. However, the Bill does not apply to Muslim marriages, nor does it prohibit polygamy or payment of the “bride price”. A draft law sanctioning sexual violence, the **Sexual Offences Bill**, is also awaiting adoption, while

reforms to discriminatory provisions of the **Succession Act**, preventing women from receiving inheritance, have not yet been submitted to parliament. Under current legislation, which is fractured and piecemeal<sup>155</sup>, there are no essential requirements common to all marriages, whether civil, religious or customary, leaving significant gaps in protection. For example, although the Ugandan Constitution provides that the minimum legal age for marriage for both men and women is fixed at 18 years, according to customary laws marriages are frequently arranged for minors, especially in rural areas. Furthermore, polygamy is authorised under customary and Islamic laws and women in polygamous relationships have

no protection in the event of dissolution of the union. In some ethnic groups, custom also provides for men to “inherit” the widows of their deceased brothers (*levirat*), which is not prohibited by law.

**The ownership and division of property:** The law defines marital property and the rules applying to the ownership of property acquired during marriage, including the notion of spousal contribution towards improvement of matrimonial property. These provisions are aimed at entitling women to their fair share of property in marriage and upon divorce. They have been criticized by some opponents to the bill, including some parliamentarians and religious leaders, as “unbalanced, favouring women”, and “encouraging women to be hostile towards men and accumulate wealth”.

**Cohabitation:** Through this provision, the draft law aims to provide some protection to couples who cohabit without being married, representing the majority of Ugandan couples. The draft law provides for the possibility to enter into an oral or written agreement relating to property. This provision only relates to cohabitation and does not apply to married couples. However,

---

<sup>155</sup> Existing family laws include: the Marriage Act, Cap 251; the Marriage of Africans Act, Cap 252; the Divorce Act, Cap 250; Marriage and Divorce of Mohammedans Act, Cap; Hindu Marriage and Divorce Act, Cap 250; Customary Marriage (registration) Act, Cap 248.

this point is unclear to many, including within the NGO community. The law is perceived by many, including some faith-based leaders, to be promoting cohabitation versus marriage, or as recognizing cohabitation as a form of marriage.

**Marriage gift or dowry:** (still commonly called ‘bridal price’). The draft law does not prohibit the marriage gift or dowry but provides that it is non-refundable. This is seen as key to breaking the financial constraints that often prevent a woman from being able to separate or divorce her husband. The term proposed by the Bill, ‘marriage gift’ is problematic to some, including members of Parliament, who have difficulties abandoning the commonly used term ‘bridal price’. As the draft law does not apply to Muslim marriages, many women in Uganda - where an estimated 12% of the population are Muslims - are excluded from its application, unless they decide at the time of marriage that the law will apply to them, by contracting a civil marriage. It is concerning that Muslim women will not receive the same protections of their rights. The creation of different laws for different groups violates international human rights norms and international law and in particular the principle of non-discrimination, which is also enshrined in the Ugandan Constitution. The obligation on states to protect women from discrimination applies to all women, irrespective of their religion.

Two major pieces of legislation came into force in 2010: The **Domestic Violence Act**<sup>156</sup> and the **Prohibition of Female Genital Mutilation Act**. However, implementation of these laws remains limited. Some significant pre-existing difficulties preventing access to justice for women victims of violence have not been addressed, such as the costs associated with the complaint process.

---

<sup>156</sup> perpetrators of domestic violence are liable to a fine of up to 960,000 Uganda



Other obstacles to implementation include the adoption of required implementing regulations and the allocation of an adequate budget. Since the entry into force of the Prohibition of Female Genital Mutilation Act, de-localization of the practice across the Kenyan border has developed, while other harmful traditional practices in Uganda remain prevalent, including early and forced marriage, abduction of girls, “widow inheritance” and “wife sharing”. A concerted government strategy towards eliminating these practices is required<sup>157</sup>. Several persons interviewed by the FIDH/FHRI mission, including the Minister for Gender Equality and Labour, Hon. Syda Bbumba, and members of the Law Reform Commission, considered that the Bill still needed to gather sufficient support from religious leaders and at community levels. The Minister for Gender Equality and Labour considered that, before further consideration of the bill, further awareness-raising actions and advocacy are required, targeting faith-based organizations and rural communities, which would serve as a basis for defending the bill before parliament.

Since the entry into force of the Prohibition of female genital mutilation (FGM) Act in 2010, a phenomenon of de-localization of the practice across the Kenyan border from the neighbouring area of Sabine has developed or been strengthened. This practice was well known to all those interviewed. In 2011 the number of documented cases of FGM increased from 550 in 2008 to 820. In the same year, six surgeons/ FGM practitioners were arrested and prosecuted under the new law. Two of them were convicted and sentenced to community service while four were found not guilty. Several awareness raising actions conducted by the government and by NGOs, targeting concerned communities, are conducted on a regular basis, but no other interventions under the law have been pursued. According to the political leadership (both at Ministerial level and in Parliament) a dedicated cross-border program with Kenya would be required to fight the current trend. This could entail in particular establishing cross-border police patrols.

---

<sup>157</sup> Women’s rights in Uganda: gaps between policy and practice

## *Asexuality, Gender and the Law in Uganda*

However, to date, such collaboration had not been initiated. Another proposed initiative, was the establishment of government incentive programs (such as scholarships, educational grants for girls) targeting communities who do not practice FGM in the concerned area. Other harmful traditional practices in Uganda are prevalent, including early and forced marriage, abduction of girls, polygamy, “widow inheritance”, “wife sharing”, and the “bride price”. However, recent and reliable research and figures are not readily available. A concerted government strategy towards eliminating these practices is lacking.

There remain serious obstacles to access to education and health services for women and girls in Uganda. In rural areas, girls often start schooling at an already advanced age, in part due to risks associated with walking long distances to school. Girls also have higher drop-out rates, in part due to early marriage and pregnancy.

Maternal mortality remains very high. In 2011, according to the Coalition to stop maternal mortality in Uganda, 16 women died every day of preventable death in childbirth. Clandestine abortions are a major cause. The level of access to family planning services and contraception remains very low.

In 2010, on International Women’s Day, the campaign released the Dossier of Claims, containing key recommendations on fighting discrimination and improving respect for women’s rights in over 30 countries<sup>158</sup>. The chapter on Uganda<sup>159</sup> was researched and written in collaboration with the Foundation for Human Rights Initiative (FHRI) and the Ugandan Association of Women Lawyers (FIDA-Uganda), partners in the campaign. In October 2010, this report was submitted to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) in

---

<sup>158</sup> Africa for women’s rights: ratify and respect! Dossier of claims, March 2010

<sup>159</sup> Africa for women’s rights: ratify and respect! Dossier of claims: Uganda, March 2010

preparation for its examination of women's rights in Uganda. The recommendations addressed by the CEDAW Committee to the Ugandan government took up the large majority of the concerns and recommendations raised<sup>160</sup>. The Committee also required the Ugandan government to submit a mid-term follow-up report by November 2012, relating to two key areas: enactment of core legislation and progress made towards access to education for women and girls. In Uganda, statutory law is applied alongside customary and religious laws. Despite the provisions of the Constitution, discriminatory statutory, customary and religious laws remain in force, in particular in the areas of family law and property law.

Responsibility for eliminating law that discriminates against women is shared by the Uganda Law Reform Commission (ULRC), Parliament and the executive branch of government.

The ULRC is a central institution in the planning, preparation and presentation of new Bills. Established as a department of the Ministry of Justice in 1975, the Commission became an autonomous statutory body in 1990 and in 1995 became a constitutional institution. The Commission has a wide-ranging mandate to review and update laws "in line with social, cultural and economic needs and values of the People of Uganda". Although an autonomous body, it depends on the Attorney General's consent or initiative for the conduct of most of its mandate. It plays a specific role in relation to implementing CEDAW recommendations on discriminatory legislation, and keeps track of the Ugandan government initiatives in this regard<sup>161</sup>

NGOs have taken a lead role in advocating for legal reform to increase protection for women's rights. Undeniably, the passing of the Domestic

---

<sup>160</sup> CEDAW Committee, Concluding observations on Uganda, 5 November 2010. In October 2011, FHRI participated in the UPR session on Uganda at the Human Rights Council, ensuring that major issues on women's rights were taken up by Members

<sup>161</sup> Ugandan Law Reform Commission Matrix).

## *Asexuality, Gender and the Law in Uganda*

Violence Bill by the former parliament in November 2009 was a civil society advocacy achievement, as is keeping important pieces of legislation, such as the Marriage and Divorce Bill and the Sexual Offences Bill, on Parliament's agenda.

Use of strategic litigation by NGOs assisted by private lawyers is a strong advocacy tool in Uganda. Several landmark constitutional cases have recently been decided and others are pending. FIDA-U and the organization Law and Advocacy for Women in Uganda have initiated several cases before the Constitutional Court, successfully challenging discriminatory provisions of the Succession Act,<sup>162</sup> as well as discriminatory provisions of the Divorce Act concerning the grounds for divorce (see *infra*)<sup>163</sup>.

In 2007, the Constitutional Court declared a provision of the Penal Code Act<sup>164</sup>, concerning the crime of adultery, to be unconstitutional. The provision makes it lawful for a married man to have an affair with an unmarried woman but unlawful for a married woman to have an affair with an unmarried man. Yet, decisions by the supreme jurisdiction, although legally binding on lower courts, are not necessarily applied in practice, in the absence of law reforms implementing such decisions.

The decisions concerning the Divorce Act and the Penal Code Act, are still awaiting law reform to give them full effect. However, on the basis of the decision on the Succession Act in 2006, the Law Reform Commission has recently been directed by the line Ministry (the Ministry of Justice) to work on revising legislation.

---

<sup>162</sup> Law and Advocacy for Women in Uganda v Attorney General (2006)

<sup>163</sup> Ugandan Association of Women Lawyers (FIDA-U) v Attorney General (2003)

<sup>164</sup> Section 154 of the Penal Code Act.

*Isaac Christopher Lubogo*

Most recently, in 2011, a well-organized and active coalition of NGOs introduced a constitutional claim<sup>165</sup> on behalf of two women who died in childbirth, which made international headlines<sup>166</sup>

The petition argues that non-provision by the government of essential services for pregnant women and their newborn babies violates the fundamental obligation to uphold the Constitution and defend, protect and promote the right to health and the right to life. The decision in this case is pending

---

<sup>165</sup> Constitutional Court Petition Number 16 of 2011

<sup>166</sup> Coalition to Stop Maternal Mortality in Uganda

## CHAPTER NINE



### **SEXUAL AND GENDER-BASED VIOLENCE IN UGANDA.**

The most common type of abuse is intimate partner violence and other forms of domestic violence. According to studies, more than two thirds of women who have been in marital relationships have experienced some form of violence by an intimate partner. A study conducted by the Uganda Law Reform Commission revealed that half of the women surveyed reported experiencing violence on a daily or weekly basis.<sup>10</sup> Yet the very notion of domestic violence is not generally recognized in Ugandan society at large. The novelty of the concept for the general population is reflected in the perception that the term “domestic violence” applies only to the most serious cases, where physical injury is both visible and grave. Some positive steps have been taken recently to increase legal protection from violence, however further necessary legislation, the Sexual Offences Bill, remains pending and there are significant obstacles to effective implementation of new laws.

**Gender Mainstreaming:** A strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and

evaluation of the policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated<sup>167</sup>

### **Why Does Gender Matter?**

This is distinct in that it focuses on women and men and not on women in isolation. It highlights: The differences between women's and men's interest even within the same household and how these interact and are expressed.

The conventions which determine women's and men's position in the family, community and society at large whereby women are usually dominated by men, important to note is that the differences among women and among men, based on age, wealth, ethnic background and other factors. The way gender roles and relations change, often quite rapidly, as a result of social, economic and technological trends. In doing so its important it worth understanding the following:

**Gender integration**, are Strategies applied in programmatic design, implementation, monitoring and evaluation to take gender considerations into account and compensate for gender-based inequalities.

**Gender Transformation Approaches** are Strategies that address the causes of gender-based inequalities and works to transform harmful gender roles, norms and power relations by fostering critical examination of inequalities and gender roles, norms and dynamics recognizing and strengthening positive norms that support equality and an enabling environment. Highlighting the position of women and girls relative to men and boys while taking into account the added effects of marginalization (e.g., the intersections of gender and social class or gender, class and ethnicity)

Once it is established that growth is essential for poverty reduction, and that inequality limits the poverty-reducing effects of growth, it is particularly

---

<sup>167</sup> [www.unicef.org/gender/training/content/resources/Glossary.pdf](http://www.unicef.org/gender/training/content/resources/Glossary.pdf)

## *Asexuality, Gender and the Law in Uganda*

apposite to focus on one critical dimension of inequality, namely gender inequality, and to address in what ways gender inequality can be seen to affect economic growth and poverty reduction, and, by extension, the effectiveness with which the Bank's assistance accomplishes its core goals of inclusive growth and green growth. Analysis by UNDP notes, bluntly, that "growth is not inclusive if it is not gender-equitable"<sup>168</sup>

It is often taken for granted, when speaking of "inclusion" or "equity," that gender inclusion or gender equity must naturally be integrated into how these concepts are defined and applied. How, after all, can growth be inclusive or equitable, if it is not inclusive of, or equitable to, both men and women? Unfortunately, the focus on inclusion or equity is often gender-blind, as revealed in recent World Bank research on "inclusive green growth" where gender is not mentioned at all (World Bank 2012b). Consequently, it is essential to adopt a pro-active focus on gender so as to ensure that inclusion and equity do not neglect their critical gender dimensions.

The business case for addressing gender inequality as a critical dimension of development has been made in many publications, including successive UNDP Human Development Reports and the 2012 World Development Report on *Gender Equality and Development*<sup>169</sup>. The evidence cited in linking gender equality and growth is a mix of microeconomic case studies, cross-sectoral analyses, and emerging macroeconomic analyses incorporating gender variables into cross-country growth regressions and simulation models. However, this evidence is not without controversy. Recent reviews have provided a more nuanced interpretation of the available evidence, highlighting, among other things, the conceptual, methodological, and data challenges involved in seeking to establish empirical, let alone causal,

---

<sup>168</sup> UNDP 2011

<sup>169</sup> See UNDP 1995, 2010, 2011; World Bank 2001



relationships between gender inequality, poverty, and growth<sup>170</sup> Poverty incidence tends to be lower in countries with more gender equality. ... Economic growth also appears to be positively correlated with gender equality. ... Simple correlations across countries, while suggestive do not imply a causal relationship between gender equality and poverty reduction or economic growth: gender equality could “cause” faster growth and accelerated poverty reduction, but faster development could also spur improvements in gender equality. Alternatively, the causal arrows may point in both directions, or a third factor may be responsible for both faster development and greater improvements in gender equality perhaps better governance.<sup>171</sup>

One way to capture the dynamics of the different contributions of men and women to the productive economy is in the “gender intensity of production” in different sectors, an approach developed by Elson and Evers and originally applied to Uganda<sup>172</sup>. The “gender intensity of production” in Uganda, and the respective shares of men’s and women’s contributions to GDP by principal sector. These estimates, while highly aggregated and based on different data than what is presented in the main report; provide a useful indication of the magnitude of the respective contributions of men and women to the economy. They confirm that men and women are not distributed evenly across the sectors of the economy, and suggest that women contribute around 42 percent of the country’s GDP, compared with men’s contribution of 58 percent. It is possible that these estimates understate women’s contribution to the economy, though they also do not take account of gender differences in productivity.

---

<sup>170</sup> World Bank 2007; Stotsky 2006

<sup>171</sup> Source: World Bank 2007:107.

<sup>172</sup> Elson and Evers 1997

## CHAPTER TEN



### **GENDER DISCRIMINATION**

gender discrimination is the treatment or proposing to treat someone unfairly basing on the group that person belongs. For example, racial, gender etc. Gender discrimination is the practice of disadvantaging and treating someone of one gender unfavorably.

Indirect gender discrimination is due to unreasonable requirements/ conditions that purport to treat everyone the same. It is part of the organizational culture e.g. (men should not get paternal leave that it's not good).

The success of dealing with gender discrimination depends on social embeddedness or how deep seated the particular form is in terms of interpersonal behaviour, social institution, cultural practice, religious, business, statutory law etc. e.g. it would be foolish to remove discrimination at superficial level to inter personal behaviour is such discrimination is actually rooted and legitimated in an underlying foundation of tradition e.g. passing of Domestic Violence Act which does not address the root cause of domestic violence.

Common instances of gender discrimination can be found in employment, when applicants of a specific gender are given preference over another. Additionally, denying someone an opportunity because they identify, or are perceived, as transgender is also considered gender discrimination.

**Uganda v Nabakooza Jackline & Others**, This revision relates to the order of the Chief Magistrates Court dated 7/7/2004. That order was made following the arrest on 6/7/2004 and prosecution of ten persons six of whom were women. All of them were in their twenties or so. They were arrested at Abayita Ababiri on the Entebbe-Kampala Highway on the very day when the COMESA summit delegates were also making their entry into the Capital City. The ten were then taken to court the following day and at once charged with being idle and disorderly (Section 167(d) of the Penal Code Act). They all pleaded guilty to the charge and were accordingly convicted and sentenced to three months imprisonment each with no option of a fine. The court also made the following orders that:

For further deterrence the girl's skimpy wear is to be handed to the police immediately the ladies are received in prison; for police to destroy through burning when duly witnessed by a court official and DPC Entebbe.

The girl's big weaves should be undone and their heads shaven to avoid stampede at the women's prison wing. The vehicle engine, since the vehicle was impounded is forfeited to the State, as a deterrent step to such activities."

All the ten pleaded for leniency and or sought leniency, while others express much remorse and vowed never again to do the acts they were accused of. The prosecutor had asked for a deterrent sentence. He stated this "When receiving heads of States for the COMESA meeting in Kampala. Putting into consideration the shame the nation got due to the paraded scantily dressed group and their supporters, I pray for a deterrent sentence." In pronouncing sentence, the learned Chief Magistrate stated: -

## *Asexuality, Gender and the Law in Uganda*

“True, yesterday was a day for awaiting COMESA delegates. Indeed, the entourage group was a nuisance on the highway skimpily dancing away on top of a vehicle at loud music while the heads of state and public were using the same high way. It depicted/depicts a high level of moral decadence of the country. The group should have put up their performance at a licensed place but not besides the highway to the general public eye. It was and is a shame to the nation! The girls are almost naked. The involved are all young and have better chances to make good use of their time, talents and bodies”.

The court then pronounced the sentence, which jolted the person from whom the vehicle had been hired for the troupe. He filed an epistolary complaint hence the revision proceedings. The DPP was invited to be heard on the matter but has not come to court. Secondly, the ten persons who were sentenced to imprisonment have duly served their sentence and have been released from custody on 18.8.2004....

### **NOTE; Comment on the sentence given to the girls vis-à-vis that given to the boys**

The women were treated to a harsher sentence than their four male counterparts. Their costumes or coverings as well as head covers were wrenched from their bodies and their heads forcibly shaven. Their male counterparts were not similarly affected. This smacked of a discriminatory treatment that also demeaned the girls and assailed their dignity as women amounting to them suffering cruel, degrading treatment and punishment.<sup>173</sup>.

### **According to Article 24 of the constitution provides for Gender Equality in Uganda**

---

<sup>173</sup> Article 24 of the constitution 1995 as amended

*Isaac Christopher Lubogo*

“Wherever women are deprived of their rights and freedoms, wherever they are humiliated and abused, development is invariably limited,” Angela Merkel, German Chancellor Angela Merkel, at global leaders’ meeting on gender equality and women empowerment.

Gender equality, sexual equality or equality of the genders, is the view that all sexes, including men and women, should receive equal treatment, and should not be discriminated against based on their gender.

This is enshrined in the United Nations Universal Declaration of Human Rights and the Constitutions of Nations, which seek to create equality in law and in social situations, such as in democratic activities and securing equal pay for equal work. Gender equality requires equal enjoyment by women and men of socially-valued goods, opportunities, resources and rewards.

Gender equality does not mean that men and women become the same, but that their opportunities and life chances are equal. In a nut shell, Gender Equality means that women and men enjoy the same status. When you have women or men who are left out of or mistreated by their societies, those societies are less stable, less secure, certainly less democratic.

Gender-based violence significantly hinders the ability of individuals to participate fully in and contribute to their families and communities – economically, politically, and socially.

Gender Equality is not only the right thing to do: It’s also smart economics and vital to ending poverty and boosting shared prosperity around the world.

### **Natural sex differences:**

Natural differences exist between the sexes based on biological and anatomic factors, most notably differing reproductive tools

There is also a natural difference in the relative physical strength (on average) of the sexes, both in the lower body and more pronouncedly in the upper body. Though this does not mean that any given man is stronger than any given woman. Men on average are taller, which provides both advantages and disadvantages

## **Psychology**

Prenatal hormone exposure influences to what extent one exhibits traditional masculine or feminine behavior. No differences between males and females exist in general intelligence.

Men are significantly more likely to take risks than women. Men are also more likely to be aggressive.

From birth males and females are raised differently and experience different environments throughout their lives. In the eyes of society, gender has a huge role to play in many major milestones or characteristics in life; like personality.

Males and females are led on different paths before they are able to choose their own. (For example, the colours of clothes they wear, the dolls they play with, work at home etc.)

These paths set by Parents are other adult figures in the child's life set them on certain paths. This leads to a difference in personality, career paths, or relationship. Throughout life, males and females are seen as two different species who have very different personalities and should stay on separate paths.

**In the work place,** Work place death reveals that the highest percentages are men, more over Income disparities linked to job stratification tend to explain

why there are gendered income disparities, gender pays differences in the medical field, if income based on hours performed, female doctors will spend less time at work because they have families to look after.

## **Gender roles**

Gender inequality in relationships participating parenting and marriage, gender equality in relationships has been growing over the years but for the majority of relationships, the power lies with the male.

## **Challenges to effective gender equality laws and policy implementation**

### **Political interference and inadequate political will**

There is a lot of politicization of issues, which fails whatever good laws the Uganda Law Reform Commission (ULRC) may come up with. Uganda Law Reform Commission ULRC only proposes laws but cannot force Cabinet to make them. They stop at justifying them. While it is the duty of Parliament to enact laws, the MPs do not seem to be aware that it is their duty to follow up on government priorities. they instead personalize themselves in the law. they do not appreciate the law and constitutional standards, this has had the tendency to affect the quality of laws and slacken the speed of their enactment and implementation. Moreover, the political-cultural confluence makes it difficult for politicians to advocate the implementation of certain laws. Strong patriarchal cultures make it difficult for certain practices to be combatted. For example, politicians from areas where Female Genital Mutilation is practised have often feared to advocate the abolition of the act as provided by the law for fear of losing socio-political capital.

## CHAPTER ELEVEN



### **PATRIARCHY**

Patriarchy literally means the ‘rule of the father’. Within gender studies, the term refers to a social system wherein men dominate over women. Male dominance can be expressed in various ways for example, within the institution of the family, in the greater rights given to men, through the ownership and control by men of resources like land and other assets.

Patriarchy takes different forms in different social and historical contexts. This is because patriarchy is a system which interacts with i.e., it is shaped by, and shapes other systems in society. It operates differently in different communities, economic systems, countries, etc.

A patriarchal society is a society controlled, and run by men. Men devise the rules and hold dominating positions at home, in community, in business and government. "A man's world", is a phrase that is used to talk about this. They hold the privilege to listing out rules and dominate in all forums both inside and outside the home. In such a societal setup a woman is seen more as supplementing and supporting a man (behind every successful man is a woman), bearing children and taking care of household chores. This is how it is and has been for ages in many of the cultures.



Feminists used the concept of patriarchy in early 20th century to expound the social arrangement of male dominance over women. The underlying ideology of a patriarchal society is all about the men possessing superior qualities or typical attitudes and traits like virility, strong will power, authority, dominance, bullying, shrewdness, maintaining confidentiality, social associations and network, action oriented, having a free will, a sense of superiority over others (outlook, race, gender), brute force, belligerence, carrier of family legacy so on and so forth. Thus, in a patriarchal social structure, the patriarch is an elder holding societal legitimate power over a group in the community unit. Men acquires a dominant status not in terms numbers or in strength but by means of having a more prominent and powerful social position and having almost absolute access to **decision-making power**. It is also related to economics as in patriarchal societies men will have greater power and control over the economy. In such a scenario, because men have higher income and greater hold on the economy, they are said and considered to be dominant.

There are a variety of ways in which patriarchy can be enforced, this may include extortion through violence, physical and mental assault and other forms of harassment, and the demeaning of their efforts to unify and resist. Authoritarian traits are typical of patriarchal societies and they trust heavily on legal-rational approaches of association, show stronger martial implication and also reliance on police suppression to impose authority. In such a setting it is a general trend to hold contempt for women and for her attempts to liberate herself. In these societies, women are presented with an interpretation of the world made by men, and a history of the world defined by men's actions. For instance, in history when we read about war and conquests, we read more about male warriors, whereas the stories of women are scarcely told. This expurgation of women's lives distances women and fails to provide them with relevant role models.

In contrast, matriarchal societies honour women as key decision-makers and they hold the privileged positions as community leaders, where they play a

central role in the family, community and in the society. In the few matriarchal societies that exist today women's rights are central; women are given space to express their creativity and participate in society. Patriarchy is resilient, often changing face. The norms and traditional ways of almost all societies in Uganda are patriarchal, making it difficult to address negative cultural issues such as female genital cutting. There is slow attitudinal change, despite the use of politically correct language, compounded by lack of progressive equality laws in some sectors. People use the right language but have the wrong/negative attitude. Culture still upholds patriarchal tendencies. Women are still stereotyped as less competent. Regarding issues of HIV/AIDs, there is a high rate of HIV transmission by especially men who do not believe in testing owing to their patriarchal nature. Most men are not keen on seeking medical attention, so they rely on their partners, which puts them at dire risk of contracting diseases. If society remains rooted in patriarchy, the pro-gender laws cannot be properly implemented.

## **Reasons why the patriarchy still subsists in Uganda's**

### **Weak enforcement structures (staffing)**

The institutions themselves have no capacity to implement the laws and policies. It is one thing to make a policy or law and it is another to embrace it. The institutions in Uganda are not as forthright. The policies that we have on paper do not actually have grounds or means through which they can be implemented. They lack staff who are adequately trained in gender analysis to champion gender mainstreaming. They lack specific individuals or bodies to follow up on behalf of the government to achieve better outcomes. Meanwhile, some of those employed as gender focal point persons still need to be sensitized regarding these laws. For example, in one department, the gender focal point person was a male who had a negative attitude towards

gender issues, causing a stagnation of mainstreaming of gender in departmental processes. This, therefore, calls for a gender-specific coordination team composed of gender focal persons from every department to coordinate issues of gender mainstreaming.

### **Limited political will**

The government is quick to adopt public policies which are not controversial but avoids those that seek to challenge unequal gender power relations. The government agrees with the policies in principle but not in practice. The principle of indivisibility of rights where some rights cannot be subscribed to is still a challenge. Some government officials think that it is not yet time for women to be liberated, leading to failure to implement the available policies. Consequently, legislating on gender equality and failing to commit resources human and financial has steadily emerged as a new form of resistance to gender equality.

### **Socio-cultural and economic context**

Though Uganda is a signatory to many international pro-gender laws, there are several contextual factors that militate against their implementation and domestication. For example, the abortion and family planning resolution that forms part of the Maputo Protocol has failed to be implemented because of cultural and religious attitudes towards abortion. Resolution 2331 against trafficking requires states to track trafficking and provide up-to-date statistics on the vice but, given the high levels of poverty, not many who are trafficked may speak out and report the vice, limiting the state's capacity to combat the vice. Some international obligations fail because of domestic contextual controversies. A case in point is the Marriage and Divorce Bill, which has failed because of the perceptions in the Ugandan social context. Local religious opinions also hinder the implementation of the international resolutions.

## **Is Gender, women or men and women?**

The operationalization of **gender is another** key challenge. Reducing of gender to women has the tendency to put the focus on individual women and not on relationships and the intersectional nature of gender oppression. As a result, the relational aspects of gender inequality are left in place, reinforcing the structures of gender oppression since interventions seek to help individual women.

As a result, no programmes exist to teach men to be better men. Furthermore, rural women are far from empowered as many continue to be victims of domestic abuse, rape, defilement, murder and increased cases of violence in families.

Focusing on relations between women and men and among women and men would lead to an acknowledgement of how males and females are all disadvantaged by patriarchy, as it places on males the burden of a particular form of masculinity that is dangerous to females and weaker males. For example, the law quickly recognises that women, especially girls, are disadvantaged but it does not recognise the fact that young boys could also be disadvantaged. How can the law prosecute perpetrators of abuse? Gender policies should begin to target men as well.

## **Recommendations for effective gender laws/policy implementation**

Continuous aggressive sensitization regarding existing legal and regulatory frameworks

- Increased collaboration with civil society
- Continuous policy review
- Institutional capacity-building

- Regular research and dissemination

## **Disadvantages of patriarchy (Patriarchy *visa vis* Feminism)**

Although patriarchy is set up in a way to benefit men, it can also hurt men in many ways, as men are under the constant scrutiny of the fabricated norms that patriarchy has put in place. What many men don't like to admit, or maybe even don't know, is that a lot of what feminism represents can directly affect the harm that patriarchal norms cause for men. Below are seven ways that patriarchy actively (or passively) hurts men, and how feminism can actually help men move past patriarchal norms in order to achieve a level of self-love and self-actualization that isn't hindered by unrealistic masculine expectations.

### **1. Reflectiveness**

There are certain aspects to the norms of masculinity that make men feel uncomfortable exploring certain parts of their own lives, minds, and personalities.

**A troubling aspect of upholding the norms of masculinity is that men don't often put effort into questioning or reflecting on such norms, let alone how their own actions affect others.**

Rather than admitting faults or embracing vulnerability, men are told to "man up" or "stop being a p-ssy" in order to protect their precious masculinity, even if it means upholding harmful, destructive, and hate-filled norms that negatively affect those around them and inevitably, themselves.

Feminism turns that idea of avoiding reflectiveness on its head. What many feminists advocate for are all people, especially men, being more reflective and introspective, and being more comfortable with being called out for things that others may have an issue with.

**A big part of feminism is understanding how one's actions and beliefs affect others, which patriarchal masculinity systematically avoids by upholding a more individualistic and man-versus-world mentality.**

This aspect of feminism, especially as it has evolved in recent years, can help men understand that keeping up a persona of ultra-masculinity or machismo is something that not only make others uncomfortable, but can directly hurt those they love or care about the most.

## **2. Competition**

One of the most negative aspects of the patriarchal norms of masculinity is the tendency for men to be in constant competition with each other. Almost every aspect of many men's lives is shrouded by the need to see themselves as better than other men, or other people in general.

This includes physically, such as working out for the specific intent of having bigger muscles, better abs, or more strength than other men, or intellectually, where men will feel the need to “mansplain” a topic to women, even if the women they're talking to are more knowledgeable on the topic than they are.

**So much of the action's men take and the way men think are related to the desire to be better than others.**

It's a much different story in the world of feminism. Despite the many stereotypes of women being highly competitive with each other, feminism has evolved around the notion of community and solidarity – and these are crucial to achieving self-love and self-care.

It is much more important for feminists to create a strong community of like-minded and caring individuals than it is to automatically push away or compete with others.

**Feminists are much more interested in creating a space that feels safe and comfortable for as many people as possible.**

This can be beneficial for many men who have trouble simply accepting others in their lives without feeling the need to be better than them; they can find a way to truly separate themselves from the competition that surrounds them every day.

### **3. Status Quo**

It's human nature for people to not like change. We like to be comfortable in whatever situation we find ourselves in, and we don't like it when something comes along and puts us out of that comfort zone. We will find a way to stay comfortable, often at any and all costs.

Unfortunately, this is exactly what patriarchy does for men.

**It enables men to remain comfortable in their privileges and dominance while never having to question the issues women and non-binary people have to deal with in relation to their comfort.**

For men, it's easier to find partners who will do all of the things that men "aren't supposed to do." Although times have changed, many men still feel as though they are meant to be the main moneymakers in their household, while their partners should be the ones staying home, making them dinner, doing their laundry, taking care of their children, and so on.

Feminism seeks to get rid of those archaic notions of what it means to be a "real man" or a "real woman." Feminists would rather dismantle those norms and create a society that doesn't let gender dictate how people should or shouldn't act.

What men don't realize is that allowing themselves to fall into the trap of patriarchal masculinity is not only hurting the people they wish to be involved with in life, but it's also hurting themselves by not allowing them to explore themselves and define themselves beyond the status quo of gender.

What many feminists would rather see is, men working alongside them to break down those barriers and norms and embrace a life of self-actualization that is free of baseless categorizations and judgments.

#### **4. Hierarchy**

Similar to the notion of keeping up the status quo, men often don't realize how our society is built to put them ahead of women and non-binary people.

The patriarchy has supported this notion that men are inherently better than others, simply by virtue of being a man. Even if you identify as a man, if you don't play along with the norms of masculinity, you're treated as another as well.

More importantly, though, we see where men are put on a pedestal while others fall by the wayside. Typically, men are paid more, men are offered jobs more often, men pay less for products, men aren't subjected to constant catcalling or sexual violence, and are content with this and so much more staying the same.

**Unfortunately, women and non-binary folks usually don't have those same options, and they're forced to be uncomfortable, feel unsafe, or face violence on a daily basis.**

The solution that feminism has developed for this is leveling the playing field. That doesn't mean men should have to deal with the same disadvantages as other people. Rather, men should both understand what others go through on a daily basis and also work toward eradicating those issues on their end, since much of it is perpetuated by men in the first place.

Feminists strive first and foremost for equality, as well as healthy interpersonal relations.



While striving for equality and giving up power and hierarchy sounds scary for lot men, it actually presents an opportunity for men to put their effort into creating a society where women and non-binary people don't automatically fear men, especially cisgender men.

## **5. Ignorance**

Although patriarchy benefits all men in one way or another, it doesn't support all men in the same ways. This is one of the illusions that patriarchy tries to pull though: You're a man, you're better than women, and definitely better than non-binary people.

But what if you're a black man as opposed to a white man? Or a poor man as opposed to a rich man? A Tran man, a disabled man, an undocumented immigrant man, or an uneducated man as opposed to a cis man, an able-bodied man, a male citizen, or an educated man?

What the patriarchy wants men to believe is that these other factors of race, ability, class, and so on, don't matter, that all men are equal while it also supports the systems that oppress people who aren't white, rich, able-bodied, cisgender, or any combination of traits that are considered the "norm."

Feminism, especially more recently, is focused on looking at everyone's experiences through a lens of intersectionality. This means that as opposed to just looking at someone as a man, they recognize that man as also being black, disabled, and poor, for example.

**Intersectional feminism allows for a multi-faceted analysis of the various experiences, histories, and biases that affect a person.**

While the focus of feminism is often primarily on gender, feminism with an emphasis on intersectionality can help men, women, and non-binary folks alike understand where they are most negatively affected, how they experience various forms of oppression, and what they can do to eradicate those oppressive systems.

## **6. Rape Culture**

There is no logical or reasonable way to deny that we live in a society that perpetuates rape and rape culture. Our society has been historically set up in a way that makes rape, sexual violence, or romantic manipulation not only possible, but a normal, expected occurrence for many people. For men, it's seen as a necessity to seduce women (or other potential sexual partners) to the point that they're encouraged to force other people into sex, with little to no regard for consent.

When men are questioned about it, it often gets played off as “boys will be boys,” or “uncontrollable sexual urges,” or “nothing that serious.”

For the survivor, however, they are often treated horribly, with outsiders calling them “sluts,” saying “they deserved it” or they were “asking for it” for one reason or another, and inevitably removing responsibility from the man who committed the act in the first place. And it goes beyond direct physical encounters too of course, with how women are objectified in every form of media, or how children and teenagers are sexualized to the point that they're kicked out of class for clothing that's deemed “too sexy,” so on and so forth. A recent focus of feminism is completely ridding our society of rape and rape culture. Feminism is focused on changing the conversation of “**no means no**” to “**yes means yes,**” providing services for women and other folks including men who have been affected by rape or sexual violence, and looking at the very systems that exist to perpetuate the notion that rape is an expected and nearly acceptable occurrence.

Feminism is out to protect *everyone* from the terrifying outcomes of rape and rape culture by making sure it can not only be talked about more openly, but it can also be more openly disavowed and dismantled. Ultimately, that means breaking the patterns that lead men to think that manipulating, hurting, or

raping people is okay, and having men look at their actions and understand why people of marginalized genders just don't trust men in many situations.

## **7. Toxicity**

What all of this comes down to is the simple fact that the masculinity that patriarchy has bred and enabled is extremely toxic. It makes everything worse not only for those who are subjected to all of its negativity, hatred, subordination, and oppression, but it also makes things worse the men who benefit from it because they don't have to question it.

**Men are hurt by their own dedication to toxic, patriarchal masculinity by allowing themselves to hurt others.**

While some men have definitely distanced themselves from the toxicity, most men are just fine staying in those positions and they'll defend it no matter what, because they're comfortable and safe.

Even so, just distancing themselves from toxic masculinity isn't enough. Men have to work to actually change their behaviors, and call out other men who are acting in toxic and horrible ways, who are acting in ways characterized by body terrorism.

This is one of the goals of feminism: to enable men to be less toxic and be more caring and supportive, to be willing to share and create safe spaces.

**But feminism is also important for men to achieve a level of radical self-love that patriarchy doesn't allow in any way.**

Men have to be more willing to understand themselves, their feelings, their insecurities, their needs, while also actively rejecting the notion that being violent or abusive or overbearing or condescending is normal.

Men have to understand that you can't separate gender from race, sexuality, ability, class, and other identities. Men have to be more feminist-minded when it comes to treating others with respect, calling out toxicity, fighting for

## *Asexuality, Gender and the Law in Uganda*

social justice and equality, and with being good to themselves as well as those around them.

It is pertinent to the betterment of our society that we can question ourselves, masculinity, and patriarchy.

**Post -modern feminism** Gender is constructed through language. They argue that the social perception of sex (male or female), gender (feminine or masculine) and sexuality is simply a matter of social constructions that must be demonstrated in order to allow creation of various identities.

Agitate for subversion of gender binaries and performances i.e., challenge and demonstrate the established structures, models, practices and standard including gender identity

Gender is a term used to denote the social meaning of sex categorization. Therefore, gender is a social and cultural construction which shape feminine and masculine identities. Gender stereotypes embody society's view of appropriate behavior for women and men. These take the form of gender roles re-enforced by law through which individuals conform to their level and the community's conventions. Uganda had a good legal and policy regime for gender equality legislation. This is characterized by the following:

a) **The constitution** Uganda has a very progressive and gender-sensitive constitution, which provides for the mainstreaming of gender in many sectors (social, cultural, economic, and political). The Uganda Constitution is rated as the most comprehensive legal instrument and it provides for several clauses to address gender inequality as seen in Articles 32 and 33. There is also the affirmative action in place to correct the social, cultural and economic mistakes made in the past. Specifically, it provides for gender mainstreaming, the protection of women's rights and the promotion of gender equality. As a

result, there have been several pronouncements and a gender machinery developed for the promotion of gender equality.

**b) Gender-sensitive policies and laws enacted**

The Uganda Government has enacted several good and well-articulated gender sensitive laws and policies. Several legislative proposals have been drafted to address gaps in the law, with the prominent ones including, among others, the Prohibition of Female Genital Mutilation Act, the Domestic Violence Act, and the Prevention of Trafficking in Persons Act. The government also has a very good National Gender Policy to guide gender mainstreaming in the different sectors of government. From this, several sectors have also developed their own gender policies to guide gender mainstreaming in their work. For example, the Gender and Equity Compliance Certificate of Gender and Equity for MDAs, issued by the Ministry of Finance, Planning and Economic Development (MoF PED) upon the advice of the Equal Opportunities Commission (EOC), requires that any MDA seeking appropriation of the National Budget meets the minimum requirements of gender and equity budgeting and has scored at least 50 per cent in the assessment by the EOC. Within the budget circular, there is a paragraph on gender and this has influenced local governments to do something on gender.

**c) Signed and domesticated international treaties**

Uganda is a signatory to several international pro-gender equality frameworks, with many of them domesticated, such as:

- i. The Convention on the Elimination of All Forms of Discrimination against Women (1979)
- ii. United Nations Security Council Resolution 1325
- iii. The Sustainable Development Goals
- iv. The Solemn Declaration on Gender Equality in Africa

## *Asexuality, Gender and the Law in Uganda*

- v. The Maputo Protocol/Protocol on the Rights of Women
- vi. The East African Community Treaty
- vii. The Protocol for the African Charter on Human and Peoples' Rights
- viii. The Beijing Platform for Action 1995
- ix. Agenda 2030 and 2063
- x. The Addis Ababa Plan

### **d) Institutional frameworks developed**

The government has also developed several institutional frameworks for addressing gender. For example, the Ministry of Gender has developed many national strategies for addressing gender in the different sectors of government. MoFPED emphasizes gender equity compliance in budgeting before entities can be funded. The Uganda Police introduced specialized training and units such as the Gender Desk to handle cases of a gender nature. The government has partnered with FIDA to institutional is specialized gender-based violence demonstration courts.

**e) Capacity-building of the human resource;** The government has tried to re-skill its staff to make them gender-sensitive. For example, the police, through training and daily routine deployment, try very hard to uphold and live up to the expectations of international protocols and treaties that uphold women's rights. Both men and women are routinely sensitized and re-skilled, without discrimination based on sex. There are efforts to build the capacity of the Judiciary, establishing standards to debunk human experiential biases. The government has initiated capacity-building programmes and training manuals for staff in their respective MDAs. These include gender equity

budgeting manuals and staff training programmes coordinated by MoFPED, launching the Gender Bench Book, which has been a key resource in engendering the Judiciary and many other sector-specific staff training programmes.

## **Feminism and Education**

Education plays a key role in the empowerment of girls and women, and the attainment of gender equality in households, communities and wider society. Even before the 1948 Universal Declaration of Human Rights made it official, education has long been recognized as an essential prerequisite to enable people to realize their true potential. Education in itself is a human right, but it also serves as a gateway that allows individuals to access and enjoy other human rights. Education broadens the perspectives of a girl about the roles that she can play; provides a key space (often the only space) for meeting peers, mentors and role models; and opens new spaces for an empowered girl to act in, reach out to and influence others.

The ideal of gender equality in the education sector can be attached to Article 32 of the Constitution that provides Affirmative action in favor of marginalized groups. and Article 33 on the rights of women. Article 33(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, and this can be achieved through education. Another example is the 1.5 Affirmative act practiced in the Ugandan law system. Provisions that provide for education in the gender sector in the international scope include Article 12 of the Maputo protocol which is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides for, the Right to Education and Training.

**Article 10 of the CEDAW** provides that States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education. Today more

## *Asexuality, Gender and the Law in Uganda*

girls than ever go to school. However, despite progress, women and girls continue to face multiple barriers based on gender and its intersections with other factors, such as age, ethnicity, poverty, and disability, in the equal enjoyment of the right to quality education. This includes barriers, at all levels, to access quality education and within education systems, institutions, and classrooms, such as, amongst others:

### 1. harmful gender stereotypes and wrongful gender stereotyping

Gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men.

Harmful gender stereotypes and wrongful gender stereotyping can affect girls before they step into a classroom and may even prevent girls from going to school. For example, stereotypical views that girls are domestic, homemakers, and caregivers may lead families to question the point of sending their daughters to school if they are to become wives and mothers, whilst the stereotype that men should be breadwinners means that boys are prioritized when it comes to education. Even when girls do go to school, some are still expected to juggle domestic responsibilities, such as cleaning, cooking and fetching water, on top of their school work.

### 2. child marriage and early and unintended pregnancy

Linked to child marriage is early and unintended pregnancy. Girls Not Brides report that 90% of adolescent births in low and lower-middle income countries are to married girls. Pregnancy and motherhood often have profound impacts on girls' education. Pregnant girls are often banned from attending school and sitting exams, and mothers often lack access to bridging programmes which allow girls to catch-up on their missed education in order to reenter mainstream education. Pregnancy and motherhood can also occur



independently from child marriage, as a result of rape, which is particularly common during conflict and other emergencies for example in the case of Luuka district which saw an increase in teenage pregnancy during the Ebola crisis due to the closure of schools. Teenage pregnancy and motherhood is also a product of a lack of information about sexual and reproductive health and a lack of access to contraception (birth control).

3. gender-based violence against women and girls

Gender-based violence against girls, for instance, rape, domestic violence, sexual harassment and assault, corporal punishment, and harmful practices such as child marriage and female genital mutilation can keep girls out of school temporarily or indefinitely lack of inclusive and quality learning environments and inadequate and unsafe education infrastructure, including sanitation. Other examples include the aspect of lectures asking for sex for marks for example the Makerere university incident of sex for marks, the BBC Africa Eye documentary on sex for grades; undercover inside Nigerian and Ghanaian Universities.

4. poverty.

Poverty is the biggest factor determining whether a girl accesses education. Children from rich families, whether boy or girl, will most likely attend all levels of basic education. However, girls from poor families are less likely than their male peers to attend school and this lack of participation increases at higher education levels

5. lack of inclusive and quality learning environments and inadequate and unsafe education infrastructure, including sanitation

However, promoting gender equality in education may be gained through Mass sensitization for example prince Mugabe foundation which advocated for rights of girl child. Etc

## **Feminism and politics**

Feminism and politics are twofold and an intertwined concept and in relation with politics women had been left behind in the spheres of social, political and cultural spheres.

This was a result of the social set up of the African communities and the different cultural attachments of the African people that believed that the African woman couldn't get involved in the direct leadership and politics of the society. Key to note is the Buganda political set up where the top leader i.e. the king or kabaka couldn't be a woman and even in other societies be it centralized and the decentralized societies.

However, in pursuance with the new bleed of the waves of feminism world over there have been enactments in the lane of suiting the political interests of the different African societies Uganda inclusive. In Uganda for example Article 78(1) b it provides that there should be district women representatives for every district within Uganda and has raised the membership of the Parliament to 25%. Still in accordance with the decentralized system Article 180(3) of the same grund norm further emphasizes that each local government council should consist of 1/3 of the membership of each should be women

Still article 111 of the constitution provides the President with powers to make cabinet appointments and currently the vice president Rt Hon Jessica Alupo is a woman, Rt Hon Robinah Nabanja is a woman too and even several important positions in judiciary like judges like Justice Kisaakye and others are women, the IGG Hon Betty Kamywa and too the DPP Jane Francis Adobo is also a woman. In the view of all of these important government positions and others is a clear indication and manifestation that the women

have been clearly put in consideration in the leadership of our Country thus answering the question of feminism in terms of politics in affirmative.

## **Feminism and Economy**

The social world we inhabit is undoubtedly gendered – it is shaped by gender and has implications for people based upon their gender.

Feminism has drawn attention to the manner in which it can be seen that the economy is also gendered.

There are many examples of this: women's employment outside the home may be concentrated within certain professions and certain types of work, and they may be less likely to own and control economic resources and assets. Feminism has also examined the gendered nature of different types of economic systems – for example, capitalist, feudal, and socialist. Each of these systems had different methods of organising work for the purposes of economic activity. Scholars of gender continue to study these methods, their historical significance, and the ways in which they contributed to relations of power between women and men. Attempts are made to understand the specific implications that these systems have for women, as well as for men.

Many feminists who look to the economy to further their understanding of the oppression of women argue that efforts like reforming hiring policies, distributing family resources equally between men and women, and having active women's groups cannot entirely produce equality between men and women in the economy.

On the other hand, they argue that entire economic systems must be transformed in order to truly liberate women (and men) from various types of economic exploitation. This is because they identify a deep and long history of links between economic organisation of work and income, patriarchal control within the family, and social norms of sexuality and

appearance, as the cause for the continuing levels of discrimination in the economy.

## **Feminism And Gender Studies.**

Feminism is directed both towards understanding society, and also towards changing those aspects and structures society that are unjust and exploitative. It therefore involves both the growth of knowledge and the betterment of the social world. These are not two separate things, but are interlinked aspects of feminism. Thus, the feminist scholar Vina Mazumdar has pointed out that women's studies (the precursor to gender studies) gave feminist activists information and insights which activists needed for their work – for example, information on peasant women and women in the unorganised sector of the economy. Women's studies and gender studies have also furthered the cause of feminism by pointing out biases and omissions in various academic disciplines, for example in the fields of history and sociology. There is, then, a close relationship between the field of gender studies and feminism.

## **Feminism and Employment**

### **Article 11 of cedaw**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary

## *Asexuality, Gender and the Law in Uganda*

In the case of *Longwe v Intercontinental Hotels Zambia* in 1984, Sara Longwe asked the Zambian ombudsman to order a hotel to stop discriminating against women. The Intercontinental Hotel had been enforcing a policy of refusing women entry unless they were accompanied by a male escort. Longwe had been stopped by a security guard who would not allow her to enter to pick her children up after they had attended a party at the hotel. The ombudsman did find that the hotel policy was discriminatory and forwarded a copy of its ruling to the National Hotels Board, but the policy wasn't changed. In 1992, Longwe was again prevented from entering the same hotel, when she and a group of women's activists tried to meet in the hotel's bar. Longwe went to the Zambian High Court, as she realized the ombudsman's ruling had been completely ineffective. She argued that the hotel's policy violated her right to freedom from discrimination on the basis of sex in Zambia's new constitution. She also argued that the policy violated articles 1, 2 and 3 of the Convention.

The court ruled in Longwe's favor, finding that her constitutional rights had been violated. Because the constitution could be applied in this case, the court did not feel it necessary to rely on CEDAW. However, it did state that the Zambian Government's ratification of CEDAW without reservations meant that the courts should look to the Convention when situations arose that were not covered by domestic law.

Maternity leave under S.56 of the Employment Act 2006 Female employees are entitled to 60 working days (eight and a half weeks) of fully paid maternity leave. The compulsory leave is four weeks after child birth or miscarriage. The worker must give a written notice of at least 7 days (or even shorter period under certain circumstances) prior to proceeding on maternity leave on a specific date and to return to work thereafter. Worker may also have to provide a certificate of her medical condition from a qualified medical practitioner or midwife, if required by the employer.

Maternity leave may be extended in case of sickness arising out of pregnancy or confinement, affecting either the mother or the baby, and making the mother's return to work inadvisable, the right to return is available to the worker within eight weeks after the date of childbirth or miscarriage (thus adding 4 more weeks of maternity leave).

**Annual leave** The Employment Act provides for **paid annual leave** of 21 working days to all employees at the rate of 7 days for each period of continuous 4 months of service. The employment Act stipulates that the time to take **annual leave** has to be agreed upon between the parties. All employees, except casual employees, are entitled to a minimum of four weeks **annual leave**, or **holidays**, for each year they work. Shift workers may be entitled to a minimum of five weeks **annual leave** if they meet certain requirements. You don't have to work a full year before you are entitled to **annual leave**

**Section 6(7)** stipulates that every employer shall pay male and female equal remuneration for work of equal value. This is under the doctrine of comparable worth.

Unequal payment between men and women is discrimination and marginalization of women which is prohibited by law that provides for equal pay between male and female. The subject of equal pay stems from the broader issues of equality of treatment under the law in general and more specifically with respect to the place of work. According to **Article 23** everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone without any discrimination has a right to equal pay for equal work.

However, **Article 11(1) (d)** states parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women the same rights, in particular the right to equal remuneration including benefits and to equal

## *Asexuality, Gender and the Law in Uganda*

treatment in respect of work of equal value, as well as equality of treatment in the evaluation of quality of work.

The subject of equal pay stems from the broader issues of equality of treatment under the law in general and more specifically with respect to the press of work. **Section 6(3)** stipulates that ; discrimination in employment shall be unlawful and for the purposes of this Act, discrimination includes; Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

The question of equal pay lies at the core of the employment contract and is designed to ensure that the work of equal value is rewarded with equal remuneration. It is considered to be the essential tenet of non-discrimination within the employment relationship, confirmed by **Article 2(1)** which provides that each member state shall, by means appropriate to the methods in operation for determining rates of remuneration, promotes and in so far as is consistence with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value in addition, a reflection of the principle is covered under the international statutes to which **Article 7 and Article 15**.

Domestically, **Article 40(1)** provides that parliament shall enact laws to ensure equal payment for equal work without discrimination. In this respect, **section 6(7)** provides that every employer shall pay male and female equal remuneration for work of equal value and also under **Article 2(2)** of the provides that persons shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, religion, social or economic standing, political opinion or disability.



**Section 6(6)** provides that the minister and the labor advisory board shall, in performing their duties, seek to give effect to the principle of equal remuneration for male and female employees for work of equal value.

Research has shown that a significant cause of the gap in male and female earnings is the fact that women have been segregated into certain positions, which have been devalued precisely because they are considered “female jobs” for example nurses, librarians and secretaries are examples of workers who have been found to suffer a wage penalty because they work in female dominated professions. One way that some countries have tackled the problem of sex discrimination within the formal labor force is through the application of the concept of comparable worth or pay equity.

However, the doctrine of comparable worth essentially goes beyond equal pay for equal work and provides that sex discrimination includes not only a situation in which a woman is paid less than a man in precisely the same job, but also a situation in which a woman is paid less than a man performing a different job that is comparable in terms of education, skills, working conditions and other factors. In other words, the concept focuses on playing an entire profession or occupation the same wage rate as a second profession or occupation, both of which are determined by some outside authority to be of the same worth or value to an employer.

**Section 6** and **Article 40** introduce the principle of comparable worth. Comparable worth legislation is a positive mechanism assisting employers to avoid unlawful devaluation of female dominated positions. It is especially useful in jurisdictions like Uganda which have neither minimum wage legislation, nor strong unions and collective bargaining. While the Equal Opportunities Commission is the body to implement equal pay for work of equal value, courts of law can also play an important role in this regard.

In a KCCA case where Akello and Okello were both employees of KCCA working as a librarian and a garbage truck driver respectively, Okello’s monthly salary is 25% higher than that of Akello. This is a total discrimination

against Akello because she is a woman. Applying the principle of comparable worth, Akello and Okello should be paid equally for doing work of equal value.

## **Feminism and Land**

Globally women own less land and have less secure rights over land than men. Yet despite women's crucial role in agriculture, food production, and land-based livelihood, there is no consistent national or global protection of women's land rights or access to land to enable them to monitor and enforce their rights as Land reforms, allocation, and titling or registration programmes often target ownership to a man.

Human rights mechanisms and UN entities have declared that women's land rights are essential for achieving substantive equality and eradication of discrimination against women, and are a fundamental to the realization of the rights to an adequate standard of living, including food and housing, health and life, work, cultural identity, and participation in civil and political life.

**In the prominent case of *Best Kemigisha v Marble Komuntale* the court noted that according to article 21 both men and women have the same rights in terms of ownership of property**

For instance, the *CEDAW Committee issued its General recommendation No. 34 on the rights of rural women qualifying "rural women's rights to land, natural resources, including water, seeds, forestry, as well as fisheries, as fundamental human rights. General Comment No. 16 of the CESCR* on the equal right of men and women to the enjoyment of all economic, social and cultural rights, requires that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do

so. Furthermore, the global goals set by the 2030 Agenda for Sustainable Development recognize women's land rights as an explicit cross-cutting catalyst to ending poverty (Goal 1); seeking to achieve food security and improved nutrition (Goal 2) and achieving gender equality and women's empowerment (Goal 5). The New Urban Agenda (2016) sets a roadmap for sustainable urban development and guidance to fulfilling the Sustainable Development Goals (SDGs) also stressed security of land tenure for women as key to their empowerment.

Domestically The Constitution 1995 was the first step in ongoing reforms that have significantly strengthened protections for women's rights under the formal framework. Uganda's Constitution prohibits discrimination based on gender and accords men and women the same status and rights, **Art 26(1) provides for the right of every person to own property, (art 21); guarantees women equal rights with men.**

**Article 32 of the Constitution** also provides for 'affirmative action in favor 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.

Despite both the international and domestic encouraging moves, however, women's land rights remain in a dire situation for two main reasons,

**Customs,** Certain customary practices, like bride wealth and polygamy, reduce women's security on land. Bride wealth is increasingly viewed as making a woman the husband's property, nullifying any claims she might have to land and transferring her property rights to her husband. Even gifts to the wife and property she acquires individually are viewed as belonging to the husband. Upon customary divorce, wives are usually sent away from the home with no property at all. In polygamy, land may be utilized jointly by several wives who therefore have difficulty claiming individual contribution or ownership. According to custom, females marry into the clans of their husband, the clan will allocate customary land to the man upon his marriage.

## *Asexuality, Gender and the Law in Uganda*

Whereas both the international and domestic are gender sensitive, the intestate Succession law still displays elements of customary law ideology in its provisions still emphasize male dominance that disregards a woman's contribution to the home. Sometimes customary leaders or family members make decisions about the deceased's property that deny women and girls their equal rights to inherit property for example Top officials in Buganda Kingdom of the Effumbe clan asserted that modernity cannot supersede tradition as they insisted it was wrong for former Prime Minister Apollo Nsibambi to choose an heiress.

### **It should be stressed in the case of Ephraim v. Pastory and Kaizingele,**

The respondent, Ms. Pastory, inherited clan land from her father by a valid will and sold the land to a man who was not a member of her clan. The next day, the appellant, Mr. Ephraim, filed suit seeking a declaration that the sale of land by Ms. Pastory was void under the customary law that a woman has no power to sell clan land. The Court held that the customary law regarding women's property rights discriminated on the ground of sex in violation of CEDAW, the African Charter on Human and Peoples' Rights and the ICCPR as well as the Tanzania Constitution.

**Lack of proper implementation and enforcement mechanisms,** this undermines the reforms' potential positive social and economic outcomes. Particularly in Africa south of the Sahara, implementation and enforcement often do not follow from some new law or other change. No matter how comprehensive the legal and institutional framework, women end up facing continuing discrimination at various stages of the implementation process and afterward. Diagnostic cross-country analysis shows that potential impediments to proper enforcement and implementations of land reforms include (but are not limited to) lack of capacity (financial and technical), corruption (rent-seeking behavior), and social practices in customary laws that favor men.

## **Feminism and Health**

Women had for a very long time faced challenges that threatened their lives and health at large however they have governments of various states, in a bid to improve women's status in society, have at long last paid attention to these anomalies and taken states to improve the health sector to favor the female gender. This has seen various initiatives to avert the challenges faced by women in this sector and it is evident by the laws and other initiatives that have been put in to alleviate women from their formal grievances.

**Article 12 of the CEDAW** is to the effect that state parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of men and women, access to health care services including those related to family planning. The same is also provided for under Article 15 of the Maputo Protocol.

According to objective 20 of the 1995 constitution it puts an obligation onto the state to ensure all practical measures for the essence of availing the medical services to the population without segregation

That is why we see the increasing campaigns on awareness about family planning through the media and it is also evident that the government has dedicated itself to improve infrastructure in the field of the health sector in favor of the women this the increasing number of women specialized hospitals which has undoubtedly helped to bring health facilities closer to the women and this fight has included people both at individual and societal levels .cultural institutions have also been active in this fight for example the kabaka run of 2019 which was dedicated to helping women with fistula.. However, a lot still stands to be done if the dream of health care to women is to be achieved to the fullest as there is still a lot of discrimination in hospitals since the poor hardly stand a chance of timely and equitable health care due to lack of funds to afford the process. Lack of sufficient incomes has also been another constraint that is faced by women when it comes to their ability to afford the basic fees needed to buy the necessary medicines. Family planning

campaigns have been more inclined to the women only yet it would be more helpful to encourage the men to join the fight against teenage and unwanted pregnancies. There still exists stereotypes among the masses about reproductive health and that is why some young females still face a challenge of how to go about their menstruation without same or marginalization for undergoing the process

According to the case of *Law and Advocacy v AG* where among the issues that were raised by the petitioner was that the act of female genital mutilation jeopardized the right to health of the women since it put their life in the position of contracting HIV easily, the constitutional court agreed with the petitioners and annulled and declared the custom of female genital mutilation as a void practice

## **Feminism and Citizenship**

The historical conceptualization of Feminism and Citizenship dates from ancient Greece, which has been a subject of wide spread feminist critique since it was highly exclusionary in the sense that only men of noble status, royal family and upper-class backgrounds were members of the state or full-fledged citizens, for they were the only ones entitled to perform their civic duties. Women and slaves were denied citizenship long after the franchise had been extended to men of color in most western democracies. Under-pining women's historical exclusion from citizenship in western democracies has been the public and private divide, which entailed a rigid gendered separation of public and private spheres and yet this divide also imparted on women's citizenship in post-colonial developing nations. The public was and still is a representation of universalism, justice and independence while the private envisaged particularly care and dependence on others. And so, with the public and private divide women experienced citizenship differently from

men as full citizenship was largely determined on individuals' participation in the public sphere principally characterized by full time employment and political participation and this has continued to live with us in the present day.

The Relationship between Gender and Citizenship in present day is one that is irresistibly inseparable because, Human Rights enjoyment, Societal Development and other national growths cannot smoothly transcend under a blurred Gender lens upon citizens since citizenship gives life and meaning to livelihood of a national. Some of the laws that make provision of who a citizen is and their rights;

### **Chapter 3,**

*Article 9 of the Constitution of the Republic 1995 all persons who, at the commencement of the Constitution, were citizens of Uganda, qualify as citizens. Furthermore, the Constitution provides for three main types of citizenship: birth, registration, and naturalization under Articles 10, 11, 12 and 13 respectively and later duo citizenship under Article 15 as amended in 2005.*

*What the constitution does is to extend formally equality rights of all people as provided under article 21 of the constitution. The problem with such concepts is that they focus on form rather than substance, they promote formal equality because they ignore the social and economic conditions from which come to arrive and at citizenship*

The fact that there is a provision in the Grand Norm of the Land in line with Citizenship of her people is a direction to the state's appreciation of Human Rights, and willingly to provide resources. However, the same written Law in this case ignores the deference's within and between people that may act as humps on the road towards citizenship. Even as the constitution states so, there is still need for a switch in the private spheres that for long have been made to only be occupied by female and the public by only men, which has

## *Asexuality, Gender and the Law in Uganda*

been a big question on a woman's true enjoyment of being a citizen of Uganda.

Then on International basis;

**Article 3**, *“States parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”*

Under this Convention, it's a commitment upon every nation to provide full enjoyment of rights of every woman in all fields since they are categorized as citizens of that nation under whatever status, which portrays a gender aware element and this also opens women to the public sphere not as it was back then.

**Article 9(1)**, *“States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.”*

**(2)** *“States parties shall grant women equal rights with men with respect to the nationality of their children.”*

This was not the norm decades ago, for women to have a choice or change of nationality and so having a provision as such enables women to explore opportunities around the world, make marital choices along with their husbands to mention a few

**Article 15 (1)** *“Everyone has the right to a nationality.”*



(2) *“No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”*

Which in light means, enjoyment of one’s full human rights. If one has a nationality, they by default are entitled to be governed by the laws of that land and enjoy the privileges that come along.

**Article 1(1)** *“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*

To freely determine for oneself, is a recognition of one belonging somewhere, thus a citizenship identity upheld, though political and civil rights still limit meaningful participation for Ugandan women. There is need for rights that accord sexuality and interpret gender terms for women to equally be first class citizens as the men.

The practice of Gender and Citizenship in society is where the detriment of the above laws stands which can be vividly portrayed in both domestic societal setting and public setting. For there still exists countless limitations of the equality and equal rights agenda in being a citizen especially as women.

In long periods of history, women have been legally denied rights and privileges enjoyed by men. Though, in most countries women have won the right to vote, legal barriers to female participation in the labor force have been removed, concessions have been made for women’s right to hold property in their own name, in real terms though, structures of oppression and subordination of women have remained intact hence the persistent need of Substantive Citizenship since the presence of these written policies and laws don’t definitely guarantee practice of what is written. Many a times for cases such as citizenship, these merely written provisions legitimize the real equality between men and women. Equal citizenship rights may imply applying equal standards to all citizens which in reality becomes meaningless, if, to begin with different groups of citizens are different and unequal. This

## *Asexuality, Gender and the Law in Uganda*

has special pertinence to sexual equality whereby if women are to have equal right to work as men, they may need more than what is available or the "normal" working standards and conditions set, more so that women are even different in age, race, social status. These tend to bend the fair practice in promotion of one's citizenship rights, thus the essential need to be gender sensitive in making Laws towards the Citizenship of a nation.

Another big practical factor of citizenship is how it stands to affect Gender rights and obligations. It can either take everything away from an individual or provide them with the right to lead a comfortable life. Citizenship is an issue of inclusion and exclusion. Scholars focusing on citizenship have pointed out the mechanisms and processes in society that prevent women in particular from exercising agency and realizing citizenship rights. A study titled *Gender and Citizenship at Its Grassroots* found that women who had participated in social mobilization and political empowerment initiatives displayed more active citizenship than women who had not. However, comparison with their male counterparts highlighted significant gains in some areas and persistent male advantage in others that is to say

- Significant gains have been made with respect to voter registration and voting, but not with respect to exercising leadership in political parties and taking part in election campaigning.
- With respect to participation in community public life, more women are serving on committees that manage community amenities and are decision-makers in community-based dispute resolution mechanisms.
- The Gender gap persists with respect to opportunity to serve on public committees that depend on either appointment by politicians or senior government officials or the Gender norm of women can't lead public spaces.

- More men still engage with public officials and use institutional spaces, although the gap is reduced with participation in social mobilization and political empowerment initiatives.
- In informal community life, female participants of social mobilization initiatives facilitate other community members' engagement with, and access to services from, government officials and institutions.

## **Unity Dow v Attorney General**

The Botswana Citizenship Act was passed in 1984. It was intended to bring citizenship law conformity with Tswana customary law, and this meant that the nationality of a child born on Botswanan soil would be determined exclusively by the father's nationality (regardless of where the parents were married). For almost two decades before this law was enacted, Botswana's constitution had guaranteed that mothers could also pass their nationality on to children born into a marriage, but this part of the constitution was now repealed.

A Botswanan lawyer and activist, Unity Dow, challenged the Citizenship Act in the Botswana High Court in 1990 (*Unity Dow v Attorney General*). She was married to an American, and two of her three children had been born in Botswana after 1984. These two children required residence permits to stay in the country, could leave the country only on their father's passport, would not be allowed to vote, and would be denied the free university education available to citizens. Dow argued that by ordering this treatment, the Citizenship Act violated the constitution's guarantees of liberty, equal protection of the law, immunity from expulsion, and the right to be free from degrading treatment. She also made the more difficult argument that the Act was discriminatory. The constitution's protection against discrimination said nothing about discrimination on the basis of sex, although it did specifically prohibit other forms of discrimination.

## *Asexuality, Gender and the Law in Uganda*

The High Court found that the constitution should be interpreted as prohibiting sex discrimination: “The time that women were treated as chattels or were there to obey the whims and wishes of males is long past, and it would be offensive to modern thinking and the spirit of the Constitution to find that the Constitution was framed deliberately to permit discrimination on the grounds of sex.”. The Government had not ratified CEDAW, but it had made other international commitments supporting women’s human rights. The court reasoned that it was “difficult or impossible to accept” that the framers of the Botswana constitution would intentionally permit sex discrimination “whilst at the same time internationally support non-discrimination against females”.

The court also cited the 1967 Declaration on the Elimination of Discrimination Against Women, the precursor to CEDAW (Botswana had participated in the adoption of the declaration, but had not yet ratified the convention). The Government appealed this decision to Botswana’s Court of Appeal, arguing that the constitution was intended to discriminate against women, in order to preserve traditional Tswana values.

The Court of Appeal rejected this argument and again referred to Botswana’s international commitments to find that the constitution prohibited sex discrimination.

### **Feminism and family**

Article 31 (1)(b)] of the Constitution of Uganda provides that men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.

Article 6 of the Maputo protocol (marriage) provides that States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that: No marriage shall take place without the free and full consent of both parties’) The minimum age of marriage for women shall be 18 years, a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband’s, a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children , during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely

**Article 7 (separation, divorce and annulment of marriage)** States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that: Separation, divorce or annulment of a marriage shall be affected by judicial order, Women and men shall have the same rights to seek separation, divorce or annulment of a marriage, in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;

**Article 9 of cedaw** provides 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality.

**Article 16(1)** provides that 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, the same right freely to choose a spouse and to enter into marriage only with their free and full consent; profession and an occupation; 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

## *Asexuality, Gender and the Law in Uganda*

The courts have developed guiding principles for determining as to what amounts to marital or matrimonial property and the same guiding principles are applied in both civil and customary marriages. The guiding principles were developed in 1997 by **Justice Bbosa J.** in the case of **Muwanga v. Kintu**,<sup>1</sup> where he observed that; “*Matrimonial property is understood differently by different people. There is always property which the couple chose to call home. There may be property which may be acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should be considered differently. The property to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to.*”

With regard to joint property where both spouses contributed towards its purchase, the legal position is that a spouse is entitled to his or her share in the property in proportion to the contribution towards its purchase. In *Kagga v. Kagga*,<sup>2</sup> for example, Mwangusya, J. observed that; “Our courts have established a principle which recognizes each spouse’s contribution to acquisition of property and this contribution may be direct, where the contribution is monetary or indirect where a spouse offers domestic services. ...When distributing the property of a divorced couple, it is immaterial that one of the spouses was not as financially endowed as the other as this case clearly showed that while the first respondent was the financial muscle behind all the wealth they acquired, the contribution of the petitioner is no less important than that made by the respondent.” With regards to the Succession act. This provision was challenged in the case of **Law and Advocacy for Women in Uganda LAW(U) V AG**. Court held that the said provision was inconsistent with the constitution.

The provision governing the distribution scheme (and many other discriminatory provisions of the Succession Act) was struck down and declared unconstitutional. The Court noted that the allocation of 15 per cent

to the surviving wife or wives in intestate succession effectively discriminates against women. The law was oblivious to the contribution of wives to the acquisition of matrimonial property. **However, the court merely stopped at declaring the law unconstitutional. It did not go ahead to suggest any remedy. Consequently, each judicial officer has been left to use common sense in the adjudication of such matters** (*The Gender Bench Book 2016; Uganda Judiciary page 99.*)

**Why is feminism an important concept in the field of gender.**

### **Challenges affecting feminism in Uganda**

Specifically, the challenges that constrain effective gender legislation and policy implementation were reported to include:

**a) A mismatch between policy and practice**

There was a reported mismatch between policy and practice. For example, several policies and laws on sexual offences have been revised but are still on the shelf. They have never been implemented. Even where they could have been implemented, such as the Penal Code Amendment Act relating to sexual offences, the Local Councils (LCs) are supposed to provide shelters for victims but they are inadequately facilitated. There are laws against trafficking, yet trafficking continues unabated, in the guise of foreign employment companies manned by powerful individuals. There is no mechanism to follow up on the cases.

**b) Political interference and inadequate political will;** There is a lot of politicization of issues, which fails whatever good laws the Uganda Law Reform Commission (ULRC) may come up with. ULRC only proposes laws but cannot force Cabinet to make them. They stop at justifying them. While it is the duty of Parliament to enact laws, the MPs do not seem to be aware that it is their duty to follow up on government priorities. They instead personalize themselves in the law. They do not appreciate the law and

constitutional standards. This has had the tendency to affect the quality of laws and slacken the speed of their enactment and implementation. Moreover, the political-cultural confluence makes it difficult for politicians to advocate the implementation of certain laws. Strong patriarchal cultures make it difficult for certain practices to be combated. For example, politicians from areas where FGM is practiced have often feared to advocate the abolition of the act as provided by the law for fear of losing socio-political capital.

c) **Weak monitoring and evaluation (M&E) mechanisms;** While we have many laws and policies in place, who monitors and evaluates them? The actors at district/local-government level who should do so are not funded and supported. The only gender budget funded is to enable them to organize the International Women's Day, which is the least of their concerns. There is need to make the roles at lower levels functional. The actors at those levels should be equipped with clear guidelines on how to implement gender equality laws and policies. There should be clear M&E tools, with indicators of progress in the implementation of gender-sensitive laws and policies.

#### d) **Patriarchy**

Patriarchy is resilient, often changing face. The norms and traditional ways of almost all societies in Uganda are patriarchal, making it difficult to address negative cultural issues such as female genital cutting. There is slow attitudinal change, despite the use of politically correct language, compounded by lack of progressive equality laws in some sectors. People use the right language but have the wrong/negative attitude. Culture still upholds patriarchal tendencies. Women are still stereotyped as less competent. Regarding issues of HIV/AIDs, there is a high rate of HIV transmission by especially men who do not believe in testing owing to their



patriarchal nature. Most men are not keen on seeking medical attention, so they rely on their partners, which puts them at dire risk of contracting diseases. If society remains rooted in patriarchy, the pro-gender laws cannot be properly implemented.

e) **Limited knowledge and understanding of the laws/policies** There is limited knowledge and understanding of the available policies by the users. Some laws and policies are voluminous and challenging to understand. For example, the gender policy, which is supposed to guide gender mainstreaming in other sectors, is not clearly understood by some of the policy implementers themselves and some duty bearers working in the relevant sectors. There is also lack of knowledge about how to use the international treaties, which would have guided local implementation. The policies should have detailed guidelines to be followed by the enforcers and the wider communities that they affect. Though policies are supposed to be largely appreciated by the implementers, many implementers in Uganda's local government system have challenges appreciating and implementing them. The people that these policies affect do not even know that the policies exist in the first place. Having the community sensitized about the laws and policies will facilitate their implementation.

f) **Weak enforcement structures (staffing);** The institutions themselves have no capacity to implement the laws and policies. It is one thing to make a policy or law and it is another to embrace it. The institutions in Uganda are not as forthright. The policies that we have on paper do not actually have grounds or means through which they can be implemented. They lack staff who are adequately trained in gender analysis to champion gender mainstreaming. They lack specific individuals or bodies to follow up on behalf of the government to achieve better outcomes. Meanwhile, some of those employed as gender focal point persons still need to be sensitized regarding these laws. For example, in one department, the gender focal point person was a male who had a negative attitude towards gender issues, causing a stagnation of mainstreaming of gender in departmental processes. This,

therefore, calls for a gender-specific coordination team composed of gender focal persons from every department to coordinate issues of gender mainstreaming.

In addition, total commitment by law enforcers is lacking. For example, politicians are not willing to take on FGM for reasons of self-preservation. Most gender focal people are contract staff and full-time staff are often transferred to other sectors, so there is lack of continuity. That is why community sensitization and education is key for them to demand the implementation of gender equality legislation.

g) **Weak enforcement structures (funding)**; Apart from staffing, the entities supposed to implement gender-sensitive legislation are also poorly funded. For example, Police Family Units, follow-up and capacity-building of implementing structures are not properly facilitated. Besides the facilitation, it is not clear to the implementers how they should enforce the rules and penalize violators, except in cases where there are adverse acts of a criminal nature, such as sexual abuse.

h) **Duplication of roles**; Policies would be easily implemented if different sectors and departments were willing to partner and not duplicate what is already being done. For example, with regard to the police and related sectors, while it is easy to enforce laws in collaboration, it is more common to find two or more government entities competing instead of complementing one another to achieve similar results. As a result, a great deal of resources are spent in the different sectors to achieve the same outputs.

i) **Limited political will**; The government is quick to adopt public policies which are not controversial but avoids those that seek to challenge unequal gender power relations. The government agrees with the policies in principle but not in practice. The principle of indivisibility of rights where some rights cannot be subscribed to is still a challenge. Some government officials think

that it is not yet time for women to be liberated, leading to failure to implement the available policies. Consequently, legislating on gender equality and failing to commit resources – human and financial – has steadily emerged as a new form of resistance to gender equality.

j) **Tokenism**

Women are only taken into consideration as a token to account for their inclusion. For example, of all the 25 directorates of the Uganda Police only the Criminal Investigation Department (CIID) has a lady director, yet there are very many competent women in the force.

k) **Socio-cultural and economic context**; though Uganda is a signatory to many international pro-gender laws, there are several contextual factors that militate against their implementation and domestication. For example, the abortion and family planning resolution that forms part of the Maputo Protocol has failed to be implemented because of cultural and religious attitudes towards abortion. Resolution 2331 against trafficking requires states to track trafficking and provide up-to-date statistics on the vice but, given the high levels of poverty, not many who are trafficked may speak out and report the vice, limiting the state's capacity to combat the vice. Some international obligations fail because of domestic contextual controversies. A case in point is the Marriage and Divorce Bill, which has failed because of the perceptions in the Ugandan social context. Local religious opinions also hinder the implementation of the international resolutions.

l) **Gender, women or men and women?** The operationalization of gender is another key challenge. Reducing of gender to women has the tendency to put the focus on individual women and not on relationships and the intersectional nature of gender oppression. As a result, the relational aspects of gender inequality are left in place, reinforcing the structures of gender oppression since interventions seek to help individual women. As a result, no programmes exist to teach men to be better men. Furthermore, rural women are far from empowered as many continue to be victims of domestic abuse,

## *Asexuality, Gender and the Law in Uganda*

rape, defilement, murder and increased cases of violence in families. Focusing on relations between women and men and among women and men would lead to an acknowledgement of how males and females are all disadvantaged by patriarchy, as it places on males the burden of a particular form of masculinity that is dangerous to females and weaker males. For example, the law quickly recognizes that women, especially girls, are disadvantaged but it does not recognize the fact that young boys could also be disadvantaged. How can the law prosecute perpetrators of abuse? Gender policies should begin to target men as well. Secondly, the policy regime has been translated differently globally. While there has been a shift in development approaches, there has been no shift in policy interventions. While many policy regimes have shifted to focus on gender mainstreaming and the structural drivers of women's disadvantage, this is often reduced to the inclusion of a few women, without paying attention to the structural gender issues. For example, gender in many policy documents continues to be taken to refer to women, and gender issues continue to be viewed as women's issues. Gender mainstreaming in policy continues to focus on the integration of women, without considering the structural drivers of gender inequality that excluded women in the first place. As such, apart from a few targeted women, gender inequality remains entrenched and keeps being reproduced

### **Conclusion**

The mapping has demonstrated that Uganda has several laws and policies, local and international that should deliver gender equality. However, most of these policies are issue-specific, often deploying gender equality as a means to an end, with potentially varying consequences. For example, the pursuit of gender equality as a strategy for poverty eradication, sustainable development and human rights is a good strategy since these are already acceptable and agreed upon principles of humanity. However, it risks instrumentalizing

*Isaac Christopher Lubogo*

gender and gender relations, without paying due attention to the drivers of gender inequality. Most times, women's rights activists and development partners have pushed for the enactment of gender-specific laws amid state resistance. This resistance has been noted in legal reforms that question male privilege, domination and power. For example, laws on property ownership within marriage have remained on the shelf for decades.

## CHAPTER TWELVE



### **GENDER ON INTERNATIONAL LAW BASIS**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes the State obligation to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”<sup>174</sup>. It also establishes the obligation to modify the socio-cultural patterns and gender stereotypes to eradicate all practices based on the inferiority or superiority of either of the sexes as well as to ensure that family education recognizes the common responsibility in the upbringing and development of children.<sup>175</sup> Moreover, the Convention reaffirms the State obligation to eliminate discrimination and guarantee equality in the cultural sphere.<sup>176</sup> In addition, the International

---

<sup>174</sup>Article 16, UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979 (AG Resolution 34/180) and entered into force on 3 September 1981.

<sup>175</sup>Ibid art. 5.

<sup>176</sup>Article 1, and 13(c), UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979 (AG Resolution 34/180) and entered into force on 3 September 1981.

Covenant on Economic, Social and Cultural Rights recognizes the right of all people to enjoy their cultural rights in conditions of equality as well as the right to enjoy the benefits of scientific progress.<sup>177</sup> Furthermore, the Human Rights Committee in its General Comment 28 on the *Equality of Rights Between Men and Women* also reaffirms that the right to equality before the law include equal status within the family and regardless of marital status.<sup>178</sup>

The World Health Organization (WHO) describes ‘gender’ as follows: “Gender refers to the socially constructed characteristics of women and men such as norms, roles and relationships of and between groups of women and men. It varied from society to society and can be changed”

The International Labour Organisation has made reference to women workers throughout history but always in particular ways Women have required special attention, whether in the form of protective legislation or through various promotional efforts.

Women’s rights are protected by international human rights treaties, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These states the principles of non-discrimination on the basis of sex (art. 2) and of affirmative action (art. 4), and contains a provision specifically devoted to rural women (art. 14). The principle of non-discrimination is stated in the CEDAW in a very broad way, applying not only to state-enacted laws and regulations, but also to the behavior of private individuals (arts. 2(e), 5 and 10(c)), and including both discriminatory purposes and effects. The principle of non-discrimination on the basis of sex is also affirmed in the Universal Declaration of Human Rights (UDHR) (arts. 2 and 7), in the International Covenant on Economic, Social

---

<sup>177</sup>International Covenant on Economic, Social and Cultural Rights adopted by UN General Assembly resolution 2200A (XXI) of 16 December 1966 and entry into force on 3 January 1976.

<sup>178</sup>UN Human Rights Committee, General Comment No. 28 on article 3 “Equality of Rights between Men and Women”, adopted on 29 March 2000 (HRI/GEN/1/Rev.9 (Vol. I)).

## *Asexuality, Gender and the Law in Uganda*

and Cultural Rights (ICESCR) (arts. 2(2) and 3), and in the International Covenant on Civil and Political Right (ICCPR) (arts. 2(1), 3 and 14), as well as in regional human rights treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (art. 14), the American Convention on Human Rights (ACHR) (art. 1), and the African Charter on Human and Peoples' Rights (ACHPR) (art. 2). Within the African regional human rights system, a Protocol on the Rights of Women in Africa was adopted in 2003 and entered into force in November 2005.

The Protocol complements the African Charter by reaffirming the principle of non-discrimination (art. 2) and by affirming arrange of civil, cultural, economic, political and social rights. An Arab Charter on Human Rights, also affirming the non-discrimination.

*Several countries have participated in the fight of achieving gender equality such as Bosnia in which.* A network of institutional mechanisms for gender issues has been established in Bosnia and Herzegovina that includes all levels of legislative and executive power. Key responsibility of these mechanisms is implementation and monitoring of the implementation of the Law on Gender Equality in BiH and the implementation of international gender equality mechanisms, primarily the UN Convention on Elimination of All Forms of Discrimination against Women and the Beijing Declaration and Platform for Action.

Gender Equality Agency and the Gender Centres investigate alleged violations of the Law on Gender Equality in BiH on the basis of applications submitted by individuals, groups of people or on its own initiative. Rules for Investigating Violations of the Law were adopted and they include the application form. Upon completion of the procedure, recommendations are issued in order to fix the violations of law. These recommendations rely on



international obligations Bosnia and Herzegovina has undertaken in the area of gender equality (in particular, the CEDAW) and articles of the Law on Gender Equality in BiH, and they propose measures for remedying causes of violations of the Law on Gender Equality in BiH. Such measures mostly include proposals for amending laws, eliminating violations of the Law or proceeding in accordance with the Law, and adopting provisional measures. Such recommendations, though not legally binding, achieve the effect of protection of rights, as well as educational, preventive and awareness-raising effects.

According to the laws that are implemented in Bosnia and Herzegovina (Family Law in Republika Srpska articles 269-271 and Family Law in Federation of Bosnia and Herzegovina, articles 269- 271):

As far as the property of marital partners is concerned, it can be separate and joint. The property that the marital partner has at the time of entering a marriage remains his or her separate property. Property that was obtained by marital partners by working during their marital community, as well as the earnings from this property, constitutes joint property.

National legal systems, and women's legal status within them, differ greatly from country to country. At the same time, influences and exchanges, both coercive and voluntary, have determined similarities across countries. Colonial powers exported their legal systems to their colonies. Moreover, the French Code Napoleon 1804 (and its patriarchal family law) influenced the civil law of many European countries, including Italy, and of most post-independence Latin American countries. Most constitutions prohibit sex/gender discrimination for example the Constitution of Brazil, Art. 5(I); the Constitution of Burkina Faso, Section 231(4) of the South African Constitution states: "Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act

## *Asexuality, Gender and the Law in Uganda*

of Parliament". Under this provision, ratified international human rights treaties are directly applicable in South Africa.

*Gender and Law: Women's Rights in Agriculture* Article 1(3); the Constitution of India, Arts. 14 and 15(1); the Constitution of Italy, Art. 3(1); the Constitution of Mexico, Art. 4; the Constitution of the Philippines, Art. II (14)). The Constitution of South Africa **prohibits discrimination on the basis of sex, gender, pregnancy and marital status**, and includes "non-sexism" among the fundamental values of the state Provision 1 and Sect. 9). Some constitutions state the principle of equality without specifying any ground of discrimination (e.g., the Constitution of Tunisia, under Article 6.

In some cases, the principle of non-discrimination is qualified. For instance, the Constitution of Fiji exempts from the prohibition of sex discrimination family and succession law ("to the extent that the law is reasonable and justifiable in a free and democratic society") and laws providing for the application of customary land and fishing rights Section 38).

Similarly, **the Kenyan Constitution, as amended in 1997, prohibits sex discrimination but exempts family law and customary law** areas of law that are crucial in shaping women's rights in agriculture Section 82). Besides, prohibiting discrimination, some constitutions contain an affirmative action clause (e.g, the Constitution of India, Art. 15(3); the Constitution of Fiji, Sect. 6(k)). In some cases, this clause does not specify the grounds for affirmative action, but is applicable to sex/gender (e.g., the Italian Constitution, Art. 3(2); the Constitution of the Philippines, Arts. XII (1) and XIII (1); the South African Constitution.

Art. 9(2)). In the Constitution of Kenya, special measures are envisaged in a double-edged way: not only a "privilege or advantage", but also a "disability or restriction" may be imposed on the basis of sex provided that this is "reasonably justifiable in a democratic society" Sect. 82(4)(d)).

In addition to constitutional provisions, comprehensive attempts to promote gender equality may be embodied in legislation. In South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) 2000 prohibits unfair discrimination on grounds **of gender and sex in both public and private life (family relations**, land rights, employment, social benefits, etc.), and envisages affirmative In Kenya, a draft Constitution that, among other things, would have strengthened women's rights was rejected in a national referendum in November 2005.

*Gender and Law: Women's Rights in Agriculture* 11action. Under the Act, the state has a duty to promote equality by developing and implementing action plans, laws, programmes and guidelines and by raising awareness. The duty to eliminate unfair discrimination includes the auditing and amendment of laws, policies and practices. A fundamental issue concerning women's legal status under national law

is women's legal capacity. This includes the capacity to be holders of rights and obligations, and the capacity to exercise them (i.e. to perform acts with legal effects). Under article 15(2) of the CEDAW, "states parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity". Under national law, the capacity to be holders of rights and obligations is usually acquired with birth, without discrimination, and lost only with death (e.g., the Brazilian Civil Code of 2002, arts. 1 and 2, the Italian Civil Code, art. 1, the Italian Constitution, Art. 22, and the Civil Code of the Philippines, arts. 37 and 40).

The capacity to perform acts with legal effects (capacity to act) usually entails minimum age and other requirements, which vary according to the act performed (matrimonial capacity, capacity to own and administer property, contractual capacity, capacity to bring claims before courts, etc.). The capacity to act is analyzed in the relevant chapters of the study; suffice to say here that the relevant norms have evolved substantially during the past century. For instance, in Brazil, the original text of articles 6 and 242 of the Civil Code of 1916 made married women incapable of performing certain

## *Asexuality, Gender and the Law in Uganda*

acts without the authorization of their Husband; Law 4121 of 1962 abrogated the subsection of article 6 on women's incapacity and reduced the number of acts requiring husband's consent; finally, the 1988 Constitution (Art. 226(5)) and the Civil Code of 2002 (arts. 1511 and 1567) affirm the equality of rights and duties of both spouses. In South Africa, the inferior status of women married under customary law envisaged by the Black Administration Act of 1927 was repealed by the Recognition of Customary Marriages Act of 1998.

Other norms, though not related to agriculture, constitute useful "indicators" of women's legal status in national legal systems. These include norms on violence against women, on honour defence (as a ground for absolution for wife murder), on son preference, on marriage age and reproductive health rights (with early marriage and child birth negatively affecting women's access to education and employment), on political representation, etc. While these issues are not covered by this Study, they may affect women's confidence and ability to exercise their rights in agriculture. In many parts of the world, female circumcision is a notable example. In Burkina Faso, although this practice was outlawed in 1990 and courts have sentenced some authors of female circumcision, the practice is still widespread in rural areas (SIDA, 1999; CEDAW, 2000). Moreover; most national legal systems include plans of action and/or of institutional machinery to promote gender equality and the advancement of women. In many cases, these instruments were adopted in the aftermath of the Beijing Declaration and Platform for Action.

Although not legally binding, plans of action express the government's commitment to gender equality and define policy directions. The functions and powers, and therefore the effectiveness, of institutional machinery vary considerably, ranging from advisory functions, to policy orientation and program me coordination, and to investigation of women's rights violations.

In federal states (e.g., India and Mexico), women's rights may differ across Member States. For instance, in India, land reform legislation has been adopted at state level, and women's rights therein vary considerably. In Mexico, each state has its own civil code, and family law varies from state to state. In some cases, decentralization coexists with the delegation of powers at supranational level, thereby increasing the complexity of the sources of women's legal status. In Italy, for instance, while general civil law (family, successions, property, contracts, etc.) is within the domain of the state, agriculture is largely within the responsibilities of the "regions" (Art. 117 of the Constitution, as amended, and of the European Community (EC Treaty, art. 32, formerly 38); regional legislation must remove the obstacles hindering the full equality between men and women in the social, cultural and economic life (the Italian Constitution, Art. 117, as amended), and EU law includes gender equality among its fundamental principles EC Treaty, arts. 2 and 137) and contains legislation and case law on women workers' rights.

To sum up, women's rights in agriculture are shaped by a wide range of legal sources, including international, national, customary and religious norms. These diverse legal systems – and hybrids between them – may coexist over the same territory – a phenomenon referred to as "legal pluralism". These different bodies of norms are not isolated, but are intertwined in dynamic interaction processes. Conflicting norms of statutory and customary law may support competing claims of different social groups. Parties to disputes may invoke the norms that best support their claims and choose the institutional channel which they feel is most likely to be favorable to their cause ("forum shopping"). Statutory and customary rules violating constitutional and international human rights norms have been struck down by courts. For instance, courts have relied on national constitutions and on the CEDAW to invalidate customary norms preventing women from selling land.

For example, in the Tanzanian case *Ephraim v. Pastory and Another*) or subjecting

## *Asexuality, Gender and the Law in Uganda*

Inheritance by daughters to their undertaking to remain unmarried (e.g., the Nigerian case **Moujekwn v. Ejikeme** on both cases, see below, section II.4.1). Women's legal status is often the outcome of the interplay between these different bodies of norms.

Formally, the relationship between statutory and customary law is determined by the legal status of customary law within the legal system. This varies across countries, ranging between official recognition and abrogation. Customary law is for instance recognized by national law in Kenya and Fiji. In Kenya, the legal status of customary law was at stake in **Otieno v. Ougo and Siranga**, in which Kenyan courts held that customary law is formally part of the Kenyan legal system, and must be applied in case of legislative lacuna (High Court, case 4872, 1986; Court of Appeals, 15 May 1987). In some cases, the recognition of customary law is qualified by respect for the fundamental principles enshrined in the Constitution and in legislation, including gender equality (e.g., South Africa, Art. 211(3) of the Constitution; Philippines, Civil Code and Indigenous Peoples Rights Act of 1997; Mexico, Agrarian Law of 1992<sup>179</sup>

In Kenya, the Judicature Act requires courts to apply customary law so far as it is "not repugnant to justice and morality or inconsistent with any written law" (chapter 8, art. 3, quoted in Walsh, 2005). In yet other cases, statutory norms outlaw customary law (e.g., in most of Francophone Africa), although even in these cases customary.

Law remains widely applied in rural areas. The relationship between norms of a religious origin and statutory law also raises important issues. First, a

---

<sup>179</sup> Gender and Law: Women's Rights in Agriculture

trade-off between freedom of religion and women's rights may arise. In India, several cases dealt with the relationship between freedom of religion and restrictions on bigamy

State of Bombay *v.* Narasu Appa Mali, AIR [1952] Bombay 1984; Srinivasa *v.* Saraswati Ammal, AIR [1952] Madras 193; more recently, Sarla Mudgal and Others *v.* Union of India and Others, 1995, 3 SCC 635). Second, statutory law may incorporate religious norms into family and succession law. For countries encompassing different ethnic or religious groups, this entails a plurality of personal laws and, therefore, a diversification of women's legal status (e.g., India and Kenya). The incorporation of religious law into statutory law may occur either Through codification of religious rules into statutory law (e.g., India, **the Hindu** Succession Act) or through legislative envoi to religious norms (e.g. India, the Shariat Act) Among the countries not directly covered by this study, the 1995 Constitution of Uganda prohibits "laws, cultures, customs or traditions which are against thdignity, welfare or interest of women or which undermine their status" (Sect. 33(6)).

## **Gender in International relations**

No one has not, will not and does not mention the term gender almost on a daily basis. Indeed, the term is an ever-present one in our conversations and debates and it is used to explain almost everything that happens around/within us.

For example, do men and women have the same food preferences? Is their driving, talking and walking styles the same? Because it is so embedded in our institutions, beliefs and actions, it appears to be very natural – even the ideas about it are common place that we assume they are facts.

We instead need to investigate why it is common sense or why/not is a fact. For us to be able to do this, we need to be able to suspend what we are used to and what we feel comfortable knowing and question and reinvestigate our most deeply held beliefs. The study of gender is interesting because gender

itself seems self-evident; who for example doesn't know that women should cook and that a man who cries is not man enough? And who doesn't know that men should fend for their families?

This re-investigation of what we have always known will help us study gender not as a given or even not as a cause but an effect.

### **Sex or/and gender**

One is not born with gender and we don't have gender but we *do* and *perform* gender, it is something socially cultivated into us, Children create personalities based on what they admire or like about their adult role models. A girl for example may put on her mother's high heeled shoes and wear make-up and a young boy may walk with his chest forward just as his father because as children, they are taught how/what males/females behave and do.

Sex on the other hand is a biological categorization based largely on reproductive potential gender is thus the social elaboration of biological sex, it builds on biological sex although it exaggerates biological differences sometimes for example, is there any reason why women shouldn't be engineers or men shouldn't be babysitters? People often think of gender as a result of nurture while they do conceive of sex as a result of nature.

However, these two works together and it is not clear when one leaves and the other begins. Interestingly biology offers us either males or females but it also gives us many individuals who do not fit into the traditional categorization of female or male (this however will not be our focus).

We do acknowledge that there are LGBTs but our focus will be on females and males' femininity and masculinity). Indeed, medical manipulations have



at times had to be performed to bring the ‘anomalous’ babies into conformity with either category.

The argument often is that biological differences between males and females determine gender by causing enduring differences in capabilities, for example, higher levels of testosterone in males are said to make them very aggressive than women. Similarly, that left-brain dominance in men leads them to be more rational while women are emotional because of lack of the same brain lateralization.

In 1985, Oakley differentiated between the two terms as follows; ‘*Sex*’ is a word that refers to the biological differences between male and female: the visible difference in genitalia, the related difference in procreative function. ‘*Gender*’, however, is a matter of culture: it refers to the social classification into ‘*masculine*’ and ‘*feminine*’.

### **Gendering babies: Is it a boy or a girl?**

Simon de Beauvoir once noted; *women are not born, they are made*, but is it just women that are made? Are men born? The making of a man or a woman, apparently may be a long process that begins even before birth as the mother wonders whether it will be a girl or a boy.

The announcement at birth that it is either of these automatically transforms the baby into a s/he. This transformation travels through the linguistic event of naming true, some names may be unisex but this is not enough to mitigate the fact that names are also gendered for there are some that are known to be for females and males.

This distinction between male and female becomes the ground on which we build ourselves and view others from the moment of birth, Overtime, the baby grows to perform roles meant for boys or girls and support such kind of gendered work. As the baby is born, people are more interested in knowing its sex and the social convention provides a number of ways through which

## *Asexuality, Gender and the Law in Uganda*

the necessity of asking is reduced, for example, pink is known to be a delicate color meant for girls while blue is meant for boys.

For babies whose sex one is not sure of, plain yellow or green or even white may work. This color coding is so integral in our ways of thinking and determines how we nurture the baby. Unfortunately, gender doesn't naturally flow from sex otherwise, we could as well just sit and let the baby grow up to become either male or female.

But sex determination sets the stage for how one will become male or female.

Names and clothing therefore may be just a part of the symbolic resources used to support an ongoing gender attribution even when the child is dressed how and what the child is dressed in, what s/he does all matter in determining whether one is male or female. In the same line, children are gendered based on treatment it is this differential treatment that makes them different.

Research by Maccoby and Jaclin in 1974 indicated that both girls and boys cry the same amount but as they mature, boys tend to cry less.<sup>180</sup> This, it is argued is due to differential adult response to a crying baby. even the language used by parents to boys and girls is different parents are said to use words such as; *sweetie, pretty* when talking to girls and *don't do that, no, no, no* when talking to boys.

Arguments favoring this differential treatment point to the idea that boys tend to misbehave as they grow compared to girls but, those against it argue that this is more dependent on the adult's beliefs about sex differences than the child's behavior.

---

<sup>180</sup>Research by Maccoby and Jaclin in 1974

It is clear that children also they play a significant role in their own development for example, until about the age of two, both may exhibit the same play behaviors, But, afterwards, boys may begin to play in boys' groups and the same is true for girls the choose different toys and engage in different games as they impose sanctions on gender-inappropriate play. As they evolve, boys are said to be more agonistic/stand pain etc than girls which many attribute to hormonal differences. Parents also play a big role as children grow by monitoring and differentiating their play habits for example, they buy trucks, pistols for boys while girls get dolls. True, some parents may not be conscious of the gender socialization roles they play but their actions are equally powerful.

### **Importance of gender**

It is not uncommon to find signs on doors of washrooms, medical wards etc with signs or words. As you pause to make sense of those signs or words, you, in a meantime get in. Do you get in because you have understood the sign or because you resemble one of them? Either way, at least you acknowledge that you are one and not the other maybe you understand what the sign means or it they are relevant to you.

There is not much evidence that shows that women are part of what goes on if it is there, it is from about the late 1980s and early 1990s when feminist perspectives began to appear in the discipline of IR. For example, early book on feminist IR scholarship came in 1987 with *Women and War* by Jean Bethke, Cynthia Enloe's *Bananas, Beaches and Bases* came in 1989 and Ann Tickner's *Gender in IR: Feminist Perspectives on Achieving Global Security* came in 1992. Women are taken to be emotional and less committed to protecting their country's national interest. Patriotism, actually, when conceived is taken to mean those that willing to go to the battlefields, die for the country and often these are men.

Women are known to be more involved in peacemaking that even when many of them may be tough, strong willed just as the men, they may not be taken

## *Asexuality, Gender and the Law in Uganda*

so seriously. Yet, even when they are committed to peace-making, they are unevenly recognized.

In Uganda, for example, despite the contributions of women to the stability of the country, there is only one General, the 5 seats reserved for UPDF in parliament have only one female – a Colonel!

It is important that we don't underestimate the importance of gender in IR global politics; war, economics, peace-making etc could actually be questions that rotate around the aspect of gender. Feminist IR scholars argue that whether the issue is on security, global governance, international law or even nuclear proliferation, taking a gender-perspective is important because it gives insights into the areas which *gender-blind* approaches do not reach.

Feminist IR scholarship looks at mainstream (malestream) IR work as a way through which a perpetuation of a patriarchal and distorted view of International Relations is maintained. This lens reflects disproportionate power control and influence that men have and misrepresents the true, full realities of both women and children. For example, there may be some women that are strong and committed to defending their countries. However, the true character of these women may be obscured by the hyper-representation of male power.

It is a discourse of the powerful as opposed to one in which members of society are fully studied and fairly discussed. For example, if women were given as much power as men have, are they capable of behaving just as the men? Are women as power hungry as the men? Why for example would Joyce Banda have asked the EC not announce the election results? But, had she been male, would she have resisted quitting the powerful seat? A gender lens and taking gender as a unit of analysis in IR is important to uncover these issues and many more.

In 1989, Enloe claimed that *gender makes the world go round*. Enloe had turned the abstract logic of mainstream International Relations inside out gender is a social force. Though, in IR, only one gender the male appears to define the discipline. This situation is still persistent for example, during the 1990s, Ann Tickner wrote that women were admitted to most combat positions in the US military but occupations in foreign and military policy making remained overwhelmingly male. The persistence of the overriding maleness in International Relations needs a gender-lens to deconstruct the myths that have overtime surrounded that discipline.

Mainstream IR has treated the state as a coherent unit controlled by males while female has been relegated to positions of home and family management, social reproduction.

The history of state formation is thus gendered and so are the other forms of oppression. At least from Plato and Aristotle's times, man has always been seen as the master (subject) and woman as the matter (object).

Aristotle for example believed that women were supposed to help men become better beings – they were to serve the superior because of their inferiority. But, a gender lens in IR will help us understand this gender superiority/inferiority complex not as a given but rather from the dynamic gender terms.

## **International Relations of gender**

Nannerl Keohane once remarked; In women's studies, a good piece of conventional wisdom holds that it is simply not enough to 'add women and stir'. In Political Science, *women are just now being added, and the field has hardly begun to stir*.

if, as Keohane said of Political Science is true, it is probably worse off with IR the most part to include gender in IR being carried by feminist academics but

## *Asexuality, Gender and the Law in Uganda*

the growth of feminist IR theory has not been easily accepted that in Social Sciences, IR is said to be one most resisting disciplines of gender

Much of IR theorizing separates between inside and outside, community and anarchy. In the community of nations, focus is on how states can increase power in an anarchic system the suggestion that gender or women should be examines is met with hostility

Contrasting IR, contemporary feminism is rooted in social movements – women's liberation movements. It represents a protest against prevailing gender-based power structures and against societal norms and values concerning women and men-feminists have challenged the traditional IR approach calling for entry of women in spheres historically preserved for men

Feminism is a politics of protest onwards transforming the historically unequal power relationships between men and women, feminism thus follows a different path from IR it look at inside questions often ignored in IR critical theorists have insisted on including gender and women in IR and moved away from the early attempts to add women into social sciences to looking at ways in which gender, understood as a social construct between men and women rotates around economic, political, and institutional practices. **IR is often described as a series of billiard balls in intermittent collision or as a cobweb of crisscrossing relationships between states and non-state actors.**

### **Analysis of gender in IR**

Partly, gender requires knowledge about sexual difference the relationships between men and women, roles they fill, what it is to be feminine or masculine may differ across time and context they are social constructs, understanding gender relations requires exploring the ways in which these are constructed and and maintained locally, nationally and internationally. To

create IR that is sensitive to gender thus requires exploring ways in which knowledge about sexual difference is sustained, reproduced and manipulated in Inter institutions.

It means uncovering the ideas about sexual difference that inform different international activities and the impact these have on their practices, also means looking to the material conditions in which the activities take place with the attention to the ways in which prevailing conditions facilitate or prohibit the adoption of some understanding over others.

Equally requires the extent to which international practices contribute to the particular understanding of gender in any given place and time, such a focus is far from the billiard balls or cobwebs because; such an analysis is beyond mere structures of IR but also looks at actions within, through and around those structures

A gendered account of IR allows us explore action so that we examine the ways in which knowledge about sexual difference is transmitted by various agents to the different institutions.

*Let's use two examples; The International planned Parenthood Federation (IPPF) and the ILO in situating gender in IR* The two differ one is an NGO while another is an IGO but in the two, gender is differently treated Merging in the post WWII environment, the IPPF was out of struggles of birth control activists in the US and Western Europe. The ILO has made reference to women workers throughout history but always in particular ways, Women have required special attention, whether in the form of protective legislation or through various promotional efforts.

While the ILO policies may serve to protect women, sometimes, such also enforces particular views about women in the workforce the male worker is normally assumed as the norm, This view reproduces the assumption that because women workers differ from the norm, they are not *real workers and* thus not entitled to the same rights, remuneration and obligations as men,

feminist discussions of war, peace, security, economy and development provide substantive literature devoted to study of women and IR, Women are known to be more involved in peacemaking that even when many of them may be tough, strong willed just as the men, they may not be taken so seriously.

## **Gender and Construction of the Nation-State**

Traditionally, nations have been thought of as extensions/creations of/from the family kinship relations think of the evolutionary theories of the state construction. With this understanding/theorization of the state, the homeland is known as the *motherland* in which battles are fought for the good of and protection of women and children – because of their vulnerability anyway (Enloe, 1991). It is such construction of the state and nationalism that gender is at the heart of state theorization.

For example, Carole Pateman has explained that theories such as the social contract a classic and widely referred to theory that finds space in explaining the creation of the Western states located women in the private domain (think of Greece) and made them thus politically irrelevant.

Yet, nationalism (ideally meaning those that are willing to die on behalf of the state in its defense) is a public issue. As such, just as women have been negated in the discussion of state construction, so have they in the discourse/literature that talks of the same think of Nkrumah, Nyerere, Kenyatta etc. interestingly, even when feminists (Enloe, Pateman, Tickner) have tried to nurture other theorists, many have remained gender blind.

The gendered nature of these nations must thus be understood in this context. The nation state (as understood in modern day IR) assumes an overlap between the boundaries of a nation and the geographical coverage of



*Isaac Christopher Lubogo*

those that live within these boundaries. But often, there are people living within the different societies that do not consider themselves to be members of any hegemonic nation (Darfurians do not belong to South or North) and there are also nations that never have a clear state (Palestine), nations divided across geography (Kurds, Azende, Tutsi) and there are also those of national collectivities that live in other countries (Banyarwanda in Uganda).

## CHAPTER THIRTEEN



### **NATIONALIST THEORIES OF CREATING NATIONS**

#### **Blood and belonging**

When boundaries are constructed, they are for distinguishing ‘us’ from ‘them’ and this goes on from generation to generation. Women, as biological producers of children are ‘bearers’ of collectivities within the boundaries.

When one thinks of joining a collectivity by being born there, then the role of a woman in national and ethnic discourses becomes more apparent continuity. And those who are not born in the collectivity are discriminated/excluded. Outsiders therefore join the collectivity sometimes by intermarriages but even then, as the case was in Germany, these intermarriages can also be seen to create/dilute purity even in Rwanda.

Thus, those who are preoccupied with issues of purity would also be preoccupied with questions of sexual relations among groups. For example, in South Africa, legal permission for people from different races to have off springs in SA was seen as one of the significant steps to abolish apartheid.

## Feminism and Nationalism

A discussion on gender relations and nationalist projects ought to keenly consider between feminism and nationalism. In 1986, a book; *Feminism and Nationalism in the 3<sup>rd</sup> world* was published by Kumari Jayawardena in which she argued that the two social movements are highly inter-related.

Since the 1970s and 80s, liberal feminism argued for the liberation of women in the 3<sup>rd</sup> world but 3<sup>rd</sup> world feminists found this irrelevant provided their people were still chained. They instead argued for freedom of both men and women.

They did not see the possibility of freedom in a space that was equally occupied by the oppressed. The belief that *as a woman I have no country* saw them involved in conflict resolution movements and anti-war protests (Vietnam for example) as well as human rights generally.

Despite similarities in the women movements, 3<sup>rd</sup> world women felt that the western world understood and described them from the barbaric customs and subjugation they suffered without considering the socio-economic context in which they existed. Thus, they were seen in light of the problems they suffered and not the achievement. this thinking would only help erase them from the history, freeze them time and space and construct them as politically immature group that needed to be versed in practices of the western liberal feminism.

For example, focus would be put on practices such as male violence and FGM but 3<sup>rd</sup> world practices had some to be appreciated for women had gained protection and security (think of use of land), Polygamy for example in Islam requires you not to divorce the first wife/es but to accord them their rights especially to property.

Kumari's work provided a break through in Western feminism (liberal) that 3<sup>rd</sup> world feminists loyalty to their customs means that they are not struggling for a liberation they instead fight from within for the transformation and

## *Asexuality, Gender and the Law in Uganda*

liberation of their societies and their own. Feminism thus/was not a mere western phenomenon.

Feminism both in the Western and 3<sup>rd</sup> world has undergone transformation following the arrival of black feminist movement that challenged ethno-centricism, racism and recognized the need to acknowledge differences and multi-positionality of women.

This post-modernist and post-structuralism feminism looked at cultural issues and how these influence feminism and nationalist struggles by women. Feminists from the West and South are divided over the question of culture, some argue that unless women talk and legitimate their struggles using culture, religion, customs etc, they would never go beyond a particular class of the elite women in the urban.

Among these voices is Riffat Hassan, a muslim feminist that believes that no equality for Muslim women is possible unless the myth that women are inferior is deconstructed. Thus, the idea that Eve was made out of Adam's ribs (could they have been crooked?) has to be deconstructed, after all Adam is used to represent mankind.

Hence, the Quran just as the bible have to be understood properly for the injustices against women to be deconstructed, Relations and reproduce biologically, symbolically and culturally nationa Away from Riffat is a South African lawyer, who in 1993 shortly before the Constitution at an ANC conference organized by Women activists suggested that customs like polygamy was exploitative to women.

She thus suggested that in marriage, the couple is entitled to 50% each so when the man chooses to remarry, he only can share the 50% with the 2<sup>nd</sup> /3<sup>rd</sup> choices. This was advocated to be included in the law. In Iran, similar

strategies have been taken – that woman should be included in public offices as judges for example.

This post-modernism feminism enables cooperation around specific issues as opposed to the western liberal thinking that generalizes equality.

Let's conclude and say that nationalist projects are many and feminists and women across have differently paid their tribute to nationalism, but in all efforts in the different nationalist projects, gender plays a critical role construction of femininity and masculinity, naturalize power l collectivities.

Hence, feminists and women generally trying to contribute to nationalism and aiming at changing their sisters' positions have had to confront reality that their positions are constructed by a myriad of social divisions and historical forces and therefore, confronting differences among women as well as men can bring a process of political dialogue that could transcend and bridge

Post modernists, coming in the 1990s with feminists like Judith Butler is an alternative discourse to radical and liberal feminism, It questions and deconstructs concepts related to sex, gender and sexuality by looking at such concepts as not neutral but social constructs that maintain and reproduce gender roles and hierarchies. They reject therefore the idea that sex or gender is predefined or fixed Bodies and sexes are not understood as natural or biological phenomena but performance processes in which sexual and gender identities are affirmed constantly and reactivated by power structures.

Post-modernists question the production of the meaning of *woman* and the political implications of this understanding thus, their fundamental focus is not to free women from oppression but to study the mechanisms of power that shape the identity of women.

They believe the identities of social groups are determined by the inequality of their interrelationships hierarchical social relations are constructed using narratives that rank countries and subjects on modern values, the woman is

## *Asexuality, Gender and the Law in Uganda*

reduced to a sexual object through prostitution at the disposal of men destroying her human dignity

The approach presumes that the act of sexual exploitation is harmful because it is based on abuses and on mechanisms of dehumanization, economic, political and social inequalities between men and women. Here, the women-man, North-South inequalities and the subordinated status of women are designated as the structural causes of modern-day slavery.

The Liberal Tradition: Empower sex workers, considers humans as rational agents and defends an individualistic conception of human nature. Thus, even prostitutes have the capacity to think and make rational decisions. To achieve gender equality, the legal and institutional barriers that block women's access to the same rights and positions of power as men need to be removed (Tickner, for example, equal rights and equal access to education and economic opportunities are key, the underrepresentation of women in politics stems from the process of socialization and education that occur in a differentiated way between men and women

The legal restrictions that limit women's freedoms and other rights are equally a block, post-colonial feminism: intersection between race, class and gender, they denounce the colonial discourse and practice of western feminism due to their presumption that women from the global South have to be saved and enlightened, they construct images of innocent and vulnerable trafficked women from 3<sup>rd</sup> world.

Western feminism associates' prostitutes from the South as children, irresponsible before the law, naïve and incapable of being responsible over their own destiny, Thus, young and naïve, they need to be protected post-colonial feminists argue that such description only serves to reinforce the ethnic, racial and sexual features that separate them from European sex workers.

The tendency is always to think of Africans as caring and loving as well as erotic as though they are over-sexualized, Generally, black women and women of color are seen as defenceless, uneducated, sexualized and subjected to traditional gender models.

Sexualisation of race and ethnicity is an integral part of the game of power relations and exclusion between Europeans citizens and aliens or between white and colored women. Such views influence the programs and policies that control the crime of trafficking persons for the purpose of sexual exploitation

The supposed naivety and vulnerability of the migrant prostitutes serves to augment the view that they are threats due to the high probability of being deceived, recruited and trafficked by criminal networks, Thus, seen as victims, they are reduced to passive subjects of imperialist interventions.

Their voices therefore are ignored in the narrative and only constructed by western thinkers, one of the main criticisms from the queer perspective at mainstream feminism is that the latter is only concerned about gender relations in a hetero-sexual structure. Thus, both radical and liberal feminisms are accused of promoting a pattern of heteronormativity that forces individuals into heterosexual norms of relationships.

This excludes individuals from the non-heterosexual world and marginalizes them, Queer theory breaks with binary categorical forms of identity such as male-female/hetero-sexual/homosexual arguing that sexual identities are dynamic, so queer theory focuses on non-monolithic homosexuals, bisexuals, transgender. Thus, queer aims at overthrowing hierarchies and abolish all kinds of normatively and contributes to the liberation of sex workers from dominant social and sexual ideologies, for them, sexual identity is not static but rather processes that continually promulgate through everyday life, the international sex industry is filled with contradictions that go beyond binary and simple tales of slave women and dominant men and sex workers adopt overlapping, intertwined, contradictory and simultaneous identity roles,

Thus, queer aims at overthrowing hierarchies and abolish all kinds of normatively and contributes to the liberation of sex workers from dominant social and sexual ideologies. For them, sexual identity is not static but rather processes that continually promulgate through everyday life. The international sex industry is filled with contradictions that go beyond binary and simple tales of slave women and dominant men and sex workers adopt overlapping, intertwined, contradictory and simultaneous identity roles, Herein, we seek to understand the insecurities that women go through as Female Domestic workers abroad and the insecurities that their own families have to encounter, by doing so, we challenge both the field of international relations that securitizes the state and the Security Studies discourse that looks at such insecurities as irrelevant. We also seek to understand the nexus between global house-holding and global de-house-holding effects on our lives but first, the feminization of migration

### **The Feminization of International Migration**

The term feminization has been used in description of international movement since 1980s, Castles and Miller (2009) used the term to refer the increasing volume of female travellers due to structural changes in the industry sector, more active participation of women in the labour market and demands from aging populations in developed countries.

Such fields, traditionally defined as women's work tend to pay little and involve hiring temporary and irregular workers, Unfortunately, their plight – underpaid, insecure, dependent and isolated gets little attention both academically and politically, The socio-economic conditions in the sending country contribute to the increasing trend as much as those other factors in the host state, Notable are e introduction of SAPs in the 1990s and the existing *domestic-servant culture* among middle-class, the UN for example has actively advocated against human trafficking internationally, the term gender also appears in most documents – a number of these organizations do a lot to



raise awareness. In 1990, the UN adopted the International Convention on Protection of Rights of All Migrant Workers and Members of their Families (ICMW) and defines a migrant worker as;

*A person, who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national*

**Art. 1** is explicit that the definition and application of the Convention is not dependent on colour, race or sex

The convention expects the nationals and migrant workers to be equally treated employment conditions (**Art. 25**); social security (**27**) education (**30**) and emergency medical care (**27**), **Art 26** and **40** allow them to partake in trade union activities and form associations and trade unions, but it has also received considerable criticism since creation; Doesn't go beyond the *add women and stir* approach (refer to liberal feminism), Hume argues they did not go beyond the concept of labor which may not mean the same to women and men, Many migrant women are in care and housekeeping fields which traditionally are not considered as part of mainstream labour. Thus, jobs related to child rearing, home maintenance are paid lowly compared to factor and industry services.

## CHAPTER FOURTEEN



### **GENDERING INTERNATIONAL RELATIONS AND DIPLOMATIC PRACTICE**

#### **Gender Diplomacy and Global Politics**

Diplomacy has traditionally and formally been a domain reserved for men only. Right from the start of the discipline of IR and inter-state relations, men have dominated its study and practice, In the 1920s, states and international organizations gradually but hesitantly began to open up their institutions for women to partake in various diplomatic functions.

A century later, men still remain grossly overrepresented in contemporary diplomacy. For example; Eighty-five percent of the world's ambassadors were men in 2014 (Towns and Niklasson2017) and men constitute a higher share of negotiators and chief mediators in peace negotiations (Aggestam and Svensson2018) The gradual opening up for women in diplomacy paralleled the wide-spread mobilization of women's international movements for gender equality (Garner2013).

In the 1990s, these efforts culminated in vibrant transnational coalitions of states, inter-governmental organizations (IGOs) and non-governmental organizations (NGOs), which actively pushed for wider inclusion of women in diplomacy and in many other international fora and arenas.

In attempting to situate gender equality as part of the wider concerns for peace and security, the United Nations (UN) Security Council adopted resolution 1325 on Women, Peace and Security (WPS) in the year 2000, a resolution which constitutes a significant milestone in the struggle for women's participation in diplomacy.

A number of countries, such as Australia, Sweden, Canada and Norway, have even included the WPS agenda as part of their foreign policies, and taken on normative entrepreneurial leadership in the quest for greater inclusion of women in peace diplomacy (Aggestam and Bergman-Rosamond 2016; True 2016). More recently, there have been some efforts to include transgender people in certain Foreign Service Organizations.

For instance, the US Department of State under the Obama administration worked actively for the inclusion of transgender diplomats along with other members of the LGBT community in 2011, Robyn McCutcheon became the first diplomat to transition (trans-gender woman) openly while posted at the US embassy in Bucharest, Romania.

## **Gender in Diplomacy**

For instance, the US Department of State under the Obama administration worked actively for the inclusion of transgender diplomats along with other members of the LGBT community.

In 2011, Robyn McCutcheon became the first diplomat to transition (trans-gender woman) openly while posted at the US embassy in Bucharest, Romania. More recently, there have been some efforts to include transgender people in certain Foreign Service Organizations.

## *Asexuality, Gender and the Law in Uganda*

Diplomacy, like all concepts and fields is in transition, thus, the traditional approach of diplomats being men representing the interests of their states and Presidents is being challenged. For example, existing gender feminist scholarship has helped unearth and highlight the critical support functions women have served while excluded from formal authorization as diplomats, for example, by overcoming the traditional demarcation between the domestic and the international (Enloe1989).

Diplomacy is often portrayed as an art based on tradition and historical precedents, which is practiced by an exclusive group of male diplomats with trained intuition (Berridge2010).

New terms such as public diplomacy, inter-societal diplomacy), para-diplomacy (process which enables the constituent units of a sovereign state, to conduct their own diplomatic engagement with another state or its constituent units for the pursuit of their own interests), catalytic diplomacy (growing symbiosis between the activities of those representing state and non-state; -activities in which the foreign policy community engages in pursuit of such a strategy) are now extensively in use as analytical lenses to assess empirically new diplomatic processes and practices. Thus, the distinction between official and unofficial diplomacy is eroding. As state sovereignty is relaxed, diplomacy is less attributed to the state, and centres more on transnational issues and relations.

Unfortunately, debates hardly pay any attention to gender as an analytical category or draw upon feminist theory as part of unpacking the changes, which are taking place in contemporary diplomatic practices. Furthermore, there is no gender sensitive lens adopted in most empirical case analyses, despite the recent historical male monopoly on diplomacy, the fact that the number of women in diplomacy has risen significantly in the past couple of

decades, or the fact that openly non-binary and transgender persons are conspicuously absent from formal diplomacy.

Diplomatic history Diplomatic history studies have primarily examined the active roles women have taken for centuries in European diplomacy. Studies of women's involvement in diplomatic activities of societies in other parts of the world are unfortunately still sparse. Some of these European histories take the form of biographies, following individual women and their diplomatic activities over time, while others study developments that occurred in briefer temporal contexts.

Since women often did not have formal access to diplomatic positions, much of the diplomatic history scholar-ship takes as its point of departure the absence of women from formal diplomacy. These studies have then tended to show either that elite European woman occasionally did serve formal diplomatic roles prior to the nineteenth century or that women exercised significant informal influence on diplomatic interactions.

By tracing the historical roots of women in European diplomacy, diplomatic history scholarship has shown conclusively that women's involvement in diplomatic activities is not a new phenomenon after all. In fact, women's immersion in diplomacy precedes their twentieth century roles as diplomats and diplomatic wives by several centuries. In fact, women occasionally served as diplomatic negotiators and were even appointed as ambassadors in Europe prior to the nineteenth century, before European bans emerged that prohibited women from holding formal state office.

A number of historical studies have a more recent scope, focusing on twentieth century roles of women in diplomacy in Europe and North America, a period during which Foreign Service professionalized and moved away from the royal courts, during the nineteenth and twentieth centuries, as the locus of diplomacy shifted to professionalized and bureaucratized Ministries of Foreign Affairs (MFAs), women were expressly and officially barred as a sex from holding diplomatic positions.

## *Asexuality, Gender and the Law in Uganda*

In Elizabethan England, during the late sixteenth and early seventeenth centuries, women influenced the formal intelligence and diplomatic endeavors through gathering and distributing news, Tischler (2001) centres on Renée du BecCrespin, Countess of Guébriant, who was formally appointed as ambassador to Poland in 1645, as one of few women to serve in the formal role of ambassador prior to the twentieth century.

Their primary influence then manifested primarily in relation to the informal institution of the diplomatic wife, with the official role of diplomat reserved for men, and preferably heterosexual elite men, the diplomatic wife came to fill important functions as facilitators of diplomatic interactions.

They did so and continue to do so as hostesses of receptions and dinners, volunteers with connections in civil society and as sounding boards for their husbands. Since the role of a diplomatic wife places heavy demands on women who accompanied their husbands on their diplomatic postings, diplomatic wives have demanded recognition, services, compensation and pensions in a number of countries, representation and the quest for inclusion. Persistently, men have been over-represented in diplomacy, at the same time, the gender make-up of diplomacy is changing and the number of women participating is increasing. For example, the MFAs in Sweden and the US have reached gender parity (of a 40/60 range of men and women) and the share of women in many other countries is increasing rapidly.

Unfortunately, literature has often focused on have mainly focused on Europe and North America and confirm, not surprisingly, that the top diplomats in most cases are male.

This reflects the gendered structures of diplomacy. Also in the European Council, women are systematically underrepresented in the negotiation committee system. Few women have been appointed to higher-level

committees and to foreign policy areas. Not surprisingly, the share of women at the very top ministerial level is the lowest of all EU institutions.

Yet, there are interesting deviant cases to consider where women have better representation in international institutions, which may be because male dominance is not as entrenched. For example, women constitute 60 percent of the Japanese delegations to the UN, although they only make up 3 percent of the Japanese ambassador's and 17 percent of diplomats overall, as diplomacy has been exclusively male for a long time, this has nurtured homosocial environments with particular forms of ingrained masculinity norms, scripts and practices. In such contexts, there are informal barriers at play which both exclude and prevent others to act efficiently as diplomats.

While overcoming formal barriers are essential for women's and transgender persons' inclusion in diplomacy, we also need to appreciate the challenges and advantages men, women and transgender people face in everyday diplomatic practices. Feminist institutionalist scholarship provides insightful accounts by showing how gender operate in institutional structures, processes, practices and how femininity and masculinity are produced and reproduced

In gender and diplomacy, the concept of institution is generally used in either of two central meanings: firstly, as formal organizations with clear goals and rules, stipulating chains of command and institutional positions with authorities and responsibilities; and secondly, as less formalized but yet persistent sets of relationships, practices or behavioural patterns.

It is important to note that in this scholarship, institutions themselves, and not just the people working as diplomats, are approached as bearers of gender). Furthermore, feminist institutional studies demonstrate that institutions in either sense of the term can be gendered.

As such, institutions contain "collections of interrelated rules and routines that define appropriate actions in terms of relations between roles and situations, gender thus conceived helps shape expectations and practices of

individuals into relatively stable and predictable patterns. Peace negotiations in particular are ingrained with masculinised norms of power, as they are strongly associated with security interests and military affairs.

Hyper-securitization and exceptional politics are additional reasons for the polarization of gender roles and for the virtually exclusive presence of men at the negotiation table. Yet, there are still only a few studies which pay attention to the specific gendered structures and dynamics of peace negotiations, in a recently conducted interview survey of more than fifty peacemakers, Aggestam (2018) analyses how gender operates within distinct institutional contexts and procession dynamics of peace negotiations. The results from the survey shows, for instance, how the WPS agenda is “ghettoized” during negotiations as something only of concern to women negotiators while discussions on masculinities are completely absent from the talks. So, there is an urgent need for more studies that probe how masculinities are expressed at the peace table and through gendered power? What are the relations of power between gendered subjects? In times of transitions from war to peace, what are the effects of masculinities in peace negotiations

Women continue to trail men in terms of where they are located in the institutional hierarchies. In some cases, the underrepresentation of women at the top is getting worse rather than better over time. Women are furthermore overrepresented in support functions.

In the Turkish MFA, for instance, more women serve as consular and expert officers than as career diplomats (Rumelili and Suleyman, 2018). In the Swedish MFA, women are still overrepresented in administrative units, despite an overall gender parity in the organization for almost two decades.

The differences in hierarchy and division of labour may diminish once the increasing numbers of women recruits make their way into international negotiations or through the Foreign Service career pipeline. However,



institutional features are also at the core of the low levels of women in leadership and other top diplomatic positions.

This is an area where more studies are required. For one, centrally located male networks may shape recruitment and career development perhaps senior men are more likely to see, encourage and involve men as junior colleagues, making it easier for junior men than women to feel supported and encouraged to take steps to advance the career.

There is also fear that women cannot network effectively in male-dominated environments, fear that women cannot combine a demanding diplomatic career with marriage and parenthood, reluctance to place women in violent contexts, or ideas about women's inability to control their emotions or keep secrets. The emotional and psychological toll of sexual harassment, which usually disproportionately befalls women and transgender people, may be leading to less dedication to the diplomatic career or even to leaving the career altogether. As Svedberg (2018) points out, institutional gender norms about appropriate "male" and "female" behaviour may be channelling women in some direction and men in others within diplomacy. Also, diplomacy generally is not well organized to enable the combination of work and family life, which is particularly damaging for women as they continue to shoulder more care responsibilities than men.

Robust parental leave policies and childcare provision seem to be a necessary requirement, as is the increased participation of fathers in the care of children, however, unless career expectations change in diplomacy, leave policies may simultaneously hold women back if their careers suffer as a result of taking the leave offered. There is need for ethnographic studies of gender and diplomacy, richer scholarship contributed by analysts that enter the institutions to examine the life world, social interactions, understandings and practices of diplomats and negotiators.

In the Western world, three distinctive masculinities are operative in diplomacy; a numerically dominant petit bourgeois masculinity (diligent,

## *Asexuality, Gender and the Law in Uganda*

rule following), a hegemonic bourgeois masculinity (economically privileged, cultivated, intellectually independent) and the more un conventional trouble-maker (Neumann2012).

Conclusively it can be, acknowledge a marked and problematic Eurocentrism in the field, Diplomatic history studies on the gender constructions that informed diplomacy among non-European societies, including the roles and positions of men, women and other sexes/genders in diplomacy, would be of great interest.

Such studies are important in their own right, but they would also help to decentre Europe and North America. Such studies would also enrich studies of diplomacy in Europe and North America, as they would provide new points of contextualization and comparison.

Equally there is need to move beyond descriptive single case studies towards more systematic comparison and even larger n-studies. For instance, scholarship of diplomatic history can benefit from more structure in terms of macro-histories with distinct periods and narratives that cover diverse national contexts over time.

## CHAPTER FIFTEEN



### **FEMININITY**

Femininity’ refers to those characteristics that are associated with being female – with being a girl or woman while Masculinity’ refers to those characteristics that are associated with being male a boy or man.

### **Feminism**

In the broadest sense, the term feminism refers to a set of ideas that recognise that women are faced with certain disadvantages because they are women and the belief that this should not be so. It refers to the political practice that emerges from these, a practice which is aimed at changing the situations of women who face systemic disadvantages.

The term ‘broadest sense’ has been used to describe this definition because there are different types of feminism, which recognize that in the social world women suffer certain disadvantages in comparison to men. However, the different strands of feminism vary in what they understand the root cause or causes of these disadvantages to be. Another common feature of the various strands of feminism is that they do not hold the difference in the social positions of men and women to be based on natural factors. They do not believe that there is anything that women have or lack that makes them inherently inferior to men, or which makes men inherently superior to

## *Asexuality, Gender and the Law in Uganda*

women. Instead, the disparities in the social positions of men and women have arisen, over long periods of human history, due to social and cultural factors, and must also be countered through social and cultural means.

This last sentence gives an indication of another very important facet of feminism it seeks to change those dimensions and systems of society which give rise to inequalities between the sexes. Thus, it not only wishes to understand social systems and processes, but also has a commitment to change those that are unjust and discriminatory. In doing so, it realises that the problems that individual women face violence, exploitation, and discrimination, for example are caused by broad social and historical factors, and not because of immediate individual circumstances. They must therefore be countered through social changes.

### **Development of the Feminism Concept.**

**Feminism**, the belief in social, economic, and political equality of the sexes. Although largely originating in the West, feminism is manifested worldwide and is represented by various institutions committed to activity on behalf of women's rights and interests.

Throughout most of Western history, women were confined to the domestic sphere, while public life was reserved for men. In medieval Europe, women were denied the right to own property, to study, or to participate in public life. At the end of the 19th century in France, they were still compelled to cover their heads in public, and, in parts of Germany, a husband still had the right to sell his wife. Even as late as the early 20th century, women could neither vote nor hold elective office in Europe and in most of the United States (where several territories and states granted women's suffrage long before the federal government did so). Women were prevented from conducting business without a male representative, be it father, brother,

husband, legal agent, or even son. Married women could not exercise control over their own children without the permission of their husbands. Moreover, women had little or no access to education and were barred from most professions. In some parts of the world, such restrictions on women continue today. In line with Uganda Article 21 of the constitution provides for the right of all people to equality. Its typically separated into four waves, first wave feminism, focusing and dealing with property rights and right to vote, second wave feminism focusing on equality and anti-discrimination and third wave which started in the 1990s as a backlash to the second wave perceived privileging white, straight women

### **Feminism First Wave Women Suffrage and Seneca Falls Convention**

There is scant evidence of early organized protest against such circumscribed status. In the 3rd century bce, Roman women filled the Capitoline Hill and blocked every entrance to the Forum when consul Marcus Porcius Cato resisted attempts to repeal laws limiting women's use of expensive goods. "If they are victorious now, what will they not attempt?" Cato cried. "As soon as they begin to be your equals, they will have become your superiors."

That rebellion proved exceptional, however. For most of recorded history, only isolated voices spoke out against the inferior status of women, presaging the arguments to come. In late 14th- and early 15th-century France, the first feminist philosopher, Christine de Pisan, challenged prevailing attitudes toward women with a bold call for female education. Her mantle was taken up later in the century by Laura Cereta, a 15th-century Venetian woman who published *Epistolae familiares* (1488; "Personal Letters"; Eng. trans. *Collected Letters of a Renaissance Feminist*), a volume of letters dealing with a panoply of women's complaints, from denial of education and marital oppression to the frivolity of women's attire.

## *Asexuality, Gender and the Law in Uganda*

The defense of women had become a literary subgenre by the end of the 16th century, when *Il merito delle donne* (1600; *The Worth of Women*), a feminist broadside by another Venetian author, Moderata Fonte, was published posthumously. Defenders of the status quo painted women as superficial and inherently immoral, while the emerging feminists produced long lists of women of courage and accomplishment and proclaimed that women would be the intellectual equals of men if they were given equal access to education.

The so-called “debate about women” did not reach England until the late 16th century, when pamphleteers and polemicists joined battle over the true nature of womanhood. After a series of satiric pieces mocking women was published, the first feminist pamphleteer in England, writing as Jane Anger, responded with *Jane Anger, Her Protection for Women* (1589). This volley of opinion continued for more than a century, until

another English author, Mary Astell, issued a more reasoned rejoinder in *A Serious Proposal to the Ladies* (1694, 1697). The two-volume work suggested that women inclined neither toward marriage nor a religious vocation should set up secular convents where they might live, study, and teach. The feminist voices of the Renaissance never coalesced into a coherent philosophy or movement. This happened only with the Enlightenment, when women began to demand that the new reformist rhetoric about liberty, equality, and natural rights be applied to both sexes.

Initially, Enlightenment philosophers focused on the inequities of social class and caste to the exclusion of gender. Swiss-born French philosopher Jean-Jacques Rousseau, for example, portrayed women as silly and frivolous creatures, born to be subordinate to men. In addition, the Declaration of the Rights of Man and of the Citizen, which defined French citizenship after the revolution of 1789, pointedly failed to address the legal status of women.

Female intellectuals of the Enlightenment were quick to point out this lack of inclusivity and the limited scope of reformist rhetoric. Olympe de Gouges, a noted playwright, published *Déclaration des droits de la femme et de la citoyenne* (1791; “Declaration of the Rights of Woman and of the [Female] Citizen”), declaring women to be not only man’s equal but his partner. The following year Mary Wollstonecraft’s *A Vindication of the Rights of Woman* (1792), the seminal English-language feminist work, was published in England. Challenging the notion that women exist only to please men, she proposed that women and men be given equal opportunities in education, work, and politics. Women, she wrote, are as naturally rational as men. If they are silly, it is only because society trains them to be irrelevant.

The Age of Enlightenment turned into an era of political ferment marked by revolutions in France, Germany, and Italy and the rise of abolitionism. In the United States, feminist activism took root when female abolitionists sought to apply the concepts of freedom and equality to their own social and political situations. Their work brought them in contact with female abolitionists in England who were reaching the same conclusions. By the mid-19th century, issues surrounding feminism had added to the tumult of social change, with ideas being exchanged across Europe and North America.

In the first feminist article she dared sign with her own name, Louise Otto, a German, built on the work of Charles Fourier, a French social theorist, quoting his dictum that “by the position which women hold in a land, you can see whether the air of a state is thick with dirty fog or free and clear.” And after Parisian feminists began publishing a daily newspaper entitled *La Voix des femmes* (“The Voice of Women”) in 1848, Luise Dittmar, a German writer, followed suit one year later with her journal, *Soziale Reform*.

The suffrage movement, debates and discussions culminated in the first women’s rights convention, held in July 1848 in the small town of Seneca Falls, New York. It was a spur-of-the-moment idea that sprang up during a social gathering of Lucretia Mott, a Quaker preacher and veteran social activist, Martha Wright (Mott’s sister), Mary Ann McClintock, Jane Hunt,

## *Asexuality, Gender and the Law in Uganda*

and Elizabeth Cady Stanton, the wife of an abolitionist and the only non-Quaker in the group. The convention was planned with five days' notice, publicized only by a small unsigned advertisement in a local newspaper.

These debates and discussions culminated in the first women's rights convention, held in July 1848 in the small town of Seneca Falls, New York. It was a spur-of-the-moment idea that sprang up during a social gathering of Lucretia Mott, a Quaker preacher and veteran social activist, Martha Wright (Mott's sister), Mary Ann McClintock, Jane Hunt, and Elizabeth Cady Stanton, the wife of an abolitionist and the only non-Quaker in the group. The convention was planned with five days' notice, publicized only by a small unsigned advertisement in a local newspaper.

Stanton drew up the "Declaration of Sentiments" that guided the Seneca Falls Convention. Using the Declaration of Independence as her guide to proclaim that "all men and women [had been] created equal," she drafted 11 resolutions, including the most radical demand—the right to the vote. With Frederick Douglass, a former slave, arguing eloquently on their behalf, all 11 resolutions passed, and Mott even won approval of a final declaration "for the overthrowing of the monopoly of the pulpit, and for the securing to woman equal participation with men in the various trades, professions and commerce."

Yet by emphasizing education and political rights that were the privileges of the upper classes, the embryonic feminist movement had little connection with ordinary women cleaning houses in Liverpool or picking cotton in Georgia. The single nonwhite woman's voice heard at this time—that of Sojourner Truth, a former slave—symbolized the distance between the ordinary and the elite. Her famous "Ain't I a Woman" speech was delivered in 1851 before the Women's Rights Convention in Akron, Ohio, but Truth did not dedicate her life to women's rights. Instead, she promoted



abolitionism and a land-distribution program for other former slaves. In the speech, Truth remarked, “That man over there says that women need to be helped into carriages, and lifted over ditches, and to have the best place everywhere. Nobody ever helps me into carriages, or over mud-puddles, or gives me any best place! And ain’t I a woman?”

Although Seneca Falls was followed by women’s rights conventions in other states, the interest spurred by those first moments of organizing quickly faded. Concern in the United States turned to the pending Civil War, while in Europe the reformism of the 1840s gave way to the repression of the late 1850s. When the feminist movement rebounded, it became focused on a single issue, women’s suffrage, a goal that would dominate international feminism for almost 70 years.

After the American Civil War, feminists assumed that women’s suffrage would be included in the Fifteenth Amendment to the U.S. Constitution, which prohibited disfranchisement on the basis of race. Yet leading abolitionists refused to support such inclusion, which prompted Stanton and Susan B. Anthony, a temperance activist, to form the National Woman Suffrage Association in 1869. At first, they based their demand for the vote on the Enlightenment principle of natural law, regularly invoking the concept of inalienable rights granted to all Americans by the Declaration of Independence. By 1900, however, the American passion for such principles as equality had been dampened by a flood of Eastern European immigrants and the growth of urban slums. Suffragist leaders, reflecting that shift in attitude, began appealing for the vote not on the principle of justice or on the common humanity of men and women but on racist and nativist grounds. As early as 1894, Carrie Chapman Catt declared that the votes of literate, American-born, middle-class women would balance the votes of foreigners: “[C]ut off the vote of the slums and give to woman...the ballot.”

This elitist inclination widened the divide between feminist organizers and the masses of American women who lived in those slums or spoke with foreign accents. As a result, working-class women already more concerned

## *Asexuality, Gender and the Law in Uganda*

with wages, hours, and protective legislation than with either the vote or issues such as women's property rights, threw themselves into the trade union movement rather than the feminists' ranks. Anthony, however, ceded no ground. In the 1890s she asked for labour's support for women's suffrage but insisted that she and her movement would do nothing about the demands made by working women until her own battle had been won. Similarly, when asked to support the fight against Jim Crow segregation on the nation's railroads, she refused.

Radical feminists challenged the single-minded focus on suffrage as the *sine qua non* of women's liberation. Emma Goldman, the nation's leading anarchist, mocked the notion that the ballot could secure equality for women, since it hardly accomplished that for the majority of American men. Women would gain their freedom, she said, only "by refusing the right to anyone over her body...by refusing to be a servant to God, the state, society, the husband, the family, etc., by making her life simpler but deeper and richer." Likewise, Charlotte Perkins Gilman, in *Women and Economics* (1898), insisted that women would not be liberated until they were freed from the "domestic mythology" of home and family that kept them dependent on men. Mainstream feminist leaders such as Stanton succeeded in marginalizing more extreme demands such as Goldman's and Gilman's, but they failed to secure the vote for women. It was not until a different kind of radical, Alice Paul, reignited the women's suffrage movement in the United States by copying English activists. Like the Americans, British suffragists, led by the National Union of Woman Suffrage Societies, had initially approached their struggle politely, with ladylike lobbying. But in 1903 a dissident faction led by Emmeline Pankhurst began a series of boycotts, bombings, and pickets. Their tactics ignited the nation, and in 1918 the British Parliament extended the vote to women householders, householders' wives, and female university graduates over the age of 30.

Following the British lead, Paul's forces, the "shock troops" of the American suffrage crusade, organized mass demonstrations, parades, and confrontations with the police. In 1920 American feminism claimed its first major triumph with the passage of the Nineteenth Amendment to the Constitution.

### **The Post Suffrage debates**

Once the crucial goal of suffrage had been achieved, the feminist movement virtually collapsed in both Europe and the United States. Lacking an ideology beyond the achievement of the vote, feminism fractured into a dozen splinter groups: the Women's Joint Congressional Committee, a lobbying group, fought for legislation to promote education and maternal and infant health care; the League of Women Voters organized voter registration and education drives; and the Women's Trade Union League launched a campaign for protective labour legislation for women.

Each of these groups offered some civic contribution, but none was specifically feminist in nature. Filling the vacuum, the National Woman's Party, led by Paul, proposed a new initiative meant to remove discrimination from American laws and move women closer to equality through an Equal Rights Amendment (ERA) that would ban any government-sanctioned discrimination based on sex. Infighting began because many feminists were not looking for strict equality; they were fighting for laws that would directly benefit women. Paul, however, argued that protective legislation—such as laws mandating maximum eight-hour shifts for female factory workers—actually closed the door of opportunity on women by imposing costly rules on employers, who would then be inclined to hire fewer women.

Questions abounded. Could women be freed from discrimination without damaging the welfare and protective apparatus so many needed? What was the goal of the feminist movement to create full equality, or to respond to the needs of women? And if the price of equality was the absence of protection,

## *Asexuality, Gender and the Law in Uganda*

how many women really wanted equality? The debate was not limited to the United States. Some proponents of women's rights, such as Aletta Jacobs of the Netherlands or Beatrice Webb of England, agreed with Paul's demand for equality and opposed protective legislation for women. Women members of trade unions, however, defended the need for laws that would help them.

This philosophical dispute was confined to relatively rarefied circles. Throughout the United States, as across Europe, Americans believed that women had achieved their liberation. Women were voting, although in small numbers and almost exactly like their male counterparts. Even Suzanne LaFollette, a radical feminist, concluded in 1926 that women's struggle "is very largely won." Before any flaws in that pronouncement could be probed, the nation and the world plunged into the Great Depression. Next, World War II largely obliterated feminist activism on any continent. The war did open employment opportunities for women from working in factories ("Rosie the Riveter" became an American icon) to playing professional baseball but these doors of opportunity were largely closed after the war, when women routinely lost their jobs to men discharged from military service. This turn of events angered many women, but few were willing to mount any organized protest.

In the United States the difficulties of the preceding 15 years were followed by a new culture of domesticity. Women began marrying younger and having more children than they had in the 1920s. Such television programs as *Father Knows Best* and *Ozzie and Harriet* reflected what many observers called an idyllic suburban life. By 1960 the percentage of employed female professionals was down compared with figures for 1930.

## **Second Wave feminism**

The women's movement of the 1960s and '70s, the so-called "second wave" of feminism, represented a seemingly abrupt break with the tranquil suburban life pictured in American popular culture. Yet the roots of the new rebellion were buried in the frustrations of college-educated mothers whose discontent impelled their daughters in a new direction. If first-wave feminists were inspired by the abolition movement, their great-granddaughters were swept into feminism by the civil rights movement, the attendant discussion of principles such as equality and justice, and the revolutionary ferment caused by protests against the Vietnam War.

Women's concerns were on Pres. John F. Kennedy's agenda even before this public discussion began. In 1961 he created the President's Commission on the Status of Women and appointed Eleanor Roosevelt to lead it. Its report, issued in 1963, firmly supported the nuclear family and preparing women for motherhood. But it also documented a national pattern of employment discrimination, unequal pay, legal inequality, and meagre support services for working women that needed to be corrected through legislative guarantees of equal pay for equal work, equal job opportunities, and expanded child-care services. The Equal Pay Act of 1963 offered the first guarantee, and the Civil Rights Act of 1964 was amended to bar employers from discriminating on the basis of sex. Some deemed these measures insufficient in a country where classified advertisements still segregated job openings by sex, where state laws restricted women's access to contraception, and where incidences of rape and domestic violence remained undisclosed. In the late 1960s, then, the notion of a women's rights movement took root at the same time as the civil rights movement, and women of all ages and circumstances were swept up in debates about gender, discrimination, and the nature of equality.

## **Dissension**

Mainstream groups such as the National Organization for Women (NOW) launched a campaign for legal equity, while ad hoc groups staged sit-ins and marches for any number of reasons from assailing college curricula that

## *Asexuality, Gender and the Law in Uganda*

lacked female authors to promoting the use of the word *Ms.* as a neutral form of address that is, one that did not refer to marital status. Health collectives and rape crisis centres were established. Children's books were rewritten to obviate sexual stereotypes. Women's studies departments were founded at colleges and universities. Protective labour laws were overturned. Employers found to have discriminated against female workers were required to compensate with back pay. Excluded from male-dominated occupations for decades, women began finding jobs as pilots, construction workers, soldiers, bankers, and bus drivers.

Unlike the first wave, second-wave feminism provoked extensive theoretical discussion about the origins of women's oppression, the nature of gender, and the role of the family. Kate Millett's *Sexual Politics* made the best-seller list in 1970, and in it she broadened the term *politics* to include all "power-structured relationships" and posited that the personal was actually political. Shulamith Firestone, a founder of the New York Radical Feminists, published *The Dialectic of Sex* in the same year, insisting that love disadvantaged women by creating intimate shackles between them and the men they loved men who were also their oppressors. One year later, Germaine Greer, an Australian living in London, published *The Female Eunuch*, in which she argued that the sexual repression of women cuts them off from the creative energy they need to be independent and self-fulfilled.

Any attempt to create a coherent, all-encompassing feminist ideology was doomed. While most could agree on the questions that needed to be asked about the origins of gender distinctions, the nature of power, or the roots of sexual violence, the answers to those questions were bogged down by ideological hairsplitting, name-calling, and mutual recrimination. Even the term *liberation* could mean different things to different people.

Feminism became a river of competing eddies and currents. “Anarcho-feminists,” who found a larger audience in Europe than in the United States, resurrected Emma Goldman and said that women could not be liberated without dismantling such institutions as the family, private property, and state power. Individualist feminists, calling on libertarian principles of minimal government, broke with most other feminists over the issue of turning to government for solutions to women’s problems. “Amazon feminists” celebrated the mythical female heroine and advocated liberation through physical strength. And separatist feminists, including many lesbian feminists, preached that woman could not possibly liberate themselves without at least a period of separation from men.

Ultimately, three major streams of thought surfaced. The first was liberal, or mainstream, feminism, which focused its energy on concrete and pragmatic change at an institutional and governmental level. Its goal was to integrate women more thoroughly into the power structure and to give women equal access to positions men had traditionally dominated. While aiming for strict equality (to be evidenced by such measures as an equal number of women and men in positions of power, or an equal amount of money spent on male and female student athletes), these liberal feminist groups nonetheless supported the modern equivalent of protective legislation such as special workplace benefits for mothers. In contrast to the pragmatic approach taken by liberal feminism, radical feminism aimed to reshape society and restructure its institutions, which they saw as inherently patriarchal. Providing the core theory for modern feminism, radicals argued that women’s subservient role in society was too closely woven into the social fabric to be unraveled without a revolutionary revamping of society itself. They strove to supplant hierarchical and traditional power relationships they saw as reflecting a male bias, and they sought to develop nonhierarchical and antiauthoritarian approaches to politics and organization.

Finally, cultural or “difference” feminism, the last of the three currents, rejected the notion that men and women are intrinsically the same and

advocated celebrating the qualities they associated with women, such as their greater concern for affective relationships and their nurturing preoccupation with others. Inherent in its message was a critique of mainstream feminism's attempt to enter traditionally male spheres. This was seen as denigrating women's natural inclinations by attempting to make women more like men.

### **Classes and Race Feminism**

Like first-wave feminism, the second wave was largely defined and led by educated middle-class white women who built the movement primarily around their own concerns. This created an ambivalent, if not contentious, relationship with women of other classes and races. The campaign against employment and wage discrimination helped bridge the gap between the movement and white labour union women. But the relationship of feminism to African American women always posed greater challenges. White feminists defined gender as the principal source of their exclusion from full participation in American life; Black women were forced to confront the interplay between racism and sexism and to figure out how to make Black men think about gender issues while making white women think about racial issues. Such issues were addressed by Black feminists including Michele Wallace, Mary Ann Weathers, bell hooks, Alice Walker, and Bettina Aptheker.

The call by white feminists for unity and solidarity was based on their assumption that women constituted a gender-based class or caste that was unified by common oppression. Many Black women had difficulty seeing white women as their feminist sisters; in the eyes of many African Americans, after all, white women were as much the oppressor as white men. "How relevant are the truths, the experiences, the findings of White women to Black women?" asked Toni Cade Bambara in *The Black Woman: An Anthology*



(1970). “I don’t know that our priorities are the same, that our concerns and methods are the same.” As far back as Sojourner Truth, Black feminists had seen white feminists as incapable of understanding their concerns.

Yet some Black women, especially middle-class Black women, also insisted that it was fundamentally different to be Black and female than to be Black and male. During the first conference of the National Black Feminist Organization, held in New York City in 1973, Black women activists acknowledged that many of the goals central to the mainstream feminist movement—day care, abortion, maternity leave, violence were critical to African American women as well. On specific issues, then, African American feminists and white feminists built an effective working relationship.

### **Feminism as a global concern**

By the end of the 20th century, European and American feminists had begun to interact with the nascent feminist movements of Asia, Africa, and Latin America. As this happened, women in developed countries, especially intellectuals, were horrified to discover that women in some countries were required to wear veils in public or to endure forced marriage, female infanticide, widow burning, or female genital cutting (FGC). Many Western feminists soon perceived themselves as saviours of Third World women, little realizing that their perceptions of and solutions to social problems were often at odds with the real lives and concerns of women in these regions. In many parts of Africa, for example, the status of women had begun to erode significantly only with the arrival of European colonialism. In those regions, then, the notion that patriarchy was the chief problem rather than European imperialism seemed absurd.

The conflicts between women in developed and developing nations played out most vividly at international conferences. After the 1980 World Conference of the United Nations Decade for Women: Equality, Development and Peace, in Copenhagen, women from less-developed

## *Asexuality, Gender and the Law in Uganda*

nations complained that the veil and FGC had been chosen as conference priorities without consulting the women most concerned. It seemed that their counterparts in the West were not listening to them. During the 1994 International Conference on Population and Development, in Cairo, women from the Third World protested outside because they believed the agenda had been hijacked by Europeans and Americans. The protesters had expected to talk about ways that underdevelopment was holding women back. Instead, conference organizers chose to focus on contraception and abortion. “[Third World women] noted that they could not very well worry about other matters when their children were dying from thirst, hunger or war,” wrote Azizah al-Hibri, a law professor and scholar of Muslim women’s rights. “The conference instead centred around reducing the number of Third World babies in order to preserve the earth’s resources, despite (or is it ‘because of’) the fact that the First World consumes much of these resources.” In Beijing, at the Fourth World Conference on Women in 1995, Third World women again criticized the priority American and European women put on reproductive rights language and issues of discrimination on the basis of sexual orientation and their disinterest in the platform proposal that was most important to less-developed nations that of restructuring international debt. The close of the 20th century saw women around the world advancing their interests, although often in fits and starts. Feminism was derailed in countries such as Afghanistan, where the staunchly reactionary and antifeminist Taliban banned even the education of girls. Elsewhere, however, feminism achieved significant gains for women, as seen in the eradication of FGC in many African countries or government efforts to end widow burning in India. More generally, and especially in the West, feminism had influenced every aspect of contemporary life, communication, and debate, from the heightened concern over sexist language to the rise of academic fields such as women’s studies and ecofeminism. Sports, divorce laws, sexual mores, organized religion all had been affected, in many parts of the world, by

feminism. *Roe v Wade* where the court argued that the woman had a right to choose abortion.

## **Third Wave of Feminism**

The third wave of feminism emerged in the mid-1990s. It was led by so-called Generation Xers who, born in the 1960s and '70s in the developed world, came of age in a media-saturated and culturally and economically diverse milieu. Although they benefitted significantly from the legal rights and protections that had been obtained by first- and second-wave feminists, they also critiqued the positions and what they felt was unfinished work of second-wave feminism.

### **Foundations.**

The third wave was made possible by the greater economic and professional power and status achieved by women of the second wave, the massive expansion in opportunities for the dissemination of ideas created by the information revolution of the late 20th century, and the coming of age of Generation X scholars and activists.

### **Liberal feminism**

Belief that genders inequality is a result of blockages that stop women from achieving equality e.g., stereotypes, prejudice, discriminatory laws.

This look at individual inequalities and is predominant in western society.

### **Marxist or social feminism**

This argues that there are fundamental inequalities built in at capitalist society because power and capital are distributed unevenly. The emphasis is an economic aspect of gender e.g., women as wage in laborer's, exploitation of women, contribution of domestic women labor to capitalist accumulation etc. They emphasize that true equality will out not be achieved without

## *Asexuality, Gender and the Law in Uganda*

major overhaul of society particularly economic overhaul. The focus is on collective change.

### **Radical feminism.**

This views patriarchal control and exploitation of women's bodies as the primary control of gender inequality. They link women's subordination to issues of sexuality, desire, reproduction, personal relationships, marriage etc.

### **Cultural feminism.**

Believe that inequality stems from society's devaluation of women growth and strength. Believes that women are naturally generous, egalitarian, kind and non-violent. Argue that women should celebrate this difference in order to bring equality.

## CHAPTER SIXTEEN



### **GENDER AND CRIMINAL LAW.**

**RAPE. S 123 defines rape. S 124 attempt to commit rape. S 129 defilement (Penal Code Act)**

The law associated with rape is male constituted. Historically the crime of rape was not viewed as an offence against the assaulted woman but against the man who had control of that woman. Typically, this would be the husband, brother, guardian etc.

The offence was not meant to protect the woman's right to her bodily integrity but perceived as polluting the honor of the father, husband or guardian that is why the crime is classified under offences against morality. Rape has two ingredients. Lack of consent and penetration. Consent is one of the ingredients. It often varies according to nature of the relationship between the victim and the rapist. It is generally much harder to prove that the act was non-consensual when the rapist was known to the victim.

This is ironic in light of the fact that most acts of non-consensual sexual violence are perpetuated by men known to the victim. A further anomaly in relation to the law of rape is that in examining the presence or absence of consent the court appears to pay more attention to not whether the victim had consented but whether the penetrator thought the victim had consented. This starts the course of the process distinctly in favor of the accused.

**Uganda v YigaHamidu CSC No. 55 of 2002**

Indicted for rape. Yiga had unlawful sexual intercourse with rehema. The other two accuseds aided Yiga. He raised the defence of mistaken belief. He believed rehema was his wife customarily and there can be no marital rape. Rehema had however refused to go ahead with the marriage unless tests for HIV AIDS were conducted.

It was held that yiga was guilty. Consent was absent in that the friends had to help him restrain the girl as he had his way with her. **Uganda v Nakoupuet (Criminal session 2016/109)** Accused in the case expressed interest in loballa. He approached the family and they dined together. She however rejected the marriage proposal. She was forced to go with the accused but managed to escape. Her brothers then took her back by force and helped the accused to “make her his wife”. He was reported.

On medical examination the woman had bruises on her back which she got in trying to fight off the accused. The prosecution proved that there was no consent to the sexual intercourse. Thus, the accused was found guilty. The defence of mistaken belief which is available to the accused is a mitigating factor. See *Wanaba v Uganda 2005 HCB 25*.

**Penetration.**

Penile vaginal penetration must be proved. In **Uganda v Stephen Mulengera (1994-95) HCB 28** it was held that in rape cases, evidence of even the slightest penetration is sufficient.

**Rape As a Weapon for Destruction.**

Women have been targeted in situations of conflict because; vulnerability occasioned by the way society perceives them. Women are perceived not as individuals in their own right but as extensions of clan's line or a man's family. Women embody the family's continuity.

That is why by extension the rapist is hurting the family she represents. Women maintain the home and targeting them as an enemy is like attacking the people responsible for production in that community. In that sense it becomes a weapon for destruction. **The Prosecutor v Jean Paul Akayesu** (rape and sexual violence against women punishable even at the international scene.)

### **Law Reform Recommendations.**

Substantively; It is important to have the law on rape include other acts e.g., penetration of the mouth, sodomy and other objects used to penetrate the victim. Rape victims should include men and allow for prosecution of both men and women.

#### **Marital rape should be recognized.**

The cases should be heard in camera to prevent the stigma that comes with publicity of such cases. Rape should be classified into various degrees ranging from non-consensual, penetrative to consensual penetrative and non-penetrative consensual. The focus of rape should shift from offences against morality to a more serious aspect of violence because rape is a crime of violence. Recognize date rape that is boyfriend raping girlfriends. And even acquaintance rape.

#### **Procedurally.**

Reform in regard to the standard of proof. It is too high beyond reasonable doubt thus should be relaxed. In requirement for corroboration in sexual

offences the thought that women are liars and thus their evidence should be corroborated is unfair. It needs to be ousted.

Victims of rape should be allowed to have their own lawyers. Prosecutors are usually underpaid thus lack incentive.

Defence of general immoral character should be removed.

### **Prostitution.**

**S 138 defines prostitute and prostitution. S 139 prohibits prostitution. S 137 provides for brothels (penal code act)**

Prostitution shall be construed accordingly section 136 of the Penal Code Act. It prohibits prostitution and it is punishable by imprisonment for 7 years. The definition only looks at the sellers who are women and not the buyers who are mainly men. Should this criminalization continue? The purpose of criminal law is to deter harm and punish offenders. John Stewart Mill in his essay “on liberty” he wrote that individuals should be given liberty to do what they want unless they harm others.

#### **What harm does prostitution introduce in society?**

Moral decadence, spread of STDS, emotional harm, escalates crime, fuels divorce, trafficking, unwanted pregnancies.

### **There are Four Legal Regimes That Govern Prostitution in The World.**

1. Prohibition-absolute criminalization of both sell and procurement like brothel keeping. This is found in countries like Uganda.



2. Abolition- this is where the sell is defacto legal but related activities like procurement are illegal. In Sweden sex workers are decriminalized but buyers are criminalized.
3. Legalization-here it is legal but subject to state control like one must have a licence. In Italy, Senegal.
4. Decriminalization- removal all criminal law related to prostitution and having it viewed as any other profession like in New Zealand.
5. **ABORTION. Sections 141 attempts to procure abortion, 142 procuring abortion and 143 supplying drugs to procure miscarriage-Penal Code Act.**

One of the most revolutionary ideas was to come up with a contraceptive pill. Article 14 of the Maputo Protocol ratified by Uganda provides for health and productive rights. In Uganda abortion is criminalized as well as procuring it. However certain exceptions exist.

**In R v Bourne 1949 KB** In the case the exception of preserving the life of the mother was brought up. It was stated that preserving life of the mother could be understood to include mental health of the mother being at threat. Abortion can lawfully be done to prevent the mother from being a physical or mental wreck.

**Article 22(2) of the 1995 Constitution** provides that no person has the right to terminate the life of an unborn child, except as maybe authorized by law. Article 22 provides for the protection of the right to life. **S212 Penal Code Act.** Killing unborn child.

## **Legal Regimes.**

Prohibition. This is a total ban of the act. In Egypt, Libya and Somalia.

## *Asexuality, Gender and the Law in Uganda*

Conditional Abortion-allow it under certain circumstances like preserving life of the mother. Uganda, Kenya, Tanzania. In cases of rape, defilement, incest in Zimbabwe. For social economic reasons like in Zambia.

It is important to note that even when abortions are legal it is difficult to procure.

In **Mildred Mapingurwe v Ministry of foreign affairs and 2 others**. Lady was raped and reported to police. She asked for medication to prevent pregnancy. In the clinic they said they could only administer it with authority from police. After a while the pregnancy was confirmed. She could only procure abortion after the rape trial. She got an order from court after 5 months and told it was too risky to abort at that point in time.

Unrestricted Abortion-it gives women access to abortion during the first trimester. Like in Tunisia, Cape Verde.

Does a man have a right to get an injunction to stop purported abortion of his child? SEE Paton case and Re F.

**Paton v Trustees of British Pregnancy Advisory service & Paton (Paton Case) 1978** a steel worker living in Liverpool, failed in his attempt to prevent his estranged wife Joan from having an abortion. Sir George ruled that the claim for an injunction to prevent the abortion was completely misconceived and thus dismissed. The man could not bring the claim in his own right. **RE F [1990] 2 AC 1** in this case a mentally ill patient had a sexual relationship with a fellow patient. Her mother and fellow medical staff were concerned she would not be able to cope with the pregnancy. They sought a declaration that it would be lawful to sterilize her. Held; it was lawful to operate without her consent. The principle of interest of the patient was used to justify the operation without consent.

## **The Developments in The Concept of Abortion.**

A number of international and regional human rights treaties as well as national constitutions all over the world safeguard the fundamental human right to a safe and legal abortion. These tools enshrine safe abortion in a slew of rights, including the freedom from harsh, inhuman, and degrading treatment as well as the rights to life, liberty, privacy, equality, and non-discrimination. Restrictive abortion regulations have consistently been criticised by human rights organisations as being in violation of those standards. 970 million women, or 59% of women of reproductive age, reside in nations with lax restrictions on abortion. Despite the fact that the majority of women reside in nations where they have access to abortions, 41% of women do. 700 million women of reproductive age are impacted by the inability to obtain safe and legal abortion services. The World Health Organization estimates that each year, 23,000 women die from unsafe abortions and tens of thousands more suffer grave health consequences. Legal limits on abortion do not reduce the number of abortions; rather, they force women to seek unsafe abortion treatment, endangering their lives and health.

The legal status of abortion reveals more than simply the jurisdictions in which it is acceptable for women and girls to choose whether to carry a pregnancy to term or not. It also highlights the risks associated with unsafe abortion, the likelihood that girls will finish high school, and the restrictions placed on women and girls' participation in public and political life. In other words, monitoring the legal status of abortion reveals places where women and girls are treated equally and have the freedom to decide how their lives will be lived.

By a decision of seven to two in the famous **Roe v. Wade** case from 1973, the US Supreme Court determined that a woman's right to end her pregnancy was guaranteed by the US constitution. In the first three months (trimester) of pregnancy, the decision guaranteed American women the absolute right to an abortion; however, it also permitted limits in the second trimester and prohibitions in the third.

## *Asexuality, Gender and the Law in Uganda*

Stephen Breyer, Sonia Sotomayor, and Elena Kagan, the three justices who dissented from the majority, stated in their opinion that they did so "with grief - for this court, but more so, for the countless millions of American women who have today lost a basic constitutional protection."

The *Roe v. Wade* decision in 1973 made abortion legal nationwide, but overturning *Roe* would not mean a nationwide ban on the practice. Rather, it would give jurisdiction back to the states, each of which would be able to decide whether or not to allow abortion within its borders. U.S. Supreme Court has overturned *Roe v. Wade*, which protects a woman's right to obtain an abortion in a safe and legal manner.

***Roe v. Wade***, 410 U.S. 113 (1973), was a landmark decision of the U.S. Supreme Court in which the Court ruled that the Constitution of the United States conferred the right to have an abortion. The decision struck down many federal and state abortion laws, and fueled an ongoing abortion debate in the United States about whether, or to what extent, abortion should be legal, who should decide the legality of abortion, and what the role of moral and religious views in the political sphere should be. The decision also shaped debate concerning which methods the Supreme Court should use in constitutional adjudication.

The case was brought by Norma McCorvey known by the legal pseudonym "Jane Roe" who in 1969 became pregnant with her third child. McCorvey wanted an abortion, but she lived in Texas where abortion was illegal, except when necessary to save the mother's life. Her attorneys, Sarah Weddington and Linda Coffee, filed a lawsuit on her behalf in U.S. federal court against her local district attorney, Henry Wade, alleging that Texas's abortion laws were unconstitutional. A special three-judge court of the U.S. District Court for the Northern District of Texas heard the case and ruled in her favor.<sup>[4]</sup> The parties appealed this ruling to the Supreme Court.

On January 22, 1973, the Supreme Court issued a 7–2 decision holding that the Due Process Clause of the Fourteenth Amendment to the United States Constitution provides a fundamental "right to privacy", which protects a pregnant woman's right to an abortion. The Court also held that the right to abortion is not absolute and must be balanced against the government's interests in protecting women's health and prenatal life. The Court resolved these competing interests by announcing a pregnancy trimester timetable to govern all abortion regulations in the United States. The Court also classified the right to abortion as "fundamental", which required courts to evaluate challenged abortion laws under the "strict scrutiny" standard, the most stringent level of judicial review in the United States.

The Supreme Court's decision in *Roe* was among the most controversial in U.S. history. *Roe* was criticized by some in the legal community, including some in support of abortion rights who thought that *Roe* reached the correct result but went about it the wrong way, and some called the decision a form of judicial activism. Others argued that *Roe* did not go far enough, as it was placed within the framework of civil rights rather than the broader human rights. Anti-abortion politicians and activists sought for decades to restrict abortion or overrule the decision; polls into the 21st century showed that a plurality and a majority, especially into the late 2010s to early 2020s, opposed overruling *Roe*.<sup>[16]</sup> Despite criticism of the decision, the Supreme Court reaffirmed *Roe*'s "central holding" in its 1992 decision *Planned Parenthood v. Casey*, although *Casey* overruled *Roe*'s trimester framework and abandoned *Roe*'s "strict scrutiny" standard in favor of an "undue burden" test.

On June 24, 2022, the Supreme Court overruled *Roe* in *Dobbs v. Jackson Women's Health Organization* on the grounds that the substantive right to abortion was not "deeply rooted in this Nation's history or tradition", nor considered a right when the Due Process Clause was ratified in 1868, and was unknown in U.S. law until *Roe*. This view was disputed by some legal historians and criticized by the dissenting opinion, which argued that many other rights contraception, interracial marriage, and same-sex marriage, did not exist when the Due Process Clause was ratified in 1868, and thus were

## *Asexuality, Gender and the Law in Uganda*

unconstitutional by the *Dobbs* majority's logic. The decision was supported and opposed by the anti-abortion and abortion-rights movements in the United States, respectively, and was generally condemned by international observers and foreign leaders.

However, throughout the years, access has been gradually reduced in more than a dozen states as a result of anti-abortion laws. *Dobbs v. Jackson Women's Health Organization*, a lawsuit challenging Mississippi's ban on abortion after 15 weeks, was being considered by the Supreme Court during its current session.

The conservative-majority court effectively put an end to the constitutional right to an abortion by deciding in the state's favour. Samuel Alito, Clarence Thomas, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett were the five justices who were adamantly in favour. While supporting the Mississippi ban, Chief Justice John Roberts stated in a separate opinion that he would not have gone further.

## CHAPTER SEVENTEEN



### **GENDER AND FAMILY LAW.**

The family is a natural basic unit of society and is entitled to protection from and by the state. In Africa the hallmark of the institution of a family constitutes patriarchy and heterosexuality. **Article 31(1) of the 1995 Constitution of Uganda** provides for the right to marry and found a family. As the basis of people's social and economic lives the family is closely associated with marriage and parenthood. Infact, the assumption is that those two are the foundation for a stable family and thus nation. The family is also the central location for sexual division of labour, property rights, inheritance, and domestic violence and gendered socialization.

The family is not really a natural setting but a societal construction that is society tells us what a family setting can and should be. Before colonization different types of family existed in different societies in Africa with one unifying factor. All were based on broad kinship associations. They're existed families based on patriarchal heterosexual marriages as well as based on homosexual. These kinds were recognized among the Nandi in Kenya. In **Monica v Jackson Succession cause No. 42 of 2010** it was acknowledged among the Nandi those wealthy women were allowed to marry fertile young girls for purposes of producing for them.

## *Asexuality, Gender and the Law in Uganda*

Although customary and common law were the common denominators of patriarchy, there were different kinds of patriarchy. The common law followed classic Victorian patriarchy which was based on the dominant patrilocal-patrilineal complex where women were almost wholly dependent on the power and authority of men. Customary law on the other hand complied with a type that we can term negotiable patriarchy. It offers women some degree of autonomy. Therefore, while it is true that familial settings in Africa and the west are deeply gendered there were distinct differences in the intricate operations of either patriarchy.

**Joyce Kiggunda v Horace Awori [2001-2005] HCB 122** the husband of the petitioner was living and resident in Nairobi in the matrimonial home. The wife filed for divorce on grounds of adultery and cruelty in Kampala high court. The issue of jurisdiction arose. Court held that a wife, as long as she is not judicially separated from her husband, her domicile is that of her husband. That a woman's domicile changes with that of her husband even if they live apart.

### **Discrimination within the Family.**

Through education; traditional African families forced girls to marry while the boys would study.

Women have no inheritance rights from the fathers or even husbands.

Culturally a woman can't head a family. **Virginia Wambu v Othieno**. Respondent had been married for more than 20 years to othieno. She wanted to bury him on their farm land. Court noted that there were no Kenyan laws regarding burial of dead persons neither did customary law make such provisions. Court decided that Luo customary law was applicable. It also said



that since a woman doesn't become the head of the family upon death of the husband, she had no right to dictate where he would be buried.

Through Nutrition; men are served first. Women were previously not allowed to eat some foods.

## **Legal Foundations of Ugandan Women's Subordination in Gender**

### **English Common Law**

Ugandan law was greatly influenced by English common law. Predicated on precedent and fixed principles. Common law dictated a subordinate position for women. Thus, most laws in Uganda drew upon the common law position that considered women almost as perpetual juveniles. This is especially occurrent in laws that governed married women.

Sir William Blackstone put it rightly when he said "in law husband and wife are person and the husband is that person".

Under common law marriage renders the husband and wife as one person i.e., the very legal existence of a woman is suspended during marriage or incorporated into that of a husband.

Upon this principle of a union of a person in a husband and wife depends almost all the legal rights, duties and responsibilities that either of them acquires during marriage. For example, married woman could not make contracts, no legal transactions, could not devise wills etc. However, statutory law has now changed and eliminated the discriminatory provisions.

However, the influence of common law can still be felt in some of the laws for example Penal Code Act, Prostitution, Succession laws on property, evidence law – wife cannot be compelled to adduce evidence against husband (because they are one and she is acting under his wing sections 16, 17 & 19), marriage and Divorce Bill on marital rape (e.g., she refuses sex because has stitches and has just given birth)

## **Religion**

It constitutes one of the shaping fences in identity formation and the sex gender system. Indeed, it is one of the important fences in influencing our belief system.

A careful mapping of religions in Africa reveals that 86% of its population subscribe to the imported monotheistic (belief in one God) Abrahamic religions of Islam and Christianity, judaisimetcx.

All Abrahamic faiths believe that God is male described in their different Holy scriptures. They are also messianic in that they anticipate the coming of a God sent Messiah.

Islam had penetrated the continents by the 12<sup>th</sup> Century while serious attempts to introduce Christianity only happened in the 18<sup>th</sup> century.

Historically, the process of proselytisation (conversion from one faith to another) over threw and demonised African traditional religion (ATR) which formed an integral part of African culture.

Nevertheless, and despite the concerted effort to undermine its relevance to the African psyche (mental thinking) it is important to note that ATR currently exercises considerable influence on the population and the tendency is for a significant number of people to practice them concurrently even if dissenting with the messianic religions.

This constitutes one of the inherent contradictions of the plurality of our legal system and cultural diversities.

Although most ATR are also monotheistic, there supreme being (male/female) is beyond gender and they are non-messianic e.g., Buganda believes in overall supreme being (no mention of male or female) be under

*Isaac Christopher Lubogo*

different deities (rain, food etc.) moreover, ATR is not located in a secret text and cannot be isolated from people's everyday existence (its part and parcel).

Thus, ATR can be viewed as religion or as *modus vivendi* which means a way of living. It is lived not read, experiences not meditated, integrated into the lives of people wherever they are, their religiosity is within them. In other words, ATR cannot be delinked from culture.

The influence of messianic religions over African culture and lives has been enormous. While ATR was not universally egalitarian (men and women were not treated equal) many traditional practices that were acceptable in pre-colonial, pre-Islam, pre-Christian Africa were encoded with a distinctive term of illegitimate and criminal through the process of proselytisation.

Laws reduced Uganda various traditions into a universalised culture and integrated them into the wider 'enlightened culture'. Practices that were fine are now crimes e.g.

If Holy books are analysed especially the Bible and Quran you will find that a woman is accorded a status much lower than man. It is important to note that these Holy books although inspired by God were written by men i.e., patriarchal male scholars.

There are numerous examples from both the Bible and Quran to illustrate the sexism.

Examples: Corinthians 11:3, 7-9 Esther 1:22 Job 25:4 Ecc 7:26 Deut 22:5 Romans 7:2; 1 Peter 3: 5-7; Gen 3:16 Quran: 4<sup>th</sup> Surat, 2<sup>nd</sup> sura

Interpretation of the above verses is crucial and many times it is interpreted to further patriarchy. Some verses have equality in them but never read by readers. – look for them, See Malala case- she was 14 in Pakistan advocating for right to education and was shot in the head by Taliban because of belief that women should not be educated.

## *Asexuality, Gender and the Law in Uganda*

The fact that men dominate the leadership in both Christianity and Islam, increases the problem of sexism in religion. For example, no female imam, no female priest.

It is important to look at how the word of God interpreted by male religious leaders e.g. in Anglican church, men at pulpit love St. Paul's word and ignore egalitarian written verses e.g. Mathew 19:3-12; 1Peter 3 :7; Ephesians 5 : 28; Proverbs 31:16 etc.

This has led to the emergence of body of scholars known as Hermeneutics where most female scholars have analysed the bible from a critical point of view to expose its sexism. They seek to re-interpret the Holy words uncovering the structures of exploitation and oppression in the bible and bring to central focus the role of women in theology, history and ethics. They critique the images of women as portrayed in biblical text and explored by its interpreters. Many of these Hermeneutics are Nuns who have known the bible for years.

## CHAPTER EIGHTEEN



### **DISABILITY**

Definition of disability and What do we mean by disability?<sup>181</sup> According to The Act, which is to provide for the respect and promotion of the fundamental and other human rights and freedoms of persons with disabilities; to re establish the National Council for Disability as the National Council for Persons with Disabilities; to transfer the property of the Uganda Foundation for the Blind to the National Council for Persons with Disabilities; to provide for the local government councils for persons with disabilities; to repeal the Persons with Disabilities Act 2006, the National Council for Disability Act and the Uganda Foundation for the Blind Act, and to provide for related matters. The act defines disability to mean **disability**” means a substantial functional limitation of a person’s daily life activities caused by physical, mental or sensory impairment and environment barriers, resulting in limited participation in society on equal basis with others and includes an impairment specified in Schedule 3 of the Act<sup>182</sup>;

---

<sup>181</sup> See also The Person with Disability Act 2020

<sup>182</sup> Schedule 3 (section 1) categories of disabilities 1. Physical disability caused by cerebral palsy, amputation of a limb, paralysis or deformity.2. Hearing disability including deafness and hard of hearing disability.3. Visual disability including blindness and low

## *Asexuality, Gender and the Law in Uganda*

According to CRPD preamble (e) disability is an evolving concept that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

Who is a person with a disability?<sup>183</sup> The convention on the rights of persons with disabilities does not provide an outright definition of persons with disability. However, it provides a detailed<sup>184</sup> description that groups persons with disabilities to include those with long term physical, mental, intellectual and sensory impairments which in interaction with various barriers are hindered from effective participation in society on an equal basis with others.

---

vision disability.4. Deaf and blind disability.5. Mental disability including psychiatric disability and learning. Disability.6. Little people.7. Albinism.8. Multiple disability.

<sup>183</sup>See also the Government of Uganda policy on persons with disability (2006). Government through the Ministry of Gender, Labour and Social Development has a mandate to promote and protect the rights of persons with disabilities (PWDs). According to Uganda Population and Housing Census (2002), one in every 25 persons has a disability and hence making it a development concern. Some of the disabilities include difficulty in seeing, hearing, speech, moving and learning. The underlying causes of disability include but not limited to communicable diseases, congenital abnormalities and injuries. The situation has been exacerbated by poverty, illiteracy and varying degrees of negative attitudes. The Government is mandated to promote and protect the rights of persons with disabilities and the Constitution of the Republic of Uganda stipulates the need to empower and provide equal opportunities to PWDs. Government has focused on provision of health services, community-based rehabilitation, vocational training, Universal Primary Education as key measures to empower PWDs. This policy on disability contributes to the improvement of the quality of life of People with Disabilities (PWDs) through expanding the scope of interventions. The interventions necessitate PWDs themselves to participate in designing, managing, monitoring and evaluating initiatives that are meant to improve their well-being. It also ensures that the central government, local authorities, CSOs, parents and caregivers involve PWDs

<sup>184</sup> See also UN convention on Rights of persons with disability rights- Uganda's initial status report 2010

There are several categories of disability recognized in Uganda. They include: persons with hearing impairments/deaf; This category of disability cannot hear and sometimes cannot talk. They need support to communicate using sign language interpretation. persons with visual impairments/blind; This group of persons cannot see. They need support in mobility and require information in accessible formats of braille for those who are totally blind, large print for those with low vision, electronic formats and screen reader software called job access for windows for those using computers. They need personal assistant and white canes for their mobility. persons with physical disabilities; these are mostly associated with the loss of the limb; They require support in accessing buildings and transport. Most of them use Wheel chairs and crutches for their movement. For them, physical access to the environment is key especially where there are ramps and lifts on the buildings. persons with mental/psychosocial disability; The UN accepted language for persons with mental disability is persons with psychosocial disabilities. This category of disability experiences encounters during certain periods in the month. Some of them leave with bipolar, celebropulssy, schizophrenia, and they leave on medication to support their wellbeing. There challenge is that most of the time their legal capacity is taken away through guardianship and substituted decision making and this is their major barrier that leads to institutionalization involuntarily. persons with albinism; This category of disability lacks melanin in their skin and they are pron to skin cancer. Sunshine affects them a lot if they do not have sunscreen, long sleeved shirts and caps. This disability sometimes leads to loss of sight and they need support to sit at the front in order to see. persons with intellectual disability; These have learning difficulties and cannot manage theoretical education to the extent that adding up 1+1 might be a challenge to them.

However, they can learn using pictures and symbols and sometimes they are better at skills. Examples of persons with intellectual disabilities include persons with down syndrome and those with autism. Persons with deaf blindness; these have multiple disabilities in that they do not hear and cannot see. They use tactile signage in accessing information. Persons with epilepsy;

## *Asexuality, Gender and the Law in Uganda*

this is part of psychosocial disabilities. They too experience attacks if not on medication. and little persons.

Women and men with disabilities can and want to be productive members of society. In both developed and developing countries, promoting more inclusive societies and employment opportunities for people with disabilities requires improved access to basic education, vocational training relevant to labour market needs and jobs suited to their skills, interests and abilities, with adaptations as needed. Many societies are also recognizing the need to dismantle other barriers - making the physical environment more accessible, providing information in a variety of formats, and challenging attitudes and mistaken assumptions about people with disabilities.

According to the 2002 Population and Housing Census, at least 4 out of every 25, or 16 per cent of the population, are disabled. Applying this estimate to today's Ugandan population (approximately 30 million<sup>1</sup>) would indicate that they may be some 5 million disabled people in the country. Disabled people in Uganda, as in most developing countries in the world, face extreme conditions of poverty, have limited opportunities for accessing education, health, suitable housing and employment opportunities

The Government of Uganda has adopted a number of laws and policies pertaining to people with disabilities, including their right to productive and decent work and basic services. The main ones are, The Constitution of Uganda, 1995 where Article 21 prohibits discrimination against people with disabilities. Uganda is one of the few countries in the world to recognize sign language in its Constitution.

### **Rights of People with Disability.**



Persons with disabilities have rights<sup>185</sup>. Human rights are inherent, inalienable and not granted by the state, they are indivisible, interlinked and interdependent. These fundamental rights and freedoms are entitlements that accrue to everyone including persons with disabilities by virtue of being human. Examples of this rights include but not limited to: the right to life, right to health, right to work and employment, right to education, freedom from discrimination, freedom from torture inhuman and degrading treatment, freedom from exploitation violence and abuse, right to home and family, right to reasonable accommodation, right to education, equality before the law, right of access to information, public transport, building, access to justice among others.

The government of Uganda in adhering to the call by the international community has enacted laws and policies to protect the rights of persons with disabilities. The national laws of Uganda concerning persons with disabilities are mainly made to: - a. To provide legal protection for persons with disabilities in service provision. b. To eliminate all forms of discrimination against persons with disabilities. c. To provide a framework for equalization of opportunities to persons with disabilities. These include but not limited to; A. General Laws These are general in nature and have sanctions or penalties that affect all citizens in the country.

The legal framework of Uganda took full recognition of the rights of persons with disabilities in the 1995 Constitution. Article 123(2) of the Constitution is to the effect that parliament shall enact laws to govern and comply with the ratification of treaties as well as internationally agreed conventions in accordance with customary international law.<sup>3</sup> Objective (VI) of the

---

<sup>185</sup>See also Article 123(2) of the Constitution of the Republic of Uganda 1995 as amended, Article 20 of the Constitution of the Republic of Uganda 1995, Article 21(1) of the Constitution of the Republic of Uganda 1995, Article 12 of the Convention on the Rights of Persons with Disabilities, Article 21(2) of the Constitution of the Republic of Uganda 1995, Article 21(3) of the Constitution of the Republic of Uganda 1995, Article 35 of the Constitution of the Republic of Uganda 1995.

## *Asexuality, Gender and the Law in Uganda*

constitution ensures gender balance and fair representation of marginalized groups on all constitutional and other bodies. Objective (xxiv) sub-section c, provides for promotion of sign language for the deaf. Chapter four of the Constitution of the Republic of Uganda is titled the bill of rights and guarantees the fundamental human rights and freedoms to all Ugandans without discrimination or distinction of any kind based on disability.<sup>4</sup> Article 21 of the constitution provides for equality of all persons before and under the law in all spheres of political, economic, social, cultural and any other respect of life and shall enjoy equal protection of the law.<sup>5</sup> This Article is in line with Article 12 of the CRPD as it may be construed to guarantee legal capacity.<sup>6</sup> Clause 2 of the same Article prohibits discrimination on all other grounds including disability.<sup>7</sup> The article further provides a definition of discrimination to mean giving different treatment that is attributable mainly to a person's description inter alia of disability.<sup>8</sup> Article 32 (1) state shall take affirmative action in favor of groups marginalized on the basis of disability. <sup>8</sup> In addition, the constitution provides that persons with disabilities have the right to respect for their inherent dignity and confers an obligation upon the state and the general society to ensure that they realize the mental and physical potentials.<sup>9</sup> Article 59 (4) provides that the parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote. Article 78 (1) provides that parliament shall consist of representatives of PWDs. Article 78 (2) provides that every five years, parliament shall review the representation of persons with disabilities to parliament for the purposes of retaining, increasing or abolishing the representation.

The Persons with Disabilities Act<sup>186</sup>, makes provisions for the elimination of all forms of discriminations against people with disabilities and towards equal opportunities. Also provides for a tax reduction of 15 per cent to private

---

<sup>186</sup> See also The Persons with Disability Act 2020

employers who employ ten or more persons with disabilities either as regular employees, apprentice or learner on a full-time basis. The Local Government Act, 1997, Parliamentary Elections Statute, 1996, and the Movement Act, 1998. These laws aim to increase the representation of disabled people in the public sphere. The Local Government Act, for example, provides for representation of disabled people at the various Local Council levels. In addition, Section 37 of the Parliamentary Elections Statute provides for five seats in Parliament for representatives of persons with disabilities, Traffic and Road Safety Act, 1998, prohibits denial of a driving permit on the basis of disability, Uganda Communications Act, 1998, provides for the promotion of research into the development and use of new communications techniques and technologies, including those which promote accessibility of hearing-impaired people to communication services. Workers' Compensation Act, 2000, provides compensation to workers who are injured or disabled through industrial accidents. The National Council for Disability Act (No. 14), 2003, monitors and evaluates the rights of persons with disabilities as set out in international conventions and legal instruments, the Constitution and other laws. The Business, Technical, Vocational Education and Training (BTVET) Act, No. 12, 2008, promotes equitable access to education and training for all disadvantaged groups, including disabled people. National Policy on Disabilities, 2006, provides a human rights-based framework for responding to the needs of persons with disabilities. The Equal Opportunity Act, 2006, and the Employment Act (No. 6), 2006, both prohibit discrimination of persons in employment based on disability. The Universal Primary Education Act, makes it financially possible for families to send their disabled children to school by providing free primary education to four children in every family, including disabled children. The Uganda Vision 2025 and the Poverty Eradication Action Program (PEAP), provide a long-term development framework and initiatives aimed at sustaining rapid economic growth and tackling poverty.

The CRPD (Convention on the rights of persons with disabilities) It is an international agreement that sets out what countries have to do to make sure

## *Asexuality, Gender and the Law in Uganda*

that ALL people with disabilities enjoy ALL the same human rights as everybody else. It prohibits discrimination on grounds of disability and emphasizes equality for all under Article five.<sup>187</sup> The Department for Disabled Persons under the Ministry of Gender, Labour and Social Development has the primary responsibility for registration, vocational rehabilitation and coordination of employment for persons with disabilities. Other important acts that have been enacted to promote an inclusive society for persons with disabilities are inclusive of the parliamentary election act of 1996 which guaranteed political representation of PWDS by designating five parliamentary seats and this marked a new era in the political participation of persons with disabilities. In the same vein, the local government Act of 1997 as well as the movement Act of 1998 were enacted in order to promote and enhance political participation by ensuring that persons with disabilities were ably represented at the local council level. The equal opportunities commission was also established by the equal opportunities act of 2007 to ensure the effective monitoring of access to equal and equitable opportunities by persons with disabilities. Its major functions include receiving and investigating complaints arising out of aspects concerning discrimination from the community, the public and private sectors. Its major rationale is to ensure equality towards the marginalized groups and to abolish discrimination. The children 's act cap 59 has a provision on children with disabilities. Section 9 states that; The parents of children with disabilities and the State shall take appropriate Steps to see that those children are (a) Assessed as early as possible as to the extent and nature of their disabilities; (b) Offered appropriate treatment; and(c) Afforded facilities for their rehabilitation and equal opportunities to education.<sup>16</sup>Section 11 (5) provides that Local Government Councils shall keep a register of children with disabilities within its area of jurisdiction.

---

<sup>187</sup>Article 5 (3) of the Convention on the Rights of Persons with Disabilities

The Ministry of Gender, Labour and Social Development coordinates the Uganda Community Based Rehabilitation (CBR) Programme. Uganda adopted CBR in 1992 as a strategy within general community development for rehabilitation, equalization of opportunities and social inclusion of all children and adults with disabilities. The Ministry of Education and Sports is in charge of disability issues relating to education in collaboration with the Uganda Institute of Special Education (UNISE). Consultative mechanisms - Other organizations - The National Union of Disabled Persons of Uganda (NUDIPU), a national umbrella organization made up of disability associations, is frequently consulted by the government on matters related to disability. - The National Union of Women with Disabilities of Uganda (NUWODU). NUWODU is one of the first organizations in Southern African run by and for women with disabilities. It provides leadership and training for emerging women's organization in other countries and focuses on economic development projects.

The Land Act – 1998, Section 28 provides for the rights of PWDs in respect to customary land – it provides for access to ownership, occupation or use of land.<sup>17</sup> 5. Rules of procedures of Parliament - 1996, Allows any person who is not an MP to give assistance to a member of disability in the house or committee. The Uganda Communications Act 1998. Section 8 provides for research into the development and use of new communication techniques and technologies to provide accessibility of persons with hearing impairments to communication services. Uganda Traffic and Road Safety Act 1998. Section 42 provides that no person with disability shall be denied a driving permit by reason of his or her disability; Section 132 provides for use of bells, alarms, direction indicator to enable persons with disabilities to access roads, railways and airports.

The Local Government (Amendment) Act 2001. Section 55 provides for the representation of persons with disabilities on: i. District service commission; The Universities and Tertiary Institutions Act 2001, The act provides for the establishment of the National Council for Higher Education which shall

consist of one person with disability appointed by the Minister. Section 28 provides for affirmative action in admission to a Public University Guidelines on Policy, Roles and Responsibilities of Stakeholders in the Implementation of Universal Primary Education (UPE), 1998, Chapter 3, Section 2: Clause vii: states that children with disabilities (special needs) have priority over normal children. The East African Community Customs Management Act 2004, In this Act there is a provision for exempting all taxes including VAT, withholding tax and import duties for the persons with disabilities, blind and persons with physical disabilities as regards materials, articles and equipment including one motor vehicle which are specifically designed for use by disabled or physically handicapped persons; The provisions also provides for exemption for materials, articles and equipment including one motor vehicle which are intended for educational, scientific or cultural advancement of the disabled for use of an organization approved by the Government for the purpose of this exemption. Domestic violence act 2010; has a provision that allows Persons with Disabilities to disclose their disabilities when recording a statement at police or LC in case of violence Building control Act 2013: this provides for accessibility standards during construction of public buildings Equal opportunities commission Act 2007; provides for a representative with disability on the commission.

It ensures equalisation of opportunities and criminalises discrimination on any ground<sup>188</sup> more over international standards on disability and their status. International Labour Organization (ILO) Convention Concerning

---

<sup>188</sup> See Article 80(b) of the Constitution of the Republic of Uganda 1995, Article 5 (3) of the Convention on the Rights of Persons with Disabilities, Section 37 of the Parliamentary Election Act 1996 Laws of Uganda 13 Section 10 of the Movement Act 1998 Laws of Uganda and Section 7 of the Local Government Act 1997 Laws of Uganda, Section 10 of the Equal Opportunities Act 2007 Laws of Uganda, Section 5 of the Equal Opportunities Commission (2008) The children's Act Cap59 laws of Uganda Section 9, Section 58 of the land Act 1998

Discrimination in Respect of Employment and Occupation, 1958, (No. 111). Status: ratified, 2 June 2005. ILO Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983, (No. 159). Status: ratified, 27 March 1990. United Nations Convention on the Rights of Persons with Disabilities (2006) and Optional Protocol. Status: ratified, 25 September 2008. Optional Protocol ratified on 25 September 2008. Uganda works to implement the Action Plan established for the African Decade of Persons with Disabilities, extended to December 2019.

### **Organizations of Persons with Disabilities.**

The National Union of Disabled Persons (NUDIPU) - The National Union of Women with Disabilities of Uganda (NUWODU) - Uganda Foundation for the Blind - Uganda National Association of the Blind - Uganda National Association of the Deaf - Disabled Women Network and Resource Organization - Uganda Disabled Women's Association, Uganda Mental Health Association - Uganda Parents Care for the Mentally Handicapped - Uganda National Action on Physical Disability, acts as an umbrella organization of/for people with disabilities. - Uganda Parents' Association of Children with Learning Disabilities (UPACLED) - Legal Action on Persons with Disability (LAPD) - Spinal Injury Association (SIA), Epilepsy Support Association of Uganda (ESAU) - National Association of the Deaf Blind (NADB)

The role of the ILO The primary goal of the ILO today is to promote opportunities for everyone, including people with disabilities, to obtain decent and productive work, based on the principles of freedom, equity, security and human dignity. The ILO works to achieve its goals of decent work for all through promoting labour standards, advocacy, knowledge building and technical cooperation services and partnerships, both within the ILO and externally. The Uganda Decent Work Country programme establishes the framework for delivery of ILO action. In Uganda, current ILO technical cooperation projects on disability are: The project "Promoting the

## *Asexuality, Gender and the Law in Uganda*

Employability and Employment of People with Disabilities through Effective Legislation” (PEPDEL).

Earlier phases of PEPDEL included the compilation of a country study on legislation, policy and implementation mechanisms on the training and employment of persons with disabilities to build a knowledge base on people with disabilities; identification of priority and needs in consultation with government, representatives of workers’ and employers’ groups and disabled persons’ organizations; support to NUWODU for the development of a simplified version of the Persons with Disabilities Act, 2020, and of the UN Convention on the Rights of Persons with Disabilities; and, a disability audit of Ugandan laws concerning the education, training and employment of persons with disabilities.

The UN Convention on the rights of persons with disabilities It was clear for everyone before the CRPD that mainstream human rights instruments and frameworks did not adequately address the specific human rights violations and discrimination faced by persons with disability. That a human rights instrument was urgently needed to ensure that governments could be clear on how to respect, protect and fulfil the rights of people with disability on an equal basis with others. Therefore, the CRPD was developed as an international human rights agreement that sets out what countries have to do to make sure that all people with disabilities enjoy all the same human rights as everybody else. It is an international agreement that sets out what countries have to do to make sure that ALL people with disabilities enjoy ALL the same human rights as everybody else. Key Articles of the CRPD: Article 1 - Purpose The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction



with various barriers may hinder their full and effective participation in society on an equal basis with others. Article 2 –

**Definitions.** For the purposes of the present Convention: Communication includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology; "Language" includes spoken and signed languages and other forms of non spoken languages; "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation; "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; "Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Universal design shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3 General principles The principles of the present Convention shall be: (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (b) Non-discrimination; (c) Full and effective participation and inclusion in society; (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; (e) Equality of opportunity; (f) Accessibility; (g) Equality between men and women; (h) Respect for the

evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities. Article 4 General obligations 1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake: (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention; (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities; (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes; (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention; (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise; (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines; (g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost; (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities; (i) To promote the training of professionals

and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights. 2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law. 3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations. 4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent. 5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions

The project “Promoting Decent Work for Persons with Disabilities through a Disability Inclusion Support Service” (INCLUDE). The project builds capacity at regional and national levels to effectively support the full participation of women entrepreneurs with disabilities in entrepreneurship development activities conducted under the ILO’s Women’s Entrepreneurship Development and Gender Equality (WEDGE) programme. INCLUDE also involves advocacy and awareness-raising activities to promote decent work for persons with disabilities. The way forward Productive and decent work enables people with disabilities to realize

## *Asexuality, Gender and the Law in Uganda*

their aspirations, improve their living conditions and participate more actively in society. Ensuring a disability perspective in all aspects of policy and labour legislation, effective implementation and enforcement of existing disability laws and policies and providing for equal employment opportunities and training are among the factors that contribute to the reduction of poverty and to the social and economic inclusion of people with disabilities in Uganda.

Uganda Human Rights Commission Act 1998; is responsible for monitoring rights of every citizen in Uganda. Has a vulnerable unit that is responsible for monitoring, documenting and reporting human rights of persons with disabilities Higher Education Students Financing Board; provides for representation of PWDs on the board. It also provides for facilitation of students with disabilities with assistive devices Specific Laws for persons with disabilities The Policy on Disability in Uganda – 2006 Provides areas of focus by all stakeholders in;- Accessibility Participation of persons with disabilities and care gives Capacity building Awareness raising Prevention and management of disabilities Care and support (i.e. provision of basic , physical and psychological needs of persons with disabilities and their care gives Research Communication – use of sign language , tactile and Braille literacy The National Council for Disability Act 2003 i. Can sue and be sued ii. It's a monitoring and evaluation mechanism iii. Established at the following levels: - a. National: National Council for Disability b. District: District Council for Disability c. Sub- County: Sub- County Council for Disability Promotes equalization of opportunities for persons with disabilities iv. Advises electoral commission in elections of persons with disabilities v. Representatives on the Council come from: a. Persons with disabilities (all types) in respect to gender b. Government representatives from line ministries c. Parents of persons with disabilities d. Youth representative with disability In line with the requirements of article 35(2) of the Constitution, the parliament of the

republic of Uganda enacted the persons with disabilities Act of 2006 to guarantee the rights of persons with disabilities, but the way it was drafted was not in the conventional nature where regulations could be made to facilitate its implementation.<sup>18</sup> The major rationale of this Act is to eliminate all forms of disability based discrimination and to promote social integration at all levels in the country.<sup>19</sup> The Act provides for:- Disability coding, Rights to quality education and health, Employment of persons with disabilities, Accessibility, Discrimination in relationship to goods services and facilities, Other social rights, Exemptions, Complaints and judicial proceedings, Offences and penalty, Currency points

## **CRPD Is Equality and Non-Discrimination**

CRPD art 1: full and equal enjoyment

- CRPD article 3: general principles
- CRPD Article 5: Non-discrimination & Equality of opportunity
- CRPD Article 6 Equality between men and women
- CRPD Article 4 general obligations
- CRPD Article 1 without discrimination of any kind on the basis of disability. ‘
- CRPD art 7: on equal basis with other children
- CRPD article 12 enjoy legal capacity on an equal basis with others
- article 5.2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. Everywhere in the convention ....

## **Discrimination on the Basis of Disability?**

Discrimination on the basis of disability is when a person is excluded, prevented from doing something or treated differently because of that person’s disability on purpose or as a result in a way that prevents that person

from exercising or enjoying human rights in the same way other people do. This includes denying the person the changes or adjustments that are necessary and possible to allow this person to exercise or enjoy their human rights in a particular situation It also includes when persons are discriminated because they have a family member with disability Article 2<sup>189</sup>

Discrimination: Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation Forms of Discrimination Distinction: Where a person or group are discriminated due to a particular characteristic that distinguishes them from others.

Exclusion: Where a person is discriminated against by being excluded or segregated from others. Restriction: Where a person is unfairly treated or restrictions are placed on his / her participation and or enjoyment of rights, this may be to have only partial access or less favorable opportunities. What is reasonable accommodation? It is all the support or all practical changes possible that have to be made for them where and when this is needed for them to exercise and enjoy their rights. This support or change should be working for the individual person This support or change should not be very difficult or really too expensive for the person or organisation that have to do them Article 5.3 In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. Article 2 CRPD:

---

<sup>189</sup> See also The Persons with Disability Act 2020

Reasonable accommodation means: necessary and appropriate modification and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

“Reasonable accommodation is related to each individual and particular situation: It includes: adaption of working schedule, physical environment... General accessibility is systemic and for all persons, For instance, to allow one child with physical mobility to attend school, even if the school cannot be made completely accessible at once, reasonable accommodation can be provided to that child by bringing to the ground floor the classes s/he is supposed to attend and putting a simple ramp to access. Article 5. 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. Discrimination on all grounds includes: race, ethnicity, gender, religion, sexual orientation, socio economic It is important to take into account multiple discrimination. Some groups of persons with disabilities might be more discriminated than others. On an equal basis with others means:

When a whole population is facing human rights restrictions, persons with disabilities should not be more deprived than others When a whole group is discriminated such as indigenous people, women, people living in neglected areas, persons with disabilities face multiple discriminations for example, if an indigenous people village is deprived from State support for having a school, children with disabilities are discriminated first as indigenous persons. If those children are excluded from other regular activities of their communities, they are discriminated on the ground of disability<sup>190</sup>

---

<sup>190</sup> See also paper presented on Legal protection for persons with disabilities in Uganda Training delivered to Makerere University staff and administrators under the disability law and rights centre By Florence Ndagire International disability rights consultant.

## **Equality**

Important to distinguish between three types of equality: Formal equality: everybody has the right to work Equality of opportunities: measures are in place to support persons with disabilities to find jobs create small business. De facto equality: (real equality- the outcome is equal) the level of employment of persons with disabilities is the same as that for people without disabilities Article 5.4 Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention. Even when some barriers are eliminated, prejudice and barriers related to past barriers (e.g., lack of access to education and vocational training) specific measures such as quota for employment are needed to bring de facto equality. Those measures have of course to be consistent with the CRPD (e.g., reserving some specific type of jobs while it creates an opportunity that can be good for basic livelihood prevents equality of choice and opportunity for professional development.

The introduction of the recognition and understanding of disability in the world and Uganda in particular traces way back in the colonial era where special groups were accorded a responsibility of taking care of people with disabilities. To this development later was enacted the first legislation in favour of a one group of the persons living with disabilities and that was the Uganda Foundation for the Blind [UFB] Act. This act was enacted in 1954 and it was specifically in favour of the blind.

The constitution of the republic of Uganda does not define disability and neither does it define a person(s) with disability but it rather protects people with disabilities. However, disability is defined under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), to which Uganda is signatory, as disability is an evolving concept that results from the interaction



between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

Disability under the black's law dictionary is defined as the inability to perform some function; or an objectively measurable condition of impairment, physical or mental.

The convention on the rights of persons with disabilities does not provide an outright definition of persons with disability. However, it provides a detailed description that groups persons with disabilities to include those with long term physical, mental, intellectual and sensory impairments which in interaction with various barriers are hindered from effective participation in society on an equal basis with others.

In Uganda, the legislation concerned with the people with disability is the persons with disabilities act 2020 in line with other statutes. The Persons with Disabilities Act (2020) establishes the fundamental freedoms and human rights for persons with disabilities and also lists a range of impairments and includes several categories that are seen as specific to the Ugandan situation, including “little people” and persons with Albinism.

### **The Categories of Persons with Disability Envisaged in The Persons with Disability Act (2020)**

**Persons with physical disability.** Such people are in a condition that limits them from performing certain basic physical activities such as walking, lifting, carrying, standing, or climbing. such a disability is mostly associated with the loss of the limb. Most of such people find difficulties in movements and they are always helped by able people.

**Persons with visual impairments.** such people have challenges with their sight. Some of them totally blind and others have low vision but can see. They

need support in mobility and require information in accessible formats of braille for those who are totally blind, large print for those with low vision, electronic formats and screen reader software called job access for windows for those using computers. They need personal assistant and white canes for their mobility.

**Persons with mental impairments.** Such people have a disorder that affects their thinking, mood and behaviour. Mental impairments include psychological disorders and mental illnesses, such as bipolar disorder, schizophrenia, major depression, anxiety disorders, obsessive-compulsive disorder, post-traumatic stress disorder (PTSD), and personality disorders. such people survive on medication to ensure that their brains are stable and in case they do not take the medication as prescribed by the doctors their lives are a mess.

**Persons with hearing impairments.** Such people are deaf and thus cannot hear and, in most cases, cannot talk. They use sign language.

**Persons with albinism.** This is a disorder where one is born with less melanin in the body. Melanin is a chemical that determines the color of the skin, eyes and the hair. Thus, when one is born with less melanin, it's a condition referred to as albinism and such a person will have pale eyes, hair and skin. Such persons face a challenge of sunburn and can easily acquire skin cancer.

**Persons with intellectual disability;** such persons face a challenge in their intellectual functioning in that they are very slow in reasoning, making decisions and solving problems. they also face a challenge in their adaptive behaviour whereby they lack skills required in day-to-day life, that is to say they cannot take care of themselves, cannot communicate with people effectively and can hardly interact with others.

**Persons with deaf blindness;** these have multiple disabilities in that they do not hear and cannot see. They use tactile signage in accessing information. **Persons with epilepsy;** this is part of psychosocial disabilities. They too experience attacks if not on medication.

**little persons,** such persons are abnormally short and, in most cases, have big heads. Such people find difficulties in associating with people since they are looked at as young children because of their height. They have short limbs and find difficulty in getting jobs since they are judged according to their height and assumed that they are ineffective.

**Persons with epilepsy.** Epilepsy is a **neurological condition that causes unprovoked, recurrent seizures.** A seizure is a sudden rush of abnormal electrical activity in your brain. Doctors diagnose epilepsy when you have two or more seizures with no other identifiable cause.

In 2014, UBOS conducted a national population and housing census and recorded that 12.4% of the Ugandan population live with disability. However, this record was so much criticized; first because of its ambiguity and secondly due to the method that was employed in acquiring the general figure. UBOS recorded every person that claimed to have any difficulty not putting into consideration the nature of the difficulty, whether its temporary or permanent, whether a lot of difficulty or even greater but whoever claimed to have a disability in one or more functional domains was recorded and counted hence the figure 12.4% due to the much criticism, more detailed surveys were conducted for example in 2017, a survey was conducted that was referred to as the Uganda functional difficulties survey and in 2019 a detailed survey was conducted and it was recorded that 8.5% of the population of Uganda live with a lot of difficulty or cannot even do a thing.

## **Standard of Living for Persons with Disabilities**

It is well established that poverty and disability are linked thus, those who live in poverty are more likely to live in poverty while those with a disability are

much more likely to be living in poverty. However, the direction of causality for these links are less well known – is it because a person lives in poverty that they are more at risk of disability due to factors such as lack of healthcare, increased vulnerability to malnutrition and preventable diseases, precarious working environments and low-quality housing, with reduced access to safe drinking water and sanitation? Or is it that persons with disabilities have a disability due to being forced to live and work in such conditions? These factors are magnified by the associated discrimination and exclusion many adults and children with disabilities experience across the life cycle.

**a. Direct costs associated with disability**

According to the World Report on Disability (WHO/World Bank 2011), direct costs include the additional costs that persons with disabilities and their families incur to achieve a reasonable standard of living (in comparison to their counterparts without disabilities). For example, these can be out of pocket costs on disability-specific aid, medication, health services, etc. The household survey included detailed expenditure modules, especially on schooling and health related expenses, along with other household expenditures. The analysis below compares the amount spent on certain expense items between persons with and without disabilities to infer on the cost of living with a disability.

**i) Spending on education**

The household survey suggests that two of the four main reasons that children with disabilities are not in school is lack of funding and because education/school is too expensive.

Schooling costs extend beyond the cost of school fees, and include school-related expenses such as transportation, textbooks, uniforms, supplies and exams fees. It is these complementary costs which can be prohibitive for

families of children with disabilities, therefore while the difference in the costs of school fees is minimal between children with and without disabilities, children with disabilities have to spend 31 per cent more than children without disabilities on other education-related costs.<sup>25</sup> On average, these complementary costs represent roughly 35 per cent of total spending on education.

## **ii) Spending on health**

The household survey initiated by also asked those who were either ill or injured during the 30 days preceding the survey how much they had spent on different health-related items. This included items such as consultation fees, medicine, clinic charges, fees from traditional healers and transportation costs. Overall, around 90 per cent of persons interviewed who had suffered an illness reported some health-related expense. However, it was discovered that persons with disabilities spend, on average, much more than those without a disability.

While the patterns of the distribution of costs by type of costs are similar for persons with and without a disability, persons with disabilities who had suffered an illness or injury during the 30 days preceding the survey spent close to UGX 60,000 in treatment, compared with less than UGX 40,000 for persons without disabilities who had also suffered an illness or injury. Assistive devices can be prohibitively expensive for persons with disabilities. For example, according to one person interviewed, a wheelchair costs between UGX 450,000 and 600,000. In comparison, the Senior Citizens Grant provides UGX 300,000 per year to a recipient.

## **iii) Household costs**

The only observed difference between households with and without persons with disabilities is in housing expenses, which include rent, utilities and household fuels. According to OLS estimates of regressing the log of housing expenses on whether the household has a person with disability or not and all

else equal, households with persons with disabilities spend close to 39 per cent more on household costs than their counterparts without disabilities. Using the mean monthly household housing expenses from the survey, this corresponds to approximately UGX 16,500. There are no clear differences in household transportation and communication expenses between households with and without persons with disabilities

All persons with disabilities without any support networks may have to rely on paid help to receive the care that they need. This was the case for two widowed older sisters who lived together in Lamwo, who were interviewed during the qualitative research. One sister has severe disabilities and the other is her caregiver. Their main income source is the Senior Citizens Grant (of which only one sister is a recipient) and due to the frailty of the sister who is the caregiver, they have to pay people to do many of their physically strenuous chores, including collecting firewood. Consequently, a significant household cost for the two sister is paying for care.

**b. Overall direct costs associated with disability**

In order to assess the overall direct costs associated with disability the standard of living method as proposed by Zaidi and Burchardt (2005) was applied by the in their approach, the direct extra cost imposed on households with persons with disabilities is estimated indirectly. This is accomplished by comparing standards of living between households that are similar in a number of observable characteristics but have different disability status, such that, any difference in standards of living is only potentially explained by the disability status. Two different measures of asset index were considered as standards of living.

The first measure is a simple composite asset index formed by 13 different household assets common to households irrespective of disability status such as chair, table, bed, clock and sofa. The second asset index measure is based

on principal component analysis of all household assets and assets of member in the household. The first principal component is transformed into an asset index. This approach is similar to that used in the DHS 2016.

**c. Indirect costs associated with disability**

The indirect costs of disability relate to a number of issues such as loss of productivity from lack of support, to adults and children in education and employment opportunities, insufficient investments, and related loss of taxes linked to the lack of productivity. It also includes the foregone economic activities associated with the person with disability and other members in the household, as well as more intangible costs such as stress and social isolation.

All of this makes indirect costs very difficult to quantify. For persons identified as having a disability, the household survey asked questions on whether they had access to personal assistance to carry day-to-day activities, and in what form personal care was being provided – that is, if carers were being paid and for how many days and hours care was being provided.

## **Social Norms and Expectations**

Social norms and expectations – especially with regard to stigma and discrimination – can have a significant impact on the vulnerability (and conversely resilience) of adults and children with disabilities across the lifecycle. However, most research to date has focused on those who are stigmatised, rather than on those who perpetrate it, so there is little evidence of how stigma or discrimination have been reduced, and in particular what works to reduce or eliminate stigma in low- and middle-income countries (Scior et al., in press; Rohwerder 2018).

**a. Gender and disability**

The literature on the links between gender and disability highlights that women with disabilities tend to experience more stigma and discrimination than women without disabilities. Gender and disability therefore intersect, and women with disabilities can face double or even triple discrimination (see, for example, UN Women 2018). For example, women with disabilities are at greater risk of experiencing sexual violence compared to their counterparts without disabilities. As a recent UN policy brief notes, compared to men with disabilities, globally, women with disabilities are three times more likely to have unmet healthcare needs; three times more likely to be illiterate; twice as likely to be unemployed; and twice as likely to not have access to the Internet. Gender is therefore a huge predictor in shaping outcomes for women and girls with disabilities. Sadly, this reflects the situation for women and girls with disabilities in Uganda (Devries et al 2014; USAID 2017), and the situational analysis household survey shows that throughout their lifecycle, women and girls experience much more discrimination as a result of their gender.

Gender plays a significant role in shaping social norms and expectations, and Uganda remains a largely patriarchal society, with both men and women adhering to social norms around marriage and childbirth. Men and women are expected to, and indeed in many cases want to, marry and have children (Reynolds White 2020). Many men aspire to have at least a second wife, which is sanctioned by the state and by society. However, the presence of a second (or subsequent) wife can change family dynamics considerably and is often a factor in relationships breaking down.

### **b. Stigma and discrimination**

Stigma occurs within the context of power differentials between those who do the “labelling” and those who are “labelled”, and results in stereotyping, status loss and discrimination (Link and Phelan 2001). The negative impact



of stigma has been widely documented and includes poorer mental and physical health (Hatzenbuehler 2009; Meyer 2003), as well as reduced economic opportunities and overall quality of life (Rüsch et al 2005). All of these effects can be seen on persons with disabilities in Uganda. Discrimination is one aspect of stigma – the behavioural dimension.

Legislating against discrimination is an important and necessary component of changing behaviour, and often drives changes in behaviour and attitudes at societal and individual level but is not in itself enough. However, we know very little about the exact relationships and the magnitude of effects. While discrimination on the basis of disability is outlawed in Uganda, there still criticisms from the Office of the United Nations High Commissioner for Human Rights (OHCHR) around some specifically excluded groups, in particular persons with mental health or psychosocial disabilities (Ssebunnya et al 2009; NCD 2019), and lack of access to justice more broadly (NCD 2019). Moreover, there are many barriers to accessing justice and it is also unclear who can hold perpetrators to account when there is a case of discrimination.

### **c. Abuse and violence**

Abuse and violence, which can be linked to extreme forms of stigma and discrimination, can take many forms, ranging from bullying and name-calling for example by children, particularly at school (Devreis et al 2014) – through to physical and sexual abuse and violence. Not all abuse is physical and can include psychological and coercive control. Two recent systematic reviews demonstrate that adults and children with disabilities are at particular risk of abuse and violence in most countries across the world, and that those with mental health conditions, intellectual impairments and communication difficulties are particularly vulnerable (Hughes et al 2012; Jones et al 2012).

In Uganda, research indicates that girls with disabilities are at particular risk of violence, especially sexual violence (HRW 2010; Devreis et al 2014), although the reasons why this is the case are not entirely clear. Some studies

in the region point to traditional beliefs about disabilities, gender and social norms, along with the fact that girls with disabilities may face higher levels of violence because they are less able to defend themselves or seek help (Devries et al 2014). Persons with disabilities are more likely to experience some form of abuse or violence across the lifecycle than persons without disabilities. This is the case both for men and women.

#### **d. Disability amongst refugees**

In the same way that the intersection of gender and disability can lead to double or even triple discrimination, refugee status can also increase the risk of vulnerability for persons with disabilities in Uganda. **Article 11 of the UN Convention for the Rights of Persons with Disabilities (UNCRPD)**, calls on States and other relevant humanitarian actors to ensure the protection and safety of persons with disabilities in all situations of risk, including armed conflict, humanitarian emergencies and natural disasters (UN, 2006). However, specific information about refugees is limited, in part because refugees are often a hard-to-reach group, so adults and children with disabilities are even harder to reach (Kett and Trani 2012). The impact of migration on health and wellbeing, including the health and wellbeing of persons with disabilities has been well documented (Abubakar et al 2018), however there is little specific data about refugees with disabilities in Uganda, despite Uganda hosting the third largest refugee community in the world.

According to a recent study of refugees in Uganda, around a quarter of the country's 1.22 million refugees report having "some difficulty" in at least one functional domain, 6.4 per cent report "a lot of difficulty" in at least one functional domain, and 0.7 per cent report being "unable to do" at least one functional domain. These figures are based on the WGSSQ, and it should therefore be recognised that the number of refugees with disabilities is likely to be higher than what is recorded, given that the WGSSQ provide limited

data around mental health or psychosocial disabilities. These disabilities are likely to be prevalent amongst refugees who have experienced violence, conflict and displacement. Refugees with disabilities are likely to be younger than the host population with disabilities, indicating both the likelihood of conflict-related causes of impairments, as well as the difficulties that older persons with disabilities face in crossing the border into Uganda. According to data, over half of persons with disabilities reported that an attack or interpersonal violence were the cause of their impairment. Refugees with disabilities are given very little additional support if and when they are identified. Overall, refugees with disabilities have poor access to almost all services, apart from healthcare. This may reflect their higher need, or higher perceived need, as a lack of understanding about disability often means that people are referred for health services even if they do not have a healthcare need (Kett and Twigg 2007). Despite this, there is less access to reproductive health services, mental health services or support for chronic and non-communicable health conditions. In addition, it is worth noting that for many of the social protection programmes provided, being a citizen of Uganda is the first requirement – one that refugees do not fulfil.

Finally, disability can be both a cause for and against resettlement in third countries, as some countries will not take refugees with disabilities and others will as part of its resettlement criteria, but there is no data on the numbers of refugees with disabilities who have been resettled outside of Uganda, nor on the numbers who have self-settled across Uganda.

## **Shocks and Coping Strategies**

As has been explained above, pre-existing conditions, including poverty, age, gender and even severity of impairment, may make children or adults more at risk of vulnerability. These conditions can therefore make a person more vulnerable to shocks. Mitra explains that in Uganda, “households with moderate or severe functional difficulties, respectively, have 1.3 or 1.8 higher odds of being subject to shocks than households without any functional

difficulty” (Mitra 2018), and that there is a significant gendered dimension to this. It is therefore important to understand how households with persons with disabilities cope with unexpected shocks. Among working age families, a breadwinner (usually male) developing a disability can be a major shock, especially if it leads to high health costs, an inability to work and a need for another adult in the family to provide care. For those with pre-existing disabilities, many of the same challenges remain, including higher costs to access work and, potentially, a need for care support. As detailed in Figure 36, data from the situational analysis household survey demonstrates that the most common shocks experienced by all households were illnesses or an accident of a household member, followed by climate-related shocks, such as drought, agricultural challenges, and increased food prices.

## **Disability Across the Lifecycle**

To examine the experiences of adults and children with disabilities in Uganda, a lifecycle approach was used. This broadly allows the exploration of impact (for example, of disability) across the different stages of a person’s life, starting at birth (or even before birth) and ending at death. This has implications for the provision of support and services for persons with disabilities across their lifecycle. As discussed above, Ugandans face a range of risks and shocks across the lifecycle, and persons with disabilities and their families may have even less wherewithal to withstand these shocks and risks for a variety of reasons (Kidd and Gelders 2017).

### **Early childhood**

The challenges faced by persons with disabilities can begin even before birth, depending on the level of ante- and postnatal healthcare received by the mother, as well as the actual process of birth. Even if the birth occurs in a health central, the level of healthcare worker training, or screening systems in

place are not currently adequate enough to identify the range of congenital anomalies a child may experience (Goud 2016). Moreover, even if they are identified, there are limited services or support available for parents and children with disabilities (Smith et al 2018). UNICEF estimates that only around 10 per cent of children with disabilities benefit from rehabilitation services, the absence of which can increase the severity and scale of their impairment (UNICEF, 2014). Many children go on to acquire impairments due to illness, distance from health services, lack of vaccination and other prevention measures, as well as the overall absence of effective health support, including rehabilitation services (UNICEF 2014).

It is largely the responsibility of the Village Health Teams (VHTs) to support new mothers and provide advice, some basic treatments and other support. However, VHT members have no specific training on disability issues, and so it is unclear how many children they identify as (potentially) having an impairment, nor what referral mechanisms they use, aside from the general reporting forms. It is clear that the life chances of children who are born with, or acquire, a disability varies enormously depending on the severity of their impairment and their family situation. In life history interviews, most adults who had acquired their disability in childhood emphasised the importance of the family environment, including support from a parent or close relative, particularly the mother, in determining their later life opportunities. This in turn formed the basis of their social situation as adults. Gendered differences in attitudes towards children with disabilities were remarked upon by male and female interviewees in all districts, including the limited value some fathers placed on children with disabilities: “A father will say what is the problem? We will have other children. He can push this one aside. He can say ‘let malaria take this one’”.

### **School age**

While children in Uganda typically start school at six years old, children with disabilities often start later for a range of reasons. There is no accurate data on dropout or retention rates for children with disabilities, and it has been noted

## *Asexuality, Gender and the Law in Uganda*

that Uganda struggles to ensure all children and adolescents with disabilities receive an adequate education. One Ugandan study cites an 80 per cent attendance rate for children without disabilities compared to only 52 per cent among those with disabilities (Okimait 2014).

Furthermore, both the GoU and UNICEF estimate that around 90 per cent of children with a disability are limited in their ability to attend school, and that they are at a higher risk of dropping out or not completing school (MGLSD 2011; UNICEF 2015). Research indicates that children with disabilities – particularly girls with disabilities – who enroll in school in Uganda but then drop out at increasing numbers across the school years, do so for a range of factors, including a lack of specialist teachers, a lack of accommodations in the classroom, violence, and falling pregnant (Nyende 2012, Moi 2012, Devries et al 2014). In Uganda, the situational analysis household survey confirms that children with functional difficulties are less likely to attend school. As Figure 41 demonstrates, only 74 per cent of children with a disability aged between 5 and 17 years attend some level of school, compared with 83 per cent of children without a disability.

### **Adolescents**

Becoming an adolescent is a challenging time, especially for adolescents with disabilities. There is often a concern, if not amongst the adolescents themselves, but expressed by their families and social groups, that adolescents with disabilities will have fewer friends, fewer opportunities for friendships and lower participation in social and recreational groups. This is due to adolescents potentially spending less time with their friends outside of school hours and therefore being less likely to belong to an integrated friendship group. For those who do not attend school, there are even fewer opportunities still. The concern here is that this could inevitably lead to greater vulnerability of social exclusion, stigmatization, victimization and

loneliness, all of which impact the adolescent's self-esteem, social competence skills, mental health, identity. The lack of social opportunities work and/or relationship-wise could also impact on adolescents with disabilities' ability to find partners and/or get married, therefore making them more likely to remain at home under the care of their parents or guardians. This could have further negative psychological impacts on younger persons with disabilities but also places added economic financial stress on households with persons with disabilities. In terms of bride wealth, and the 'fulfillment' of their gender role and dynamics involved with marital arrangements within Uganda, this would disproportionately impact families with adolescent girls with disabilities, but will also affect families with boys with disabilities too. The literature review suggests that young persons living with disabilities are neglected over matters of sex and family planning. Imalingat Deo, a young person with a disability, stated at a National Family Planning Conference in 2019, that "Most of the Deaf community is unaware of health services that include family planning mostly because they are not empowered and some are illiterate. There is therefore need to reach out to these groups so that they can as well benefit from such programmes."

A Women's Refugee Commission (2014) report called "We have a right to love" spoke of the intersection of issues faced by young people with disabilities living as urban refugees in Kampala, Uganda in terms of sexual and reproductive health and discrimination and violence. Many of the young women with disabilities felt they were looked down upon due to the perception of their disabilities and were often forced or felt compelled into early marriage. They also lacked general awareness about what health programmes were available to them, and had received limited sex education (including awareness of sexual transmitted infections prevention). There were also reports of forced sterilization and vulnerability to violence and/or sexual violence.

## **Youth**

## *Asexuality, Gender and the Law in Uganda*

Uganda's youth face particular challenges around education, employment, health, relationships and family life, all of which can have adverse consequences on life chances and opportunities. Young persons with disabilities have lower literacy rates compared with their peers without disabilities. 43 per cent of young men with disabilities and 50 per cent of young women with disabilities are unable to read or are only able to read parts of a sentence, compared with 34 per cent of young men and 38 per cent of young women without disabilities. Furthermore, young men with disabilities (and young women, though to a lesser degree) have lower literacy levels than both young men and women without disabilities.

Poor literacy rates for persons with disabilities results in a curtailment of life chances, such as limited employment opportunities (Lang and Murangira 2009; World Bank 2009) and poorer health outcomes. This is exacerbated by a lack of catch-up or adult literacy programmes for persons with disabilities, despite Uganda having a Functional Adult Literacy (FAL) Programme. This appears to have been more successful for certain groups (for example, women without disabilities) than for persons with disabilities. None of the persons with disabilities interviewed in the life history qualitative research had attended any FAL programmes. Moreover, there are few accredited training institutions or, indeed, necessary technologies available to provide support for persons with disabilities to enable them to access further education and training.

If students succeed in transitioning through the education system, it is reported that there are a number of allocated places for students with disabilities at tertiary level (Emong and Eron 2016). However, students are required to have the requisite examination scores to be allocated a place, as well as a certificate of eligibility from the National Union of Persons with Disabilities (NUDIPU).



GoU data suggests that around 25,000 students are enrolled in tertiary education, although it is unclear how many of these are students with disabilities, as this data are not available nationally.

**i) Employment**

Youth un- and under-employment rates are very high in Uganda<sup>53</sup> and even higher for youth with disabilities.<sup>54</sup> This is in part linked to a lack of education and training, but also to stigma and discrimination which continues across working age. The GoU has made a concerted effort to revitalize youth training, as outlined in the Business, Technical and Vocational Education and Training (BTVET) Act (2008). However, the Act only makes passing reference to disability issues (Omona et al 2017). The associated Skilling Uganda: BTVET Strategic Plan 2011-2020<sup>55</sup> does make provisions for the targeted inclusion of youth with disabilities. Overall, however, the BTVET sector in Uganda has been subject to criticism, in particular over the lack of funding and attention to training centres, the lack of trained staff, links to the private sector and overall poor image of the BTVET (GoU 2019).

The household survey also shows high levels of unemployment for both young persons with and without disabilities, although unemployment rates are higher for persons with disabilities. For youth who cannot perform functional activities at all, gender has a significant impact, with 24 per cent of young men being in employment compared with only 3 per cent of young women.

**ii) Marriage and relationships**

It is around this age that many young people, particularly girls, begin relationships and have children. According to the “Girls Not Brides” campaign,<sup>6</sup> Uganda has the 16th highest prevalence rate of child marriage in the world. Customary or informal marriages, whereby a girl lives with a (usually older) man, are more common than registered civil or religious

marriages, and 11 per cent of the currently married 15–19-year-old girls are married to men who have more than one wife.<sup>58</sup> Gendered attitudes are entrenched from a very young age, and girls who marry young often endure lasting health and other consequences (Ninsiima et al 2018). The household survey found that about 2.3 per cent of girls aged 12-17 years with a disability are married, and a similar number without any functional limitations are also married.

Therefore, young men and women with disabilities are less likely to be in monogamous marriages compared with young people without disabilities. However, the survey did not make a distinction between marriage and cohabitating, and these terms were sometimes used interchangeably by respondents. Young women, both with and without disabilities, are also more likely to be separated or divorced than men.

### **Working age**

According to stakeholders within the labour sector, UBOS and the International Labour Organization, “working age” in Uganda is defined as 14-64 years. However, for the purposes of this section, “working age” is broadly defined as 30-60 years, although, in reality, most adults begin working long before that, often in subsistence farming, and many go on working long after the age of 60. Nevertheless, Mitra’s (2018) findings demonstrate that persons with functional difficulties are more likely to stop working even before retirement age. The findings of this household survey also indicate this.

#### **i) employment**

In Uganda, women are less likely to have ever worked compared with men, which may be a reflection of gender norms in Uganda. Perhaps surprisingly, women who reported at least a lot of functional difficulties had similar rates

of employment compared with women without disabilities, though this may be due to a lack of alternative choices. However, more than three quarters of women who cannot perform functional activities at all have never worked. When disaggregating by impairment type, results showed that nearly two-thirds of people with communication difficulties had never been employed. By contrast, people with walking and visual difficulties were least likely to never have been employed (between a quarter and a third of people with these difficulties)

**ii) marriage and relationships.**

While most men and women are living as couples with children, it is not clear if they are cohabiting or in a formal marriage. Informal cohabiting may contribute to vulnerability, as being legally recognised as the next of kin gives at least some semblance of legal protection to women when they divorce, unlike informal arrangements of living together and having children. Furthermore, men and women with disabilities are more likely to be living in a three-generation household than their counterparts without disabilities. and to this also, there are higher age dependency ratios amongst households with persons with disabilities. Having a higher number of dependents means that such households are more vulnerable, particularly if they are female-headed. It also means that they are less able to deal with adverse shocks than households with smaller age dependency ratios or households without persons with disabilities.

Negotiating relationships can be a challenge for persons with disabilities. Many adults with disabilities and their partners face stigma and discrimination, for example around pregnancy, childbirth and their ability to take care of their children. For some women, giving birth to a child with a disability can even led to abandonment (see, for example, Ahumuza et al 2014). Women in both formal and informal marriages risk losing their homes and land, as inheritance laws are often ignored and not enforced.

## *Asexuality, Gender and the Law in Uganda*

Women with disabilities may fare even worse than their counterparts without disabilities, as Ugandan customary law prohibits persons with disabilities from inheriting land (Groce et al 2014). For both men and women in Uganda, families are often the greatest source of support, so having children is what the anthropologist, Reynolds Whyte, calls “the great life project” (2020). It is one to which many people aspire to, even if they have to do it alone. Furthermore, for some women with disabilities, having children was both a coping strategy, as well as “validation” of them as women. Having children was seen as shared experience with other women, even if it placed them in a precarious living situation.

Many working age family members have the responsibility of caring for adults and/or children who need additional support or supervision – this could be for children or adults with severe health conditions, including having HIV/AIDS, or those with impairments who cannot be fully independent (who may be their spouses), or even for frail elderly parents. Adults – particularly working age women – may also be caring for their children. All of this can put a severe burden on caregivers, including physical, psychological, social, time, and financial burdens (see, for example, Namale et al 2019; Thrush and Haytner 2014).

As Thrush and Haytner (2014) note in their review of caregiving in low- and middle-income countries, this burden of care is often against a backdrop of shifting social and support structures linked to urbanisation and migration, in which “traditional” notions of family and care provision are being challenged. Additional structural challenges, including lack of resources – especially limited medical, educational, and social services, as well as hardship and food insecurity may all add to this burden. While it is clear from the household survey that there are a higher number of three- or more-generation families amongst households with a person with a disability compared to without a person with a disability, the direction of care is less clear. For

example, it is unclear whether children are caring for older and/or infirm grandparents, or grandparents are caring for and/or supporting children with functional limitations.

While by this stage of their lives, some men with disabilities have begun to form second families, for others, their ability to marry often depends on whether their family can provide bride wealth, which determines who and how they can marry. According to some informants, for men with disabilities, bride wealth may be higher than for a man without disability, as he is seen as “a less attractive” marriage option for the potential wife and her family, as she may face greater demands on her labour. Men with disabilities also face other challenges. For example, one interviewee, a blind amputee, was told by people in his community to “continue with life” and “forget” about his disability. Despite the good intentions behind the sentiment, it also clearly demonstrates the lack of awareness that other persons without disabilities of the community may have about persons with disabilities.

As is apparent, in Uganda, a woman’s capacity to live an autonomous life is severely restricted by gender norms. While being single may give women more autonomy around decision-making, if this is not matched with economic empowerment, then women will be able to be fully autonomous. Currently, women with and without disabilities lack autonomous decision-making within the household. For example, men are expected to make the decisions on how much money is spent and on what; who can and cannot go to school; which children can remain living at home and who else is permitted to live in the household.

Despite a few examples to the contrary, the care and upbringing of children especially young children is still largely the responsibility of mothers. Men fathers may largely be the “providers” if they are still around, although it should be emphasised that even when fathers are present, mothers will often still earn money in addition to their caregiving duties. When fathers are not present, however, both caregiving duties and the provision of income are, in general, the mother’s responsibility. Mothers who lack the wherewithal to do

this may choose to send their children to relatives, such as grandparents, with the understanding that they will return to claim them back at some point. For others, this is a pragmatic decision to enable them to seek work elsewhere with the aim of earning more money to support their children.

## **Old age**

Though not inevitable, people often experience a decrease in their functions as they age (for example, vision, hearing, cognition, and mobility). This in turn affects both their need for support and care, as well as their ability to work and earn their own income. The Disability Situational Analysis Household Survey classifies “old age” as 60 years and above. The average life expectancy for men is 63 and for women, 65,59 and around 3 per cent of the Ugandan population are aged over 60 years (Sengupta and Kidd 2019). However, with increasing life expectancy, shifting living arrangements and greater globalisation, the profile of older adults in Uganda is changing rapidly (Wandera et al 2017). With some exceptions, the Senior Citizens Grant (SCG) is in the process of being rolled out to all individuals over the age of 80.

### **i) Relationships and living arrangements**

In a recent report “Facing our Future Ageing in a Changing Uganda” (Sengupta and Kidd 2019), the authors note how the extended family forms part of an older person’s social safety net, along with their community. These bonds of social capital can be called on to provide financial, physical and emotional support and resilience, and without these, a person becomes vulnerable. These bonds are reciprocal, and begin long before old age, including in family living arrangements.

Two-thirds of older persons live with their extended families, but there are many older persons who live only with young or school-age children. It has

long been the case that young children are sent to live with their grandparents, to care for or learn from them. However, crises such as the HIV/AIDS epidemic, in which a large number of children were orphaned, as well as an increasing need for parents to migrate in search of work, have obliged a greater number of grandparents to become the primary caregivers of their grandchildren. While widowed older men may re-marry, or have younger second or subsequent wives, prevailing social norms do not allow older women to do the same, so they are more likely to be alone. There is little available social care to support those living alone (Sengupta and Kidd 2019).

The marital status of persons with disabilities when disaggregated by type of difficulty is consistent across all domains. This is due to around half of people (predominantly women) in all domains being widowed. The remainder of all persons with disabilities tend to be in either monogamous or polygamous marriages. Given the often-substantial age gaps between men and women when they marry, as their husbands become frailer and are less able to work and provide support, women may end up managing the household and caring for at least one member of their family, as well as their grandchildren.

## ii) **Employment**

Older persons who have at least a lot of difficulty in a functional domain are more likely to have never been employed compared to their younger counterparts. This may indicate that education and affirmative action have had some impact on employment rates for persons with disabilities, but this should be interpreted with caution.

As Figure 58 indicates, women overall, and particularly those who are unable to perform functional difficulties, are the least likely to have ever worked. More than half of women who have at least a lot of difficulty have also never engaged in employment. Employment rates are significantly higher for persons without disabilities compared to persons with disabilities.

## **Persons with Disabilities and Their Rights.**

Persons with disabilities enjoy human rights as laid down in chapter iv of the 1995 constitution of the republic of Uganda due to the fact that they are human. Human rights are inherent, inalienable and are not granted by state. However, since persons with disabilities are a marginalized group of people, they are prone to discrimination and infringement of their human rights. Thus, to this cause a number of laws have been enacted in favour of this group of people to ensure; provision of legal protection for persons with disabilities in service provision; elimination of all forms of discrimination against persons with disabilities and; provision of a framework for equalization of opportunities to persons with disabilities.

## **Inclusion of Persons with Disabilities in Law in Uganda.**

**Chapter four** of the **1995 Constitution of the Republic of Uganda** is titled the bill of rights and guarantees the fundamental human rights and freedoms to all Ugandans without discrimination or distinction of any kind based on disability.

**Article 21** of the constitution provides for equality of all persons before and under the law in all spheres of political, economic, social, and cultural and any other respect of life and shall enjoy equal protection of the law. **Article 32 (1)** state shall take affirmative action in favor of groups marginalized on the basis of disability. **Article 59 (4)** provides that the parliament shall make laws to provide for the facilitation of citizens with disabilities to register and vote. **Article 78 (1)** provides that parliament shall consist of representatives of PWDs. **Article 78 (2)** provides that every five years. **Article 123(2)** of the Constitution is to the effect that parliament shall enact laws to govern and comply with the ratification of treaties as well as internationally agreed conventions in accordance with customary international law.



Objective (VI) of the constitution ensures gender balance and fair representation of marginalized groups on all constitutional and other bodies.

Objective (xxiv) sub-section c, provides for promotion of sign language for the deaf.

**The Parliamentary Election Act of 1996** which guaranteed political representation of PWDS by designating five parliamentary seats and this marked a new era in the political participation of persons with disabilities. **The children 's act cap 59** has a provision on children with disabilities. **Section 9** states that; The parents of children with disabilities and the State shall take appropriate Steps to see that those children are— (a) Assessed as early as possible as to the extent and nature of their disabilities; (b) Offered appropriate treatment; and parliament shall review the representation of persons with disabilities to parliament for the purposes of retaining, increasing or abolishing the representation. **The Equal Opportunities Act of 2007** to ensure the effective monitoring of access to equal and equitable opportunities by persons with disabilities. Its major functions include receiving and investigating complaints arising out of aspects concerning discrimination from the community, the public and private sectors. Its major rationale is to ensure equality towards the marginalized groups and to abolish discrimination. **The Local Government Act of 1997** provided for promotion and enhancement of political participation by ensuring that persons with disabilities were ably represented at the local council level. (c) Afforded facilities for their rehabilitation and equal opportunities to education. **Section 11 (5)** provides that Local Government Councils shall keep a register of children with disabilities within its area of jurisdiction. **The Land Act 1998**

**Section 28** provides for the rights of PWDs in respect to customary land it provides for access to ownership, occupation or use of land. **Rules of procedures of Parliament - 1996 allow** any person who is not an MP to give assistance to a member of disability in the house or committee. **The Uganda Communications Act 1998 under Section 8** provides for

research into the development and use of new communication techniques and technologies to provide accessibility of persons with hearing impairments to communication services.

**Uganda Traffic and Road Safety Act 1998** under **Section 42** provides that no person with disability shall be denied a driving permit by reason of his or her disability; and under **Section 132** provides for use of bells, alarms, direction indicator to enable persons with disabilities to access roads, railways and airports. **The Local Government (Amendment) Act 2001** under **Section 55** provides for the representation of persons with disabilities on: District service commission; **The Universities and Tertiary Institutions Act 2001** provides for the establishment of the National Council for Higher Education which shall consist of one person with disability appointed by the Minister and **Section 28** provides for affirmative action in admission to a Public University **Guidelines on Policy, Roles and Responsibilities of Stakeholders in the Implementation of Universal Primary Education (UPE), 1998**

**Chapter 3, Section 2:** Clause vii: states that children with disabilities (special needs) have priority over normal children. **The East African Community Customs Management Act 2004**

exempts all taxes including VAT, withholding tax and import duties for the persons with disabilities, blind and persons with physical disabilities as regards materials, articles and equipment including one motor vehicle which are specifically designed for use by disabled or physically handicapped persons; it also provides for exemption for materials, articles and equipment including one motor vehicle which are intended for educational, scientific or cultural advancement of the disabled for use of an organization approved by the Government for the purpose of this exemption. **Domestic violence act 2010;** has a provision that allows Persons with Disabilities to disclose their

disabilities when recording a statement at police or LC in case of violence. **the building control Act 2013**; provides for accessibility standards during construction of public buildings. **the Equal opportunities commission Act 2007**; provides for a representative with disability on the commission. It ensures equalization of opportunities and criminalizes discrimination on any ground. **Uganda Human Rights Commission Act 1998**; is responsible for monitoring rights of every citizen in Uganda. Has a vulnerable unit that is responsible for monitoring, documenting and reporting human rights of persons with disabilities Higher Education Students Financing Board; provides for representation of PWDs on the board. It also provides for facilitation of students with disabilities with assistive devices

### **Specific Laws for persons with disabilities**

**The Policy on Disability in Uganda 2006** Provides areas of focus by all stakeholders in; - Accessibility Participation of persons with disabilities and care givers Capacity building Awareness raising Prevention and management of disabilities Care and support (i.e., provision of basic, physical and psychological needs of persons with disabilities and their care givers Research Communication – use of sign language, tactile and Braille literacy **The National Council for Disability Act 2003**

- i. Can sue and be sued
- ii. It 's a monitoring and evaluation mechanism
- iii. Established at the following levels: -
  - a. National: National Council for Disability
  - b. District: District Council for Disability
  - c. Sub- County: Sub- County Council for Disability

Promotes equalization of opportunities for persons with disabilities

## *Asexuality, Gender and the Law in Uganda*

- iv. Advises electoral commission in elections of persons with disabilities
- v. Representatives on the Council come from:
  - a. Persons with disabilities (all types) in respect to gender
  - b. Government representatives from line ministries
  - c. Parents of persons with disabilities
  - d. Youth representative with disability

In line with the requirements of article 35(2) of the Constitution, the parliament of the republic of Uganda enacted the persons with disabilities Act of 2006 to guarantee the rights of persons with disabilities, but the way it was drafted was not in the conventional nature where regulations could be made to facilitate its implementation.<sup>18</sup> The major rationale of this Act is to eliminate all forms of disability based discrimination and to promote social integration at all levels in the country.<sup>19</sup> The Act provides for:- Disability coding, Rights to quality education and health, Employment of persons with disabilities, Accessibility, Discrimination in relationship to goods services and facilities, Other social rights, Exemptions, Complaints and judicial proceedings, Offences and penalty, Currency points.

### **The UN Convention on the rights of persons with disabilities**

It was clear for everyone before the CRPD that mainstream human rights instruments and frameworks did not adequately address the specific human rights violations and discrimination faced by persons with disability. That a human rights instrument was urgently needed to ensure that governments

could be clear on how to respect, protect and fulfil the rights of people with disability on an equal basis with others.

This Article is in line with Article 12 of the CRPD as it may be construed to guarantee legal capacity. Clause 2 of the same Article prohibits discrimination on all other grounds including disability. The article further provides a definition of discrimination to mean giving different treatment that is attributable mainly to a person's description *inter alia* of disability '.

In addition, the constitution provides that persons with disabilities have the right to respect for their inherent dignity and confers an obligation upon the state and the general society to ensure that they realize the mental and physical potentials. , However, it is very sad to note that the Constitution which is the supreme law of the land has given protection of the rights of persons with psychosocial disabilities on the one hand and taken it away with another by denying them the right to vote and stand for public offices, regarding them as persons of unsound mind, which is a discrimination based on their personal attribute. The CRPD prohibits discrimination on grounds of disability and emphasizes equality for all under Article five. Therefore, such provisions that discriminate towards persons with psychosocial disabilities in the constitution should be deleted in order to comply with the required human rights standards.

## **Challenges Faced by Children while accessing Justice and enjoying their Human Rights**

The African Charter on the Rights and Welfare of the Child defines a child as a person under the age of 18 years.

The Constitution of Uganda: **Article 257 (c)** "child" means a person under the age of eighteen years;

**The Children ACT CAP: Sec 2.**

### **Definition of child.**

A child is a person below the age of eighteen years.

Children are considered vulnerable persons that attract special protection from not only the State and its organs but also from its citizens. The Uganda Refugee Response Plan January 2019-December 2020 indicates that children represent 60% of the refugees and asylum seekers in Uganda. In refugee hosting areas there are many children who have been forced to seek refuge, some along with their parents, others unaccompanied or separated from their parents or guardians. In the process of seeking asylum, some of these children face physical, sexual, gender violence and psychological trauma. What, though, happens to those who enter into conflict with the law? I want to share my own encounters, as a lawyer working with refugees and their hosts, with Uganda's treatment of children in conflict with the law.

### **What is juvenile justice?**

Juvenile justice, which concerns children in conflict with the existing laws is about the specific ways of working with children who are alleged to have committed offences, including their apprehension, the procedures involved in investigating and charging them with any offences committed, decisions about whether to divert a case to informal mechanisms or to the formal justice process, and, in the latter case, the passing of age-appropriate orders by the different stakeholders.

Uganda being a state party to the various international treaties governing Children's rights has domesticated the provisions under the 1995 Constitution of the Republic of Uganda which provides for the rights of children. In 1997, Parliament passed an independent law providing for Children's rights, institutions concerned and the procedure to be followed

while handling Children in conflict with the law. The Children Act also defines a child to mean a person below the age of 18 years. It goes ahead to provide for children in conflict with the law and places the age of criminal liability at 12 years. As per the Refugee Act 2006, refugee children are entitled to the enjoyment of rights and freedoms enshrined in the various International, Regional and Domestic laws in place irrespective of the child's parents or legal guardian's race, ethnic group, colour, sex, language, relation, political or other opinion, national and social origin, fortune, birth and other status.

At the International and Regional level, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of Children, specific provisions regarding refugee children are provided. Under the two international instruments, State parties have a duty to ensure that refugee children receive appropriate protection and humanitarian assistance in enjoyment of their human rights, and to ensure that unaccompanied and separated children are given special protection through foster placement or placement institutions. At the domestic level, irrespective of Uganda's efforts to incorporate international and regional laws in its domestic laws, there is a gap in respect to laws in place to provide special protection to refugee children considering their level of vulnerability. Under the National Orphans and other Vulnerable Children Policy of Uganda, refugee children are not specifically listed as part of the target group to benefit from the policy, though they could potentially be considered under "Children affected by armed conflict".

### **Gaps in the juvenile law**

Despite significant advancements in the legal and institutional frameworks towards the recognition and protection of juvenile rights and justice at international, regional and domestic level, juveniles are still facing multiple obstacles compared to those encountered by adults, and that need specific attention if we are properly to protect children's rights. There is inadequate

enforcement and adherence to the existing legislation in respect to the wellbeing of children and the poor structured diversionary methods in existence.

Regardless of the existing laws governing children, their implementation by different organs and institutions which are powerful tools towards observing juvenile rights and ensuring juvenile justice cannot be underestimated. While we greatly appreciate the efforts and contribution made by the Ugandan government, UNHCR and the different organizations in ensuring and upholding children's rights, we cannot use these successes to turn a deaf ear to the different obstacles still faced by refugee and host juveniles while seeking to access justice and enjoy their human rights. As per the 2019 Uganda crime report, police received 10,596 child-related offences involving children as targets or victims of the crime that is child abuse, torture, desertion and neglect and 13,682 defilement cases. On the side of children in conflict with the law, in accordance with Justice, Law and Order Sector report of 2018/2019, 1,844 (1195 males, 649 females) children in conflict with the law were handled. The figure indicated in both reports is a substantial number in respect to the vulnerability of juveniles, particularly as it reflects only reported cases, not those that go unattended to.

### **Apprehension procedures are not fully implemented**

Under laws governing children, children are to be treated with dignity and in a humane manner especially when it is suspected that they are in conflict with the law. A child offender has a right not to be apprehended by use of force. The person apprehending such an offender is not to be clothed in uniform and should desist from handcuffing a child offender.

**Children are thrown in cells with adults and produced in court as if they were adults**



Children in conflict with the law also have a right not to be detained in a cell or prison with adults, a right which has for many years been violated due to lack of juvenile cells at police stations, Officers on duty have ended up making illegal decisions to detain juveniles in inappropriate cells when they encounter juveniles in conflict with the law.

As a way of protecting children from harm, the existing laws provide that children matters should be heard in camera to respect their right to privacy; however, this has not been implemented. While extending legal representation in courts, it has been observed that juvenile cases are not heard in camera thus exposing them to the public. Where juveniles are charged jointly with adults, they have been subjected to the same Court proceedings.

### **Rehabilitation Centers and Remand homes are insufficient**

Furthermore, Uganda has one rehabilitation center at Kampiringisa and seven regional remand homes that is Naguru, Fort Portal, Arua, Gulu, Mbale, Kabale and Masindi Districts. Each remand home caters for more than four districts with different courts of law within their territorial jurisdiction. This defies juveniles' right to be detained by Court in a remand home that is within the Court's jurisdiction. Masindi regional remand home, for example, caters for Courts in Masindi, Kiryandongo, Hoima, Bullisa, Buseruka, Kyangwali, Biiso, and Kagadi among others. Most of these courts are very far from the remand home, and these distances affect juvenile justice. Due to inadequate remand homes, both the victims and juveniles in conflict with the law end up not achieving justice.

Given the hardships arising from the lack of a remand home within the jurisdiction of the Court, and the difficulties of transporting offenders from Court to remand home, judicial officers are often forced to grant court bond to juvenile offenders. Court decisions have negative effects on the victims/complainants seeking to access justice. Juveniles granted Court bond are likely to disobey the bond rules and interfere with the investigation and hearing of cases against them. In 2019, as part of my own work in Courts of

## *Asexuality, Gender and the Law in Uganda*

Law in Western Uganda, I was offering legal representation services to juvenile offenders who had committed minor offences. However, only one out of ten juveniles granted Court bond appeared in Court on the given date for further Court proceedings.

Regardless of children being in conflict with the law, the welfare principle that is crucial in their wellbeing should still be applied in remand homes. However, it has been noted that the remand homes are poorly facilitated and overcrowded, that children are subjected to corporal punishment, and that the care takers who are mainly social workers may not ably take care of their emotional needs thereby defying the primary objective of being in a remand home, namely rehabilitation. More often than not, juvenile offenders escape from these homes and some that manage to complete the orders passed by court come out worse than before incarceration. In this sense, poor rehabilitation may result in some juveniles recommitting offences or becoming serial offenders.

### **Age determination procedures are not adhered to**

While providing legal representation in Courts of Law, I have observed that when police interfaces with children in conflict with the law, it has at times resorted to manipulating the age of children offenders to that of an adult to justify detaining them with adults during police and prison detention. During prison visits conducted, juveniles have been identified on remand in prison in Hoima and Kyegegwa. Prison officials and Court have been engaged to transfer the juveniles to remand homes. Police simply look at the physical appearance of a juvenile offender to make a determination as to their age. At times when these child offenders are subjected to medical examination, medical practitioners estimate their ages on the basis of the number of teeth. The absence of birth certificates during the process of dealing with a child offender has contributed to courts passing irregular

judgments and sentencing juveniles to prison instead of making appropriate orders and sending them to remand homes. The decision violates juveniles' right to enjoy the appropriate lenient orders to be first considered by Court, with sentencing to detention as the last resort.

Juveniles' right to not be detained with adults has been violated due to the rigid formal justice system to be followed to prove that the juvenile being charged as an adult is below 18 years of age. To legally prove that the person appearing before Court is juvenile medical evidence must be adduced that supports the presumed age of the person appearing.

Determining the age of refugee children in conflict with the law when deciding to charge the offender, notably in cases involving sexual activity, has not been duly enforced. Relatives of both parties are often unable to adduce proof of age like a birth certificate, such documents having been left behind or lost during flight from the country of origin. This has contributed to police charging children below the age of criminal responsibility and mischarging the persons in conflict with the law with either minor or major offences.

### **“Diversions” procedures are not being implemented**

A critical reading of laws governing children reveals that while the various institutions handling children in conflict with the law should in principle be applying restorative justice as opposed to the formal justice system, in practice the different institutions have resorted to the latter.

Under the Children's Act, police have a duty to first engage parents of the children in conflict with the law, welfare and probation officers, victims, and local leaders such as Refugee Welfare Councils to handle the matters at hand. This, practice, known as 'diversion', can result in caution, discharge, and rehabilitation rather than resorting to Court process. Juvenile justice institutions have disregarded diversion justice system that is child friendly and instead subjected juveniles to formal justice system whereby they have been

remanded in remand homes and given appropriate orders that have greatly affected their wellbeing.

Children rehabilitation centers create further challenges to child-friendly justice. As noted above, Uganda's only national rehabilitation center at Kampiringisa is insufficient given the number of children in conflict with the law. Kampiringisa caters for all children, whether the offence is minor or capital in nature. This increases the likelihood that, by the end of the "rehabilitation process" juveniles who had committed minor offences become hard core criminals, thus defeating the main purpose of rehabilitation.

### **Not all children enjoy their right to legal representation**

In Uganda some juveniles in conflict with the law do not enjoy their right to legal representation as provided for under the African Charter on the Rights and Welfare of Children. Under the laws of Uganda, only children who have committed capital offences are entitled to legal representation by the state. Juveniles who commit minor offences have been left at the mercy of overstretched non-governmental legal aid service providers unable to effectively represent juveniles.

In respect to refugee children, unaccompanied and separated minors face unfair and weak protection systems in refugee settlements. This leaves them exposed to child trafficking, child recruitment into armed conflict, sexual exploitation and abuse, welfare principle that is paramount to the wellbeing of children.

While giving legal advice to the community, I have come across unaccompanied children who enter Uganda for asylum and are connected to their relatives. Their relatives have to take several steps to ensure that they are added to their attestation cards so that they can be able to acquire necessities

from different agencies. However, many of these children get denied for various reasons. For example, they are required to adduce evidence such as birth certificates to prove that they are related, a requirement that is difficult or impossible to meet considering the circumstances under which they left their country of origin.

### **Child-headed households**

I have come across unaccompanied children who, simply because they are perceived by institutions to be mature and understanding, have been tasked to head a family of fellow minors. In short, they are given parental responsibilities yet they are all still very young to physically, financially and emotionally take care of the family.

### **Inadequate vetting of foster families**

As a way of protecting the unaccompanied and separated children UNHCR and its implementing partners in different settlements at times place them under foster families within the refugee settlement. Nonetheless this has been challenging as foster families taking on caring responsibilities for unaccompanied and separated children are themselves refugees who are still facing emotional and financial challenges. Some foster families take up the responsibilities in disguise but with the main intention of benefitting financially and economically from the foster child. Acceptance of the foster caretaker role is attached to perceived benefits in terms of food ration packages provided, but in most cases, these are not sufficient to the wellbeing of children. Unaccompanied and separated children within refugee settlements need strong support system from the community and partners, if they are to have a sense of belonging, guidance in various aspects of life, proper upbringing and easy identification and addressing of issues affecting them as children. However, this is often lacking.

With all the shortcomings in the protection and observance of the rights of children and juvenile justice, it is no longer a secret that children are victims

## *Asexuality, Gender and the Law in Uganda*

of sexual violence. Equally, child labour, juvenile injustice in courts of law towards both the victims and those in conflict with the law, child prostitution, child torture, early marriage among girls are also all violations of children's human rights that, sadly, have become part of our community. The violation of children's human rights is evident in the Uganda police 2019 report that indicates 13,682 children were defiled (13,441 female children, 241 male children) with those aged 9 to 17 most severely affected. It is therefore everyone's responsibility to raise concerns that affect children as far as accessing justice and living a dignified life is concerned.

### **Advise on way forward.**

Above all, we must promote diversion of child related cases through community systems, with formal justice and incarceration as a last resort. This requires i) community sensitization about the rights of children, and the role of the community providing appropriate support systems ii) development of solid community-based reintegration processes, and iii) adequate vetting of potential foster homes in refugee settlements. Where the formal justice system is required, Government should provide for legal representation of children with minor offences, rehabilitation centers and remand homes should be decentralized, ideally to one per district, and: - Distinct rehabilitation Centers should be put in place to allow separation of juveniles that have committed minor offences from those charged with capital offences.

## **Statutory Implications of Law of Juvenile**

### **Limitation on the Criminal Responsibility of children:**

Outline:

- Only children above the age of 12 can form mensrea

Legal Premise:

**Only children above the age of 12 can form mensrea**

The Children ACT CAP

**Sec. 88. Age of criminal responsibility.**

The minimum age of criminal responsibility shall be twelve years.

**Underlying principles considered when dealing with child offenders:**

**Diversion**

The Constitution of Uganda:

**ART 34 (6)** A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.

**Guiding principles in the Child ACT i.e., well fare principle, time being of the essence, and so on**

The Children ACT:

**Sec. 3. Guiding principles.**

The welfare principles and the children's rights set out in the First Schedule to this Act shall be the guiding principles in making any decision based on this Act.

**The First Schedule:**

**Restriction on the use of certain words:**

**The Children ACT:**

**SEC 101. Restriction on use of certain words.**

## *Asexuality, Gender and the Law in Uganda*

The words “conviction” and “sentence” shall not be used in reference to a child appearing before a family and children court; and instead, the words “proof of an offence against a child” and “order” shall be substituted for conviction and sentence respectively.

### **Forum for the Adjudication of disputes involving children in conflict with the Law:**

#### **Outline:**

- a. The Local Council Courts.
- b. The Family Court.
- c. The Magistrates Court.
- d. The High Court

#### **Legal Premise:**

##### **The Local Council Court(s):**

The Constitution of Uganda 1995

**Article 129 (1)** (d) such subordinate courts as Parliament may by law establish, including gadhis’ courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

##### **The Local Council Courts Act, 2006. Sec 3. Establishment of local council courts**

There is established a local council court at every village, parish, town, division and sub-county level.

#### **Jurisdiction over children:**



**The Local Council Courts Act, 2006**

**Sec 10 Legal jurisdiction** *(d)* matters specified under the Children Act;

**The Local Council Courts Act, 2006**

**Sec 49. (3)** The village local council court shall be the court of first instance in respect of the criminal offences specified in subsection (2) involving children.

**The Local Council Courts Act, 2006**

**Sec 49. Consequential amendment of Children Act Cap.59**

The Children Act is amended by substituting for section 92 the following section **“Role of local council courts.**

**(2)** A village local council court shall, in addition to any jurisdiction conferred on it by the Local Council Courts Act, 2006, have criminal jurisdiction to try a child for any of the following offences—

**(a)** affray, under section 79 of the Penal Code Act;

**(b)** an offence against section 167 with the exception of paragraph *(b)* of the Penal Code Act;

**(c)** common assault, under section 235 of the Penal Code Act;

**(d)** actual bodily harm under section 236 of the Penal Code Act;

**(e)** theft, under section 254 of the Penal Code Act;

**(f)** criminal trespass, under section 302 of the Penal Code Act;

**(g)** malicious damage to property, under section 335 of the Penal Code Act.

**Orders of the Court:**

**The Local Council Courts Act, 2006**

**Sec 49. (4)** A village local council court may, notwithstanding any penalty prescribed by the Penal Code Act in respect of the offences stated in subsection (2) of this section, make an order for any of the following reliefs in respect of a child against whom the offence is proved—

(i) reconciliation;

(ii) compensation;

(iii) restitution;

(iv) community service;

(v) apology; or

(vi) caution.

**(5)** In addition to the reliefs under subsection (4) of this section, the court may make a guidance order under which the child shall be required to submit himself or herself to the guidance, supervision, advice and assistance of a person designated by the court.

**Restriction on the orders of the Local Council Court:**

Outline:

- The duration of the guidance order is restricted to six months:
- The Local council court cannot make an order restraining a child

**Legal Premise:**

**The duration of the guidance order is restricted to six months:**

**The Local Council Courts Act, 2006**

**Sec 49.**

(6) A guidance order shall be for a maximum period of six months.

**The Local council court cannot make an order restraining a child:**

THE LOCAL COUNCIL COURTS ACT, 2006

**Sec 49.**

(7) A local council court shall not make an order remanding a child in custody in respect of any child appearing before the court.

**Procedure of a matter in the Local Council Court:**

THE LOCAL COUNCIL COURTS ACT, 2006

**Sec 49. (8)** Proceedings in respect of a child appearing before a local council court shall be in accordance with the procedure laid down by the Local Council Courts Act, 2006 except that the court shall have due regard to provisions set out in paragraphs (b), (c), (d) and (f) of subsection (1) of section 16 of this Act.”

**Family and Children Court:**

**Establishment of the Family and Children Court**

The Constitution of Uganda 1995

**Article 129 (1)** (d) such subordinate courts as Parliament may by law establish, including qadhis’ courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

The Children ACT CAP 59

**Sec 13. Establishment of family and children court.**

**(1)** There shall be a court to be known as the family and children court in every district, and any other lower government unit designated by the Chief Justice by notice in the Gazette.

### **Jurisdiction of the Family and Children Court**

The Children ACT CAP 59

#### **Sec 14. Jurisdiction of family and children court.**

(1) A family and children court shall have power to hear and determine—

(a) criminal charges against a child subject to sections 93 and 94;

The Children ACT CAP 59

#### **Sec 93. Criminal jurisdiction of family and children court.**

A family and children court shall have jurisdiction to hear and determine all criminal charges against a child except—

(a) any offence punishable by death;

(b) any offence for which a child is jointly charged with a person over eighteen years of age.

The Children (Family and Children Court) Rules.

#### **Rule 23. Jurisdiction of the court.**

The court shall have the criminal jurisdiction set out in section 93 of the Act.

THE MAGISTRATES COURTS ACT.

#### **SEC 34. Ordinary place of trial.**

Subject to the provisions relating to transfer conferred by this Act, every offence shall ordinarily be inquired into or tried by a court within the local limits of whose jurisdiction it was committed.

THE MAGISTRATES COURTS ACT.

**SEC 35. Trial at place where act done or consequence of offence ensues.**

When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, the offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Children ACT

**Sec. 15 Venue of the family and children court.**

A family and children court shall, whenever possible, sit in a different building from the one normally used by other courts.

**Procedure of the Family and Children Court:**

**Cases are handled expeditiously**

The Children (Family and Children Court) Rules.

**Rule 24. Duration of cases.**

Every case shall be handled expeditiously without unnecessary delay, and shall be conducted from day to day, except that for exceptional reasons short adjournments may be granted by the court.

**If not disposed of within three months is dismissed where the child has taken plea:**

The Children (Family and Children Court) Rules.

**Rule 30. Dismissal of cases.**

Where the case of a child appearing before a court is not completed within three months after the plea has been taken, the case shall be dismissed and the child is not liable to any further proceedings for the same offence.

**Special procedure is taken i.e., in camera, as informal as possible and so on**

Children ACT CAP.

**Sec. 16. Procedure in family and children court.**

(1) The procedure of the family and children court in all matters shall be in accordance with rules of court made by the Rules Committee for the purpose, but subject to the following—

- (a) the court shall sit as often as necessary;
- (b) proceedings shall be held in camera;
- (c) proceedings shall be as informal as possible and by inquiry rather than by exposing the child to adversarial procedures;
- (d) parents or guardians of the child shall be present whenever possible;
- (e) the child shall have a right to legal representation;
- (f) the right to appeal shall be explained to the child.

**Orders of the Family and Children Court:**

**Outline**

- These include a discharge, caution, and so on

**Legal Premise:**

**These include a discharge, caution, and so on**

Children ACT:

**Sec 94. Orders of family and children court.**

(1) A family and children court shall have the power to make any of the following orders where the charges have been admitted or proved against a child—

(a) absolute discharge;

(b) caution;

(c) conditional discharge for not more than twelve months;

(d) binding the child over to be of good behaviour for a maximum of twelve months;

(e) compensation, restitution or fine, taking into consideration the means of the child so far as they are known to the court; but an order of detention shall not be made in default of payment of a fine;

(f) a probation order in accordance with the Probation Act for not more than twelve months, with such conditions as may be included as recommended by the probation and social welfare officer; but a probation order shall not require a child to reside in a remand home;

(g) detention for a maximum of three months for a child under sixteen years of age and a maximum of twelve months for a child above sixteen years of age and in the case of an offence punishable by death, three years in respect of any child.

**The Magistrates Court:**

**Jurisdiction accrues in a matter where a child is charged with an adult:**

The Children ACT:

**Sec 93. Criminal jurisdiction of family and children court.**

A family and children court shall have jurisdiction to hear and determine all criminal charges against a child except—

(b) any offence for which a child is jointly charged with a person over eighteen years of age.

The Magistrate Court:

**Sec 103. Children in magistrate's court.**

A child jointly charged with a person over eighteen years of age may be tried in a magistrate's court.

**The High Court:**

**Jurisdiction in the high Court accrues when the child is charged with an adult or is charged for a capital offence:**

The Children ACT:

**Sec 93. Criminal jurisdiction of family and children court.**

A family and children court shall have jurisdiction to hear and determine all criminal charges against a child except

(a) any offence punishable by death;

(b) any offence for which a child is jointly charged with a person over eighteen years of age.



The Trial on Indictment ACT CAP

**Sec. 104. Children in the High Court.**

(1) A child shall be tried in the High Court for an offence with which the child is jointly charged with a person over eighteen years of age and for which only the High Court has jurisdiction.

**But due regard shall at all times be had of the child's age**

The Children ACT:

**Sec. 104. Children in the High Court.**

(3) In any proceedings before the High Court in which a child is involved, the High Court shall have due regard to the child's age and to the provisions of the law relating to the procedure of trials involving children.

**Procedure of the High Court on Judgement:**

**The court will remit the minor to the Family and children for an order**

The Children ACT:

**Sec. 104. Children in the High Court.**

(2) Where a child is tried jointly with an adult in the High Court, the child shall be remitted to the family and children court for an appropriate order to be made if the offence is proved against the child.

**Procedure When Child is arrested:**

**As soon as possible the parents/guardians are to be informed**

Children ACT.

**Sec 89. Arrest and charge of children.**

(3) As soon as possible after arrest, the child's parents or guardians and the secretary for children's affairs of the local government council for the area in which the child resides shall be informed of the arrest by the police.

**No child is to be detained with an adult**

Children ACT.

**Sec 89. Arrest and charge of children.**

(8) No child shall be detained with an adult person.

**Female minors are to be in the custody of female officers**

Children ACT.

**Sec 89. Arrest and charge of children.**

(9) A female child shall, while in custody, be under the care of a woman officer.

Charging of the child:

**The first option will be to release the child**

Children ACT

**Sec 89. Arrest and charge of children.**

(1) Where a child is arrested, the police shall under justifiable circumstances caution and release the child.

Under the current law (Probation Act) a juvenile who commits an offence can be released on probation. Parents are expected to help the child to reform with the assistance of Probation and Social Welfare Officers.

In the study concerning children's rights at the village level (already quoted), it was found that there was a general feeling that cut across gender and ethnicity. The community groups agreed that adults and, specifically, parents had an obligation to guide, advise and mould their children to become responsible citizens. There is awareness that childhood is a transition period during which children need special help if they are to grow up properly. There is also a need to be aware that this is also a time when children have ideas and attitudes which are of value in themselves. In the same study it was noted that some members of the community sometimes mistreat children in the name of teaching skills or guidance. Also noted was the fact that often adults expect children to take responsibilities. Adults, however, do not usually explain the implications of taking responsibility and when this is done, it is often after the child has refused or failed to do correctly what he or she was supposed to do. In anger they then explain. The findings of this study indicate that this is typically happening, and this area of child development needs emphasis in the education and sensitization programmes.

**The police may resolve the matter with resorting to court**

Children ACT

**Sec 89. Arrest and charge of children.**

(2) The police shall be empowered to dispose of cases at their discretion without recourse to formal court hearings in accordance with criteria to be laid down by the Inspector General of Police.

**The police have to ensure that a parent or guardian of the child is present**

Children ACT

**Sec 89. Arrest and charge of children.**

(4) The police shall ensure that the parent or guardian of the child is present at the time of the police interview with the child except where it is not in the best interests of the child.

**If any of the aforementioned persons cannot be traced a social officer may be called in to stand in their stead:**

Children ACT

**Sec 89. Arrest and charge of children.**

(5) Where a child's parent or guardian cannot be immediately contacted or cannot be contacted at all, a probation and social welfare officer or an authorised person shall be informed as soon as possible after the child's arrest so that he or she can attend the police interview.

**Pre-trial remedies in respect of children:**

**Police Bond:**

Children ACT

**Sec 89. Arrest and charge of children.**

(6) Where a child is arrested with or without a warrant and cannot be immediately taken before a court, the police officer to whom the child is brought shall inquire into the case and, unless the charge is a serious one, or it is necessary in the child's interests to remove him or her from association with any person, or the officer has reason to believe that the release of the child will defeat the ends of justice, shall release the child on bond on his or her own recognisance or on a recognisance entered into by the parent of the child or other responsible person.

(7) Where release on bond is not granted, a child shall be detained in police custody for a maximum of twenty-four hours or until the child is taken before a court, whichever is sooner.

**Grant of bail:**

The Constitution of Uganda 1995

**Art 23. (6)** Where a person is arrested in respect of a criminal offence

(a) the person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable;

Children ACT

**Sec 90. Bail.**

(1) Where a child appears before a court charged with any offence, the magistrate or person presiding over the court shall inquire into the case and unless there is a serious danger to the child, release the child on bail—

(a) on a court bond on the child's own recognisance;

(b) with sureties, preferably the child's parents or guardians who shall be bound on a court bond, not cash.

Children ACT

**Sec. 100. Remission of cases.**

(4) A court making an order remitting a case to a family and children court may give directions with respect to the custody or release of the child on bond or bail until he or she can be brought before the family and children court.

**Remand**

**Children ACT**

**Sec 91. Remand.**

(1) Where a child is not released on bail, the court may make an order remanding or committing him or her in custody in a remand home to be named in the order, situated in the same area as the court making the order.

**Children ACT**

**Sec 91. Remand.**

(5) Remand in custody shall not exceed—

(a) six months in the case of an offence punishable by death; or

(b) three months in the case of any other offence.

(6) No child shall be remanded in custody in an adult prison.

## **Sentencing**

A person under the age of 18 years cannot be sentenced to a term of imprisonment, although this sometimes happens in the circumstances described above. Probation and Welfare Officers work with the courts to decide on the best means of dealing with children who have committed criminal offences. Decree No. 26 of 1971 provides that the sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed, he was under the age of 18 years.

**UGANDA VS BAITWABABU 119811 H.C.B**, Manyindo. J. held; the Sentence of imprisonment cannot be passed on person who is under apparent age of 18years as provided under S.190 (I) of the Magistrates' court act. If the court is of the view that the accused should not be punished otherwise, then

it must order the accused to be detained in safe custody pending an order of the Minister of justice.

**UGANDA VS DIVISA ZIRABA [1979] HCB 168, ALLEN, J** held; Magistrate should take into account the age and position of the accused as well as other factors when deciding upon a suitable sentence. In this case considering the age of the accused there was no justification for such a big fine. The provision under S.190 of the Magistrates' Court concerning the detention of a convicted juvenile is in no way a default sentence or a sentence at all but a separate order. It cannot therefore be combined with fine or any other sentence and in the present trivial case, it was absurd even to consider it

**UGANDA VS KUNOBWA DEO.CRIMINAL REVISION ORDER NO.6 OF 1991.MUKANZA. J.** Held; Section 190 of the Magistrate Courts Act, prohibits a Magistrate Court to pass a sentence of imprisonment on a young offender who is in the opinion of court under the apparent age of eighteen years. Instant case the accused was stated to be 16 years of the age and was sentenced to 3 months imprisonment. This sentence is illegal as contravening the provision of the referred to the Law.

## **Separation from parents**

Parents are free and are encouraged to visit their children who may be in custody in the approved schools, reformatory schools and the remand homes. Children committed to the approved school are granted two weeks' leave every year. In this period, a child stays with his/her parents and the Probation and Social Welfare Officers facilitate the interaction. Although what has been said above regarding parents visiting their children who are in custody in approved institutions is ideal and appropriate, it has often been practically difficult because these institutions are very far from the child's home and the parents may not have the money to make such long journeys. Similarly, children have often not been able to go for home leave because of lack of money in the approved schools.

## *Asexuality, Gender and the Law in Uganda*

There are situations when women are sent to prison when they are pregnant and sometimes with babies. The situation of prisons in Uganda is very unsatisfactory. There are no special accommodation facilities for necessary prenatal and post-natal care. By July 1993 the number of babies/children in Luzira women's prison averaged 12 per day. The law requires that mothers in prison stay with their babies to the age of 18 months. After this period, the children are still too young to be taken away and the mothers are also reluctant to part with their children. There are not yet concrete steps to address the needs of children whose mothers are in prison. Their stay in prison with the mothers in a situation of insufficient facilities greatly affects their welfare and development and is a situation requiring immediate action.

### **Bodies concerned in promoting rights of Juvenile in Uganda**

**Probation and Welfare Officers** who are responsible for the protection of the child are inadequately resourced. A probation officer is always the person in charge of a child aspects and these include; custody, parentage, adoption, remand etc.

Ministry of Labour and Social Affairs (Probation Department), the Ministry is in charge of probation, custody etc. the Probational officers are under Ministry of Labour and Social Affairs.

The Office of the Inspector General of Government (IGG) is generally interested in human rights. This includes the rights of the child. The Office checks on juvenile offenders who have been detained in places of detention by the police, the army or any other security organ. The Office investigates any human rights abuse or mistreatment of any person, including children, and makes appropriate recommendations. The presence of children in adult prisons is one of the phenomena the IGG's Office will concentrate on. The



inspection will involve finding out how long the cases of children have taken to handle and whether they have been imprisoned for longer than they should. Other human rights organizations like the Uganda Human Rights Activists (UHRA) take interest in cases of child abuse and advise Government accordingly.

In conclusion therefore these organs implement the rights of child in aspect when considering the “best interest of a child “such as Welfare which is the cornerstone to the child’s rights as per case *Nakaggwa v Kiggundu* (1978) HCB 310

Way forward on the challenges faced by the children while accessing justice and enjoying their human rights?

It is prudent enough for the government to apply the law not it to be on the form than on the surface, the process of arresting a child, he/she should not be taken to the police custody to be detained mixed with mature suspects.

It is approved by the research in 2019, that children are first taken to police custody before taking them to the court. The essence of determining the age of the juvenile its always at the court level the conditions in which children are held on remand in adult prisons or police cells infringe their rights. From the research already mentioned above, in 347 cases 257 (74 per cent) were remanded in custody and half of these were remanded in places designated for adults. For all remandees 44 per cent were detained for over three months and 24 per cent for over six months. Even the few remand homes available are usually congested or lack the basic facilities. In one remand home (Naguru Remand Home) there were 402 children by the end of 2019 and the institution's designated capacity is only 200. The conditions are poor and doesn't facilitate the welfare of the child which is the cornerstone to the child's interest. Same also in the remand homes like Kampiirigisa children are not taught hence violating the right to education.

Probation officers: it is much prudent basing on the analysis that the Country has few probation officers hence children's rights are vandalized. The government need to employ more probational officers to be placed in every court jurisdiction in the country.

## **Sexual Harassment in Uganda**

Sexual harassment is a ubiquitous problem that prevents women's integration and retention in the workforce. The prevalence of sexual harassment in Uganda's public health sector had been documented and linked to staffing shortages and absenteeism. In a 2003 Uganda Ministry of Health (UMOH) study on health worker retention, around 24% of workers the majority of whom were female nurses reported that they had been subjected to sexual "abuse" by a supervisor. Approximately one in five reported sexual abuse by patients or their relatives (21%). Fewer reported abuse by peers (16%) or while travelling to and from work (18%). Health workers reported quitting in response to such abuse.

In 2012 UMOH descriptive gender research study, Gender Discrimination and Inequality Analysis GDIA found that men were overwhelmingly concentrated in senior levels of management. About 32% of GDIA survey respondents reported that manager/supervisor expectations of sexual favors in exchange for a good evaluation, a promotion, or a salary raise (i.e., *quid pro quo* sexual harassment) were either "somewhat common" or "very common." Focus group (FGD) respondents perceived gendered power and subordination ("*When men are bosses, they think they can take anything they want from female subordinates, so they start asking for sexual favors*") and retaliation (e.g., a woman who "stands her ground" runs the risk of a bad evaluation or job loss). FGD participants affirmed that "*Some decide to ignore it while others suffer quietly*" while others quit their jobs or found different

ways of coping *rather than report* it (“*Sexual harassment is silent; no one discloses*”). District managers confirmed that rampant sexual harassment was a “*serious form of corruption*.” Other forms of sexual harassment included 1) sexually suggestive gestures (30%); 2) being exposed to sexually explicit discussions or conversations (25%); 3) unwanted attempts to establish sexual relationships (22%); and 4) being the object of sexual jokes, comments, or leering (19%). There were also co-occurring stereotypes of women’s leadership incompetence and discrimination based on pregnancy and family responsibilities, which sidelined female health workers.

In summary, sexual harassment, especially by supervisors, was a silent and apparently unregulated problem in Uganda’s public health workplaces, mainly affecting female employees, co-occurring with other types of gender discrimination, in a context of vertical segregation. Other Ugandan studies, while measuring the prevalence of sexual harassment in different ways, found it to be a problem in other public sectors, from Parliament, the police force, the prison system, education, to agriculture and at public markets, where men’s non-consensual touching of women is so common as to have a name— *bayeye*. While Uganda had launched national *Sexual Harassment Regulations* in 2012, their implementation was uneven

Original descriptive research was conducted in 2017 to identify the nature, contributors, dynamics and consequences of sexual harassment in public health sector workplaces and assess these in relation to available theories. Multiple qualitative techniques were employed to describe experiences of workplace sexual harassment in health employees’ own voices. Initial data collection involved document reviews to understand the policy environment, same-sex focus group discussions, key informant interviews and baseline documentation. A second phase included mixed-sex focus group discussions, in-depth interviews and follow up key informant interviews to deepen and confirm understandings.<sup>191</sup> A pattern emerged of men in higher-status

---

<sup>191</sup> Human Resources for Health volume **19**, Article number: 59 (2021)

## *Asexuality, Gender and the Law in Uganda*

positions abusing power to coerce sex from female employees throughout the employment cycle. Rewards and sanctions were levied through informal management/ supervision practices requiring compliance with sexual demands or work-related reprisals for refusal. Abuse of organizational power reinforced vertical segregation, impeded women's productive work and abridged their professional opportunities. Unwanted sexual attention including non-consensual touching, bullying and objectification added to distress. Gender harassment which included verbal abuse, insults and intimidation, with real or threatened retaliation, victim-blaming and gaslighting in the absence of organizational regulatory mechanisms all suppressed reporting. Sexual harassment and abuse of patients by employees emerged inadvertently.

Sex-based harassment was pervasive in Ugandan public health workplaces, corrupted management practices, silenced reporting and undermined the achievement of human resources goals, possibilities overlooked in technical discussions of support supervision and performance management. Harassment of both health system patients and employees appeared normative and similar to "sextortion." The mutually reinforcing intersections of sex-based harassment and vertical occupational segregation are related obstacles experienced by women seeking leadership positions. Health systems leaders should seek organizational and sectoral solutions to end sex-based harassment and make gender equality a human resource for health policy priority.

Prevalence had been previously measured, but information on how to prevent and respond to sexual harassment was lacking. Not everything that counts can be counted, so additional UMOH research in 2017 involved a new descriptive approach employing multiple qualitative data collection

techniques to address key questions: *What are UMOH employees' experiences of sexual harassment? Why is non-reporting of sexual harassment pervasive? What are the consequences? What is the cross-cultural relevance of current theories, definitions and dynamics for UMOH human resources for health policy and human resources management (HRM)?* The 2017 research not only aimed to describe the workings of sexual harassment and non-reporting in UMOH workplaces but also assessed the relevance of current sexual harassment theory and definitions, at a minimum, to increase the consistency of measurement across settings. This approach required balancing discovery of participants' lived experience with the explanatory potential of pre-existing categories of understanding from the literature. The literature informed data collection tools and interpretation.

### **Theoretical frame work for sexual harassment.**

There is no single explanation or theoretical framework that fully accounts for sexual harassment. Some include

- Nature: Sexual harassment is a natural extension of mate selection in evolutionary theory, behaviour that is motivated by mutual sexual desire and “natural” and therefore not a social or workplace problem.
- Sex role/sociocultural spill over: Sexual harassment is the outcome of norms that socialize men into sexual assertion, social dominance and superiority, and persistence, and women into sexual submission and passivity. Harassers bring inappropriate expectations to workplace interactions, thereby perceiving women in their sex, rather than their work, roles. The result of these inappropriate role expectations is behaviour that is perceived as sexually harassing.
- Economics: Sexual harassment is used to drive out women (and cultural minorities) who compete for valued jobs traditionally held by men, as if to communicate “women don't belong here”. Maintaining the most highly-rewarded forms of work as domains of masculine competence results from “tormenting members of

## *Asexuality, Gender and the Law in Uganda*

minority and other disadvantaged groups seeking upward mobility through work”.

- Power: Organizations are “public patriarchies” in which violence and violence are forms of power, domination and oppression that structure organizations
- Sexual harassment embodies sexist ideologies of male superiority and female inferiority. The (patriarchal) gender order of the larger society translates into organizational gender regimes which are maintained through a dominant form of [hegemonic] masculine behaviour vis a vis ideal feminine behaviour to maintain an unequal gender order. Power differentials increase the likelihood of sexual harassment, and since men typically hold more power, they are more likely to be perpetrators. Women are at most risk to be targets of sexual harassment and more vulnerable to its economic, psychological, social and physical consequences. Managers and supervisors (in the health workforce, predominantly men) are structurally situated in organizational hierarchies to exercise power over their subordinates and have control over work-related outcomes such as positive performance evaluations, salary increases, or flexible work

There is a substantial vein of research and human rights literature that puts unequal power at the centre of theory where asymmetries of power, threats or acts of violence, gender stereotyping and economic control of work result in the subordination of women. Cockburn’s early research led her to conclude that women’s presence in the workplace was a highly political issue for men, and that women’s claim to economic independence and an equal place in organizational life called forth new measures of exclusion and reassertion of male authority Sexual harassment maintains an already existing gender stratification through “the unwanted imposition of sexual requirements in a relationship of unequal power” .While men may be

vulnerable to harassment if they are perceived as feminine, women are targeted when they challenge their subordinate position in the gender order. Konik and Cortina augmented sex-based harassment theory by studying sexualized harassment, gender harassment, and heterosexist harassment, which yield an integrated model of workplace oppression based on gender-role enforcement, i.e., “policing gender”. In Schultz’s thinking, the problem with workplace harassment is sexism and not sex; it is more about upholding gendered status and identity than it is about expressing sexual desire.

The United Nations posited “that violence against women (including sexual harassment) 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 of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

The term “violence against women” means 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 in private life. A COFEM brief recently noted that “everyday sexism, sexual harassment and other forms of gender-based violence share a root cause gender inequality and the oppression of women and girls– and distinguishing different forms of gender-based violence as more serious than others ignores how patriarchy and gender inequality create a culture in which [all] violence against women and girls is accepted and normalized”. Summarizing power theories, sexual harassment is an assertion of power, a manifestation of historically unequal power relations between men and women, serves to police appropriate ways of “doing gender,” penalizes gender non-conformity and protects or enhances men’s gender-based social status. The 2017 UMOH research assessed the cross-cultural relevance of these theories. It should be noted that patterns of workplace sexual harassment of men may differ from the sexual

harassment of women. In a 2008 study of health workplace violence in Rwanda, 40% of targets disclosed to no one .

Ssexual harassment is under/un-reported is well-established. A 2015 European Union survey found that out of all women who described the most serious incident of sexual harassment that had happened to them, 35% did not speak about it to anyone, only 4% talked to an employer or boss, and less than 1% consulted a lawyer, a victim support organization or a trade union representative. Reasons given for non-reporting of sexual harassment appear consistent across studies: Procedural and evidentiary (burden of proof) hurdles; a belief that nothing will come of a report; feelings of shame and fear of being ostracized by co-workers and retaliated against for reporting; considered as a normal part of work; repercussions such as being fired or blacklisted or having to quit, damage to reputation and loss of career prospects, and conflicting emotions about the harasser . Retaliation is a real risk, as victims who file harassment complaints are much more likely to lose their jobs than those who experience similar levels of harassment and say nothing. The targets of sexual harassment experience a range of personal, professional and organizational harms which are relevant to human resources for health and management (HRH/M), such as decreased job satisfaction and morale; increased absenteeism and job loss/leaving; deteriorating relationships with co-workers; financial stress and incremental economic harms to the employee, higher rates anxiety, depression and PTSD

### **Dynamics of silencing and non-reporting**

It is possible that non-reporting is pervasive because of the evidentiary hurdles, for example, in documenting its psychological harms. There are also psychological and social dynamics that may explain the tendency for targets to remain silent and not report. The notion of the rape myth has been



extensively used in sexual violence research to understand the sociocultural context of non-disclosure. False cultural beliefs about the culpability of the victim and the innocence of the sexual offender, or the illegitimacy of rape as a serious offense serve to deny and justify sexual aggression against women for example, “What was she wearing?” deflects responsibility onto the victim’s dress. Rape myths are driven by

(1) gender inequality and society’s acceptance of patriarchy and male dominance, leading to tolerance of aggression against women.

(2) structural violence within which societal tolerance normalizes, justifies and legitimizes sexual violence against women, so that we do not see the violent act, or at least not as violence. Baugh found that the reason so few instances of sexual harassment are formally reported, and why so many targets who do make formal reports see the situation as worsening, is the pervasive tendencies to “blame the victim for her own plight” and to discount the target’s definition of sexual harassment. “Blaming the victim” facilitates the persistence of sexual harassment because institutionalized contributors or responses remain unquestioned. Power differentials in male-dominated workplaces legitimize and institutionalize male perspectives and definitions. Attempts at holding perpetrators to account for harassing, violent behaviour typically evokes defensiveness and hostility. In what has been described as a “DARVO” dynamic (Deny, Attack, Reverse Victim and Offender), a perpetrator’s response to being held accountable puts the target of violence under scrutiny, and casts the target (or whistle-blower) as the perpetrator. Examples include accusing the target of seeking revenge for a poor performance appraisal, or using terms like “male-bashing” which suggests that it is the victim who is the violent party for bringing a charge of harassment, or for trying to affix perpetrator responsibility. Institutional betrayal describes organizational actions/inaction that are experienced as violations of trust that exacerbate the original harm of sexual harassment. Examples include when the administration shows excessive concern for the future of the perpetrator, or when it participates in a target’s demotion,

transfer or firing effectively silencing attempts to stop the harassment. “Gaslighting” refers to a form of psychological manipulation in which a person or a group sows seeds of doubt and undermines self-confidence, making the target question their own memory, perception, or judgment, again with an effect of silencing. Stark developed the notion of manipulative gaslighting, which denies, minimizes or challenges testimony about harms done to the target, by sidestepping evidence that supports the target’s testimony, or attributing cognitive or characterological defects to the target, e.g., “Can’t you take a joke?” or “Why are you obsessing on this?” Ahern referred to whistleblowing gaslighting, which involves trauma resulting from the emotional manipulation used by employers to discredit and punish employees who report misconduct

A reluctance to report or even label behaviours as sexual harassment is documented in academic medicine, where for example, female physicians-in-training developed strategies such as “not sweating the small stuff” (i.e., minimizing) and humour as tactics of resistance to deal with hostile environments, and acceptance of mistreatment which was normalized and passed from one generation to the next. Wear and Altman also remark that physicians-training learn institutional norms that whistleblowing against one’s peers is considered unprofessional or unreliable behaviour, and that gender socialization may encourage women to emphasize empathy for harassers over confrontation and punishment. Hinze found that a target’s self-doubt and asking themselves if they are being “too sensitive” were common reactions in which attention was deflected back onto the target of harassment. Hinze also suggested that denying or ignoring harassment, or “not taking it personally,” are tactics used by female physicians to distance themselves from the stigma of being publicly devalued, and that these tactics interrupt the naming of sexual harassment, and ensure its continuance. All

the foregoing processes serve to silence a target, inhibit reporting and maintain impunity.

Hearn and Parkin suggested that the recognition of violence is difficult not only because the relative isolation of survivors and feelings of shame or self-blame, but because violence and violation contradict the dominant ideological constructions of most organizations. As organizations become more aware, violence is more likely to be identified, recognized, problematized, “spoken” and contested, but then is followed by further organizational “dynamics of violation.” Dynamics of violation are at play in the institutional betrayal of whistle-blowers, such as official or unofficial reprisals, reprimands, punitive transfer, referral to a psychiatrist, social ostracism all of which, the authors claim, should be anticipated. These damaging processes make it hard to keep sexual harassment “spoken” in the face of organizational pressure to silence targets.

### **Data collection tools and strategy**

The qualitative data collection techniques employed by the study elicited UMOH employees’ lived experience with or observations of sexual harassment and factors that constrained reporting. In Phase 1, data collection involved policy document review, male/female same-sex FGDs with health workers, national and district level key informant interviews (KIIs), and baseline documentation of health employees’ understanding of sexual harassment and policy guidance available at UMOH worksites. Phase 2 involved mixed-sex FGDs to elicit gender, social class, regional and ethnic dimensions and interaction and reporting dynamics, and in-depth interviews (IDIs) with employees or facility in-charges to deepen understandings of evidence that had emerged in Phase 1. See Additional file 3, for a detailed description of the methodology and sample.

Data collection took place between August November 2017 with assistance from the (now-ended) USAID-funded, Intra Health-led Strengthening

Human Resources for Health (SHRH) project. The study sites included those of the UMOH and other central-level ministries, district human resources management (HRM) structures, hospitals and health facilities. The two categories of study population were key informants at the national and district levels and health workers and managers at health facilities. District-level data were collected in the ten districts in which the sexual harassment prevention and response system would be piloted. The districts were selected from the 44 project priority districts where there were staff shortages and where second year project efforts were concentrated. A purposive sample included 294 health workers (including managers) from Central (Mukono and Mubende); East Central (Bugiri, Namayingo); East (Tororo); Karamoja (Abim); North (Gulu); West Nile (Adjumani); West (Hoima); and South West (Rukungiri).

Findings were synthesized from the transcripts and unpublished report text, and presented both in this section and in Additional files 4, 5, 6, 7. Additional file 4 illustrates the forms and examples of sexual harassment emerging from FGDs, IDIs including the physical, verbal, written/visual, and gestural behaviours and dynamics featured in health employees' descriptions of sexual harassment. Additional file 5 contains excerpts from two key informant transcripts describing secondary injury, to illustrate the additional risks and harms faced by targets who had reported sexual harassment. The extensive use of quotes in the text below aims to convey health workers' lived experiences or informants' observations, and how they made sense of sexual harassment, in their own voices. Quotes were selected to illustrate categories and types of sexual harassment, its power dynamics, contributors and consequences. Findings in this section answer the two key questions: What are UMOH employees' experiences of sexual harassment? Why is non-reporting of sexual harassment pervasive?

### **Employees' experiences of sexual harassment**

There appear to be patterns of male-on-female aggression featuring sexual coercion and quid pro quo, unwanted sexual attention and gender harassment. Abuse of organizational power to coerce sex by managers and supervisors occurred throughout the employment cycle

Sexual coercion started during recruitment of health workers and continued after hiring, perpetrated by men in hierarchically superior decision-making positions– supervisors, senior managers (including human resources) or medical superintendents. Female applicants were promised or given jobs in exchange for sex. Such transactional behaviour continued into the job where in-charges/supervisors offered bribes and rewards, such as gifts, exemption from night duty, working fewer hours, and opportunities for training or promotion, in exchange for sex. Refusal was followed by further coercion, reprisals or psychological or administrative retaliation.

The following quotes express experiences and observations of sexual harassment in UMOH workplaces.

Sexual coercion and quid pro quo (Female health worker FGDs).

“Demands for sexual favors are common for ladies. They are demanded for sex before being given jobs.”

“Supervisors demand for sex from females in offices with threats of sacking upon refusal.”

“They wait for you at the time of appraisal and harass you.”

“Most of the sexual harassment occurs to the trainees in the health sector who are coming for their practice. Most trainees will try to look for a place where they can do their practice. But there is no place and the only place they find, someone tells them that if you do not sleep with me, you do not get the opportunity. So somehow you have to weigh between the two, which one is better: Should I sleep with him and get the opportunity or I leave?”

## *Asexuality, Gender and the Law in Uganda*

“Forced sex, male colleagues force the females against their consent... The boss can call you in his office and force you to have sex with him.”

“But sometimes it is economical because you have refused to give in to the sexual favors, you are denied some economic benefits- it could be allowances, field trip, salary reduction, transfer so that your economic chances are reduced depending on how you give in to the sexual favors or not. ...There are people who rotate in workshops or trips. If it is field, she is the one, workshops- she is the one in charge of the money/accounts, she/he is on every list...so you are denied of some economic benefits as a way of harassing you to go into a sexual demand.”

“Some start hitting on you through abuses and criticism that you are lazy at work, yet it is not true...when you give in the abuses stop”.

A Health Worker’s Experience of Non-Consensual Touching, Coercion and Psychological Distress [In-Depth Interview]

### **Unwanted sexual attention**

The objectification and sexualization of female health workers, non-consensual touching and gestural and verbal behaviours that violate the space of the target through unwanted, unwelcome attention.

Non-consensual touching (Female health worker FGDs)

“Bad touches. Someone can touch your bums, breasts, and some other parts that are unwanted and unpleasant. Someone can come and touch on your nose and chin. “

*Isaac Christopher Lubogo*

“Touching the person between colleagues, for example the male touching the breasts of the female when she doesn’t want it-they are just working together-but this person keeps touching without permission.”

“When greeting some men, they can tickle/scratch inside the female’s hand.”

“It is a sexual kiss, not merely kiss, a sexual peck, not merely peck.”

## **Gender harassment**

Evidence of “gender harassment” emerged from FGDs. This category of harassment consisted of bullying, taunting, derogatory, sexually gross, insulting verbal abuse by co-workers and supervisors, including the use of threats or acts of retaliation. Targets apparently did not take the behaviour as sexual invitation.

## **Gender Harassment with Unwanted Sexual Advances and Reprisals**

The experience of harassment involved psychological manipulation (gaslighting) which resulted in confusion, loss of confidence and psychological distress:

“The approach can be different- can be abusive or praising but you are uncomfortable with the comment... It is psychological... In your mind you wonder- Am I stupid? Am I less of a woman? So, it is physical, sexual, and psychological.”

“You are ugly--‘Whom do you think is interested in you?’ when he was actually interested in her.” Somebody will be psychologically tortured like what happened to the other student nurse. This is PTSD-Post Traumatic Stress Disorder.”

## **Patients as targets of sexual harassment**

Evidence of the sexual harassment of patients by clinicians emerged unexpectedly. This was followed-up by interviews with 16 facility In-Charges in the facilities where this behaviour was reported. Irrelevant or unnecessary vaginal and breast exams and “bad touching” were reported to be the most common forms of sexual harassment by clinicians, though forms also included displaying a patient’s nude body or body parts during clinical exams, and sexual assault such as rape. Facility In-Charges observed that victims rarely reported the health worker to police, hospital administrators or others, likely for fear of negative consequences. For example, a Facility In-Charge recounted a story in which a young woman who had been sexually assaulted by a clinician complained to her family and the village chief, and the latter asked her not to report it further lest the village lose the one health provider they had or possibly receive less preferential treatment in the future

When asked about contributors to sexual harassment in general, male FGD participants mentioned the following examples which are relevant to the harassment of patients: Medical examinations and clinical procedures make clinicians vulnerable to harassing, such as palpation of a female client, collection of vaginal swabs, making an injection on the thigh of a female patient or observing a female worker insert a catheter in a male patient. This finding suggests that responsibility for harassing behaviour is deflected onto a medical task or onto a female body which during examination has aroused the perpetrator.

## **Causes of employee harassment**

Study respondents identified contributors to sexual harassment at several levels.



### Individual and relationship-level contributors

A recurrent theme in focus groups was a belief that women's "indecent dressing" caused sexual harassment, deflecting attention onto the target who was said to be responsible for calling forth harassing behaviour. Stereotypical notions seemed to portray men as victims of seductresses whose manner of dress or walking enticed perpetrators:

"Dressing still on ladies, like putting on these blouses which just cover only breasts, the rest of the body part is naked. There is this term they use to call this type of dressing, pimp dressing. You see they put on this thing up to here; they call it cleavage dressing (the navel just remains outside (The kundi shows))." (Male Health Worker FGD)

"One of the other causes, I think is dress code. Because if a lady dresses up and the dress is revealing most of her body parts, that entices the opposite, to initiate and at the end of the day, call it sexual harassment." (Male District-level Key Informant)

One thing I would really point out is that somebody may be doing something subconsciously and it can be construed as sexual harassment. For example, if a lady was walking with her high-heeled shoes and she is wriggling in the corridor while there are other onlookers, that can't be harassment..." (Male District-Level Key Informant) (Table 4)

## **Perceived Contributors to Sexual Harassment**

In the following job-seeking scenario, persistent, coercive sexual demands in an imbalanced power relationship are described as normal courtship behavior, in the face of the target's attempts resistance:" At first it can be harassment but later, it becomes enjoyable. Let us take this scenario of these ladies who are used when they want jobs...There is a lady I know who wanted a job and the boss demanded for sex and the lady gave in. After giving in four times, the boss ended up marrying the lady...so it started as sexual harassment,

later on it was not. This lady initially refused saying she is born again but after giving in, she accepted and enjoyed the marriage.” (Male Health Worker FGD). Organizational factors, including inaction and impunity, emerged as major contributors to sexual harassment:

“I think the most common cause is that in Uganda, there are no punitive actions against sexual harassment. You know you can touch a woman and get away with it. You cannot report to police that so-and- so touched me since even the police are some of the main perpetrators...When you report to the local council, they will not help you because they think it is normal for women to be touched. The only thing they can listen to is rape.” (Female Health Worker FGD). “There was one case scenario this was not an employee but then it was someone seeking for a service in one of the public places, and it happened to be a nun. She went to this person and this person without shame turned to this person and started demanding for sexual favors from the nun. Of course, nun made an alarm that attracted attention and probably the church should have started from there but...no decision was taken.” (National-level Key Informant).

### **Beliefs about regional, ethnic and gender attributes**

on perceptions of regional and ethnic attributes that intersect gender beliefs and that explain sexual harassment. For example, women or men from urban regions were stereotyped as “easy” (e.g., “Dot.com Girls”). Traits attributed to Banyakole, Busoga or Batooro women and men were also implicated in perceptions of sexual harassment.

**(Why) is non-reporting of sexual harassment pervasive?**

This section presents data on reactions to and consequences of sexual harassment as well as silencing dynamics in UMOH workplaces that shed light on non-reporting.

## **Reactions to sexual harassment**

FGD participants were about asked common reactions to sexual harassment. These common reactions and compliance with sexual demands suggest silence or non-reporting. However, quarrelling and reporting (46%, 50%) indicate that reactions other than silence exist, i.e., that sexual harassment is resisted and reported to someone. It should be noted, however, that no formal UMOH reporting system existed at the time.

## **Perceived consequences**

Fear of the consequences of sexual harassment which involve retaliation suppresses reporting. Personal and professional consequences of sexual harassment (Female health worker FGDs) Actual loss of employment was a consequence, as “Sometimes you can even lose your job. The man may make advances at you and you always say no and at times may decide to leave the job. I have a friend who left her job and went to sit home because the boss was always demanding her for sex which she could not accept.” (Female Health Worker FGD). Punitive transfer can occur “If you refuse to give in to sexual harassment... they can transfer you to far-off health centers like close to Sudan.” (Female Health Worker FGD). In addition to personal and professional consequences, study respondents mentioned the effects of sexual harassment on work climate, including: Conflict and disrupted teamwork; fear of or loss of respect for the harasser; undermining the relationship between harasser and target; and undermining of supervisory authority.

## **Dynamics of silencing**

## *Asexuality, Gender and the Law in Uganda*

The two cases described by national-level stakeholders in the secondary injury or revictimization that may result from reporting and that silences reporting. retaliation, excusing the harasser and attempts at normalizing sexual harassment as an expected part of life. secondly the disbelief and minimization involved in manipulative gaslighting, where the hierarchical superior appear for example to challenge the target who attempted to report: questions like “Are you sure, has it happened? What did he do, only touched you...? Is that a matter worth reporting to me?” “Why are you so obsessed with this? Also, there is damage to reputation and a counter charge of false allegation: “You brought me a girl who is telling lies a non-performer.”

“In Uganda, reporting is quite low...most people fear to report because of the consequences, you don’t know what will end. At the end you will find you become a victim yourself. You think you are trying to salvage yourself from the challenges you are facing by using the channels available to talk about your boss who is harassing you sexually, but instead, it will turn against you.” Feelings of shame, embarrassment, and fear of exposure, gossip and stigma hindered reporting. A target who considers reporting fears heightened scrutiny or publicity, gossip, disbelief, intimidation or cover up:

Some victims do not want the issue to be said out. They feel ashamed when the community gets to know they were sexually harassed. So, when the witness tries to bring it out, denial is also there. When the victim denies, it makes it difficult for the witness to proceed with the case. Sometimes the harasser may be on side of you both, so they will just sit on your issue.

When you are a victim and you report, you become the talk of the city, it is not that whenever you report people will believe you, many times one may report and people think one is deceiving. So, most victims keep quiet.

Some victims talk thier friends seeking advice, that so- and- so wants to give you a job but you first have to give him sex. That friend will ask you; do you

remember the number of years you have spent without a job? Just give in, the secret will be between you and the boss. And you will remain with ‘your thing’ and life continues. People no longer take it seriously. many atime we hear stories like i was at the pediatric ward and so I used to take blood sample to the lab. I think that is where he saw me from and he started picking interest in. He started talking to me and finally, he told me what he wanted. I personally told him that I cannot be involved in such relationships because I am married. The whole time I worked at the hospital, I never told anyone until when I was leaving for more studies. He was ever on my neck and yet he is even an old man.”

Also, there is a lot of intimidation from the bosses and the boss tells you even if you report no one will support you, so many end up keeping quiet.

The stories demonstrate the feared and real risks of secondary harm and institutional betrayal related to reporting. It is a complex thing that most people die silently. Like for the common cadres, they will ask for a transfer to other facilities away. Most of the people suspected to be harassing their subordinates, especially sexual harassment at best what they do is also transfer them to other places and there are quite a number of scenarios, so what they do is to transfer the person to other facilities or another department. So, because of that, most people don’t see the reason to go and report and say [they] would rather die with the problem.

The cross-cultural relevance of current theories; how sex-based harassment corrupts management/supervision systems, power and gender inequality; the mutually reinforcing intersections of sex-based harassment and vertical occupational segregation; the harassment and abuse of health system patients and employees should be questions to be dealt with in the HRH/M policy.

The cross-cultural portability of organizational silencing dynamics, such as victim-blaming, retaliation, minimizing, deflection, gaslighting and institutional betrayal, is borne out in this book.

## *Asexuality, Gender and the Law in Uganda*

The cross-cultural portability of power-based theories and the three categories of “sex-based harassment” are also areas of concern. For example, unwanted sexual attention embodied in persistent demands and non-consensual touching in frequent violations of women’s personal and professional spaces Sexualizing talk serves to remind female health workers of their sexual, rather than professional, role (“Words spoken telling you that you are not using your endowment”). Superior and apparently unregulated organizational (management and supervisory) power is widely (ab)used to coerce sexual quid pro quos. As Hearn and Parker suggest, “nor is sexual harassment only a process of subordination and re-subordination of women as workers in a hierarchy. It has to be seen an individual appropriation of women, a male sex right”. Sexual harassment functions as an agent of social control, with the practice of using women’s sexuality to keep women in subordinate positions as key to the way women are treated, at least in male-dominated workplaces. That gender inequality drives sexual harassment is evident in Uganda.

Gender harassment involves “gendered opprobrium” such as “abusive or praising but you are uncomfortable with the comment... In your mind you wonder- Am I stupid? Am I less of a woman?” Female employees also described the denigration of being labeled “ugly” in response to refusal of unwanted sexual attention and coercion. Gender harassment has been described as not aimed at sexual cooperation, “more put down than come on”, though this book reveals Uganda-specific instances of gender harassment that seemed both “come on” and “put down” in the service of unwanted sexual attention and coercion. However, consistent with prior descriptions, gender harassment does appear used to police appropriate ways of “doing gender” i.e., to enforce a feminine gender ideal of compliance that, when advances were resisted or rebuffed, ended in punishment. As a jurist once observed, it is “demeaning and disconcerting” for a worker to “run a

gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living”.

In most workplaces, managers and supervisors were structurally situated to exercise power and to control work-related outcomes such as positive performance evaluations, promotions and opportunity for in-service training. Sexual coercion and blackmail emerge as a workplace pattern where men in higher status positions abuse unregulated organizational power to intimidate and subordinate female employees, and extort sex, throughout the employment.

Rewards and sanctions are levied in these seemingly informal “management” systems where compliance with sexual demands or suffering the penalties were “rules of the game” and where female health employees could expect little professional advancement without being expected to pay for it in sexual “currency”. This suggests that the relationships, rewards and sanctions of formal HR management and supervision systems are corrupted by the abuse of unregulated organizational power. Kabatt-Farr and Crumley remind us that it is the hierarchy of health care that normalizes the power differentials between men and women that enables the harassment that protects superior status and excludes people from full participation in the workforce.

Transferring the perpetrator (“pass the harasser”) or the target of harassment are both administrative dysfunctions in most informal performance management system. Supervisor-supervisee relationships and functions likely lost credibility through routine attempts to coerce sex. It seems reasonable to suppose that these processes directly or indirectly contributed to absenteeism, turnover and attrition the very workforce shortages that dogde the health sector and that have to be addressed.

It has been argued that sexual harassment is not meant to appeal to women it is meant to coerce them. When the target has no choice in the encounter, or has reason to fear the repercussions of refusal, the interaction has moved out of the realm of invitation, courtship or flirtation, and into the realm of

intimidation and aggression. Schultz suggests that, once sex-based harassment is understood as a means of protecting hegemonic masculine work status and identity, “even unwanted sexualized attention becomes visible as a means of putting women down”, i.e., of maintaining subordination. There is also the ongoing difficulties for female employees to progress beyond sexual objectification and subordination and to establish professional credibility under conditions of poorly regulated sexual aggression. These harassing processes not only undermine the goal of retention, but also abridged opportunities for female employees to engage in economically productive work and progress in a career. The mutually reinforcing intersections of sexual harassment and vertical occupational segregation appear to be related discriminations and not independent obstacles experienced by women seeking leadership positions.

Psychological and physical violence and organizational violations in the forms of sexual coercion and blackmail, gender harassment, the dynamics of silencing, retaliation and secondary injury appeared so pervasive in workplaces as to suggest organizational norms and systems. For example, an abuse of power and the corruption of management/supervisory appear normative. The abuse of superior power is also apparent in the “sextortionary” harassment of female clients by clinicians and also suggests normative organizational processes. Such breaches of trust by persons who abuse the social power derived from their positions, and the silence surrounding these processes appear systemic and have relevance for the conceptualizations proper system governance.

### **Sexual predators**

A sexual predator is a person seen as obtaining or trying to obtain sexual contact with another person in a metaphorically “predatory” or abusive



manner. Analogous to how a predator hunts down its prey, so the sexual predator is thought to "hunt" for his or her sex partners. People who commit sex crimes, such as rape or child sexual abuse, are commonly referred to as sexual predators, particularly in tabloid media or as a power phrase by politicians

The term "sexual predator" is often considered distinct from "sex offender". Sexual offender as a person who has committed a sexual offense. The term "sexual predator" is often used to refer to a person who habitually seeks out sexual situations that are deemed exploitative. However, "sexual predator" is applied to anyone who has been convicted of certain crimes, regardless of whether or not there is a history of similar behavior. In the state of Illinois, for instance, a person convicted of any sex crime against a minor is designated a sexual predator, no matter the nature of the crime (violent versus statutory, or perpetrated against a young child versus a teenager), and regardless of past behavior. This has led to criticism that the term is being misused, or overused, and thus has lost its original meaning and effectiveness.

Uganda's Sexual Offenses Bill, 2019 both criminalizes consensual sex acts and would allow some non-consensual acts to go unpunished, Human Rights Watch said today.

Ugandan lawmakers should focus on ending endemic sexual violence rather than seeing this as an opportunity to imbed abusive provisions that criminalize the sex lives of consenting adults,". "Sexual offenses legislation should advance the rights of survivors and potential victims of violence, not enshrine rights violations into law. "The bill includes some positive provisions toward addressing sexual violence, including protecting sexual assault survivors' rights during criminal proceedings and criminalizing sexual harassment by people in positions of authority, Human Rights Watch said. But it also punishes any "sexual act between persons of the same gender," as well as anal sex between people of any gender, with up to 10 years in prison, in flagrant violation of the rights to privacy and non-discrimination. It even provides that if Ugandans perform these sexual acts outside Uganda, they can

## *Asexuality, Gender and the Law in Uganda*

be prosecuted in Uganda. It also includes provisions that discriminate based on HIV status and that could punish those who report crimes and allows for the death penalty for certain offenses. Uganda's penal code already criminalizes consensual same-sex conduct through a provision that punishes "carnal knowledge against the order of nature" with up to life in prison. In 2014, parliament passed the Anti-Homosexuality Act, which further criminalized same-sex acts, restricted freedom of association, and incited discrimination against LGBT people. The Constitutional Court overturned the 2014 Act on the grounds that lawmakers passed the bill without the requisite quorum.

The criminalization of consensual same-sex acts means that LGBT survivors of sexual violence are unlikely to seek access to or obtain justice. In the wake of the passage of the Anti-Homosexuality Act, gay and transgender victims of violence told Human Rights Watch and Amnesty International that they were hesitant to follow up on a police complaint against their assailants out of fear that they themselves could be arrested. Ugandan feminists and human rights activists advocated for a sexual offenses bill that would decriminalize sex work, saying that criminalization fosters violence and limits access to justice. However, parliament rejected their recommendations, maintaining prison sentences for sex workers, clients, and brothel keepers. Human Rights Watch supports the Ugandan activists in opposing the criminalization of consensual adult sex work. Criminalization leads to violations of the rights of and abusive working conditions for those involved and contributes to impunity for those who commit violence against sex workers. Perversely, parliament also limited the requirement for consent to sexual acts by removing a provision that would have clarified that consent may be withdrawn "at any time before or during the performance of the sexual act." Legislation on sexual violence should consider any sexual act that takes place after consent has been withdrawn to be a form of sexual assault, Human

Rights Watch said. The Sexual Offenses Bill includes other provisions that violate rights. The bill prescribes the death sentence for “aggravated rape,” including when rape is committed by a person who is HIV positive. Human Rights Watch opposes the death penalty under all circumstances, as well as any enhanced penalties based on a person’s HIV status. Because the bill provides for extraterritorial jurisdiction, Ugandans who engage in consensual same-gender sexual conduct or anal sex outside Uganda could be prosecuted, irrespective of whether such conduct is legal where it takes place. If this provision is adopted, no country should send a person to Uganda if they could face charges for such offenses in violation of international law. To do so would violate their own obligations under international law of nonrefoulement – the prohibition on returning someone to a country where they could face torture, cruel, inhuman, or degrading treatment or punishment, and other irreparable harm. The bill also provides that anyone who commits these offenses would be entered on a sex offenders register, in effect opening up the possibility of having a “register” of LGBT people or sex workers in Uganda that would not only be discriminatory but ripe for serious abuse. The bill punishes family members who fail to report any offenses under the bill with up to three years in prison, effectively requiring Ugandans to turn in their LGBT relatives. The bill criminalizes “false sexual allegations,” a provision that activists fear could be used against survivors in a legal system that has often disregarded their claims. While the stated purpose of the bill includes preventing sexual offenses, the bill makes no effort to address underlying causes of widespread sexual violence, including gender inequality and the absence of comprehensive sexuality education. It does not address protection and assistance for survivors. An exclusive focus on punitive responses is unlikely to root out sexual violence, Human Rights Watch said. “The Sexual Offenses Bill does not do enough for survivors, conflates consensual sexual acts with violence, and offers tools to persecute LGBT people and sex workers in Uganda,” Segun said. “President Museveni should reject the bill and instruct parliament to present a revised bill that takes a proper rights-respecting approach to addressing sexual violence, so that survivors and the general public can reap the benefits.”

## CHAPTER NINETEEN



### **LGBT AND THE LAW**

Despite differences between the European Convention on Human Rights (ECHR) and the African Charter on Human and Peoples\* Rights (ACHPR) in terms of the substantive rights guaranteed and machineries to enforce them, both instruments have been foundational in the establishment of organizations that share a common history of rejecting human rights complaints from homosexuals. Although the contemporary jurisprudence of the European Court of Human Rights (ECtHR) on homosexuality may contrast sharply with that of the African Court on Human and Peoples' Rights (ACTHPR) and the African Commission on Human and Peoples' Rights (ACMHR) because the ACTHPR and ACMHR have never upheld a complaint relating to sexual orientation – the early history of the ECtHR and the former European Commission on Human Rights (ECMHR) mirrors the current African stance. This article explores what those seeking to develop gay and lesbian rights in Africa might usefully learn from the historical evolution of similar rights under the ECHR.

The issue of homosexuality is certainly controversial. Part of the controversy involves the question of whether people are “born gay.” Despite what has

been frequently touted in the media, there is no conclusive evidence that anyone is born with same-sex desires. There may be genetic factors involved but these do not necessarily determine someone's sexual orientation. The American Psychological Association comments on this issue.

What causes a person to have a particular sexual orientation? There is no consensus among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay or lesbian orientation. Although much research has examined the possible genetic, hormonal, developmental, social and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or factors.

Same-sex sexual activity is prohibited under the Penal Code 1950, which criminalises acts of 'carnal knowledge against the order of nature' and 'gross indecency'. This law carries a maximum penalty of life imprisonment. Both men and women are criminalised under this law.

The law was inherited from the British during the colonial period, in which the English criminal law was imposed upon Uganda. Uganda retained the provision upon independence and continues to criminalise same-sex sexual activity today. In recent years there have been repeated attempts to strengthen laws criminalising LGBT people in Uganda, however none have successfully been implemented long-term.

There is substantial evidence of the law being enforced in recent years, with LGBT people being frequently subject to arrest. Mass arrests often take place, and lead to arbitrary detention, forced anal 'examinations', and other forms of ill treatment, though successful prosecutions under the law appear rare. There have been consistent reports of discrimination and violence being committed against LGBT people in recent years, including murder, assault, harassment, extortion, and the denial of basic rights and services.

## *Asexuality, Gender and the Law in Uganda*

The Ugandan Parliament passed the Sexual Offences Bill, further criminalising same-sex sexual activity and sex work and consolidating a range of other sexual offences. Ostensibly to tackle sexual violence, the Bill received criticism from Ugandan LGBT groups including Sexual Minorities Uganda (SMUG), who stated that the new law would be another tool used to target and arrest LGBT people in the country, as well as being condemned by UN mechanisms and international civil society. In August, President Museveni declined to give assent to the Bill, returning it to Parliament on the basis that many of its provisions duplicate offences already included in the Penal Code. The ultimate fate of the Bill is not yet clear.

In October 2015, it was reported that there were plans to revive the ‘Kill the Gays’ Bill – criminalising the ‘promotion of homosexuality’ and imposing the death penalty for certain offences. Uganda’s former Minister for Ethics and Integrity, Simon Lokodo, asserted that *“Homosexuality is not natural to Ugandans, but there has been a massive recruitment by gay people in schools, and especially among the youth, where they are promoting the falsehood that people are born like that. Our current penal law is limited. It only criminalises the act. We want it made clear that anyone who is even involved in promotion and recruitment has to be criminalised. Those that do grave acts will be given the death sentence.”*

However, Ofwono Opondo, Executive Director of Uganda Media Centre (the Ugandan Government’s public communications body), tweeted once and in a few days later that “Government hereby clarifies that it does not intend to introduce any new law with regards to the regulation of #LGBT activities in Uganda because the current provisions in the #PenalCode are sufficient.” This was re-affirmed by Senior Press Secretary to President Museveni, Don Wanyama, who stated “We have the penal code that already handles issues of unnatural sexual behaviour so there is no law coming up.” These developments came soon after the former Uganda’s Minister for

Security, General Elly Tumwine, labelled the opposition movement (“People Power, Our Power”) “a terrorist organisation”, noting its association “with LGBT... and things that want to break the established order of things”, and the murder of gay rights activist, Wasswa John (known as Brian), who was brutally beaten and stabbed to death by locals.

“We want it made clear that anyone who is even involved in promotion and recruitment has to be criminalised. Those that do grave acts will be given the death sentence.<sup>192</sup> In May, Sexual Minorities Uganda lodged its case with the High Court after the Ugandan Registration Service Bureau refused the organisation’s attempt to formally register its name. In June 2015, Rebecca Kadaga, former Speaker of the Parliament of Uganda, called for the country’s anti-gay laws to be reinstated. She said: “***There is no bill on homosexuality. What we need is a new bill.***”

In April 2015, the *Non-Governmental Organisations Bill 2015* was published in the Ugandan Government Gazette. The Bill proposed to empower the National Board for Non-Governmental Organisations to refuse to register an NGO when “it is in the public interest to do so.” Organisations would be prohibited from operating unless registered with the National Board for NGOs. Clause 40(f) of the Bill would also prohibit NGOs from engaging in “any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda.” These provisions would restrict the activities of NGOs, and in particular those who work in support of LGBT rights. However, the Bill failed to pass in September.

The Ugandan Constitutional Court was on 8 July 2015 due to hear the matter of *Jjuuko Adrian v. Attorney General*, which has been awaiting trial for seven years, but failed to do so. The case concerns a challenge to provisions in Uganda’s *Equal Opportunities Commission Act* of 2007 preventing the

---

<sup>192</sup> Per THE THEN MINISTER FOR ETHICS AND INTEGRITY, SIMON LOKODO, 2019

## *Asexuality, Gender and the Law in Uganda*

Equal Opportunities Commission from investigating cases of LGBT rights abuses.

The Anti-Homosexuality Act (AHA) was signed into law in February 2015. The law expanded the criminalisation of same-sex sexual activity, contravening Uganda's obligations under its Constitution and international law. Read more about the AHA. In April, 30,000 Ugandans gathered at a stadium in Kampala to "give thanks to the President" for passing the Act.

*So, we are saying anybody found committing this incredible and abominable act should be checked and isolated from society. Per SIMON LOKODO, former STATE MINISTER OF ETHICS AND INTEGRITY, 2014*

On 1 August 2014, the Ugandan Constitutional Court struck down the AHA. The Court found that there was an insufficient quorum (the required number of parliamentarians to pass an Act) and thus found the Act unconstitutional. While, UN Secretary-General Ban-Ki Moon welcomed the decision by the Constitutional Court of Uganda to annul the AHA as "a victory for the rule of law", domestic supporters urged the government to reintroduce the Bill. Anglican Archbishop, Stanley Ntagali, said in August "***the 'court of public opinion'*** has clearly indicated its support for the Act, and we urge Parliament to consider voting again on the Bill with the proper quorum in place."

In November 2014, members of Uganda's ruling party circulated a draft of the *Prohibition of Promotion of Unnatural Sexual Practices Bill*, which was intended to replace the annulled AHA by criminalising same-sex acts even further. The Bill was not adopted. Read more about this failed bill.

### **Criminal Provisions**



**Penal Code 1950, Section 145 Unnatural Offences**

Section 145 criminalises ‘carnal knowledge... against the order of nature’, punishable with life imprisonment.

**Penal Code 1950, Section 146 Attempt to Commit Unnatural Offences**

Section 146 criminalises attempts to commit any of the offences prohibited under Section 145, punishable with seven years’ imprisonment.

**Penal Code 1950, Section 148 Indecent Practices**

Section 148 prohibits acts of ‘gross indecency’, punishable with seven years’ imprisonment. The provision is gender-neutral, applicable to acts between men and between women.

**Selected Examples on the Crack Down On Some Personalities**

In 2013 October, 65-year-old British national Bernard Randall was arrested and charged with “trafficking obscene publications”. The arrest and charges arose out of an attempted blackmail plot, after Randall’s laptop was stolen and material published in a newspaper. On 22 January 2014, the charges were dropped, and the Court ordered his immediate deportation. Randall’s 30-year-old Ugandan partner, Albert Cheptoyek, was also arrested and charged with gross indecency.

In 2014 the Police raided the premises of Steven Dhont, a Belgian national, and his Kenyan friend at midnight while they were watching television in January. Both were charged and compelled to undergo anal examinations. The following day, they were paraded in public before the media.

## *Asexuality, Gender and the Law in Uganda*

In February 2014, NTV Uganda reported that two men suspected of engaging in homosexual acts were arrested in Oyam in the Northern Region of Uganda.

A report in May 2014 noted 17 arrests since the passage of the AHA. This compares with just one such case reported to them in 2013 and none in 2012. Between 2007 and 2011, there were 23 reported arrests, none of which resulted in prosecute

After the AHA came into effect, the government ordered the suspension of the Refugee Law Project (RLP), a legal aid organisation based at Kampala's Makerere University School of Law that provided services to refugees across Uganda, including victims of gender-based and sexual violence. Despite the nullification of the AHA by the Constitutional Court, the responsible minister refused to lift the RLP's suspension.

In October 2014, a Ugandan court dismissed charges against a man and a trans woman arrested in January 2014. The defendants' lawyer said the case was dismissed because the prosecution failed to produce any witnesses.

The US Department of State report on Uganda noted that: "Local LGBT-related NGOs were denied official status due to the discriminatory law preventing their registration."

In January 2014, a trans-woman was attacked by a mob on her way home from a gay-friendly bar. The mob humiliated her, beat her up and undressed her to check her sex in front of media. Police intervened and detained and charged her with vagrancy.

In April 2014, activists in Uganda reported at least 17 LGBT people had attempted suicide due to the AHA.

*Isaac Christopher Lubogo*

Ugandan officials raided a US military affiliated research institute at Makerere University in April, reportedly on account of the institute's work with the LGBT community.

A report released by Makerere University's Refugee Law Project in April found that the AHA not only reinforced homophobia but also heightened xenophobia.

A report by Sexual Minorities Uganda in May found 162 reported cases of discrimination following the passage of the AHA, with over 30% including an element of violence; 41% involving an element of intimidation; 50% involving a loss of property or an eviction or loss of home; and 25% involving family rejection, asylum or suicide.

A joint press release from Amnesty International and Human Rights Watch in May stated that "LGBTI people in Uganda have reported a surge in human rights violations since the passage of the Anti-Homosexuality Act."

In November 2014, Ugandan LGBT activist Kelly Mukwano was hospitalised after an attack by a homophobic mob in Kampala.

In 2015 A report released in February by Chapter Four Uganda detailed 25 instances of forced anal 'examinations' carried out by doctors in cases related to same-sex activity between men.

A report released in July 2014 by the Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation documented 89 cases of LGBT rights violations in Uganda in 2014. Of these, 47 were carried out by state actors and 42 by non-state actors.

In July 2014, a Channel 4 documentary covered the story of two gay men who were arrested in January 2014 after they were thrown out of their house and beaten by the local residents. They were subjected to forced HIV examinations and one of them had an anal 'examination performed' on him. Both were paraded before the media. Although the charges against them were

## *Asexuality, Gender and the Law in Uganda*

dismissed in October 2014, they suffered homophobic attacks from fellow inmates and are now struggling to make a living.

In 2015 January, police reportedly arrested nine men under Uganda's anti-gay laws. Reports indicate the men were subject to forced anal examinations while in police custody.

In September 2015, an ex-football manager was convicted by a chief magistrate's court for forceful same-sex sexual act, but at the same time was acquitted for sex with another male because that involved consensual same-sex sexual activity. However, according to the HRAPF the accused was not acquitted on the second count because the sex was consensual, but because the Magistrate concluded that evidence from his consensual sex partner could not be trusted. He even suggested that the partner could also have been prosecuted for willingly violating a law against same-sex relations

In 2017 The US Department of State report stated that the authorities enforced the law during the year. The report further noted that the Human Rights Awareness and Promotion Forum (HRAPF) reported 14 cases of police arresting persons on suspicion of being LGBT.

In August 2017, the Ugandan government cancelled a week of gay pride celebrations in the country for the second year. Minister for Ethics and Integrity, Simon Lokodo, accused pride organisers of attempting to stage an illegal gathering aimed at recruitment, exhibition and promotion of homosexuality.

In December 2017, police stormed Uganda's only gay and lesbian film festival and forced its organisers to shut it down.

*No gay gathering and promotion can be allowed in Uganda. We can't tolerate it at all. We know they are trying to recruit and promote homosexuality secretly.*

*But it's worse to attempt to stand and exhibit it in public arena. This is totally unacceptable. Never in Uganda.*<sup>193</sup>

In 2019, On 21 October, 16 LGBT activists were arrested on suspicion of engaging in same-sex sexual activity in what fellow activists called an escalating campaign against sexual minorities. The 16 men, believed to be aged between 22 and 35, were arrested at the office of a sexual health charity (Let's Walk Uganda) where they all worked and lived. On 24 October, police spokesperson Patrick Onyango indicated that officers had found lubricants, condoms and antiretroviral drugs at the charity, and had conducted medical examinations on all 16 people. "Based on the medical examination report, it was established that the suspects were involved in sexual acts punishable under the penal code," he said.

Uganda activist Frank Mugisha noted that mass arrests were a new phenomenon in Uganda, reporting that the 16 individuals were held by police for over 48 hours and forced to undergo anal 'examinations. All 16 activists were initially taken into "protective custody" after a crowd yelling homophobic slurs surrounded their office, rights groups said. Police said the group was detained after they were alerted to "illegal activities" by the community. They were reportedly released on bail until 5th November.

On 10 November 2019, police raided LGBT-friendly 'RAM Bar' in Kampala, arresting 127 people. Local media reported that they were dragged out of the venue and thrown into police vehicles. One of those detained by the police was able to call her brother, who works for the police and indicated that the raid had been to target LGBT people, despite police claims that it related to their use of shisha. Local LGBT rights organisations similarly suggested that this raid was targeting the LGBT community. Of those arrested, 67 were reportedly charged with nuisance offences.

---

<sup>193</sup> MINISTER FOR ETHICS AND INTEGRITY, SIMON LOKODO, 2017

## *Asexuality, Gender and the Law in Uganda*

Not forgetting, In August, Dr Ben Kiwanuka Mukwaya reportedly cracked a lesbian woman's skull with an iron bar and inflicted other serious injuries. In October, the Minister of Health, Dr Jane Aceng, reported Dr Mukwaya to the Uganda Medical and Dental Practitioners Council (UMDPC) over allegations that he assaulted a patient at his private health facility. Dr Mukwaya is a member of the UMDPC and sits on the board. The Minister said: "It is the policy of Ministry of Health that all patients should be able to seek medical treatment without fear of discrimination, violence, personal vengeance or retaliation... We also strongly condemn assault and violence against any individual and appeal to the public to report any such incidents to the relevant authorities."

Also in August, group of motorcycle taxi drivers beat to death a young trans woman, Fahad Ssemugooma Kawere.

In the aftermath of the Minister for Ethics and Integrity, Simon Lokodo's statement indicating a revived 'Kill the Gays' Bill, LGBT activists reported a surge in hate crimes. Executive Director of Sexual Minorities Uganda, Frank Mugisha, observed that "what we are seeing recently – these continuous attacks over such a short space of time – is not normal." On 13 October 2019, two transgender women were beaten when they were leaving a nightclub. Also in October, gay rights activist, Wasswa John (known as Brian), was brutally beaten and stabbed to death by locals. On 20 October 2019, unidentified assailants attacked a gay Rwandan refugee, inflicting blows to the head.

In 2020 The US Department of State report noted that the law is occasionally enforced. This included at least two raids of civil society meetings in which LGBT people were arrested, ostensibly for breaching COVID-19 regulations.

In May, 44 2021 people were arrested under the guise of violating COVID-19 regulations for attending a gathering in a shelter, which the police claimed

was a same-sex marriage. Forty-two people were charged under section 171 of the Penal Code, which criminalises acts “likely to spread infection of disease”. At least 17 of the accused were subjected to forced anal examinations despite the fact that there were no charges under anti-LGBT laws, and were transferred to a prison where they were held in unsafe conditions. On 4 June the detainees were granted bail and were later released.

## **Uganda Legal Provison**

### **1. Penal Code 1950, Section 145 Unnatural Offences**

“Any person who— (a) has carnal knowledge of any person against the order of nature; (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.” Full text.

### **2. Penal Code 1950, Section 146 Attempt to Commit Unnatural Offences**

“Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.” Full text.

### **3. Penal Code 1950, Section 148 Indecent Practices**

“Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.” Both male and female homosexual activity is illegal in Uganda. Under the Penal Code, “carnal knowledge against the order of nature” between two males carries a potential penalty of life imprisonment.

The *Uganda Anti-Homosexuality Act, 2014* was passed in 2013 and annulled in 2014. The Act carried a punishment of life in prison for “aggravated

## *Asexuality, Gender and the Law in Uganda*

homosexuality".<sup>194</sup> The law brought Uganda into the international spotlight, and caused international outrage, with many governments refusing to provide further aid to Uganda.

LGBT people continue to face major discrimination in Uganda, actively encouraged by political and religious leaders. Violent and brutal attacks against LGBT people are common, often performed by state officials. Households headed by same-sex couples are not eligible for the same legal protections available to opposite-sex couples. Same-sex marriage has been constitutionally banned since 2005.

### **Homosexuality in Ancient Uganda**

Homosexual relations were accepted and commonplace in pre-colonial Ugandan society. The British Empire introduced laws punishing homosexuality when Uganda became a British colony. These laws were kept after independence.<sup>194</sup> In May 2021, the outgoing parliament passed further criminalization laws on both sex work and gay sex.<sup>195</sup>

---

<sup>194</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>195</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)





King Mwanga II of Buganda (ruled 1884-1888 & 1889–1897) kept many male and female servants with whom he is allegedly to have had sexual relations<sup>196</sup>.

Similarly to neighbouring Kenya, Rwanda and Burundi, male homosexual relations were quite common in pre-colonial Ugandan society. Among the Baganda, Uganda's largest ethnic group, homosexuality was usually treated with indifference. King Mwanga II of Buganda was famously bisexual, known to have regular sexual relations with women, having had a total of 16 wives, as well as his male subjects whom he abused without their consent. During his reign, he increasingly regarded the Christian missionaries and the European colonial powers, notably the British, as threats<sup>197</sup>

---

<sup>196</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>197</sup> Tamale Sylvia (2003) out of the closet unveiling sexuality discourses in Uganda

## *Asexuality, Gender and the Law in Uganda*

Mwanga II took a more aggressive approach than other African leaders, choosing to expel all missionaries and insist that Christian and Muslim converts abandon their faith or face death.

The Luganda term *abasiyazi* refers to homosexuals, though usage nowadays is commonly pejorative. The Baganda were not the only ethnic group known to engage in homosexual acts. Among the Lango people, *mudoko dako* individuals were believed to form a "third gender" alongside male and female. The *mudoko dako* were effeminate men, mostly treated by Langi society as women and could marry other men without social sanctions.<sup>198</sup> Homosexuality was also acknowledged among the Teso, Bahima, Banyoro, and Karamojong peoples.<sup>199</sup> Societal acceptance disappeared after the arrival of the British and the creation of the Uganda Protectorate.<sup>200</sup> Presently, there is widespread denial that homosexuality was practised before colonisation. Furthermore, the false belief that homosexuality is "un-African" or "Western" is quite prevalent in Ugandan society.<sup>201</sup> The term *kuchu*, of Swahili origin, is increasingly used by the Ugandan LGBT community. A documentary film, *Call Me Kuchu*, was released in 2012, focusing in part on the 2011 murder of LGBT activist David Kato

Laws prohibiting same-sex sexual acts were first put in place under British colonial rule in the 19th century. Those laws were enshrined in the *Penal Code Act 1950* and retained following independence. The following sections of that Act are relevant:

---

<sup>198</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>199</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>200</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>201</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

**Section 145. Unnatural offences.** Any person who

(a) has carnal knowledge of any person against the order of nature; [or]

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

commits an offence and is liable to imprisonment for life.<sup>202</sup>

**Section 146. Attempt to commit unnatural offences.** Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.<sup>203</sup>

**Section 148. Indecent practices.** Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.<sup>204</sup>

Before the *Penal Code Amendment (Gender References) Act 2000* was enacted, only same-sex acts between men were criminalized. In 2000, that Act was passed and changed references to "any male" to "any person" so that grossly indecent acts between women were criminalized as well, and are now punishable by up to seven years imprisonment. The Act also extended this criminalizing such acts to both homosexuals and heterosexuals. This effectively outlawed both oral sex and anal sex, regardless of sexual orientation, under the Penal Code.<sup>205</sup>

---

<sup>202</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>203</sup> *ibid*

<sup>204</sup> *ibid*

<sup>205</sup> *ibid*

### **Anti-Homosexuality Act**

On 13 October 2009, Member of Parliament David Bahati introduced the Anti-Homosexuality Act, 2009, which would broaden the criminalization of same-sex relationships in Uganda and introduce the death penalty for serial offenders, HIV-positive people who engage in sexual activity with people of the same sex, and persons who engage in same-sex sexual acts with people under 18 years of age. Individuals or companies that promote LGBT rights would be fined or imprisoned, or both. Persons "in authority" would be required to report any offence under the Act within 24 hours or face up to three years' imprisonment.

In November 2012, Parliament Speaker Rebecca Kadaga promised to pass a revised anti-homosexuality law in December 2012. "Ugandans want that law as a Christmas gift. They have asked for it, and we'll give them that gift."<sup>[14][15]</sup> The Parliament, however, adjourned in December 2012 without acting on the bill.<sup>[16]</sup> The bill passed on 17 December 2013 with a punishment of life in prison instead of the death penalty for "aggravated homosexuality",<sup>[1]</sup> and the new law was promulgated in February 2014.<sup>206</sup>

In June 2014, in response to the passing of this Act, the American State Department announced several sanctions, including, among others, cuts to funding, blocking certain Ugandan officials from entering the country, cancelling aviation exercises in Uganda and supporting Ugandan LGBT NGOs.<sup>207</sup> In August 2014, Uganda's Constitutional Court annulled this law on a technicality because not enough lawmakers were present to vote.<sup>[17]</sup>

---

<sup>206</sup> [http://en.wikipedia.org/wiki/Lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/Lgbt_in_Uganda)

<sup>207</sup> [http://en.wikipedia.org/wiki/Lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/Lgbt_in_Uganda)

## Constitutional provisions

Article 21 of the 1995 Ugandan Constitution as amended, "Equality and freedom from discrimination", guarantees protection against discriminatory legislation for all citizens. It may be that because existing criminal law addresses sodomy (oral and anal sex), and applies to all genders, that it may not be in violation of Article 21, unlike the *Anti-Homosexuality Act*.<sup>208</sup> On 22 December 2008, the Ugandan High Court ruled that Articles 23, 24, and 27 of the Uganda Constitution apply to all people, regardless of their sexual orientation or gender identity or expression. Article 23 states that "No person shall be deprived of personal liberty." Article 24 states that "No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment." Article 27 states that "No person shall be subjected to: (a) unlawful search of the person, home or other property of that person; or (b) unlawful entry by others of the premises of that person or property. No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property."<sup>209</sup> In November 2016, the Constitutional Court of Uganda ruled that a provision in the *Equal Opportunities Commission Act* was unconstitutional. This provision effectively barred the commission from investigating "any matter involving behaviour which is considered to be immoral and socially harmful, or unacceptable by the majority of the cultural and social communities in Uganda." The court ruled that the section breaches the right to a fair hearing and as well as the rights of minorities, as guaranteed in the Constitution.<sup>210</sup>

The court also ruled that Uganda's Parliament cannot create a class of "social misfits who are referred to as immoral, harmful and unacceptable" and cannot legislate the discrimination of such persons.<sup>211</sup> Following the ruling, Maria Burnett, Human Rights Watch Associate Director for East Africa,

---

<sup>208</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>209</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>210</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>211</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

said: "Because of their work, all Ugandans should now be able to bring cases of discrimination – against their employers who fired or harassed them, or landlords who kicked them out of their homes – and finally receive a fair hearing before the commission."

## **Recognition of same-sex relationships**

On 29 September 2005, President Yoweri Museveni signed a constitutional amendment prohibiting same-sex marriage.<sup>212</sup> Clause 2 a of Section 31 states: "Marriage between persons of the same sex is prohibited."<sup>213</sup>

## **Recognition of transgender identity**

In October 2021, trans woman Cleopatra Kambuğu Kentaro was issued new ID identifying her as female. She is the first Ugandan to have a change of gender legally recognized<sup>214</sup>

## **Further 2021 criminalization laws**

In May 2021, the outgoing parliament passed a bill further criminalizing sex work and gay sex in the final days of its last session. However, the incoming government has stated that it will not grant assent to the bill, meaning that it will not become law.<sup>215</sup> On 29 July 2021, however, petitions by gay and human rights activists arose to President Museveni not to sign another bill

---

<sup>212</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>213</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>214</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>215</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

into law, which would further criminalize gay sex, stating that it could increase violent attacks even to people suspected of being gay.

## **Living conditions**

In 2004, the Uganda Broadcasting Council fined Radio Simba over \$1,000 and forced it to issue a public apology after hosting homosexuals on a live talk show. The council's chairman, Godfrey Mutabazi, said the programme "is contrary to public morality and is not in compliance with the existing law". Information Minister Nsaba Buturo said the measure reflected Ugandans' wish to uphold "God's moral values" and "We are not going to give them the opportunity to recruit others."<sup>[29]</sup> In 2005, Human Rights Watch reported on Uganda's abstinence until marriage programs. "By definition, ... [they] discriminate on the basis of sexual orientation. For young people who are lesbian, gay, bisexual, or transgender ... and cannot legally marry in Uganda ..., these messages imply, wrongly, that there is no safe way for them to have sex. They deny these people information that could save their lives. They also convey a message about the intrinsic wrongfulness of homosexual conduct that reinforces existing social stigma and prejudice to potentially devastating effect."<sup>216</sup>

In June 2012, the Ugandan Government announced the ban of 38 non-governmental organizations (NGO) it accused of "promoting homosexuality" and "undermining the national culture". Simon Lokodo, the country's then Minister of Ethics and Integrity, claimed the NGOs were "receiving support from abroad for Uganda's homosexuals and 'recruiting' young children into homosexuality." He also said that "they are encouraging homosexuality as if it is the best form of sexual behaviour."<sup>1</sup> That same month, Lokodo ordered Ugandan police to break-up an LGBT rights workshop in Kampala. Later in the month, the Ugandan Government,

---

<sup>216</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

## *Asexuality, Gender and the Law in Uganda*

in an apparent rebuke of Lokodo, announced that it will no longer attempt to break up meetings of LGBT rights groups.<sup>217</sup>

The U.S. Department of State's 2011 human rights report found that:<sup>218</sup> LGBT persons faced discrimination and legal restrictions. It is illegal to engage in homosexual acts.... While no persons were convicted under the law [in 2011], the government arrested persons for related offenses. For example, in July police arrested an individual for "attempting" to engage in homosexual activities. On July 15, [2011,] a court in Entebbe charged him with "indecent practices" and released him on bail. Hearing of the case was pending at year's end. LGBT persons were subject to societal harassment, discrimination, intimidation, and threats to their well-being [in 2011] and were denied access to health services. Discriminatory practices also prevented local LGBT NGOs from registering with the NGO Board and obtaining official NGO status....

On January 26, [2011,] LGBT activist David Kato, who had successfully sued the local tabloid discussed above for the 2010 publication of his picture under the headline "Hang Them," was bludgeoned to death at his home outside Kampala. On February 2, police arrested Sidney Enock Nsubuga for Kato's murder. On November 9, Nsubuga pled guilty and was sentenced to 30 years' imprisonment. On October 3, [2011,] the Constitutional Court heard oral arguments on a 2009 petition filed by a local human rights and LGBT activists challenging the constitutionality of Section 15(6)(d) of the Equal Opportunities Commission Act. Section 15(6)(d) prevents the Equal Opportunities Commission from investigating "any matter involving behavior which is considered to be (i) immoral and socially harmful, or (ii) unacceptable by the majority of the cultural and social communities in Uganda."

---

<sup>217</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>218</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)



The petitioner argued that this clause is discriminatory and violates the constitutional rights of minority populations. A decision was pending at year's end. A 2018 article in *African Health Sciences* said that Uganda's high HIV rate has "roots" in Uganda's stigma against same-sex sexual behavior and sex work.<sup>219</sup> In June 2021, a raid on the Happy Family Youth Shelter in Kampala resulted in forty-four arrests, police claiming that an illegal same-sex wedding was being held and that the participants were "doing a negligent act likely to spread infection of disease." Several of the detainees then alleged that police performed invasive anal examinations on them. Thirty-nine of the 44 were released on bail after several days in detention, with the trial scheduled for 8 July.

## **Violence and harassment**

Vigilante attacks, including harassment, beatings and murder occur. Both state and non-state actors are involved in targeting those perceived as LGBT. However, the United States Department of State considers that mob violence is prevalent in many circumstances in Uganda.<sup>[a]</sup>

It is directed at a range of socially disapproved individuals for actual or perceived wrongdoing, due, in the view of the State Department's report, to the community's lack of confidence in the police and judiciary.<sup>220</sup> Extra-judicial police actions against LGBT individuals, such as arbitrary detention, beatings and psychological coercion, meet the United Nations criteria for torture.

## **Outings by newspapers**

---

<sup>219</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>220</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

## *Asexuality, Gender and the Law in Uganda*

In August 2006, a Ugandan newspaper, *The Red Pepper*, published a list of the first names and professions (or areas of work) of 45 allegedly gay men.<sup>[39]</sup>

In October 2010, the tabloid paper *Rolling Stone* published the full names, addresses, photographs, and preferred social-hangouts of 100 allegedly gay and lesbian Ugandans, accompanied by a call for their execution. David Kato, Kasha Jacqueline, and Pepe Julian Onziema, all members of the Civil Society Coalition On Human Rights and Constitutional Law, filed suit against the tabloid. A High Court judge in January 2011 issued a permanent injunction preventing *Rolling Stone* and its managing editor Giles Muhame from "any further publications of the identities of the persons and homes of the applicants and homosexuals generally".<sup>221</sup>

The court further awarded US\$1.5 million/= plus court costs to each of the plaintiffs. The judge ruled that the outing, and the accompanying incitation to violence, threatened the subjects' fundamental rights and freedoms, attacked their right to human dignity, and violated their constitutional right to privacy. Kato was murdered in 2011, shortly after winning the lawsuit.<sup>222</sup>

### **LGBT rights activism**

Despite the criminal laws and prevailing attitudes, the Government has not expressly banned Uganda residents from trying to change public policies and attitudes with regards to LGBT people.

The climate in Uganda is hostile to homosexuals; many political leaders have used openly anti-gay rhetoric, and have said that homosexuality is "akin to bestiality", was "brought to Uganda by white people" and is "un-

---

<sup>221</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>222</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

African". Simon Lokodo, Minister for Ethics and Integrity, is known by Ugandan LGBT activists as "the country's main homophobe", has suggested that rape is more morally acceptable than consensual sex between people of the same sex, has accompanied violent police raids on LGBT events and actively suppresses freedom of speech and of assembly for LGBT people.<sup>223</sup>

Uganda's main LGBT rights organization is Sexual Minorities Uganda, founded in 2004 by Victor Mukasa and has been allowed to conduct its activities without much government interference. Frank Mugisha is the executive director and the winner of both the 2011 Robert F. Kennedy Human Rights Award and the 2011 Rafto Prize for his work on behalf of LGBT rights in Uganda.

In late 2014, LGBT Ugandans published the first instalment of Bombastic Magazine and launched the online platform Kuchu Times. These actions have been dubbed as a "Reclaiming the Media Campaign" by distinguished activist Kasha Jacqueline Nabagesera. She was awarded the Martin Ennals Award for Human Rights Defenders in 2011<sup>224</sup>

Former Prime Minister Amama Mbabazi is the first Ugandan presidential candidate to openly oppose homophobia.<sup>225</sup> He ran in the 2016 presidential election and came third.

In August 2016, an LGBT event was brutally interrupted by police officers who violently attacked and beat the people present at the event, eventually arresting 16 August 2017<sup>226</sup>, the organisers of Pride Uganda had to cancel the event after threats of arrest by the police and the Government.

In November 2017, several police officers from the Kampala Metropolitan Police Area were ordered by police headquarters to attend a workshop on

---

<sup>223</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>224</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>225</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>226</sup> [http://en.wikipedia.org/wiki/lgbt in Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

LGBT rights. A police spokesperson said: "What the training is aimed at, is to teach our field officers to appreciate that minorities have rights that should be respected."<sup>[46]</sup> In October 2019, 28-year-old Ugandan LGBT activist Brian Wasswa was beaten to death in his own home.

## **Public opinion**

A 2007 Pew Global Attitudes Project poll found that 96 percent of Ugandan residents believed that homosexuality is a way of life that society should not accept, which was the fifth-highest rate of non-acceptance in the 45 countries surveyed.<sup>227</sup> A poll conducted in 2010, however, revealed that 11 percent of Ugandans viewed homosexual behavior as being morally acceptable. Among other members of the East African Community, only 1 percent in Tanzania, 4 percent in Rwanda, and 1 percent in Kenya had the same view.<sup>[49]</sup>

A 2013 Pew Research Center opinion survey showed that 96% of Ugandans believed homosexuality should not be accepted by society, while 4% believed it should.<sup>228</sup> Older people were more accepting than younger people: 3% of people between 18 and 29 believed it should be accepted, 2% of people between 30 and 49 and 7% of people over 50. In May 2015, Planet Romeo, an LGBT social network, published its first Gay Happiness Index (GHI). Gay men from over 120 countries were asked about how they feel about society's view on homosexuality, how do they experience the way they are treated by other people and how satisfied are they with their lives. Uganda was ranked last with a GHI score of 20.<sup>229</sup>

---

<sup>227</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>228</sup> [http://en.wikipedia.org/wiki/lgbt\\_in\\_Uganda](http://en.wikipedia.org/wiki/lgbt_in_Uganda)

<sup>229</sup> *ibid*

A poll carried out by ILGA found attitudes towards LGBT people had significantly changed by 2017: 59% of Ugandans agreed that gay, lesbian and bisexual people should enjoy the same rights as straight people, while 41% disagreed. Additionally, 56% agreed that they should be protected from workplace discrimination. 54% of Ugandans, however, said that people who are in same-sex relationships should be charged as criminals, while 34% disagreed. As for transgender people, 60% agreed that they should have the same rights, 62% believed they should be protected from employment discrimination and 53% believed they should be allowed to change their legal gender.<sup>230</sup> Additionally, according to that same poll, a third of Ugandans would try to "change" a neighbour's sexual orientation if they discovered they were gay.

On October 4, 2019, Ugandan LGBTQ human rights activist Brian Wasswa was found fatally wounded and lying in a pool of his own blood, representing the latest casualty in the cultural war against homosexuality in Uganda. Uganda was not always the extremely homophobic country it has transformed into. It first gained international notoriety in 2009 when David Bahati, a member of the Ugandan parliament whose views were heavily influenced by American evangelicals, introduced the now infamous "Kill the Gays" bill. Under the guise of "protecting the traditional family," the bill advocated for the death penalty for "aggravated homosexuality" and the imprisonment of anyone "promoting" or failing to report homosexuality. Supporters of the bill equated homosexuality with pedophilia, insinuating that gay adults groomed vulnerable children into homosexuality. Although the death penalty was dropped from the 2009 version, the bill was still signed into law in 2014 as the Anti-Homosexuality Act. Six months later, and after widespread international pressure, the Ugandan Constitutional Court ruled the Anti-Homosexuality Act invalid on procedural grounds. However, even though the law itself fell, the spirit lived on, as the bill had enjoyed wide-

---

<sup>230</sup> *ibid*

## *Asexuality, Gender and the Law in Uganda*

spread support in Uganda, where 93 percent of Ugandans were opposed to homosexuality.

For Christian fundamentalists, Uganda an impoverished country recovering from years of corruption and violence provided a blank canvas to project their missionary zeal and strong homophobia. American fundamentalist missionaries were on a mission to save God-fearing Ugandans from the evil Western “gay agenda.” They found willing servants in opportunistic politicians and Ugandan religious leaders who argued that homosexuality was “un-African” and a Western export. But as Ugandan scholar Dr. Sylvia Tamale observes, “it is not homosexuality that is un-African but the laws that criminalized such relations...what is alien to the continent is legalized homophobia, exported to Africa by the imperialists where there had been indifference to and even tolerance of same-sex relations.”

Uganda is not unique in its criminalization of homosexuality. Over seventy countries still criminalize homosexuality, and Uganda is among thirty-two countries in Sub-Saharan Africa that still criminalize homosexuality. But Uganda is among the worst of these countries. It ranked an “F” or “Persecuting,” a failing grade on the F&M Global Barometer of Gay Rights™ (GBGR). The GBGR measures the extent to which countries are human rights protective or persecuting towards sexual minorities, ranking countries on a scale from “A” to “F.” Uganda scores a mere 11 percent, sharing this dubious distinction with The Gambia, South Sudan, and Tanzania.

Uganda continues to be ground zero in the cultural wars over homosexuality. On the heels of Wasswa’s murder, the recent threat of reintroducing the “Kill the Gays” bill from member of Parliament (MP) James Buturo and other MPs, and the arrests of over one hundred suspected homosexuals at an LGBTQ friendly bar, catapulted Uganda back into the international

spotlight, signaling an escalation of violence and repression toward the Ugandan LGBTQ community. In response to international pressure, the president's office denied that the bill will be re-introduced. But statements by high-level officials in the Ugandan government, such as Ugandan Minister for Security General Elly Tumwine, who claimed that LGBTQ people are connected to terrorism, continue to put the LGBTQ community at risk.

LGBTQ Ugandans have courageously refused to stay silent and continued to fight for their human rights. Clearly, the LGBTQ community became a pawn in the political process and a scapegoat for the ills facing Ugandan society. Stemming homophobia in Uganda will be difficult; it is fully entrenched in Ugandan society and politics and is an easy way of unifying an otherwise ethnically and politically divided population. That is why a sustained, multi-pronged approach is needed to move forward.

The most important first step is challenging the narrative that homophobic politicians, religious leaders, and outsiders have crafted. This is not about the West exporting homosexuality to Africa or a "gay agenda"; it is instead about right-wing Christian evangelicals from the West using homophobia as a tool to establish a foothold in the African continent, and local Ugandan politicians and "men of the cloth" profiting from this narrative. Religion has been hijacked to demonize and persecute LGBT minorities. Ugandan society has been poisoned by this exported homophobia and deliberate misinformation. There should be real consequences for this deadly promotion of hatred and bigotry. Individuals like Scott Lively, who campaigned for the repression of LGBT groups in Uganda, must be held accountable for their actions. Politicians such as David Bahati and religious leaders like Pastor Martin Ssempe and Pastor Robert Kayanja should not be granted visas to visit countries that adhere to international human rights standards. The passage of the Greater Leadership Overseas for the Benefit of Equality (GLOBE Act) would be a start. This ACT would restrict entry into the United States for anyone who commits abuse or murder against LGBTQ

## *Asexuality, Gender and the Law in Uganda*

people. This should also be extended to members of government who promote or support the persecution of LGBTQ individuals.

To effect real change, this cannot be the work of a single government. Although US security and development aid to Uganda alone is \$970 million, as Ugandan President Yoweri Museveni has made clear, “no one should think of using aid to dominate us.” The recent very public disagreement between the US envoy to Zambia and the Zambian government over the sentencing of two Zambian gay men to fifteen years in prison is a case in point. Coalitions such as the Equal Rights Coalition, comprised of forty-two countries and over thirty international non-governmental organizations, provide an important pressure on human rights persecuting countries like Uganda.

Similarly, as UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein stated, businesses must become “active agents of change.” The UN Standards of Conduct for Business for Tackling Discrimination against LGBTI People encourages businesses to challenge abusive government action through public advocacy, collective action, and social dialogue. Museveni himself acknowledged the impact that a trade or consumer boycott would have on Uganda.

Furthermore, courageous leaders like Botswana’s president, who came out supporting the human rights of LGBTQ individuals, need to be supported. Bobi Wine, Former member of Parliament Kyadondo East, the charismatic “Ghetto President” musician and politician running for president in Uganda, shows some hope for Ugandans. He was initially against homosexuality but has since evolved in his stance, and recently stated that he “does not agree with homosexuals, but respects their rights.” And I must add so do I as a burgeoning legal scholar.

It will take generations to reverse the harm that has been done to Ugandan society. LGBTQ human rights in Uganda are not a lost cause, but they will



require a concerted, sustained effort by the international community and brave Ugandans to undo the damage. The international community must maintain pressure on the Ugandan government to adhere to international human rights standards, and keep the spotlight on Ugandan society. Those courageous enough to stand up to bigotry and hatred must have the support of the international community. The sovereignty of all countries must be respected; however, when a government or society deliberately tramples on the human rights of its most vulnerable minorities, the international community must react. LGBTQ people deserve the same basic human rights as everyone else irrespective of their sexual orientation or gender identity; to treat them otherwise is to violate established international human rights law. This is not just a Ugandan LGBTQ human rights issue it is *the* human rights issue of the twenty-first century.<sup>231</sup>

The Sexual Offenses Bill seeks to address a wide range of issues from rape to prostitution. But gay rights activists fear the new law amounts to a backdoor reintroduction of the discredited 2013 Anti-Homosexuality Bill.

The Ugandan Parliament passed the Sexual Offenses Bill, which contains a clause to criminalize same-sex relationships. The bill prescribes a five-year-jail term for anyone guilty of same-sex acts, and awaits the signature of President Yoweri Museveni. For many, the bill sounds like a repeat of a similar law passed in the Ugandan parliament in 2013, which, however, was annulled by the country's Supreme Court based on technicalities.

## **The new bill explained**

---

<sup>231</sup> Susan Dicklitch-Nelson is Professor of Government at Franklin & Marshall College and co-creator of the F&M Global Barometer of Gay Rights® & the F&M Global Barometer of Transgender Rights. She is the author of *The Elusive Promise of NGOs in Africa: Lessons from Uganda*, and of numerous scholarly articles on human rights.

The focus of the new bill is to primarily clamp down on sexual violence in general, increasing punishments for sexual offenders while also boosting the protection of victims during sexual offense trials. The overarching objective of the new piece of legislation is to provide for a broader application of the law while repealing some provisions of the Penal Code Act.

According to Jacob Oboth-Oboth, chairperson of the Legal and Parliamentary Affairs Committee, the bill first and foremost aims to introduce articles pertaining to "post-penetration" consent, which relates to cases in which a person initially engaging in consensual sexual intercourse may change his or her mind and withdraw consent.

Oboth-Oboth said that the new bill "protects victims of sexual violence both within and out of marriages," and Pamela Nasiyo Kamugo, chairperson of Uganda's Women Parliamentary Association (UWOPA), described the bill as a positive move because "it gives women the right to withdraw consent and discontinue sex upon the realization that the man may not be protected."

### **Lawmaker finds homosexuality 'contrary to the order of nature**

The types of sexual offense cited in the bill, however, include a rather long list of criminalized acts: rape, aggravated rape, sexual assault, indecent communication, sexual harassment, detention with sexual intent, sexual acts with a person in custody, sexual exploitation, defilement, aggravated defilement, procuring defilement, sexual offenses by children, households permitting defilement, supply of sexual content and material to a child, child prostitution, child sex tourism, sexual act in presence of a child, marriage involving children and so-called "unnatural offences." It is indeed the latter element that has gays and lesbians in Uganda worried, and has plunged the country into a fresh debate on the issue. While presenting the bill before

parliament, Oboth-Oboth was categorical in his classification of homosexuality as an "unnatural act" that ought to be outlawed.

"A person who performs a sexual act with another person contrary to the order of nature, performs a sexual act with a person of the same gender, a person who attempts to commit an unnatural offense, commits a felony is liable on conviction for imprisonment for five years," Oboth-Oboth argued before parliament — a view that is apparently echoed by many Ugandans.

Isaac Lubulwa, an administrative assistant, told DW that the introduction of such laws, in his view, was long overdue. "Banning homosexuals should have happened in Uganda like a century ago. This is Africa. Therefore, homosexuality is immoral, it is not religious, and it is not natural. Men should marry women and women should be married to men," Lubulwa said.

Elementary school teacher Rose Bukirwa expressed her support for the bill but fell short of indicating whether the element prohibiting same-sex relationships was her main motivation. "The bill will protect our moral fiber. It will protect our young children, and our young generation. It is long overdue," she said. Human rights activists in Uganda have declared that they intend to fight the bill, seeing it as another blow on their quest for achieving equal treatment. Frank Mugisha of Sexual Minorities Uganda, a local LGBT+ organization, said the law "is extreme, uncalled for and very regrettable.

"We definitely are going to challenge this in the courts of law. This should or will be amended or removed. This bill, if signed into law by the president, will continue to harass the LGBT+ community. It will increase incidents of arbitrary arrest, blackmail and extortion. Hate crimes and violence towards LGBT+ community will increase because of this law," he said. Mugisha's view is not just based on an uneasy feeling but is rather informed by his experience with the introduction of the 2013 Anti-Homosexuality Bill, which handed out the death penalty to anyone convicted of engaging in homosexuality. Although gay rights defenders successfully challenged the

2013 bill at the Supreme Court on legal technicalities, many LGBT+ individuals in Uganda now fear that this new bill has simply brought back elements of the originally discredited bill.

### **Church response**

According to some members of the Pentecostal community, the new bill also targets pastors who fondle and inappropriately touch their followers under the guise of praying for them. Despite this, many clergymen in Uganda have also expressed support for the piece of legislation, highlighting that it primarily addresses homosexuality.

Pastor Wilson Sewanyana has welcomed the bill. "I don't think this law was meant to act against the church or pastors. This law was meant to fight against homosexuality," he said. "But in church, when we do pastoral duties, we don't touch people's privates during prayers. We only lay hands on their heads and they are healed. This bill will help us to fight the devil."

While the new law also bans prostitution and places a life imprisonment on defilement, the focus in the public debate has clearly shifted to issues relating to LGBT+ rights, with many thinking that the draft law will be signed into legislation.

Given that President Museveni has repeatedly described homosexuals as "disgusting" in the past, many in the country believe he will sign the law sooner rather than later. This would make it one of Museveni's first acts of government during his new term, which many observers have labeled the result of an illegitimate power grab amid mounting claims of rigged elections and serious human rights violations against opposition supporters.

When Uganda's Constitutional Court declared the notorious Anti-Homosexuality Act "null and void" on August 1, the country's lesbian, gay, bisexual, transgender, and intersex (LGBTI) community and human rights activists breathed a collective sigh of relief. Since President Yoweri Museveni promulgated the law in February, it had cast a long shadow. But the real fight is not over not in Uganda, nor in many other countries that have been passing anti-LGBTI measures into law.

After Uganda's parliament passed the law seven months ago, one of Africa's most vibrant and outspoken LGBTI communities experienced a notable increase in arbitrary arrests, police extortion, loss of employment, evictions, and

homelessness. Health providers were forced to reduce essential services for LGBTI people, who sometimes were harassed or even arrested when seeking care. Scores sought asylum outside the country, trading the risk of arrest or harassment in Uganda for the difficulties of asylum procedures overseas or even in northern Kenya's barren Kakuma refugee camp. Others ended up on the run in Uganda, particularly those "outed" by unscrupulous tabloid newspapers in photo montages of "Uganda's Top Homos." They moved from neighborhood to neighborhood, house to house, to avoid vigilantes, extortion, or arrest.

Even before the president signed the bill into law, however, lawyers and activists had begun drafting a constitutional challenge -- one that any independent court would have had a hard time rejecting. The petition raised concerns of procedure and substance.

It pointed out the myriad ways the Anti-Homosexuality Act violated well-enshrined rights to freedom of expression, assembly, and association, as well as privacy. The act criminalized the undefined "promotion of homosexuality." Its ambiguous phrasing and seven-year criminal sentence could be used to silence speech in support of rights or health services for

## *Asexuality, Gender and the Law in Uganda*

LGBTI people. The law also banned "aiding and abetting homosexuality" and keeping any home, room, or place "for the

purposes of homosexuality," provisions which led some Ugandan landlords to evict their LGBTI tenants.

The petition also noted that parliament passed the bill without a quorum. The parliamentary rules of procedure require at least one-third of all members to be present to pass a bill. During the vote on the Anti-Homosexuality Act, Rebecca Kadaga, the former parliament speaker and one of the bill's biggest cheerleaders, flagrantly ignored objections from the prime minister and another legislator that there was no quorum. A violation of parliamentary rules, according to the constitution, renders a law null and void.

It was on these narrow procedural grounds that the Constitutional Court struck down the law last Friday.

While it was unfortunate that the court did not address the substantive concerns at stake, the ruling was remarkable. In Uganda many petitioners wait years for a hearing on a constitutional matter. In January 2009, activists filed a challenge to discriminatory aspects of the law establishing the Equal Opportunities Commission -- but the case did not have a hearing until October 2011, and the court still hasn't ruled in it. In short, that the court struck down the Anti-Homosexuality Act on the quorum issue was a victory in itself for the rule of law: Parliamentary procedure is frequently flouted, and lawmakers rarely see any consequences.

Understandably, human rights advocates applauded the ruling. "I am officially legal," gay activist Frank Mugisha, one of the petitioners in the court case, proclaimed on Twitter shortly after the ruling.

But in reality, this isn't entirely true. The Anti-Homosexuality Act did not make it illegal to be gay, but rather created a series of new "crimes" such as the ambiguous "promotion" of homosexuality. While those crimes are no longer enforceable,

the law's nullification does not protect LGBTI people from ongoing discrimination, arrest, and prosecution, despite misleading international headlines to the contrary. In fact, penalties for same-sex conduct remain very much enshrined in Uganda's existing penal code.

Article 145 of the code, on the books since British colonial days, criminalizes "carnal knowledge against the order of nature." That crime, too, can lead to a sentence of life in prison meaning Uganda retains one of the most severe penalties in the world for homosexual conduct. This provision has been rarely enforced, but there have been cases: An LGBTI activist, Sam Ganafa, is fighting charges filed in November under Article 145. Jackson M. and Kim M., two young people arrested on January 27 after they fled from a threatening mob, also face charges, as does a well-known sports figure Chris Mubiru.

Article 145 has had far-reaching implications. It leaves Uganda's LGBTI people without access to effective remedies to abuse in the face of homophobic mobs and corrupt officials preying on vulnerability and fear. It was also the justification for the recent, deeply problematic High Court ruling in what became known as the "Lokodo" case. Activists filed a civil suit against Ethics and Integrity Minister Simon Lokodo after he and police forcibly dispersed a human rights and advocacy workshop in February 2012, organized by Freedom and Roam Uganda (FARUG), a lesbian, bisexual, and transgender women's organization.

The judge ruled that Lokodo had the right to shut down the workshop, alleging that participants, simply by talking about human rights for gay people, were "promoting" or "inciting" same-sex acts that were prohibited by Article 145. The judge even suggested that condom distribution to gay people

## *Asexuality, Gender and the Law in Uganda*

could be unlawful -- a decision that is especially inflammatory given Uganda's high HIV rates and failure in recent years to make progress in tackling the spread of the virus. The Lokodo ruling set a dangerous precedent not only for LGBTI advocacy but for all human rights and governance advocacy; under the court's odd logic, educating people about any law would incite them to commit crimes, and thus be illegal.

Ultimately, the Ugandan government could appeal the ruling against the Anti-Homosexuality Act to the country's Supreme Court. And certainly, the law could return as a new bill in parliament at any time. Given the controversy surrounding the law, the widespread international condemnation, and the cuts and diversions of aid money that resulted from its passage, it is unlikely to come back too quickly, but some parliamentarians are pushing for its rapid return. Clearly, anything is possible in the current climate, and activists will need to remain prepared and vigilant to fight the fight on the substantive grounds.

Thus, Ugandan LGBTI people still face a highly polarized and dangerous social and political environment. Speculations that the court decision was tailored to appease donors from the Global North -- in particular, U.S. President Barack Obama, whom Museveni is meeting at the **U.S.-Africa Leaders' Summit** this week -- hardly help the cause of LGBTI Ugandans, given that the law's proponents scurrilously cast homosexuality as a "Western imposition." World leaders who condemned the Anti-Homosexuality Act, and in some cases withheld or redirected aid while assessing the law's impact, did the right thing -- but in failing to condemn other serious human rights abuses by Museveni's regime, such as torture by the police and military, the killings of unarmed protestors in 2009 and 2011, and ongoing threats to civil society, they leave the impression of prioritizing the rights of LGBTI people over other concerns. This inconsistent approach to rights violations ultimately leaves all Ugandans more vulnerable.



Sadly, LGBTI people in Uganda are not alone. A 2011 BBC documentary sensationally labeled Uganda "the world's worst place to be gay," but many LGBTI Ugandans reject that depiction as oversimplifying a complex local context in which activists have managed to hold hard-earned ground in the face of hostility. Certainly, there are plenty of other contenders for the moniker: Nigeria, despite having passed an equally egregious anti-gay law that criminalizes acts such as "the public show of same-sex amorous relationship directly or indirectly" has received only a fraction of the international condemnation directed at Uganda. In **Cameroon**, meanwhile, LGBTI people are frequently sentenced to prison on allegations of consensual sex, often after being subjected to forced anal exams that purport to "prove" homosexuality.

In **Egypt**, the largest recipient of U.S. foreign assistance in Africa -- more and more reports have emerged of gay men being arrested on "debauchery" charges since the military's July 2013 ousting of Mohamed Morsi, without a peep of public objection from the United States. In **Russia**, too, gays must contend with brutality from vigilante groups while fighting legislation that prohibits making positive statements about homosexuality -- legislation that is spilling over into nearby countries, such as Kyrgyzstan, which has proposed even harsher laws against so-called gay "propaganda."

Successfully challenging homophobia and transphobia, in Uganda and beyond, requires an enduring commitment to working with local civil society activists to challenge myriad anti-LGBTI policies -- not simply fleeting attention to a one-off cause célèbre such as defeating Uganda's Anti-Homosexuality Act. Several years after an Act of parliament made homosexuality a crime punishable by death, the anti-gay campaigners of Uganda are at it again.

The Ugandan government will not sign this anti-gay legislation into law in part because it was introduced by an outgoing legislator and approved by a now-dissolved parliament. But there is also the fact that granting assent to this

## *Asexuality, Gender and the Law in Uganda*

law – not least when it was not legislation the government put forward – would trigger an outcry from the international community.

Indeed, after Uganda passed the “Kill the gays bill” – as it was dubbed locally in 2014, its reputation on the international arena suffered. Not only did the British and American governments, encouraged by global rights groups and LGBTQI campaigners, raise the spectre of retaliation, but the World Bank decided to rescind a \$90m loan to Uganda’s health system.

Our sovereign credit rating also took a hit due to the passing of the anti-gay law. Certainly, after the experience of 2014 the Ugandan government is surely less willing to grant assent to similar legislation that would undoubtedly draw condemnation and an unwelcome response from the international community.

While the efforts of LGBTQI campaigners across the globe made it highly unlikely for Uganda to sign into law another “Kill the gays bill”, the fight for LGBTQI rights in the country and the rest of Africa is far from over.

The fear of retaliation from the international community may stop Uganda and other African countries from attempting to officially criminalise homosexuality, but it will not make being gay socially acceptable on the continent. Today, homosexuality is simply not accepted by the majority of African citizens. And the LGBTQI fight for equality and recognition in Africa will not be over until it is.

Ultimately, it will not matter how many court cases are won, or governments pressured to cease anti-gay legislation, or African leaders backed by western money and education elected with the expectation they will challenge public perceptions of homosexuality.

*Isaac Christopher Lubogo*

President Adama Barrow of Gambia reneged on his pledge to do so, despite being ushered into office by US Democratic lobbyists. Kenya's President Uhuru Kenyatta did nothing to further LGBTQI rights in his country, despite his liberal Amherst College education. We must know by now that African politicians – just like their western counterparts – follow public opinion, rather than lead it.

Neither should we be so certain, as some are, that the pervasiveness of anti-LGBTQI sentiment in Africa is owing to some malignant and deceptive Christian influence. Most Africans are refusing to accept homosexuality not so much because of their Christian beliefs, but because they perceive it as a “Western value” being forcefully pushed upon their societies by malignant and invasive outside forces.

This may seem perverse given Christianity itself was brought to Africa by European colonial missionaries. But that was a long time ago. In the present, many Africans express their patriotism and defiance to the West by railing against what they perceive as “modern-day” western interference.

But all this does not mean there is no chance for widespread LGBTQI equality and acceptance in Uganda and on the continent. Times, and people, are changing. In 2014, only 17 percent of the Ugandan population had internet access. Today, nearly every adult in the country has the ability to go online. As a result, the minds of our people are rapidly opening to new ways of thinking and seeing the world.

This newfound access to knowledge, information and differing points of view is having a vast, transformational effect on the electorate, with our youthful population, so many young, knowledgeable Ugandans, who do not carry strong anti-gay sentiments, and even support LGBTQI rights, are joining the electoral roll in every election cycle.

We are already seeing the consequences of this gradual change.

## *Asexuality, Gender and the Law in Uganda*

Many had doubted such bill will come to pass, the times are changing, the electorate is changing and, consequently, legislators are changing, the parliament that voted for last month's anti-gay bill is now replaced. The legislator that proposed the bill is no longer in parliament.

The current government clearly has no intention to die on the hill of criminalising homosexuality. Uganda is not making it illegal to be gay (again). But being gay is still not socially acceptable in the country – nor, in reality, is it anywhere in Africa. And the LGBTQI fight for rights will not be truly over until it is.

Same-sex relations have been criminalized in Uganda since British colonial times. Sections 145 on “unnatural offenses” and 148 on “indecent practices” have been retained in the Penal Code since independence. “Carnal knowledge against the order of nature” between men carries a maximum sentence of life in prison. The so-called “Anti-Homosexuality Act,” which foresaw imposition of the death penalty for same-sex relations, was first passed by the parliament of Uganda in 2013 and signed into law by President Museveni in early 2014. It was invalidated by the Constitutional Court of Uganda on procedural grounds the same year. Rumors of a resurrection have been circulating ever since, with the death penalty foreseen not only for same-sex relations, but also for promotion and recruitment of homosexuality. In May 2021, the Parliament of Uganda passed the Sexual Offences Bill. Purportedly the Bill aims to prevent sexual violence, enhance punishment against sexual offenders and provide additional protection for victims, however, it also reinforces the ban on same-sex relations. Police regularly target, abuse, and arrest people on the basis of their presumed sexual orientation and gender identity, with forced anal examinations used against those detained, purportedly to gather evidence. Although the laws do not explicitly mention transgender and gender-non conforming individuals, law enforcement officials often conflate gender identity with sexual orientation,

and, as such, trans people are detained and charged under the same laws. Government officials have repeatedly shut down Pride events, LGBTIQ events and conferences, and raided LGBTIQ friendly social spaces. Films, tv shows, and radio programs have been banned for “homosexual content.” Violence from private individuals is also high, and hate speech in the media is strong. Uganda has an enthusiastic and persistent LGBTIQ activist community, despite threats, violent attacks, and arbitrary arrests.

### **Anti-LGBT legislation in Uganda and violent enforcement**

Widespread homophobic sentiment in Uganda was, once again, embedded into law on 3 May 2021, when the Ugandan Parliament passed the Sexual Offences Bill (the “Bill”). The broad purpose of the Bill is, allegedly, to combat sexual violence and address defects in outdated legislation, like the Penal Code Act, including adding new offences such as sex tourism and child marriages.

Notwithstanding its stated intention of “addressing defects in outdated legislation”, the Bill renews the criminalization of consensual same-sex sexual acts, even adopting the same stigmatizing, vague, irrational and downright offensive language of Sections 145 and 146 of the Penal Code Act. In Clause 11 on “Unnatural offences”, the Bill criminalizes “sexual act[s] with another person contrary to the order of nature”, as an offence liable to “imprisonment for ten years”. Expressing satisfaction in reinstating what Ugandan authorities appear to regard as a “ban on homosexuality”, Jacob Oboth-Oboth, chairperson of the Legal and Parliamentary Affairs Committee, indicated before Parliament that sexual acts between persons of the same gender are considered “unnatural offences”.

The Ugandan President, Yoweri Museveni, must still formally sign the Bill before it becomes enforceable as law, but this is likely to be only a matter of time. President Museveni has not only publicly made homophobic

## *Asexuality, Gender and the Law in Uganda*

statements, but has also previously signed the Anti-Homosexuality Act in 2014, which outlawed consensual same-sex sexual acts and made those convicted of the offence liable to imprisonment for life. The 2014 Act is not in force today only due to a failure to comply with procedural requirements for the enactment of the legislation.

While the 2014 Act was struck down in the Ugandan Constitutional Court on procedural grounds, the Act still managed to incite animosity against LGBT individuals, leading to an increase in violence and other discriminatory acts against the LGBT community. Similarly, violence and homophobic sentiment directed specifically at LGBT persons and organizations has substantially increased since the introduction of the Sexual Offences Bill in Parliament in 2019, further encouraged by homophobic statements made by Ugandan officials.

In October of 2019, for example, Ugandan police arrested 16 LGBT activists at a sexual health charity where they worked and lived. The activists themselves had called the police for protection against a menacing mob that had surrounded the office and was threatening to break in. After dispersing the mob, the police interrogated the activists and, using homophobic insults, questioned them about their gender identity before eventually arresting them. The police then searched the office and shelter, confiscating condoms and lubricants, and charged the occupants with “carnal knowledge against the order of nature” under Section 145 of the Ugandan Penal Code, the predecessor to Clause 11 of the Sexual Offences Bill.

### **Exacerbation of anti-LGBT violence and law enforcement during the COVID-19 pandemic**

The pattern of harassment of LGBT persons in Uganda has intensified since the onset of the COVID-19 pandemic. As the executive director of Sexual

Minorities Uganda, Frank Mugisha, put it *“the community already faces so much discrimination but now with this coronavirus, things are getting worse... we’ve had reports of LGBTQI members being blamed for the virus”*.

In several instances throughout the last year and a half, the Ugandan police have manipulated COVID-19 response measures to arbitrarily detain and further violate the human rights of LGBT people in Uganda.

In April 2020, while arresting over twenty LGBT people gathered at a shelter in Kampala, purportedly for violating social distancing rules, witnesses reported that the police confiscated everyone’s phones and shoes, bound everyone’s hands with rope and marched the detainees barefoot to a nearby police station. After a similar raid on an LGBT shelter in May 2020, the police charged those arrested with conducting an act likely to cause the spread of an infectious disease and again used COVID-19 regulations as an excuse to restrict access to lawyers and to deny release on bail.

### **Violation of international human rights law and standards and the impact on health**

Although police authorities have denied any relation between these arrests and the sexual orientation of the detainees, the police have repeatedly conducted forced anal examinations, a procedure that, in this context, is medically worthless, has no evidentiary value and, among others, violates detainees’ right to freedom from torture or other cruel, inhuman or degrading treatment or punishment under international human rights law.

In 2016, the Court of Appeal in neighboring Kenya dismissed the evidentiary value of such examinations, finding them to be unreasonable, unnecessary and unconstitutional. Within Uganda’s own Constitution, Article 24 creates an obligation for the State to protect against inhuman and degrading treatment. Subjecting detainees to forced anal examinations not only proves the charge of violating COVID-19 regulations to be merely a cover, but also

## *Asexuality, Gender and the Law in Uganda*

violates Uganda's international human rights law obligations, as well as the country's domestic obligations outlined in the Ugandan Constitution.

Uganda's homophobic legislation and use of emergency COVID-19 measures to harass, arbitrarily arrest, and subject members of the LGBT community to violence violates international human rights law and standards. Article 26 of the International Covenant on Civil and Political Rights, as the UN Human Rights Committee has authoritatively interpreted it, guarantees the right to equal protection of all persons before the law and prohibits discrimination based on sexual orientation.

By labelling homosexuality as an "unnatural offence" and defining it as "against the order of nature," the Sexual Offences Bill stigmatizes consensual same-sex sexual acts and the LGBT community. Stigmatization and discrimination are significant barriers that discourage people from accessing necessary healthcare services. Such barriers to healthcare are particularly dangerous and life-threatening during a global pandemic.

### **A call to action for Uganda in light of Pride Month**

Pride Month is meant to be a time of celebration and encouragement for all people to be themselves. However, in Uganda, Pride has become a time of heightened homophobia. In the past, despite plans to hold peaceful celebrations outside of Kampala to avoid crowded areas, police have disrupted Pride parades and arrested participants. Simon Lokodo, the then Ugandan Minister of Ethics and Integrity, even threatened the LGBT community with arrests and violence if they held or participated in Pride events.



This Pride month, some Ugandans argued that Uganda should uphold its obligation under its own Constitution and under international human rights law to protect every person under its jurisdiction from discrimination and unequal treatment before the law. President Museveni was encouraged not sign the Sexual Offences Bill into law and the Ugandan Parliament is now being encouraged to take steps toward decriminalizing consensual same-sex sexual acts by repealing those provisions from the Penal Code Act. Most importantly, and that Uganda should stop stigmatizing homosexuality as “unnatural” and instead celebrate and respect each person for who they are. Are LGBT rights human rights?

A lot of progress that has been made at the UN with regards to recognizing gay rights as human right, With the increased global media attention on violent acts of persecution inflicted on Lesbian, Gay, Bisexual & Transgender (LGBT) persons, a crucial question before the world community today is whether gay rights are included under our basic human rights. At the United Nations, this question is slowly taking center stage, but it is not at all clear what the U.N. deliberations will yield from the linkage between gay rights and human rights. Foundational U.N. documents appear to provide guidance. For example, the Charter of the United Nations (1945)<sup>1</sup> encourages “respect for human rights and for fundamental freedoms for all without distinction” in Chapter I, Article 1, Similarly, the Universal Declaration of Human, Rights (1945)<sup>2</sup> states in Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.” Regardless, among a substantial percentage of Member States that have sworn to protect the human rights of their citizens, same sex relations remain illegal. This article will outline recent developments at the United Nations and discuss the progress that has been made with regards to including gay rights under the legal protections of human rights.

Marking the occasion of Human Rights Day on December 9, 2010, U.N. Secretary-General Ban Ki-moon spoke at a Ford Foundation event in New York City entitled, “Speak Up, Stop Discrimination.” The event honored

## *Asexuality, Gender and the Law in Uganda*

human rights defenders those courageous women and men who strive to make human rights a reality for everyone, everywhere. In this speech, Mr. Ban called for individuals to stand up for the rights of all and specifically referred to defending the rights of people jailed for their sexual orientation. This statement clearly identified his advocacy for the issue of gay rights in the context of human rights, and in so doing, placed this issue on the agenda of the United Nations.

The following year, in a Human Rights Day address to the United Nations in Geneva, Switzerland on Dec. 6, 2011, the United States Secretary of State, Hillary Clinton, stated that one of the remaining human rights challenges before the world today is guaranteeing the equality and dignity of members of the LGBT community.<sup>4</sup> She spoke of this "invisible minority," whose human rights were in jeopardy throughout the world, and in this way, she called for greater protection of LGBT persons. She asserted that gay rights and human rights are not distinct, as some have argued, and referred to the Universal Declaration of Human Rights as a foundational U.N. document guaranteeing gay rights as human rights. She outlined how violence against the LGBT community in any form is a violation of human rights, including the withholding of life-saving care or the denial of access to equal justice. Finally, Ms. Clinton argued that, despite the due respect for cultural and religious traditions, these traditions do not trump human rights and therefore should not serve as a pretext for denying fundamental rights to citizens based on sexual orientation or gender identity.

A few days later, Mr. Ban offered his own Human Rights Day message at U.N. Headquarters in New York City, focusing on homophobic bullying.<sup>5</sup> On Dec. 8, 2011, he identified homophobic bullying as a form of violence endangering the human rights of LGBT persons and encouraged Member Nations to protect their citizens from discrimination based on sexual orientation. Mr. Ban articulated the profound psychological suffering

that ensues from bullying, including depression and suicide. He also underscored the responsibility of local communities including individual citizens, community leaders, teachers, religious and public figures to share in the challenge of ending violence against LGBT persons and protecting their own neighbours from persecution.

In April 2011, the U.N. office for the high commissioner for human rights (OHCHR), the UN development programme (UNDP), the joint U.N. programme on HIV/AIDS (UNAIDS), and the world health organization (who) collaboratively published a brochure titled "the united nations speaks out: tackling discrimination on grounds of sexual orientation and gender identity." this cites statements that have been made by U.N. senior officials and human rights experts regarding LGBT rights including statements from the U.N. secretary general and the U.N. high commissioner on human rights. the quote from Mr. ban followed his 2010 Human Rights Day speech and avers: "but let there be no confusion: where there is tension between cultural attitudes and universal human rights, rights must carry the day. the U.N. high commissioner, NAVI PILLAY, was quoted on February 2011: "laws criminalizing homosexuality pose a serious threat to the fundamental rights of lesbian, gay, bisexual and transgender individuals."<sup>6</sup> these statements strongly and clearly advocate in favor of human rights protections for LGBT individuals. by jointly issuing this brochure, OHCHR, UNDP, UNAIDS, and who showed that the United Nations partners speak together on this matter

On December 15, 2011 OHCHR released its first report on the human rights of LGBT persons.<sup>7</sup> This report details the worldwide manifestations of discrimination based on sexual orientation, noting that violence against LGBT persons has a history of hate-motivated violence, such as discrimination in work, health care, education, detention and torture. The publication of this report followed two historic developments of the Human Rights Council. First, 85 countries signed on to a statement calling for the decriminalization of homosexuality in March 2011. Subsequently, a

## *Asexuality, Gender and the Law in Uganda*

resolution initiated by South Africa was passed in June 2011 and became the first U.N. resolution calling for support of gay rights.

Concurrent with the OHCHR report, Navi Pillay of South Africa, the U.N. High Commissioner for Human Rights, appealed to U.N. Member States to decriminalize homosexuality and enact comprehensive anti-discrimination laws. The OHCHR report documents that same-sex relationships are illegal in 76 countries, and the death penalty may be invoked as punishment in at least 5 countries. The report carefully links anti-homosexuality laws with the legitimacy of violence against nations citizens based on sexual orientation and gender identity. When persons are formally and legally devalued, it follows that designating their status as second rate may lead to "acceptable" persecution.

The OHCHR report encourages nations to institute public information campaigns to educate citizens about ensuring the rights of LGBT persons. Additionally, those sworn to protect individual rights, such as police and law enforcement officers and public officials, should receive appropriate training in this subject. The report emphasizes the shared community responsibility in combating homophobia and transphobia, and to that end, calls on nations to:

- repeal laws that criminalize homosexuality,
- abolish the death penalty for offenses involving consensual sexual relations,
- enact comprehensive anti-discrimination laws,
- standardize the age of consent for homosexual and heterosexual conduct,

Isaac Christopher Lubogo

- investigate all killings or serious violence against sexual orientation or gender identity, ensure that asylum laws recognize sexual orientation and gender identity as a basis for claiming persecution and
- enable LGBT persons fleeing persecution to avoid returning to countries or territories where their freedom is threatened.

The OHCHR report was released in anticipation of a Human Rights Council meeting scheduled for March 2012. Ban Ki-moon opened the Council meeting by stating: *'The High Commissioner's report documents disturbing abuses in all regions. We see a pattern of violence and discrimination directed at people just because they are gay, lesbian, bisexual or transgender. There is widespread bias at jobs, schools and hospitals, and appalling violent attacks, including sexual assault. People have been imprisoned, tortured, even killed. This is a monumental tragedy for those affected and a stain on our collective conscience. It is also a violation of international law. You, as members of the Human Rights Council, must respond, to those who are lesbian, gay, bisexual or transgender, let me say: You are not alone. Your struggle for an end to violence and discrimination is a shared struggle. Any attack on you is an attack on the universal values of the United Nations I have sworn to defend and uphold. Today, I stand with you, and I call upon all countries and people to stand with you, too.'*

The United Nations has been working with Member States to reject discrimination and criminalization based on homophobia and transphobia. While the denial of human rights for LGBT persons persists throughout the world today, over 30 countries have decriminalized homosexuality in the past 20 years. In the face of resistance, determined efforts from the U.N., associated NGOs, and representatives of Member States to guarantee the human rights of LGBT persons have been gaining momentum toward the global inclusion of LGBT rights in our basic human rights.

**International Updates from APA's Lesbian, Gay, Bisexual and Transgender Concerns Office**

## *Asexuality, Gender and the Law in Uganda*

The International Network on Lesbian, Gay, and Bisexual Concerns and Transgender Issues in Psychology were active at the 30th International Congress of Psychology (ICP) 2012 in Cape Town, South Africa. Representatives to the International Network from the Psychological Society of South Africa are coordinating a pre-conference workshop on practice guidelines for lesbian, gay, bisexual, and transgender (LGBT) clients in an African context. This was follow-up with a symposium on the same topic open to all conference attendees, a meeting of the representatives to the International Network provided information to conference attendees about the Network.

Since its formation in May 2005, the International Network has had two main areas of focus: 1) expanding programming about LGBT people and issues at international psychology conferences and 2) advocating for LGBT inclusive and affirming policies in international psychology and beyond. There has been significant progress in both areas. Concerning the first, the ICP 2012 will include more than 60 programs related to LGBT people and issues, which represents the most ever at an international psychology conference. Concerning the second, in September 2011, the International Council for Science revised its "Universality of Science" statement to include gender identity and sexual orientation, and in July 2010, the International Union of Psychological Science revised its policy on the *Free Circulation of Scientists* to include sexual orientation. The International Network is currently advocating for the removal of the diagnosis Ego-Dystonic Sexual Orientation from the World Health Organization's "International Statistical Classification of Diseases and Related Health Problems." The support of the Office of International Affairs, at the APA's Lesbian, Gay, Bisexual and Transgender Concerns Office, provides the secretariat for the International Network, In August 2011, the office secured a grant from the Arcus Foundation for \$150,000 for a two-year project. Half of the grant is to

*Isaac Christopher Lubogo*

support the International Network. The other half is going to the Psychological Society of South Africa and the Psychological Association of the Philippines to build their capacities to bring psychology to bear on LGBT human rights in their countries and, to the extent possible, in their regions of the world.

**SCIENTIFIC STATEMENT FROM THE  
MINISTRY OF HEALTH ON  
HOMOSEXUALITY**

*Asexuality, Gender and the Law in Uganda*

THE REPUBLIC OF UGANDA



Ministry of Health

Scientific Statement on Homosexuality

10th February 2014



## **I INTRODUCTION**

The Minister of Health requested the Director General Health Services to constitute a team of expert scientists to review research data, deliberate and advise him on key questions about homosexuality.

A team of scientists was appointed to respond to two questions:

- 1) Is there a scientific /genetic basis for homosexuality?
- 2) Can homosexuality be learned and unlearned?

A series of meetings were held after the experts reviewed existing literature and presented their views, which were discussed to reach a consensus.

Answering the above questions require a background discussion and understanding of sex and homosexuality.

## **II. BACKGROUND**

Sex is a natural phenomenon in all life forms and is the basis for the reproduction and continuum of life, though some lower forms of life may have asexual reproduction. Sexuality is determined by biology (anatomy, physiology, biochemistry) and how one relates to others which is a function of psychology, sociology, and the culture in which one lives, the latter includes anthropology, religion and other environmental factors. Ultimately, these functions are determined by genes and their interactions with the environment. What, therefore, constitutes normal sexual behaviour in any given society (learned sexual practices) is a function of one's biology, psychology, sociology and culture, the last three being dynamic and often changing. Sexuality, on the other hand, depends on four interrelated factors:

- i) sexual identity (XX or XV karyotype that will determine the sex phenotype),

## *Asexuality, Gender and the Law in Uganda*

- ii) gender identity (the psychological feeling of being male or female and the accompanying gender roles),
- iii) sexual orientation (one's inner sexual attraction impulses: heterosexual - to opposite sex, or homosexual- to same sex),
- iv) Sexual response (Desire, Excitement, Orgasm, Resolution).

Homosexual behaviour has existed throughout human history including in Africa. Judeo-Christian religions (Judaism, Christianity and Islam) condemn it but not all religions of the world condemn it. Many Western-based evangelistic missionaries and Arabs penetrated Africa and influenced her people with their views on homosexuality. This continues today. However, different cultures practice their sexualities differently and these practices have often changed with times.

Homosexuality existed in Africa way before the coming of the white man. However, most African cultures controlled sexual practices, be they heterosexual or homosexual, and never allowed exhibitionistic sexual behavior. Almost universally, they contained homosexual practices to such a point that overt homosexuality was almost unheard of. Indeed, there are undeclared homosexuals in Africa who may not even know it because their cultures never give room for the expression of such behavior. Many non-sex practicing individuals exist throughout African societies. No one has done any study to unpack their sexual orientations.

The present fad of sexual exhibitionism, both heterosexual and homosexual is alien and repugnant to most African cultures

### **III THE SCIENTIFIC BASIS OF HOMOSEXUALITY**

All studies of human sexuality in all races throughout the world and throughout human history have documented the presence of homosexuality. Studies in the animal world have also shown homosexual practices to exist in animal and insect species. Genetic studies have attempted, though unsuccessfully to pinpoint to one specific homosexual gene. A singular determinant for sexual orientation has not been demonstrated. As a result, many scientists hypothesize that a combination of genetic, hormonal, psychological, environmental and social factors determine sexual orientation.

Studies in sexology have shown that sexual phenomena exist on a normal distribution continuum like most human attributes e.g., height - most people are in the middle but others may be taller or shorter. Thus, also in sexuality, there are spectrum of sexual behaviors. Some people are less fixed in one form of sexuality than others. Thus, sexuality is a far more flexible human quality than used to be assumed in the past, demonstrating the biological variability within the human race.

Sexual expression is the function of biology, psychology, sociology and anthropology, the latter including cultural and religious influences. Ultimately, all sexual functions are determined by genes and their interactions with the environment. Thus, the causes of homosexuality can be traced to biological, social, environmental, psychological or a combination of them. These influence each other. Reparative therapies to change people's sexual practices have not proven successful and their scientific validity has remained questionable.

#### **IV. CAN HOMOSEXUALITY BE LEARNED OR UNLEARNED?**

Homosexuality is sexual behaviour (not a disorder) involving sexual attraction to people of the same sex. It is not clear whether this differing physiological response exist at the birth or developed under homosexuality experience later in life.

## *Asexuality, Gender and the Law in Uganda*

The conclusion from the current body of scientific evidence is that there is no single gene responsible for homosexuality and there is no anatomical or physiological data that can fully explain its occurrence.

Psychosocial causes of homosexuality imply that it may be learned through experiences in life. Previous disastrous heterosexual encounters (e.g., erectile dysfunction, premature ejaculation) may lead to aversion towards homosexual intercourse. A chance homosexual encounter in early life may be associated with sexual pleasure leading to homosexual relationships being associated with pleasure. The increasing influence of Western culture provides homosexuality as a choice one can make; it's therefore seen as a socially acceptable option for a few. In conclusion, homosexual tendencies can be taken up based on the person's judgement on what is pleasurable for them. Why this happens to some people is not clear, whereas some homosexuals may take up the behaviour as an open choice, for others it may be due to indoctrination, in summary, homosexuality has no clear cut cause, several factors are involved which differ from individual to individual. It's not a disease that has a treatment.

Genetically, homosexuality represents one of the "sexual orientation" variants possible in the same species, As is the case for many human behavioural variants, the evolution and emergence of one's self identity as a 'homosexual-be it gay or lesbian" must be governed by nature and nurture, Ironically, an argument for a purely structural-genetic basis of the origins of homosexuality contravenes the essence of sex, which is that of procreation,

Specifically, the essence of homosexuality would be an antithesis for the Darwinian evolution of sex in species largely because homosexuality does not offer an opportunity for the self-propagation of the species, This has been a critical and fundamental argument by some scholars against the non-genetic basis of homosexuality,

However, the counterargument has been for group survival, that some individuals in a group not overburdened by reproduction responsibilities would be available to give a hand to weak members of the group (e.g. the elderly and children) as happens in social animals. In our view, at least from existing knowledge and literature, there is no basis for a single, definitive structural genetic basis of homosexuality.

That said, the influence of the largely unstudied processes of epigenetics-which involves non-structural modifications of the genetic code, and represent one of the ways by which we learn many of our acquired traits that we can even pass on to our off-springs, cannot be ruled out.

Chromosome linkage studies, based on linking a single gene locus to a physical trait, previously identified a position on the female chromosome X (denoted Xq28) as a possible influence (Hamer, 1993). A preponderance of gay relatives on the maternal side, was also stated. Subsequent studies however, failed to replicate these findings. More recently, a group from the American Societies of Human Genetics have used a genome-wide study to replicate Hamer's Xq28 in animal model studies, in *Drosophila*. In Korea a scientific team induced attraction to urine of the same sex mice by deleting a single gene. These studies were not conclusive.

The practice of homosexuality in animals is, however, uncommon as are many physical deviants. Brain structure, again provides another area of controversy, with reports of homosexual versus heterosexual variations at the suprachiasmatic area and more recently the hypothalamus. Again, this study did not provide any conclusive evidence.

## V. THE NEED TO REGULATE SEXUALITIES

Throughout the world, human activity IS regulated to 'safeguard citizens, especially the weak and vulnerable, against the dangers inherent in human activities. Thus, human sexuality also needs to be regulated especially as it is the core of the family and hence the nation. At any one-time rules and

## *Asexuality, Gender and the Law in Uganda*

regulations are based on the current prevailing knowledge and understanding of what is to be regulated. This knowledge and understanding may change depending on the times and circumstances. Today the world has come to the realization that indeed homosexuality is a minority sexual expression practiced by some few members of the community. But, like heterosexuality, it needs to be regulated. No country, in the world today, has come up with a successful way to regulate human sexuality, hence the daily scandals and rapes of this world including sexual and gender-based violence or human trafficking for sex. That vulnerable populations (including children, minorities, refugees, the poor, the elderly, mentally ill etc.) need to be protected against sexual (and other) exploitations is not in question. African cultures had contained sexual vices. Maybe we need to revisit them to contain the present explosion of overt and coercive homosexual activity with the exploitation of our young children.

### VI. CONCLUSION

- a) There is no definitive gene responsible for homosexuality
- b) Homosexuality is not a disease
- c) Homosexuality is not an abnormality
- d) In every society, there is a small number of people with homosexual tendencies
- e) Homosexuality can be influenced by environmental factors (e.g., culture, religion, information, peer pressure)
- f) The practice needs regulation like any other human behaviour, especially to protect the vulnerable.
- g) There is need for studies to address sexualities in the African context

END.

*Isaac Christopher Lubogo*

## CHAPTER TWENTY



### PORNOGRAPHY

**Pornography** (often shortened to **porn** or **porno**) is the portrayal of sexual subject matter for the exclusive purpose of sexual arousal. A distinction could be drawn between uncensored explicit or hardcore erotic art, and pornography. Pornography may be presented in a variety of media, including magazines, animation, writing, film, video, and video games. The term does not include live exhibitions like sex shows and striptease. The primary subjects of present-day pornographic depictions are pornographic models, who pose for still photographs, and pornographic actors who engage in filmed sex acts.

Various groups within society have considered depictions of a sexual nature immoral, addictive, and noxious, labelling them pornographic, and attempting to have them suppressed under obscenity laws, censored or made illegal. Such grounds, and even the definition of pornography, have differed in various historical, cultural, and national contexts.<sup>[3]</sup> In the late 19th century, various films by Thomas Edison were denounced as obscene in the United States, whereas Eugene Pirou's *Le Coucher de la Mariée* became very popular in France. Social attitudes towards the discussion and presentation



of sexuality have become more tolerant in Western countries, and legal definitions of obscenity have become more limited, beginning in 1969 with *Blue Movie* by Andy Warhol, the first adult erotic film depicting explicit sexual intercourse to receive wide theatrical release in the United States. It was followed by the Golden Age of Porn (1969–1984), in which the best quality pornographic films became part of mainstream culture.

A growing industry for the production and consumption of pornography developed in the latter half of the 20th century. The introduction of home video and the Internet saw a boom in the worldwide porn industry that generates billions of dollars annually. Commercialized pornography accounts for over US\$2.5 billion in the United States alone, including the production of various media and associated products and services. The porn industry is between \$10–\$12 billion in the U.S. In 2006, the world pornography revenue was 97 billion dollars. This industry employs thousands of performers along with support and production staff. It is also followed by dedicated industry publications and trade groups, award shows such as the AVN Awards, as well as the mainstream press, private organizations (watchdog groups), government agencies, and political organizations. Videos involving non-consensual content and cybersex trafficking have been hosted on popular pornography sites in the 21st century

The **effects of pornography** on individuals or their intimate relationships depend on the type of pornography used and differ from person to person. Consumption of pornographic material is associated with negative and positive impacts. It has been studied particularly for associations with addiction as well as effects on the brain over time. Some literature reviews suggest that pornographic images and films can be addictive, particularly when combined with masturbation, while others maintain that data remains inconclusive. Other research has looked at pornographic material's relation to acts of sexual violence, with varying results.

Pornography research is greatly influenced by script theory. Originally proposed by researcher Silvan Tomkins, script theory proposes that

## *Asexuality, Gender and the Law in Uganda*

behaviour is a series of "scripts," or programs in order to achieve a goal. These scripts provide meaning for specific behaviours in relation to a goal or desire. In 1986, Simon and Gagnon applied script theory to sexuality research, asserting that sexual scripts fall under a category of cultural scripts to regulate sexual behaviours. Modern research has applied this concept to work with pornography, and specifically how pornography may influence sexual scripts and behaviours. Some studies argue that pornography functions as a sexual script, cluing people in to certain signals and behaviours and influencing their own sexual behaviours in later encounters.

Pornography may alter individuals' expectations regarding sexual activity, which then impacts their ability to form and maintain romantic, or sexual, relationships. Pornography functions as a cultural script, a media through which individuals may pick up on or learn sexual cues.<sup>[11][13]</sup> These cues lead individuals to express sexual behaviours and function in sexual situations at appropriate times. One concern is that, by relying on pornography for education on sexual cues or sexual scripts, individuals may have an altered sense of what sexuality and sexual intercourse truly entail, or how to behave sexually in a real-life scenario.<sup>[14]</sup>

### **Affection exchange theory**

Affection Exchange Theory classifies human affection and interaction as innate acts which assist individuals in mating, reproduction, and survival, as well as in developing and maintaining healthy relationships. This theory can be extended to sexuality to consider sexual acts as significant contributions to affection behaviour. Humans' express affection through a myriad of actions, including verbal affirmations and physical touch. This theory takes a more modern approach to traditional evolutionary theories, and extrapolates that affection communication plays a role in sexual selection and

reproduction. Furthermore, Affection Exchange Theory posits that, although often found together, affectionate expression is separate from affectionate emotion. An individual may express unauthentic affection (expression without emotion), or may feel affection that they suppress (emotion without expression). Beyond relationship findings, more affectionate people also report better overall health, including more self-esteem, less anxiety, less fear of intimacy, and greater satisfaction with their lives and their relationships. Research on Affection Exchange Theory has been connected to pornography and couples research as a potential mitigator to relationship and sexual satisfaction, as well as sexual desire.

Pornography has many different forms which are difficult to cover in blanket form. Pornographic internet videos, for example, have been found to have different effects on viewers than material such as pornographic magazines. Within the field of pornography research, there are also other challenges that arise due to strong opinions and feelings on the topic. Confirmation bias has been prevalent on both sides due to societal taboos surrounding pornography. Studies have looked into both negative effects of pornography as well as potential benefits or positive effects of pornography. A large percentage of studies suffer from methodological issues. In one meta-study by researchers at Middlesex University in England, over 40,000 papers and articles were submitted to the team for review: 276 or 0.69% were suitable for consideration due to the low quality of research within the field.

One limitation to current research about pornography's effect on relationships is the sample. Researchers often, but not always, sample individuals who are in a relationship. They rarely sample both partners. This method limits the scope of research as pornography can affect a relationship depending on how often one or both partners watch and if they watch alone or together. For example, a Norwegian study on heterosexual partners evaluated these effects. The study found that couples experience higher levels of dysfunction when only one partner is watching alone. Partners who both

watch pornography alone experienced low levels of dysfunction. Partners who did not watch at all experienced an average level of dysfunction.

## **Psychological effects**

Men who consume pornography regularly have reported less stable mental health, specifically higher levels of depression. Pornography can be considered addictive, especially in men.

Pornography addiction: is a purported behavioural addiction characterized by compulsive, repeated use of pornographic material which causes serious consequences to one's physical, mental, social, and/or financial well-being. There is no diagnosis of pornography addiction in the current Diagnostic and Statistical Manual of Mental Disorders (DSM-5), though the DSM-5 considered the diagnosis of hypersexuality-related behavioural disorders (to which porn addiction was a subset), but rejected it because "there is insufficient peer-reviewed evidence to establish the diagnostic criteria and course descriptions needed to identify these behaviours as mental disorders." Instead, some psychologists suggest that any maladaptive sexual symptoms represent a manifestation of an underlying disorder, such as depression or anxiety which is simply manifesting itself sexually, or, alternatively, there is no underlying disorder and the behaviour simply is not maladaptive. It is argued that psychologists do not recognize the concept of addiction, only chemical dependence, and some believe the concept and diagnosis to be stigmatizing and unhelpful. 2016 neurology reviews found evidence of addiction related brain changes in internet pornography users. Psychological effects of these brain changes are described as desensitization to reward, a dysfunctional anxiety response, and impulsiveness. Another 2016 review suggests that internet behaviours, including the use of pornography, be

considered potentially addictive, and that problematic use of online pornography be considered an "internet-use disorder".

Introductory psychology textbook authors Coon, Mitterer and Martini, passingly mentioning NoFap (former pornography users who have since chosen to abstain from the material) speak of pornography as a "supernormal stimulus" but use the model of compulsion rather than addiction.

A number of studies have found neurological markers of addiction in Internet porn users, which is consistent with a large body of research finding similar markers in other kinds of problematic internet users. Yet other studies have found that critical biomarkers of addiction are missing.

According to the American Society of Addiction Medicine, some psychological and behavioural changes characteristic of addiction brain changes include addictive cravings, impulsiveness, weakened executive function, desensitization, and dysphoria. BOLD fMRI results have shown that individuals diagnosed with compulsive sexual behaviour (CSB) show enhanced cue reactivity in brain regions associated traditionally with drug-cue reactivity. These regions include the amygdala and the ventral striatum. Men without CSB who had a long history of viewing pornography exhibited a less intense response to pornographic images in the left ventral putamen, possibly suggestive of desensitization. ASAMs position is inconsistent with the American Association of Sex Educators, Counselors, and Therapists, who cite lack of strong evidence for such classification, describing ASAM as not informed by "accurate human sexuality knowledge".

Neuropsychopharmacological and psychological researches on pornography addiction conducted between 2015 and 2021 have concluded that most studies have been focused entirely or almost exclusively on men in anonymous settings, and the findings are contradicting. Some researches support the idea that pornography addiction qualifies as a form of behavioural addiction into the umbrella construct of hypersexual behaviour and/or a subset of compulsive sexual behaviour (CSB), and should

be treated as such, whereas others have detected the increased activation of ventral striatal reactivity in men for cues predicting erotic but not monetary rewards and cues signaling erotic pictures, therefore suggesting similarities between pornography addiction and conventional addiction disorders.

ICD-11 added pornography to CSBD. CSBD is not an addiction and should not be conflated with sex addiction.

Some clinicians and support organizations recommend voluntary use of Internet content-control software, internet monitoring, or both, to manage problematic online pornography use.<sup>[39][40][41]</sup> Sex researcher Alvin Cooper and colleagues suggested several reasons for using filters as a therapeutic measure, including curbing accessibility that facilitates problematic behaviour and encouraging clients to develop coping and relapse prevention strategies.<sup>1</sup> Cognitive therapist Mary Anne Layden suggested that filters may be useful in maintaining environmental control. Internet behaviour researcher David Delmonico stated that, despite their limitations, filters may serve as a "frontline of protection."

DSM-5-TR, published in March 2022, does not recognize a diagnosis of porn addiction.

Rothman stated "The professional public health community is not behind the recent push to declare pornography a public health crisis." She and another researcher have called these moves a "political stunt".

## **Withdrawal symptoms**

Individuals who have developed form of dependence on pornography use, and do consider themselves as addicted to pornography, have experienced

withdrawal symptoms. A study on effects and consumption of pornography across large sample of students from various universities has shown more than a half tried to give up consumption for pornography (or at least minimize the use of such material). Within those who at least made one attempt, almost 75% experienced at least one symptom of withdrawal. Withdrawal symptoms included erotic dreams, irritability, attention disturbance, and sense of loneliness. Other recorded potential symptoms included depression, anxiety, obsessive thoughts, and an intense longing for pornography. On topic on anxiety, a survey performed on a sample of internet users with porn dependency, concluded 24% of the participants had experienced anxiety symptoms if access to porn on the Internet was inhibited. Individuals who showcased an abstinence from online pornography has shown "most common positive effects" to include improvements in day-to-day functioning, increased energy, mental clarity and productivity. Some surveyed individuals even experienced enhanced sensation and greater pleasure from ordinary activities.

## **Body image and self esteem**

### **Men**

A study of 359 college men found that high viewership of pornography relates to increased masculinity and body dissatisfaction. Sexual performance changes a man's view of his masculinity, and often his self-esteem. Pornography is not the only factor affecting men's self-esteem and body image. Popular media often depicts strong but lean men. Pornography is significant to men's self-image. It connects a lean body type to sexual validation. As of 2021, few studies have evaluated how exposure to pornography relates to men's body image. Researchers recommend that others conduct more studies on pornography's effect on men's psychology.

Heterosexual pornography reinforces a concept called the centrefold syndrome. In 1995, psychologist Gary R. Brooks wrote about men and the

centrefold syndrome. This concept asserted that gender roles in media contribute to high sexual dysfunction in men.<sup>1</sup> Sexual dysfunction has many parts. One part is the viewing of women as body parts, trophies, or sexual conquests. These concepts are often known as voyeurism, objectification, and trophism. Another part is tying female approval of manliness to a man's self-image. The third part of sexual dysfunction includes avoiding intimacy, attachment, and emotions. Heterosexual pornography reinforces this syndrome through observational learning. In other words, the story within pornography becomes the expected reality. Deviations from that story create low self-esteem.

## **Women**

Studies rarely observe women's viewership of pornography. One modern study with female subjects provided mixed results. Pornography does not affect women's perception of body image and relationship satisfaction if it is free of behaviour. Violence is one example. All other viewership appears to minimally affect body image and relationship satisfaction.

A 2021 study has shown a mediating role of pornography use among women and how it affects the consciousness of body image and attachment insecurities.<sup>[53]</sup> Girls who have not experienced a sensitive response to their needs and/or were emotionally deprived under the parent/caretaker childhood environment had a greater chance of developing insecurities about their body image. The use of pornography seems to amplify attachment fears and anxiety. Such anxiety is correlated to females seeking approval of their bodies and self-worth from their counterpart in a relationship setting. The findings did correlate with past research articles which found that "anxious but not avoidant attachment affects body image, the drive for thinness, body dissatisfaction and body appreciation." Furthermore, pornography use could also amplify women's body image self-consciousness in an intimate setting.



The acts performed in pornographic movies created a feeling of pressure among women, not only creating a higher negative body image but also the feeling of being criticized by their partners if their body was not resembling the body shape of models in pornographic content.

However, mediating role between pornography, and anxiety attachment, and body image self-consciousness was found only in women in a relationship at the time of the study, which correlated with attachment theory.

### **Sexual effects**

The sexual effects of pornography on intimacy and relationships observe some of the most gendered differences. Men and women differ vastly in how they are impacted by pornography both within and beyond a romantic or sexual relationship.

The consumption of pornography has been shown to have an impact on sexual risk-taking, including less frequent usage of condoms and birth control, as well as more casual sexual encounters. It can negatively impact sexual functioning, especially in men. However, pornography can function as an educational resource for individuals to improve their sexual knowledge, and women who consume pornography more regularly experience increased desire for sexual activity, indicating that pornography might be useful as a form of foreplay.

### **Sexual desire**

Sexual desire is one of the factors most strongly moderated by gender differences. In general, men experience the most acute effects from pornography in terms of sexual desire. Straight men report less sexual desire, both for their partner and in general, directly after consuming pornography. Men also typically utilize pornography for masturbation and solo-sexual activities, rather than partnered or joint purposes. Strong associations exist between increased pornography consumption, as well as frequency of pornography consumption, and problematic decreases in sexual

desire for men. Men who more frequently use pornography report less desire for their partner, and less desire for sex in general.

While most modern research on pornography focuses on men, the findings in women hold interesting information on pornography's gendered impact on sexual desire. Women have found a positive correlation between pornography consumption and sexual desire, indicating that women who view pornography feel more positively about expressing their sexual desire. In addition to increased sexual desire, women also express more sexual desire specifically for their partner on days when they watch pornography, indicating pornography may function as a form of foreplay.

Although men and women do differ in many significant ways with respect to pornography consumption and sexual behaviour, they share one important similarity: brain activity. Men and women's brain activity while watching pornography is nearly identical, suggesting that both men and women experience similar arousal while watching pornography. Further, both men and women report significant support for female-centric pornography, though men express similar levels of arousal to both traditional male-centric pornography as well as female-centric pornography. While women report more general negativity towards traditional, male-centric pornography, women express stronger support and higher levels of self-reported arousal for female-centric pornography.

In general, pornography consumption in couples has been associated with greater sexual desire. Although research in the way of same-sex relationships is limited, available findings indicate that pornography use is connected to an increased level of sexual desire. Men partnered with women report less sexual desire in general with increased pornography consumption, whereas women in both mixed-sex or same-sex relationships report greater sexual desire

overall. Also, individuals were less likely to consume pornography the day after engaging in sexual intercourse.

In 2016, model and actress Pamela Anderson and Orthodox Rabbi Shmuley Boteach co-authored a viral *Wall Street Journal* opinion piece, in which they called online pornography a "public hazard of unprecedented seriousness."

## **Sexual function**

Sexual function is a rising concern with pornography consumption. Primarily thought to affect men, there is a notable relationship between pornography consumption and sexual function problems. Commonly reported problems include erectile dysfunction, delayed ejaculation, anorgasmia, and a lack of sexual desire. Recently, rates of sexual dysfunction have been increasing in younger age brackets. Medical professionals suspect pornography may be one factor contributing to this increase, however there is little causal evidence of such an effect. Another issue is delayed ejaculation, during which men may experience a large disconnect between their orgasm and ejaculation, or difficulty achieving ejaculation. Overarching research shows little evidence of pornography having any effect on delayed ejaculation. Despite the lack of evidence for more physical issues with sexual function, pornography is related to problematic decreases of sexual desire and sexual satisfaction, though the direction of this relationship remains up for debate without additional causal research.

In women, there is little evidence for pornography-induced sexual dysfunction. The most commonly observed effect is increased anxiety or distress, which may then lead to issues of sexual function. The most commonly reported issue for women is arousal dysfunction, indicating a difficulty in achieving or maintaining arousal during sexual activity. This could potentially lead to physical issues, such as painful penetration or vaginismus, making sexual intercourse painful and unpleasant. Women

also tend to report more negative affect with regards to pornography, including strong feelings of shame or guilt.

For both men and women, pornography may lead individuals to make riskier decisions with their sexual health. A study analyzing the use of barrier contraceptives by German adults found that, when pornography is viewed as an educational resource, there is an inverse relationship between pornography consumption and condom usage; people who viewed more pornography tended to not use condoms as frequently. Overall, the most frequently reported issues with sexual function that relate to pornography are decreases in sexual desire for men, and decreases in sexual satisfaction overall.

### **Sexual satisfaction**

Research on pornography's effect on sexual satisfaction is highly varied. Numerous studies looking at both individuals and couples have found different, at times contradictory, results. One study found a negative relationship between pornography consumption and sexual satisfaction across two samples of men. In addition, frequency of pornography consumption, rather than the type of pornography consumed, is negatively correlated with sexual satisfaction; the type of pornography an individual consumed had no effect on sexual satisfaction. When considering couples and their pornography consumption, couples with a greater discordance reported being more sexually dissatisfied than couples who watched pornography together, as well as couples who jointly abstained from pornography altogether.

When looking at women, there is a positive correlation between pornography consumption and sexual satisfaction. Some suggest the connection between male pornography use and sexual dissatisfaction may be the other way around, with men resorting to pornography due to sexual satisfaction, or even

perhaps a cyclical effect. An indirect, yet positive, effect on sexual satisfaction has been found when looking at sexual preference.

Individuals who use pornography alongside masturbation as the primary tool of sexual arousal and fulfillment of one's sexual satisfaction (or needs) may become conditioned to prefer pornography more than other needs of sexual arousal. Furthermore, the "frequency of pornography consumption was also directly related to a relative preference for pornographic rather than partnered sexual excitement." The individuals in the given study primarily used pornography for masturbation purposes. Such preference of pornography over sexual satisfaction fulfilled with a partner, especially in the case of extracting sexual information from pornography, would lead to lower overall sexual satisfaction. Individuals who seek pornography as the main source of information about sexuality were associated with lower sexual excitement, and in return, lower sexual satisfaction in a partnered relationship. Gender did not affect the results of such findings.

However, pornography among some individuals is not only used for sexual satisfaction. A study on affection substitution has shown that "pornography consumption is positively related to affection deprivation, depression, and loneliness and inversely related to experienced affection, relational satisfaction, and closeness." All presented above variants, except affection deprivation, had a significant correlation based on statistical data. Due to such positive relations, individuals who consume pornography not only use it to satisfy their sexual arousal but also to reduce loneliness and create a coping mechanism against social disconnection. Some of the examples of coping mechanisms may include "creating parasocial relationships with the characters depicted in pornography."

## **Sexual preferences**

The use of pornography is extremely varied, especially in the United States. Consumption rates including general consumption, frequency of

consumption, length of time, and type of pornography vary by gender, age, and relationship status, as well as frequency of consumption, which all factor into overall pornography consumption rates. In general, men consume more pornography, and consume pornography more frequently, than women. A vast majority of men report having consumed pornography, with rates ranging from 50% to 90%, usually plateauing in the upper 80% range. Women, however, report significantly less and significantly more varied consumption of pornography, with between 30% and 80% of women saying they have viewed pornography in their lifetime. This variation reflects differences in nationality and culture in terms of sex positivity and pornography acceptance, as well as the unreliability of self-reporting. Despite the variation and lower reports of pornography consumption for women, female viewership of pornography is steadily increasing. Women tend to prefer less hardcore porn compared to men, and men report consuming pornography in conjunction with masturbation more frequently than women.

One of the more current findings revolves around how pornography impacts sexual preference. Theories speculate that increase pornography consumption may alter an individual's preferences during sexual intercourse to more closely resemble what is depicted in pornography. This may include both the acts depicted, as well as the behaviours displayed by actors. Among men, there is a positive relationship between pornography consumption and a desire for more porn-like sexual experience. Frequency of consumption and type of pornography consumed are related to increased desire for more porn-like sex, which is measured by items indicating an expressed preference for "kinkier sex," "hotter sex," and a more porn-like "sexual appearance." The latter includes grooming habits, as well as hair colour and body type. While correlational, the findings do present evidence that pornography consumption has a role in sexual preferences, though causal relationships

cannot be confirmed. This effect is mitigated by both the type of pornography consumed, as well as the frequency of pornography consumption, and the finding holds for both men and women.

A study by Professor Kathryn C. Seigfried-Spellar and Professor Marcus Rogers found results which suggested deviant pornography use followed a Guttman-like progression, concluding that individuals with a younger "age of onset" for adult pornography use were more likely to engage in deviant pornography (bestiality or child) compared to those with a later "age of onset".

Prolonged exposure to pornographic content can lead to a development of increased sexual stimuli tolerance. Study showed earlier exposure may lead to potential desensitization to the stimuli, meaning individuals seek longer stimulation (12.0%) and more intensive sexual stimuli (17.6%) to reach climax. Such increase in tolerance was connected to a change in online pornography use pattern, major one's being "switching to a novel genre of explicit material (46.0%), use of materials that do not match sexual orientation (60.9%) and need to use more extreme (violent) material (32.0%)."

A cross-sectional study on prevalence and patterns in pornography use has detected individuals who mentioned an increased need for more extreme content. Although this may have been depicted as a result of desensitization due to frequent use of pornography, thus a need to use more graphic, violent, and degrading porn material to achieve similar sexual arousal, the actual causation comes from aggression as "more extreme pornography material was more frequently reported by males describing themselves as aggressive." On the other hand, females who increased their search for extreme pornographic content came from the curiosity aspect itself rather than a need due to desensitization.

The research focused on associations of dark personality traits with online activities has also found some dark traits related to online sexual use. Specific online activities of the study covered social media, online gaming, online

gambling, online shopping and online sex. The results showed that "Machiavellianism, spitefulness, sadism, and narcissism were related to different types of internet activities such as online sex, social media use, online gambling, online gaming, and online shopping." Individuals' correlation to sexual use to such study variables is Machiavellianism (.32), spitefulness (.31), sadism (.34), narcissism (.24), and psychopathy (.26).

### **Sexual violence**

A controlled study describes the relationship between given behaviours or environmental conditions and health effects in a laboratory setting in which conditions other than those under study are effectively held constant across groups of participants receiving various levels of the experimental condition(s). Since it is considered that the only functional difference between groups is the level of experimental condition(s) received, researchers can strongly infer cause-and-effect relationships from statistically significant associations between experimental condition(s) and health consequences. Thus, if executed properly, controlled studies have high levels of internal validity. However, such studies often suffer from questionable external validity due to the considerable differences between real-world environments and the experimental context, and the consequent belief that results cannot be generalized beyond that context.

The link between pornography and sexual aggression has been the subject of multiple meta-analyses. Meta-analyses conducted in the 1990s suggested to researchers that there might not be an association of any kind between pornography and rape supportive attitudes in non-experimental studies. However, a meta-analysis by Hald, Malamuth and Yuen (2000) suggests that there is a link between consumption of violent pornography and



rape-supportive attitudes in certain populations of men, particularly when moderating variables are taken into consideration.

A meta-analysis conducted in 2015 found that pornography "consumption was associated with sexual aggression in the United States and internationally, among males and females, and in cross-sectional and longitudinal studies. Associations were stronger for verbal than physical sexual aggression, although both were significant. The general pattern of results suggested that violent content may be an exacerbating factor."

An earlier review of this literature by Ferguson and Hartley in 2009 argued that "it is time to discard the hypothesis that pornography contributes to increased sexual assault behaviour". They stated that the authors of some studies tended to highlight positive findings while de-emphasizing null findings and concluded that controlled studies, on balance, were not able to support links between pornography and sexual violence.

Ferguson and Hartley updated their review with a 2020 meta-analysis. This meta-analysis concluded that mainstream pornography could not be linked to sexual violence and was associated with reductions in societal violence at the societal level. Small correlations were found between violent porn viewing and sexual aggression, but evidence was unable to differentiate whether this was a causal or selection effect (i.e., sexual offenders seeking out violent porn).<sup>1</sup>

Rothman stated in 2021: "In other words, five studies found that the sexual violence perpetrators had seen *less* pornography than other criminals." She added "Should these few "bad apples" spoil the pleasure of the potentially much larger subset of people who enjoy violent-looking pornography with no ill effects?"

## **Epidemiological studies**

## *Asexuality, Gender and the Law in Uganda*

An epidemiological study describes the association between given behaviours or environmental conditions, and physical or psychological health by means of observation of real-world phenomena through statistical data. Epidemiological studies generally have high levels of external validity, insofar as they accurately describe events as they occur outside of a laboratory setting, but low levels of internal validity, since they do not strongly establish cause-and-effect relationships between the behaviours or conditions under study, and the health consequences observed.

Danish criminologist Berl Kutchinsky's *Studies on Pornography and sex crimes in Denmark* (1970), a scientific report ordered by the Presidential Commission on Obscenity and Pornography, found that the legalizing of pornography in Denmark had not resulted in an increase of sex crimes. In 1998 Milton Diamond from the University of Hawaii noted that in Japan, the number of reported cases of child sex abuse dropped markedly after the ban on sexually explicit materials was lifted in 1969; however, in Denmark and Sweden, there was an increase in reported rapes after the liberalization of their pornography laws during the same time period.

Some researchers argue that there is a correlation between pornography and a decrease of sex crimes. *The effects of Pornography: An International Perspective* was an epidemiological study which found that the massive growth of the pornography industry in the United States between 1975 and 1995 was accompanied by a substantial decrease in the number of sexual assaults per capita - and reported similar results for Japan - but not for Denmark and Sweden.

In 1986, a review of epidemiological studies by Neil M. Malamuth found that the quantity of pornographic material viewed by men was positively correlated with degree to which they endorsed sexual assault. Malamuth's work describes Check (1984), who found among a diverse sample

of Canadian men that more exposure to pornography led to higher acceptance of rape myths, violence against women, and general sexual callousness. In another study, Briere, Corne, Runtz and Neil M. Malamuth, (1984) reported similar correlations in a sample involving college males. On the other hand, the failure to find a statistically significant correlation in another previous study led Malamuth to examine other interesting correlations, which took into account the information about sexuality the samples obtained in their childhood, and pornography emerged as the second most important source of information. Malamuth's work has been criticized by other authors, however, such as Ferguson and Hartley (2009) who argue Malamuth has exaggerated positive findings and has not always properly discussed null findings. In a *Quartz* publication, Malamuth argued that porn is like alcohol: "whether it's bad for you depends on who you are" (stating that it increases violence in a few people, not in most people; it makes most people more relaxed).

## **Effects on relationships**

The consumption of pornography has a large reach across various areas of relationships in life. Pornography can influence an individual's relationship and intimacy through a number of channels, including overall level of satisfaction in their relationships, communication within a relationship, and setting boundaries for infidelity within a relationship.

Pornography's impact on relationship satisfaction comes under scrutiny, as findings range from negative correlations, to positive relationships. Pornography consumption is correlated with less relationship satisfaction, sexual satisfaction, and in men, less sexual desire for their partner. Researchers have concluded this could be because the novelty value of porn makes it difficult for a female partner to compete. Some research reports positive findings for women who consume pornography more regularly, including increased relationship satisfaction and decreased distress.

## **Relationship satisfaction**

The research on the relationship between pornography use and relationship satisfaction is vast and mixed. While some believe pornography consumption leads people to become less satisfied in their relationships, others believe it can have the direct opposite effect. Pornography consumption tends to accompany lower levels of satisfaction in long-term, heterosexual relationships. Most of the current research is correlational, indicating a connection but not a cause; however, one major trend is the rate of divorce. Couples who increase their consumption of pornography are nearly twice as likely to divorce than couples who do not, with the rate rising from 5% to 11%. Also, married adults who watch porn are twice as likely to be divorced after 6 years than married adults who don't watch porn. One mitigator is the frequency of pornography consumption. More frequent pornography consumption is negatively associated with relationship satisfaction. Individuals who report more frequent use of pornography within a relationship also report low levels of satisfaction in their relationships.

However, many reject the idea that pornography is inherently harmful to relationship satisfaction. Joint pornography consumption within a relationship has been connected to increased levels of relationship satisfaction for both partners. Couples who consumed pornography together expressed more satisfaction with their relationships than couples in which only one individual used pornography. This suggests that there is more at play than simply the consumption of pornography, such as the role of honesty and partner perception. Individuals whose partners are honest about their own pornography consumption tend to feel more satisfied in their relationships, to a point. There is evidence for an "honesty threshold," indicating that the relationship between honesty and pornography is not linear, and partners do not want to hear every detail about the other's pornography habits. This indicates that, although honesty and disclosure is important for pornography

consumption, there seems to be a threshold of helpful honesty that, once surpassed, may cause more harm. In addition, when women consume pornography, they report lower levels of distress than their counterparts. While women often consume pornography less often than men, men are fairly accurate at perceiving their partner's pornography consumption. Women, on the other hand, are less accurate at perceiving their male partner's pornography use.

Some research suggests that there is no connection between relationship satisfaction and pornography use, whether individually or jointly. Although finding evidence in their second study for a negative correlation, a study of two independent male samples found no relationship between pornography and relationship satisfaction in their first sample. Conversely, other studies found no relationship whatsoever between joint pornography use and satisfaction. When analyzing couples and their pornography consumption over the course of one month, researchers found no correlation between relationship satisfaction and pornography use.

## **Communication**

Communication is a vital component of any healthy relationship, and many researchers question how pornography may impact the ability of a couple to communicate openly. Honesty has been shown to be a mitigator in relationship effects of pornography consumption. Couples in which partners are honest about their pornography consumption report greater satisfaction than couples dealing with concealment, or dishonesty, surrounding pornography use. Pornography consumption among couples leads to improved communication about sexual desires, and increased openness in communication. Conversely, active concealment of pornography use habits can lead to less openness in communication and trust.

Another important aspect is the communication of affection within relationships. Affection Exchange Theory establishes the inherent role of

## *Asexuality, Gender and the Law in Uganda*

affection within romantic relationships, and even in the role of survival, reproduction, and sexual selection. Trait attachment is positively associated with relationship satisfaction. Individuals who score higher in trait attachment report feeling and expressing greater sexual desire for their partners, compared to individuals who score lower in trait attachment. Some evidence indicates that the connection between Affection Exchange Theory and sexual desire is, in fact, stronger than the connection to relationship satisfaction, suggesting that sexual desire may have a crucial moderating role between the two. While this study found no correlation between pornography consumption and trait affection, researchers noted that increased feelings of guilt were related to lower levels of sexual desire for one's partner. This is somewhat indicative of partner-imposed or communicated guilt, or possibly reflecting an effect of the sexual scripts of pornography creating unrealistic expectations that lead to magnified dissatisfaction.

In conclusion therefore the pornography act doesn't repel pornography in directly but it only limits it to person who is not at the age of 18years and above

## CHAPTER TWENTY ONE



### **PROSTITUTION**

A Prostitution of sex work is illegal in Uganda and the law defines a "prostitute as " a person, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain living on the earnings of prostitution is prohibited.

Prostitution in Uganda is illegal according to Uganda's 1950 Penal Code, but is widespread despite this. Many turn to prostitution because of poverty and lack of other opportunities. A study of Kampala teachers in 2008 showed that teachers were turning to prostitution to increase their income. A sex worker can earn around USh.1.5 million/= (£439 sterling) per month, whereas this would be a yearly wage for a secondary school teacher.<sup>232</sup> There are many Kenyan prostitutes in the country.

Offenders of any these related crimes may be subjected to a maximum sentence of seven years Imprisonment, it should be noted that although trafficking for prostitution exists in Uganda, there are currently no laws or policies that address the issue. But sex work has always been a criminal offence according the Uganda penal code act, the customary law of crime did not

---

<sup>232</sup> [http://en.wikipedia.org/wiki/prostitution in Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)

## *Asexuality, Gender and the Law in Uganda*

penalize for the sex work alone, but married man was only penalized for the customary crime of committing adultery when he is to be found with a woman or a betrothed girl. Hence the exchange of material gain for sexual service was generally tolerated under pre-colonial Uganda.

In 2003, Ugandan authorities ordered sex workers to pay a tax of US\$9,000/= (£2.63 stg) in order to operate in Malaba<sup>233</sup>. Also, in 2003 Ugandan MPs met sex workers who were concerned about "police harassment" and claiming that it was unfair that police officers were arresting sex workers while they waited for clients.<sup>234</sup>

The unprecedented rural-urban migration in the 1910s and 1920s, the growth of Kampala city and the attendant "social explosion's work flourished. The colonial law against prostitution was needless to say, very much modeled on that of England at that time, imposed female sexuality monogamy and chastity, similarly in the Buganda Kingdom where the capital of Kampala is located, the elite members of the Lukiiko Buganda parliament with their colonial education and missionary influence felt the need to curb what they perceived as moribund morality. Hence in 1941, the Buganda government enacts a separate legislation to prevent sex work in the royal Capital, it criminalized sex work and prohibited "an unmarried girl less than twenty years of age to enter employment or engage in any kind of work which takes her away from the home or her parents at night but the irrational double standard in Ugandan women's and men's sexuality not only cast doubt on the moralizing discourages but was fraught with tensions and contradictions.

The Practice of Prostitution In Uganda The historical evaluation of prostitution in Uganda Prostitute in Uganda is contributed by lack of a standard of living, adequate for the health and evolving of himself and his

---

<sup>233</sup> [http://en.wikipedia.org/wiki/prostitution\\_in\\_Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)

<sup>234</sup> [http://en.wikipedia.org/wiki/prostitution\\_in\\_Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)



famny, including food, clothing, housing and medical care that is necessary social services including rights to security in the events of unemployment, sickness, disability, widowhood, beyond his control. Legalized or regulative regimes do not primarily focus on the rights and welfare of the female sex workers but caters for the interest of male clients. The state controls the conditions under which commercial sex operates (Gangoli and Westmorland 2006) the committee which monitors of Discrimination of the United Nation Convention on the Elimination of all forms of discrimination.

Article 11 Stated that the Parties to present covenant recognize the right of every one, and give an adequate standard of living for himself and his family including adequate food, clothing and housing and to the continuous improvement of living condition. The state parties will take appropriate steps to ensure the international co-operation based on free consent. Against Women (CEDAW} interpretation "voluntary prostitution" to a within free choice of profession and employment.}

Unfortunately, the Ugandan judicial jurisprudence has not lent itself to any substantive discussion of Prostitute or sex work. On the issue of whether the feminist scholars agree on irrespective of their theoretical leaning in that all criminal sanction against females offers services in the sex industry should be abolished. In other words, feminists are united in fighting the stigma feminist and discrimination those women engaged in the sex trade suffer from. There are main legal regimes that governs sex work around the world is total prohibition of all aspects of sex work.

Prostitutes operate in Kampala city centre.<sup>235</sup> Ahead of the 2007 Commonwealth leaders' meeting in the city, the prostitutes were moved out of the city centre to designated zones in the suburbs.

Violence erupted in Kampala in 2016 between Ugandan and Kenyan prostitutes. The Kenyan prostitutes were charging a low price, and the

---

<sup>235</sup> [http://en.wikipedia.org/wiki/prostitution\\_in\\_Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)

## *Asexuality, Gender and the Law in Uganda*

Ugandans were angry that the Kenyans were taking all their trade. Local leaders intervened to stop the fighting, and the Kenyans agreed to charge the same price as the Ugandans. Two Kenyans were injured. In an attempt to stop the influx of Kenyan prostitutes, the authorities planned to charge a registration fee.<sup>236</sup>

With 6,000 construction workers building the new Hydroelectric Power Station fuelling demand, there are many prostitutes in the Karuma area.<sup>237</sup>

Lyantonde is a truck-stop town and the main stop-over on the main highway from Kampala to Kigali, the capital city of Rwanda. There are many prostitutes in the town to service the truck driver's needs. The area has the highest rate of HIV in the country, nearly twice the national average.<sup>238</sup>

### **HIV**

Uganda is in the top 10 of countries with the highest HIV prevalence rates. Sex workers are a high-risk group. In 2013 they had a 34.2% prevalence rate.<sup>239</sup> Even in Kampala, where HIV infection is the highest in the country, clients are reluctant to use condoms and will offer many times the usual rate for unprotected sex.<sup>240</sup>

### **Sex trafficking**

---

<sup>236</sup> [http://en.wikipedia.org/wiki/prostitution\\_in\\_Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)

<sup>237</sup> [http://en.wikipedia.org/wiki/prostitution\\_in\\_Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)

<sup>238</sup> [http://en.wikipedia.org/wiki/prostitution\\_in\\_Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)

<sup>239</sup> [http://en.wikipedia.org/wiki/prostitution\\_in\\_Uganda](http://en.wikipedia.org/wiki/prostitution_in_Uganda)

<sup>240</sup> *ibid*

Uganda is a source, transit, and destination country for women, and children subjected to sex trafficking. Ugandan girls and boys are exploited in prostitution. Recruiters target girls and women aged 13–24 years for domestic sex trafficking, especially near sports tournaments and road construction projects. An international organisation reported that most internal trafficking victims are Ugandans.

During the reporting period, Ugandan victims were identified in neighboring countries, including Kenya, South Sudan, and the DRC. Children from the DRC, Rwanda, Burundi, Kenya, Tanzania, and South Sudan are exploited in prostitution in Uganda. South Sudanese children in refugee settlements in northern Uganda are vulnerable to trafficking.

Young women remained the most vulnerable to transnational trafficking, usually seeking employment as domestic workers in the Middle East; at times Ugandan women were fraudulently recruited for employment and then exploited in forced prostitution. Ugandan migrant workers are subjected to sex trafficking in United Arab Emirates (UAE), Saudi Arabia, Oman, Qatar, Kuwait, Iraq, Iran, Egypt, Turkey, and Algeria. Despite the government's complete ban in 2016 on Ugandans' travel abroad for domestic work, some licensed and unlicensed agencies circumvented this ban by sending Ugandans through Kenya and Tanzania. Traffickers, who appear to be increasingly organized, are frequently relatives or friends of victims, or may pose as wealthy women or labor recruiters promising vulnerable Ugandans well-paid jobs abroad or in Uganda's metropolitan areas. Some traffickers threatened to harm the victims' family or confiscated travel documents.

## **Should prostitution in Uganda be legalized**

### **Religious perspective**

Although the New Testament is largely silent on the subject of polygamy, some point to Jesus's repetition of the earlier scriptures, noting that a man

## *Asexuality, Gender and the Law in Uganda*

and a wife "shall become one flesh". However, some look to Paul's writings to the Corinthians: "Do you not know that he who is joined to a prostitute becomes one body with her? For, as it is written, "The two will become one flesh.'" Supporters of polygamy claim that this verse indicates that the term refers to a physical, rather than a spiritual, union.

Some Christian theologians argue that in Matthew 19:3–9 and referring to Genesis 2:24, Jesus explicitly states a man should have only one wife:

Have you not read, that he which made them at the beginning made them male and female, and said, for this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh?

1 Timothy 3:2 states:

Now a bishop must be above reproach, married only once, temperate, sensible, respectable, hospitable, an apt teacher,

See verse 12 regarding deacons having only one wife. Similar counsel is repeated in the first chapter of the Epistle to Titus.

Periodically, Christian reform movements that have sought to rebuild Christian doctrine based on the Bible alone (*sola scriptura*) have temporarily accepted polygyny as a Biblical practice. For example, during the Protestant Reformation, in a document which was simply referred to as "*Der Beichtrat*" (or "*The Confessional Advice*"), Martin Luther granted the Landgrave Philip of Hesse, who, for many years, had been living "constantly in a state of adultery and fornication", a dispensation to take a second wife. The double marriage was to be done in secret, however, to avoid public scandal. Some fifteen years earlier, in a letter to the Saxon Chancellor Gregor Brück, Luther stated that he could not "forbid a person to marry

several wives, for it does not contradict Scripture." (*"Ego sane fateor, me non posse prohibere, si quis plures velit uxores ducere, nec repugnat sacris literis."*)

Similarly, upon the 10 commandments as per the book of Exodus that stipulate "don't commit adultery". It's a wider view that once prostitution is legalized upheld evils of adultery, fornication will be on board and this makes us to recall why God destroyed Sodom and Gommola.

### **Other perspectives**

Sex work is criminalized not only through prohibitions on selling sexual services, but also through laws that prohibit the solicitation of sex, living off the earnings of sex work, brothel-keeping, or the purchase of sexual services. By reducing the freedom of sex workers to negotiate condom use with clients, organize for fair treatment, and publicly advocate for their rights, criminalization and aggressive policing have been shown to increase sex workers' vulnerability to violence, extortion, and health risks.

This document provides ten reasons why decriminalizing sex work is the best policy for promoting health and human rights of sex workers, their families, and communities. Removing criminal prosecution of sex work goes hand-in-hand with recognizing sex work as work and protecting the rights of sex workers through workplace health and safety standards. Decriminalizing sex work means sex workers are more likely to live without stigma, social exclusion, and fear of violence

## **Reasons Prostitution Should Be Legalized**

The subject of prostitution has been analyzed and discussed for thousands of years. It was around 5000 years ago that civilized societies started to regulate prostitution. Those in power decided to use the mutual exchange of sex for money to forward their tax base, provide a regulated and needed service and accept the fact that love for sale was here to stay. In fact, it was not long ago

## *Asexuality, Gender and the Law in Uganda*

that prostitution was regulated in the city of New Orleans in an area of the city that was known as Storyville.

Storyville was the “red-light district” of New Orleans, Louisiana from 1897 to 1917. It was established by municipal ordinance under the New Orleans City Council by Alderman Sidney Story, a City Councilman, who wrote guidelines and legislation to control prostitution within the city. This municipal ordinance did not legalize prostitution, but rather created a 16-block area of the city wherein prostitution was not illegal. The area was originally referred to as The District, but its nickname Storyville soon caught on. It was bound by the streets of North Robertson, Iberville, Basin, and St. Louis and was found between the French Quarter and Claiborne Ave. Since it was also located by a train station, Storyville was a popular destination for visitors and travelers to the city and became a centralized attraction in the heart of New Orleans

So far from what I have seen and assessed there are full reason for prostitutions be legalized based on the human rights value, freedom. Therefore, prostitution must be supported not only in Uganda, but also internationally hence, bill in the parliament to legalize prostitution which might lead to an international covenant recognizing the rights of prostitution and the right to practice prostitution. All stake holders are required to play their roles satisfactorily those institutions to mention but few:

1. It would make both parties less prone to STDs: Legalization could require that all prostitutes take regular health exams, helping to ensure that she or he is not carrying a sexually transmitted disease.
2. It would give the prostitute employment rights: Many prostitutes are at the financial mercy of a pimp, john or madam who often take more than half their income. Legalization would protect their rights and abolish this form of slavery.

3. It would open the door to unionization: Unions would probably be the best enforcer of the industry. They would help ensure that under the radar (illegal, non-taxpaying, non-health exam participants) would stay off the streets.
4. Illegal prostitution costs us money: While the costs involved are hard to estimate, it taxes the police force, the public defenders' offices and the judicial system. All of these resources could be better utilized pursuing and prosecuting violent offenders.
5. Legalized prostitution would pay: We could tax prostitution in the same way we tax hospitality and luxury services, often higher than normal sales tax.
6. It can't be prevented: There's a reason it's called "the world's oldest profession". It's always been around; it always will be. We might as well bring it out into the open.
7. It Would Reduce Violence Against Women: Prostitutes in America (mostly women) are vulnerable to violence from customers and pimps alike. A study of San Francisco prostitutes found that 82% had been assaulted and 68% had been raped while working as prostitutes. Another study of prostitutes in Colorado Springs found they were 18 times more likely to be murdered than non-prostitutes their age and race.

## CHAPTER TWENTY TWO



### MASTURBATION

**Masturbation** is the sexual stimulation of one's own genitals for sexual arousal or other sexual pleasure, usually to the point of orgasm. The stimulation may involve hands, fingers, everyday objects, sex toys such as vibrators, or combinations of these. Mutual masturbation is masturbation with a sexual partner, and may include manual stimulation of a partner's genitals (fingering or a handjob), or be used as a form of non-penetrative sex.

#### Cultural history

The sexual stimulation of one's own genitals has been interpreted variously by different religions, the subject of legislation, social controversy, activism, as well as intellectual study in sexology. Social views regarding masturbation taboo have varied greatly in different cultures, and over history.

There are depictions of male and female masturbation in prehistoric rock paintings around the world. From the earliest records, the



ancient Sumerians had very relaxed attitudes toward<sup>241</sup>. The Sumerians widely believed that masturbation enhanced sexual potency, both for men and for women, and they frequently engaged in it, both alone and with their partners. Men would often use *purru*-oil, a special oil probably mixed with pulverized iron ore intended to enhance friction. Masturbation was also an act of creation and, in Sumerian mythology, the god Enki was believed to have created the Tigris and Euphrates rivers by masturbating and ejaculating into their empty riverbeds.<sup>242</sup> The ancient Egyptians also regarded masturbation by a deity as an act of creation; the god Atum was believed to have created the universe by masturbating to ejaculation.

The ancient Greeks also regarded masturbation as a normal and healthy substitute for other forms of sexual pleasure.<sup>243</sup> Most information about masturbation in ancient Greece comes from surviving works of ancient Greek comedy and pottery. Masturbation is frequently referenced in the surviving comedies of Aristophanes, which are the most important sources of information on ancient Greek views on the subject. In ancient Greek pottery, satyrs are often depicted masturbating. According to the *Lives and Opinions of Eminent Philosophers* by the third-century AD biographer Diogenes Laërtius, Diogenes of Sinope, the fourth-century BC Cynic philosopher, often masturbated in public, which was considered scandalous. When people confronted him over this, he would say, "If only it were as easy to banish hunger by rubbing my belly."

Among non-western perspectives on the matter, some teachers and practitioners of Traditional Chinese medicine, Taoist meditative and martial arts say that masturbation can cause a lowered energy level in men. Within the African Congo Basin, the Aka, Ngandu, Lesi, brbs, and Ituri ethnic

---

<sup>241</sup> <http://en.Wikipedia.org/wiki/musterbation>

<sup>242</sup> <http://en.Wikipedia.org/wiki/musterbation>

<sup>243</sup> <http://en.Wikipedia.org/wiki/musterbation>

groups all lack a word for masturbation in their languages and are confused by the concept of masturbation<sup>244</sup>

### **Development of the contemporary Western world view**

Masturbation was depicted in 19th-century Shunga prints, such as this piece by Kunisada

#### **18th century**

*Onanism* is a hybrid term which combines the proper noun, *Onan*, with the suffix, *-ism*. Notions of self-pollution, impurity and uncleanness were increasingly associated with various other sexual vices and crimes of the body (such as fornication, sodomy, adultery, incest and obscene language); in reaction to the 17th-century libertine culture, middle-class moralists increasingly campaigned for a reformation of manners and a stricter regulation of the body. Paradoxically, a crime that was secret and private became a popular and fashionable topic. Moreover, writers tended to focus more on the perceived links with mental and physical illnesses that were deemed to be associated with the sense of moral outrage. Attention increasingly shifted to the prevention and cure of this illness which perilously sapped men of their virility.<sup>245</sup>

The first use of the word "onanism" to consistently and specifically refer to masturbation is a pamphlet first distributed in London in 1716, titled "Onania, or the Heinous Sin of self-Pollution, And All Its Frightful Consequences, In Both Sexes, Considered: With Spiritual and Physical Advice To Those Who Have Already Injured Themselves By This

---

c

<sup>245</sup> <http://en.Wikipedia.org/wiki/musterbation>

Abominable Practice." The Online Etymology Dictionary, however, claims the earliest known use of *onanism* occurred in 1727. In 1743–45, the British physician Robert James published *A Medicinal Dictionary*, in which he described masturbation as being "productive of the most deplorable and generally incurable disorders" and stated that "there is perhaps no sin productive of so many hideous consequences" One of the many horrified by the descriptions of malady in *Onania* was the notable Swiss physician Samuel-Auguste Tissot. In 1760, he published *L'Onanisme*, his own comprehensive medical treatise on the purported ill-effects of masturbation. Though Tissot's ideas are now considered conjectural at best, his treatise was presented as a scholarly, scientific work in a time when experimental physiology was practically nonexistent.

Immanuel Kant regarded masturbation as a violation of the moral law. In *The Metaphysics of Morals* (1797), he made the *a posteriori* argument that "such an unnatural use of one's sexual attribute" strikes "everyone upon his thinking of it" as "a violation of one's duty to himself", and suggested that it was regarded as immoral even to give it its proper name (unlike the case of the similarly undutiful act of suicide). He went on, however, to acknowledge that "it is not so easy to produce a rational demonstration of the inadmissibility of that unnatural use", but ultimately concluded that its immorality lay in the fact that "a man gives up his personality ... when he uses himself merely as a means for the gratification of an animal drive".<sup>[124]</sup>

## 19th century

By 1838, Jean Esquirol had declared in his *Des Maladies Mentales* that masturbation was "recognized in all countries as a cause of insanity."<sup>246</sup> John Harvey Kellogg and Sylvester Graham were among those who proposed that circumcision and eating a bland, meatless diet would curb masturbation.<sup>[127]</sup> The medical literature of the time also described more invasive procedures including electric shock treatment, infibulation,

---

<sup>246</sup> <http://en.Wikipedia.org/wiki/musterbation>

restraining devices like chastity belts and straitjackets, cauterization or – as a last resort – wholesale surgical excision of the genitals. Medical attitudes toward masturbation began to change towards the end of the 19th century when H. Havelock Ellis, in his seminal 1897 work *Studies in the Psychology of Sex*, questioned Tissot's premises.<sup>247</sup>

## **20th century**

In 1905, Sigmund Freud addressed masturbation in his *Three Essays on the Theory of Sexuality* and associated it with addictive substances. He described the masturbation of infants at the period when the infant is nursing, at four years of age, and at puberty. At the same time, the supposed medical condition of hysteria from the Greek *hysteria* or uterus was being treated by what would now be described as medically administered or medically prescribed masturbation for women. In 1910, the meetings of the Vienna psychoanalytic circle discussed the moral or health effects of masturbation,<sup>248</sup> but its publication on the matter was suppressed. "Concerning Specific Forms of Masturbation" is a 1922 essay by another Austrian, the psychiatrist and psychoanalyst Wilhelm Reich. In the seven and a half page essay Reich accepts the prevalent notions on the roles of unconscious fantasy and the subsequent emerging guilt feelings which he saw as originating from the act itself. By 1930, F. W. W. Griffin, editor of *The Scouter*, had written in a book for Rover Scouts stating that the temptation to masturbate was "a quite natural stage of development" and, citing Ellis' work, held that "the effort to achieve complete abstinence was a very serious error." The work of sexologist Alfred Kinsey during the 1940s and 1950s, most notably the Kinsey Reports, insisted that masturbation was an instinctive

---

<sup>247</sup> <http://en.Wikipedia.org/wiki/musterbation>

<sup>248</sup> <http://en.Wikipedia.org/wiki/musterbation>

behavior for both males and females. In the US, masturbation has not been a diagnosable condition since DSM II (1968).<sup>1</sup>

Thomas Szasz stated in 1973 the shift in scientific consensus: "Masturbation: the primary sexual activity of mankind. In the nineteenth century, it was a disease; in the twentieth, it's a cure." In 2019, Encyclopedia Britannica endorses his conclusion (namely masturbation as a cure inside sex therapy).

Dörner and others wrote in their now classic book (1978): "Self-satisfaction is therefore a priceless good for the success of sexual pleasure, but also for other partnership and sexual relationships: for only if I can offer something to myself can I also offer it to someone else. ... Not self-satisfaction, but feelings closely correlated with it need among others help through counseling, respectively therapy!"

In the 1980s, Michel Foucault was arguing masturbation taboo was "rape by the parents of the sexual activity of their children". However, in 1994, when the surgeon general of the United States, Joycelyn Elders, mentioned as an aside that it should be mentioned in school curricula that masturbation was safe and healthy, she was forced to resign, with opponents asserting that she was promoting the teaching of *how* to masturbate.

## **21st century**

Both practices and cultural views of masturbation have continued to evolve in the 21st century, partly because the contemporary lifeworld is increasingly technical. For example, digital photographs or live video may be used to share masturbatory experiences either in a broadcast format (possibly in exchange of money, as with performances by "camgirls" and "camboys"), or between members of a long-distance relationship. Teledildonics is a growing field. Masturbation has been depicted as a complicated part of "Love in the 21st Century" in the BBC drama by the same name.

### **In modern culture**

Even though many medical professionals and scientists have found large amounts of evidence that masturbating is healthy and commonly practiced by males and females, stigma on the topic still persists today. In November 2013, Matthew Burdette, after being filmed masturbating, committed suicide. In an article published by the nonprofit organization Planned Parenthood Federation of America, it was reported that:

Proving that these ancient stigmas against masturbation are still alive and felt by women and men, researchers in 1994 found that half of the adult women and men who masturbate feel guilty about it (Laumann, et al., 1994. p.85). Another study in 2000 found that adolescent young men are still frequently afraid to admit that they masturbate (Halpern, et al., 2000, 327).

### **Sperm donation**

Male masturbation may be used as a method to obtain semen for third party reproductive procedures such as artificial insemination and *in vitro* fertilization which may involve the use of either partner or donor sperm. At a sperm bank or fertility clinic, a special room or cabin may be set aside so that semen may be produced by male masturbation for use in fertility treatments such as artificial insemination. Most semen used for sperm donation, and all semen donated through a sperm bank by sperm donors, is produced in this way. The facility at a sperm bank used for this purpose is known as a masturbatorium (US) or men's production room (UK). A bed or couch is usually provided for the man, and pornographic films or other material may be made available.<sup>[139]</sup>

## Encouragement

In the UK in 2009, a leaflet was issued by the National Health Service in Sheffield carrying the slogan, "an orgasm a day keeps the doctor away". It also says: "Health promotion experts advocate five portions of fruit and veg a day and 30 minutes' physical activity three times a week. What about sex or masturbation twice a week?" This leaflet has been circulated to parents, teachers and youth workers and is meant to update sex education by telling older school students about the benefits of enjoyable sex. Its authors have said that for too long, experts have concentrated on the need for "safe sex" and committed relationships while ignoring the principal reason that many people have sex. The leaflet is entitled *Pleasure*. Instead of promoting teenage sex, it could encourage young people to delay losing their virginity until they are certain they will enjoy the experience, said one of its authors.

The Spanish region of Extremadura launched a program in 2009 to encourage "sexual self-exploration and the discovery of self-pleasure" in people aged from 14 to 17. The €14,000 campaign includes leaflets, flyers, a "fanzine", and workshops for the young in which they receive instruction on masturbation techniques along with advice on contraception and self-respect. The initiative, whose slogan is, "Pleasure is in your own hands" has angered local right-wing politicians and challenged traditional Roman Catholic views. Officials from the neighboring region of Andalucia have expressed an interest in copying the program. The text book *Palliative care nursing: quality care to the end-of-life* states, "Terminally ill people are likely no different from the general population regarding their masturbation habits. Palliative care practitioners should routinely ask their patients if anything interferes in their ability to masturbate and then work with the patient to correct the problem if it is identified."<sup>249</sup> The sex-positive movement argues for a supportive environment for masturbation.

---

<sup>249</sup> <http://en.Wikipedia.org/wiki/musterbation>

## **Law**

The prosecution of masturbation has varied at different times, from complete illegality to virtually unlimited acceptance. In a 17th-century law code for the Puritan colony of New Haven, Connecticut, blasphemers, homosexuals and masturbators were eligible for the death penalty.

Often, masturbation in the sight of others is prosecuted under a general law such as public indecency, though some laws make specific mention of masturbation. In the UK, masturbating in public is illegal under Section 28 of the Town Police Clauses Act 1847. The penalty may be up to 14 days in prison, depending on a range of circumstantial factors.<sup>250</sup> In the US, laws vary from state to state. In 2010, the Supreme Court of Alabama upheld a state law criminalizing the distribution of sex-toys. In the city of Charlotte, North Carolina, masturbating in public is a class 3 misdemeanor in 2013, a man found masturbating openly on a beach in Sweden was cleared of charges of sexual assault, the court finding that his activities had not been directed towards any specific person.<sup>251</sup> Can the same argument be made in favor of the UCU Student girl who posted on her whatsapp masturbating, this girl was jailed for sharing her masturbation video on social media<sup>252</sup> the 23-year-old student of Uganda Christian University (**UCU**) pleaded guilty before Buganda Road court, to broadcasting pornographic material.

Lilian Rukundo is said to have uploaded on the internet a video of herself, while **masturbating**, the student was charged with 10 counts before being convicted on her own plea of guilty. Prosecutions claims that Rukundo in 2017 while in her hostel in Mukono District produced a video of herself

---

<sup>250</sup> <http://en.Wikipedia,org/wiki/musterbation>

<sup>251</sup> <http://en.Wikipedia,org/wiki/musterbation>

<sup>252</sup> See post by Alabi Lawrence on July 10, 2018



masturbating and shared it through social media for purposes of sexually arousing whoever watched it.

The prosecuting officer said:

*“We came across the video of the accused in 2017 and our team swung into action immediately after which she was arrested and questioned. She admitted making the pornographic video and then distributing it on Facebook for the view of the public”*

In many jurisdictions, masturbation by one person of another is considered digital penetration which may be illegal in some cases, such as when the other person is a minor. There is debate whether masturbation should be promoted in correctional institutions. Restrictions on pornography, used to accompany masturbation, are common in American correctional facilities. Connecticut Department of Corrections officials say that these restrictions are intended to avoid a hostile work environment for correctional officers.<sup>[147]</sup> Other researchers argue allowing masturbation could help prisoners restrict their sexual urges to their imaginations rather than engaging in prison rape or other non-masturbatory sexual activity that could pose sexually transmitted disease or other health risks.<sup>253</sup> Masturbation is frequent in both sexes and at any age. Various medical and psychological benefits have been attributed to a healthy attitude toward sexual activity in general and to masturbation in particular. No causal relationship is known between masturbation and any form of mental or physical disorder. In the Western world, masturbation in private or with a partner is generally considered a normal and healthy part of sexual enjoyment.

Masturbation has been depicted in art since prehistoric times, and is both mentioned and discussed in very early writings. In the 18th and 19th centuries, some European theologians and physicians described it as

---

<sup>253</sup> <http://en.Wikipedia,org/wiki/musterbation#>

## *Asexuality, Gender and the Law in Uganda*

"heinous", "deplorable", and "hideous", but during the 20th century, these taboos generally declined. There has been an increase in discussion and portrayal of masturbation in art, popular music, television, films, and literature. Today, religions vary in their views of masturbation; some view it as a spiritually detrimental practice, some see it as not spiritually detrimental, and others take a situational view. The legal status of masturbation has also varied through history and masturbation in public is illegal in most countries.

Masturbation involves touching, pressing, rubbing, or massaging a person's genital area, either with the fingers or against an object such as a pillow; inserting fingers or an object into the vagina or anus (see anal masturbation); and stimulating the penis or vulva with an electric vibrator, which may also be inserted into the vagina or anus. It may also involve touching, rubbing, or pinching the nipples or other erogenous zones while masturbating. Both sexes sometimes apply lubricants to reduce friction. Reading or viewing pornography, sexual fantasies, or other erotic stimuli may lead to a desire for sexual release such as by masturbation. Pornography is also used in order to assist with masturbation and to improve the experience of masturbating. Some people get sexual pleasure by inserting objects, such as urethral sounds, into the urethra (the tube through which urine and, in men, semen, flows), a practice known as urethral play or "sounding". Other objects such as ball point pens and thermometers are sometimes used, although this practice can lead to injury or infection. Some people masturbate by using machines that simulate intercourse. Men and women may masturbate until they are close to orgasm, stop for a while to reduce excitement, and then resume masturbating. They may repeat this cycle multiple times. This "stop and go" build-up, known as "edging", can achieve even stronger orgasms. Rarely, people quit stimulation just before orgasm to retain the heightened energy that normally comes down after orgasm.

## **Male**

Common positions include lying on one's back or face down, sitting, squatting, kneeling, or standing. The most common masturbation technique among males is to hold the penis with a loose fist and then to move the hand up and down the shaft. This type of stimulation is typically all that is required to achieve orgasm and ejaculation. The speed of the hand motion may vary throughout the masturbation session.

Male masturbation techniques may differ between males who have been circumcised and those who have not. Some techniques which may work for one individual can be difficult or uncomfortable for another. For males who have not been circumcised, stimulation of the penis typically comes from the "pumping" of the foreskin, whereby the foreskin is held and slid up and down over the glans, which, depending on foreskin length, is completely or partially covered and then uncovered in a rapid motion. The outer foreskin glides smoothly over the inner foreskin. The glans itself may widen and lengthen as the stimulation continues, becoming slightly darker in colour, while the gliding action of the foreskin reduces friction. This technique may also be used by some circumcised men who have sufficient excess skin remaining from their circumcision.

For circumcised males, on whom the glans is mostly or completely uncovered, this technique creates more direct contact between the hand and the glans. To avoid friction, irritation and soreness from this resulting friction, some may prefer to use a personal lubricant, masturbation cream, or saliva.

The shaft skin can also be slid back and forth with just the index finger and thumb wrapped around the penis. A variation on this is to place the fingers and thumb on the penis as if playing a flute, and then shuttle them back and forth. Lying face down on a comfortable surface such as a mattress or pillow, the penis can be rubbed against it. This technique may include the use of a simulacrum, or artificial vagina.

## *Asexuality, Gender and the Law in Uganda*

Prostate massage is one other technique used for sexual stimulation, often in order to reach orgasm. The prostate is sometimes referred to as the "male G-spot" or P-spot. Some men can achieve orgasm through stimulation of the prostate gland, by stimulating it using a well-lubricated finger or dildo inserted through the anus into the rectum, and men who report the sensation of prostate stimulation often give descriptions similar to females' accounts of G-spot stimulation. Prostate stimulation can produce more intense orgasms than penile stimulation. Stimulating the prostate from outside, via pressure on the perineum, can be pleasurable as well.

Anal masturbation without any prostate stimulation, with fingers or otherwise, is also one other technique which some men enjoy. Since the muscles of the anus contract during orgasm, the presence of an object holding the sphincter open can strengthen the sensation of the contractions and intensify orgasm. The practice may be pleasurable because of the large number of nerve endings in the anal area, and because of the added stimulation gained from stretching the anal sphincter muscles while inserting the finger. A good quality personal lubricant is advisable to both increase the pleasurable sensation and aid insertion. Some people prefer to simply stimulate the outer ring of the anus, while others will follow this by inserting one or more fingers.

There are many other variations on male masturbation techniques. Men may also rub or massage the glans, the rim of the glans, and the frenular delta. Some men place both hands directly on their penis during masturbation, while others may use their free hand to fondle their testicles, nipples, or other parts of their body. The nipples are erogenous zones, and vigorous stimulation of them during masturbation usually causes the penis to become erect more quickly than it would otherwise. Some may keep their hand stationary while pumping into it with pelvic thrusts in order to simulate the motions of sexual intercourse. Some may lay in the prone position and rub

their genitals against a bed sheet or other surface, a technique called *prone masturbation*. In a bath or shower, a male may direct water via a handheld showerhead at his frenulum, testicles, or perineum. Others may also use vibrators and other sexual devices more commonly associated with female masturbation.

A somewhat controversial ejaculation control technique is to put pressure on the perineum, about halfway between the scrotum and the anus, just before ejaculating. This can, however, redirect semen into the bladder (referred to as retrograde ejaculation).

## Female

Female masturbation involves the stroking or rubbing of a woman's vulva, especially her clitoris, with an index or middle fingers, or both. Sometimes one or more fingers may be inserted into the vagina to stroke its frontal wall where the G-spot may be located. Masturbation aids such as a vibrator, dildo, or Ben Wa balls can also be used to stimulate the vagina and clitoris. Many women caress their breasts or stimulate a nipple with the free hand and anal stimulation is also enjoyed by some. Personal lubricant is sometimes used during masturbation, especially when penetration is involved, but this is not universal and many women find their natural lubrication sufficient.

Like males, common positions for female masturbation include lying on back or face down, sitting, squatting, kneeling, or standing. In a bath or shower, a female may direct water via a handheld showerhead at her clitoris, vulva, or perineum. Lying face down one may use the hands, one may straddle a pillow, the corner or edge of the bed, a partner's leg or some scrunched-up clothing and "hump" the vulva and clitoris against it. Standing up, a chair, the corner of an item of furniture, or even a washing machine can be used to stimulate the clitoris through the labia and clothing. Some masturbate only using pressure applied to the clitoris without direct contact, for example by pressing the palm or ball of the hand against underwear or other clothing. In the

## *Asexuality, Gender and the Law in Uganda*

1920s, Havelock Ellis reported that turn-of-the-century seamstresses using treadle-operated sewing machines could achieve orgasm by sitting near the edge of their chairs.

Women can stimulate themselves sexually by crossing their legs tightly and clenching the muscles in their legs, creating pressure on the genitals. This can potentially be done in public without observers noticing. Thoughts, fantasies, and memories of previous instances of arousal and orgasm can produce sexual excitation. Some women can orgasm spontaneously by force of will alone, although this may not strictly qualify as masturbation as no physical stimulus is involved.

Sex therapists will sometimes recommend that female patients take time to masturbate to orgasm, for example, to help improve sexual health and relationships, to help determine what is erotically pleasing to them, and because mutual masturbation can lead to more satisfying sexual relationships and added intimacy.

Mutual masturbation involves two or more people who sexually stimulate each other, usually with the hands. It can be practiced by people of any sexual orientation, and can be part of other sexual activity. It may be used as foreplay, or as an alternative to sexual penetration. When used as an alternative to penile-vaginal penetration, the goal may be to preserve virginity or to avoid risk of pregnancy.

Mutual masturbation can be practiced in pairs or groups with or without actually touching another person for example:

- Non-contact mutual masturbation – Two people masturbating in the presence of each other but not touching.

- Contact mutual masturbation – One person touching another person to masturbate. The other person may do the same during or after.
- Non-contact group – More than two people masturbating in the presence of each other in a group but not touching each other.
- Contact group – More than two people physically touching each other to masturbate as a group.
- Mutual masturbation foreplay – The manual stimulation of each other's genitals where the session eventually leads to sexual intercourse.

### **Frequency, age, and sex**

Frequency of masturbation is determined by many factors, e.g., one's resistance to sexual tension, hormone levels influencing sexual arousal, sexual habits, peer influences, health and one's attitude to masturbation formed by culture; E. Heiby and J. Becker examined the latter. Medical causes have also been associated with masturbation, wherein masturbation is not cause, but effect, with the exception of inserting foreign objects into the urinary bladder. Different studies have found that masturbation is frequent in humans. Alfred Kinsey's 1950s studies on US population have shown that 92% of men and 62% of women have masturbated during their lifespan. Similar results have been found in a 2007 British national probability survey. It was found that, between individuals aged 16 to 44, 95% of men and 71% of women masturbated at some point in their lives. 73% of men and 37% of women reported masturbating in the four weeks before their interview, while 53% of men and 18% of women reported masturbating in the previous seven days. The Merck Manual says that 97% of men and 80% of women have masturbated and that, generally speaking, males masturbate more than females. The Global Self Pleasure Report of 2018 found that the United Kingdom was the country with the highest rate of masturbation.

## *Asexuality, Gender and the Law in Uganda*

Masturbation is considered normal when performed by children, even in early infancy. In 2009, the Sheffield NHS Health Trust issued a pamphlet called "Pleasure" which discussed the health benefits of masturbation. This was done in response to data and experience from the other EU member states to reduce teen pregnancy and STIs (STDs), and to promote healthy habits.

According to the *New Oxford Textbook of Psychiatry* (1st ed.), "Masturbation and sexual play are common well before puberty. Sexual behaviour in young children is common, and should only be regarded as a sign of sexual abuse when it is out of context and is inappropriate."

In the book *Human Sexuality: Diversity in Contemporary America*, by Strong, Devault and Sayad, the authors point out, "A baby boy may laugh in his crib while playing with his erect penis". "Baby girls sometimes move their bodies rhythmically, almost violently, appearing to experience orgasm."<sup>1</sup> Italian gynecologists Giorgio Giorgi and Marco Siccardi observed via ultrasound a female fetus possibly masturbating and having what appeared to be an orgasm. Popular belief asserts that individuals of either sex who are not in sexually active relationships tend to masturbate more frequently than those who are; however, much of the time this is not true as masturbation alone or with a partner is often a feature of a relationship. Contrary to this belief, several studies actually reveal a positive correlation between the frequency of masturbation and the frequency of intercourse. A study has reported a significantly higher rate of masturbation in gay men and women who were in a relationship. Coon and Mitterer stated: "Approximately 70 percent of married women and men masturbate at least occasionally."

## **Health effects**

### **Benefits**



The American Medical Association declared masturbation as normal by consensus in 1972. It does not deplete one's body of energy or produce premature ejaculation. The medical consensus is that masturbation is a medically healthy and psychologically normal habit. According to the *Merck Manual of Diagnosis and Therapy*, "It is considered abnormal only when it inhibits partner-oriented behavior, is done in public, or is sufficiently compulsive to cause distress." The existence of "masturbation addiction" has not been proven, but "masturbation compulsion" probably exists. Solo masturbation is a sexual activity that is nearly free of risk of sexually transmitted infection. With two or more participants, the risk of sexually transmitted infection, while not eliminated, remains lower than with most forms of penetrative sex. Support for such a view and for making masturbation part of the American sex education curriculum, led to the dismissal of US Surgeon General Joycelyn Elders during the Clinton administration.<sup>254</sup> Masturbation among adolescents contributes to their developing a sense of mastery over sexual impulses, and it has a role in the physical and emotional development of prepubescents and pubescents.

Sex therapists sometimes recommend that female patients take time to masturbate to orgasm; for example, to help improve sexual health and relationships, to help determine what is erotically pleasing to them, and because mutual masturbation can lead to more satisfying sexual relationships and added intimacy.<sup>255</sup> *Encyclopedia Britannica* endorses the use of masturbation inside sex.<sup>256</sup> *Britannica* also calls "myths" the ideas that masturbation would be unhealthy or immature behavior. Mutual masturbation enables partners in a couple to reveal the "map to [their] pleasure centers," learning how they enjoy being touched. When intercourse is inconvenient or impractical, mutual masturbation affords couples the opportunity to obtain sexual release as often as desired.<sup>[85]</sup>

---

<sup>254</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica-21-30](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica-21-30)

<sup>255</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica-33-34](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica-33-34)

<sup>256</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica-83](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica-83)

## *Asexuality, Gender and the Law in Uganda*

It is held in many mental health circles that masturbation can relieve depression and lead to a higher sense of self-esteem. When one partner in a relationship wants more sex than the other, masturbation can provide a balancing effect and promote a more harmonious relationship<sup>257</sup>

In 2003, an Australian research team led by Graham Giles of The Cancer Council Australia found that males who masturbated frequently had a lower probability of developing prostate cancer, although they could not demonstrate a direct causation. A 2008 study concluded that frequent ejaculation between the ages of 20 and 40 was correlated with higher risk of developing prostate cancer, while frequent ejaculation in the sixth decade of life was found to be correlated with a lower risk. However, a larger 2016 study found that regular ejaculation markedly reduced prostate cancer risk in all age groups.<sup>258</sup> A study published in 1997 found an inverse association between death from coronary heart disease and frequency of orgasm even given the risk that myocardial ischaemia and myocardial infarction can be triggered by sexual activity.

The association between frequency of orgasm and all cause mortality was also examined using the midpoint of each response category recorded as number of orgasms per year. The age adjusted odds ratio for an increase of 100 orgasms per year was 0.64 (0.44 to 0.95).

That is, a difference in mortality appeared between any two subjects when one subject ejaculated at around two times per week more than the other. Assuming a broad range average of between three and five ejaculations per week for healthy males, this would mean five to seven ejaculations per week.

---

<sup>257</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica\\_-86](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica_-86)

<sup>258</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica\\_-88](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica_-88)

This is consistent with a 2003 paper that found the strength of these correlations increased with increasing frequency of ejaculation.<sup>259</sup>

A 2008 study at Tabriz Medical University found that ejaculation reduces swollen nasal blood vessels, freeing the airway for normal breathing. The mechanism is through stimulation of the sympathetic nervous system and is long lasting. The study author suggests: "It can be done [from] time-to-time to alleviate the congestion and the patient can adjust the number of intercourses or masturbations depending on the severity of the symptoms."<sup>260</sup>

Sexual climax leaves an individual in a relaxed and contented state, frequently followed by drowsiness and sleep.<sup>261</sup>

Some professionals consider masturbation equivalent to a cardiovascular workout.<sup>[95]</sup> Though research remains scant, those suffering from cardiovascular disorders, particularly those recovering from heart attacks, should resume physical activity gradually and with the frequency and rigor which their physical status will allow. This limitation can serve as encouragement to follow through with physical therapy sessions to help improve endurance. In general, sex slightly increases energy consumption.<sup>262</sup>

## **Risks**

Those who insert objects as aids to masturbation risk them becoming stuck (e.g., as rectal foreign bodies). Men and women can fall prey to this problem. A woman went into a German hospital with two pencils in her bladder, having pierced her urethra after inserting them during masturbation.

A male whose penis is bluntly traumatized during intercourse or masturbation may, rarely, sustain a penile fracture or develop Peyronie's

---

<sup>259</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica\\_-90](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica_-90)

<sup>260</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica\\_-91](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica_-91)

<sup>261</sup> [http://en.Wikipedia.org/wik/masturbation#cite\\_note-Britannica\\_-96](http://en.Wikipedia.org/wik/masturbation#cite_note-Britannica_-96)

<sup>262</sup> [http://en.Wikipedia.orgc/wik/masturbation#cite\\_note-Britannica\\_-97](http://en.Wikipedia.orgc/wik/masturbation#cite_note-Britannica_-97)

## *Asexuality, Gender and the Law in Uganda*

disease. Phimosis is "a contracted foreskin (that) may cause trouble by hurting when an attempt is made to pull the foreskin back". In these cases, any energetic manipulation of the penis can be problematic.

A small percentage of males have postorgasmic illness syndrome (POIS), which can cause severe muscle pain throughout the body and other symptoms immediately following ejaculation, whether due to masturbation or partnered sex. The symptoms last for up to a week. Some doctors speculate that the frequency of POIS "in the population may be greater than has been reported in the academic literature",<sup>1</sup> and that many cases are undiagnosed.

Compulsive masturbation and other compulsive behaviors can be signs of an emotional problem, which may need to be addressed by a mental health specialist. As with any "nervous habit", it is more helpful to consider the causes of compulsive behavior, rather than try to repress masturbation.

Alongside many other factors such as medical evidence, age-inappropriate sexual knowledge, sexualized play and precocious or seductive behavior excessive masturbation may be an indicator of sexual abuse.

## CHAPTER TWENTY THREE



### POLYGAMY

**Polygamy** from (*polugamia*) "state of marriage to many spouses") is the practice of marrying multiple spouses. When a man is married to more than one wife at the same time, sociologists call this polygyny. When a woman is married to more than one husband at a time, it is called polyandry.

In contrast to polygamy, monogamy is marriage consisting of only two parties. Like "monogamy", the term "polygamy" is often used in a *de facto* sense, applied regardless of whether a state recognizes the relationship. In sociobiology and zoology, researchers use *polygamy* in a broad sense to mean any form of multiple mating.

Worldwide, different societies variously encourage, accept or outlaw polygamy. In societies which allow or tolerate polygamy, in the vast majority of cases the form accepted is polygyny. According to the *Ethnographic Atlas Codebook* (1998), of 1,231 societies noted, 588 had frequent polygyny, 453 had occasional polygyny, 186 were monogamous and 4 had polyandry – although more recent research suggests that polyandry may occur more commonly than previously thought. In cultures which practice polygamy, its prevalence among that population often correlates with social class and socioeconomic status.

## *Asexuality, Gender and the Law in Uganda*

From a legal point of view, in many countries, although the law only recognises monogamous marriages (a person can only have one spouse, and bigamy is illegal), adultery is not illegal, leading to a situation of *de facto* polygamy being allowed, although without legal recognition for non-official "spouses".

Scientific studies classify the human mating system as primarily monogamous, with the cultural practice of polygamy in the minority, based both on surveys of world populations, and on characteristics of human reproductive physiology.

Polygamy (taking the form of polygyny) is most common in a region known as the "polygamy belt" in West Africa and Central Africa, with the countries estimated to have the highest polygamy prevalence in the world being Burkina Faso, Mali, Gambia, Niger and Nigeria.

## CHAPTER TWENTY FOUR



### POLYGyny

Polygyny, the practice wherein a man has more than one wife at the same time, is by far the most common form of polygamy. Many Muslim-majority countries and some countries with sizable Muslim minorities accept polygyny to varying extents both legally and culturally. In several countries, such as India, the law only recognizes polygamous marriages for the Muslim population. Islamic law or *sharia* is a religious law forming part of the Islamic tradition which allows polygyny. It is derived from the religious precepts of Islam, particularly the Quran and the hadith. In Arabic, the term *sharī'ah* refers to God's (Arabic: الله Allāh) immutable divine law and is contrasted with *fiqh*, which refers to its human scholarly interpretations.

Polygyny is more widespread in Africa than on any other continent, especially in West Africa, and some scholars see the slave trade's impact on the male-to-female sex ratio as a key factor in the emergence and fortification of polygynous practices in regions of Africa.<sup>[21]</sup> In the region of sub-Saharan Africa, polygyny is common and deeply rooted in the culture, with 11% of the population of sub-Saharan Africa living in such marriages (25% of the Muslim population and 3% of the Christian population, as of 2019). According to Pew, polygamy is widespread in a cluster of countries in West and Central Africa, including Burkina Faso, (36%), Mali (34%) and Nigeria (28%).

Anthropologist Jack Goody's comparative study of marriage around the world utilizing the Ethnographic Atlas demonstrated a historical correlation between the practice of extensive shifting horticulture and polygamy in the majority of sub-Saharan African societies.

### **Types of polygyny**

Polygynous marriages fall into two types: *sororal polygyny*, in which the co-wives are sisters, and *non-sororal*, where the co-wives are not related. Polygyny offers husbands the benefit of allowing them to have more children, may provide them with a larger number of productive workers (where workers are family), and allows them to establish politically useful ties with a greater number of kin groups. Senior wives can benefit as well when the addition of junior wives to the family lightens their workload. Wives', especially senior wives', status in a community can increase through the addition of other wives, who add to the family's prosperity or symbolize conspicuous consumption (much as a large house, domestic help, or expensive vacations operate in a western country). For such reasons, senior wives sometimes work hard or contribute from their own resources to enable their husbands to accumulate the bride price for an extra wife. Polygyny may also result from the practice of levirate marriage. In such cases, the deceased man's heir may inherit his assets and wife; or, more usually, his brothers may marry the widow. This provides support for the widow and her children (usually also members of the brothers' kin group) and maintains the tie between the husbands' and wives' kin groups. The sororate resembles the levirate, in that a widower must marry the sister of his dead wife. The family of the late wife, in other words, must provide a replacement for her, thus maintaining the marriage alliance. Both levirate and sororate may result in a man having multiple wives.



In monogamous societies, wealthy and powerful men established enduring relationships with, and established separate household for, multiple female partners, aside from their legitimate wives; a practice accepted in Imperial China up until the Qing Dynasty of 1636–1912. This constitutes a form of *de facto* polygyny referred to as **concubinage**.

### **Household organization**

Marriage is the moment at which a new household is formed, but different arrangements may occur depending upon the type of marriage and some polygamous marriages do not result in the formation of a single household. In many polygynous marriages the husband's wives may live in separate households. They can thus be described as a "series of linked nuclear families with a 'father' in common".

## CHAPTER TWENTY FIVE



### **POLYANDRY**

Polyandry, the practice of a woman having more than one husband at the one time, is much less prevalent than polygyny and is now illegal in virtually every country in the world. It takes place only in remote communities. Polyandry is believed to be more common in societies with scarce environmental resources, as it is believed to limit human population growth and enhance child survival. It is a rare form of marriage that exists not only among poor families, but also the elite. For example, in the Himalayan Mountains polyandry is related to the scarcity of land; the marriage of all brothers in a family to the same wife allows family land to remain intact and undivided. If every brother married separately and had children, family land would be split into unsustainable small plots. In Europe, this outcome was avoided through the social practice of impartible inheritance, under which most siblings would be disinherited.

### **Types of Polyandry**

Fraternal polyandry was traditionally practiced among nomadic Tibetans in Nepal, parts of China and part of northern India, in which two or more

brothers would marry the same woman. It is most common in societies marked by high male mortality. It is associated with partible paternity, the cultural belief that a child can have more than one father. Non-fraternal polyandry occurs when the wives' husbands are unrelated, as among the Nayar tribe of India, where girls undergo a ritual marriage before puberty, and the first husband is acknowledged as the father of all her children. However, the woman may never cohabit with that man, taking multiple lovers instead; these men must acknowledge the paternity of their children (and hence demonstrate that no caste prohibitions have been breached) by paying the midwife. The women remain in their maternal home, living with their brothers, and property is passed matrilineally. A similar form of matrilineal, de facto polyandry can be found in the institution of walking marriage among the Mosuo tribe of China.

### **Serial monogamy**

Serial monogamy refers to remarriage after divorce or death of a spouse from a monogamous marriage, i.e., multiple marriages but only one legal spouse at a time (a series of monogamous relationships). According to Danish scholar Miriam K. Zeitzen, anthropologists treat serial monogamy, in which divorce and remarriage occur, as a form of polygamy as it also can establish a series of households that may continue to be tied by shared paternity and shared income. As such, they are similar to the household formations created through divorce and serial monogamy. Serial monogamy creates a new kind of relative, the "ex-". The "ex-wife", for example, can remain an active part of her "ex-husband's" life, as they may be tied together by legally or informally mandated economic support, which can last for years, including by alimony, child support, and joint custody. Bob Simpson, the British social anthropologist, notes that it creates an "extended family" by tying together a number of households, including mobile children. He says that Britons may have ex-wives or ex-brothers-in-law, but not an *ex-child*. According to him, these "unclear families" do not fit the mold of the monogamous nuclear family.

## **Group marriage**

Group marriage is a non-monogamous marriage-like arrangement where three or more adults live together, all considering themselves partners, sharing finances, children, and household responsibilities. Polyamory is on a continuum of family-bonds that includes group marriage. The term does not refer to bigamy as no claim to being married in formal legal terms is made.

## **Religious attitudes towards polygamy**

### **Buddhism**

Buddhism does not regard marriage as a sacrament; it is purely a secular affair. Normally Buddhist monks do not participate in it (though in some sect's priests and monks do marry). Hence marriage receives no religious sanction. Forms of marriage, in consequence, vary from country to country. The Parabhava Sutta states that "a man who is not satisfied with one woman and seeks out other women is on the path to decline". Other fragments in the Buddhist scripture seem to treat polygamy unfavorably, leading some authors to conclude that Buddhism generally does not approve of it or alternatively regards it as a tolerated, but subordinate, marital model.

Polygamy in Thailand was legally recognized until 1935. Polygamy in Myanmar was outlawed in 2015. In Sri Lanka, polyandry was legal in the kingdom of Kandy, but outlawed by British after conquering the kingdom in 1815. When the Buddhist texts were translated into Chinese, the concubines of others were added to the list of inappropriate partners. Polyandry in Tibet was traditionally common, as was polygyny, and having several wives or husbands was never regarded as having sex with inappropriate partners. Most typically, fraternal polyandry is practiced, but sometimes father and son have a common wife, which is a unique family

structure in the world. Other forms of marriage are also present, like group marriage and monogamous marriage. Polyandry (especially fraternal polyandry) is also common among Buddhists in Bhutan, Ladakh, and other parts of the Indian subcontinent.

### **Celtic traditions**

Some pre-Christian Celtic pagans were known to practice polygamy, although the Celtic peoples wavered between it, monogamy and polyandry depending on the time period and the area. In some areas this continued even after Christianization began, for instance the Brehon Laws of Gaelic Ireland explicitly allowed for polygamy, especially amongst the noble class. Some modern Celtic pagan religions accept the practice of polygamy to varying degrees, though how widespread the practice is within these religions is unknown.

### **Christianity**

Although the Old Testament describes numerous examples of polygamy among devotees to God, most Christian groups have rejected the practice of polygamy and have upheld monogamy alone as normative. Nevertheless, some Christians groups in different periods have practiced, or currently do practice, polygamy. Some Christians actively debate whether the New Testament or Christian ethics allows or forbids polygamy.

Although the New Testament is largely silent on the subject of polygamy, some point to Jesus's repetition of the earlier scriptures, noting that a man and a wife "shall become one flesh". However, some look to Paul's writings to the Corinthians: "Do you not know that he who is joined to a prostitute becomes one body with her? For, as it is written, 'The two will become one flesh.'" Supporters of polygamy claim that this verse indicates that the term refers to a physical, rather than a spiritual, union. Some Christian theologians argue that in Matthew 19:3–9 and referring to Genesis 2:24, Jesus explicitly states a man should have only one wife:

## *Asexuality, Gender and the Law in Uganda*

Have ye not read, that he which made them at the beginning made them male and female, and said, for this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh?

1 Timothy 3:2 states:

Now a bishop must be above reproach, married only once, temperate, sensible, respectable, hospitable, an apt teacher,

See verse 12 regarding deacons having only one wife. Similar counsel is repeated in the first chapter of the Epistle to Titus.

Periodically, Christian reform movements that have sought to rebuild Christian doctrine based on the Bible alone (*sola scriptura*) have temporarily accepted polygyny as a Biblical practice. For example, during the Protestant Reformation, in a document which was simply referred to as "*Der Beichtrat*" (or "*The Confessional Advice*"), Martin Luther granted the Landgrave Philip of Hesse, who, for many years, had been living "constantly in a state of adultery and fornication", a dispensation to take a second wife. The double marriage was to be done in secret, however, to avoid public scandal. Some fifteen years earlier, in a letter to the Saxon Chancellor Gregor Brück, Luther stated that he could not "forbid a person to marry several wives, for it does not contradict Scripture." ("*Ego sane fateor, me non posse prohibere, si quis plures velit uxores ducere, nec repugnat sacris literis.*")

In Sub-Saharan Africa, tensions have frequently erupted between advocates of the Christian insistence on monogamy and advocates of the traditional practice of polygamy. For instance, Mswati III, the Christian king of Eswatini, has 15 wives. In some instances, in recent times, there have been moves for accommodation; in other instances, churches have strongly resisted such moves. African Independent Churches have sometimes referred to those parts of the Old Testament that describe polygamy in defense of the practice.

## Roman Catholic Church

The Roman Catholic Church condemns polygamy; the *Catechism of the Catholic Church* lists it in paragraph 2387 under the head "Other offenses against the dignity of marriage" and states that it "is not in accord with the moral law." Also, in paragraph 1645 under the head "The Goods and Requirements of Conjugal Love" states "The unity of marriage, distinctly recognized by our Lord, is made clear in the equal personal dignity which must be accorded to husband and wife in mutual and unreserved affection. Polygamy is contrary to conjugal love which is undivided and exclusive."

Saint Augustine saw a conflict with Old Testament polygamy. He refrained from judging the patriarchs, but did not deduce from their practice the ongoing acceptability of polygyny. On the contrary, he argued that the polygamy of the Fathers, which was tolerated by the Creator because of fertility, was a diversion from His original plan for human marriage. Augustine wrote: "That the good purpose of marriage, however, is better promoted by one husband with one wife, than by a husband with several wives, is shown plainly enough by the very first union of a married pair, which was made by the Divine Being Himself."<sup>[70]</sup>

Augustine taught that the reason patriarchs had many wives was not because of fornication, but because they wanted more children. He supported his premise by showing that their marriages, in which husband was the head, were arranged according to the rules of good management: those who are *in command* (*quae principantur*) in their society were always singular, while *subordinates* (*subiecta*) were multiple. He gave two examples of such relationships: *dominus-servus* – master-servant (in older translation: *slave*) and *God-soul*. The Bible often equates worshipping multiple gods, i.e., idolatry to fornication. Augustine relates to that: "On this account there is no True God of souls, save One: but one soul by means of many false gods may commit fornication, but not be made fruitful."

As tribal populations grew, fertility was no longer a valid justification of polygamy: it "was lawful among the ancient fathers: whether it be lawful now also, I would not hastily pronounce (*utrum et nunc fas sit, non temere dixerim*). For there is not now necessity of begetting children, as there then was, when, even when wives bear children, it was allowed, in order to a more numerous posterity, to marry other wives in addition, which now is certainly not lawful."<sup>[73]</sup> Augustine saw marriage as a covenant between one man and one woman, which may not be broken. It was the Creator who established monogamy: "Therefore, the first natural bond of human society is man and wife." Such marriage was confirmed by the Saviour in the Gospel of Matthew (Mat 19:9) and by His presence at the wedding in Cana (John 2:2).<sup>[75]</sup> In the Church—the City of God—marriage is a sacrament and may not and cannot be dissolved as long as the spouses live: "But a marriage once for all entered upon in the City of our God, where, even from the first union of the two, the man and the woman, marriage bears a certain sacramental character, can in no way be dissolved but by the death of one of them."<sup>[76]</sup> In chapter 7, Augustine pointed out that the Roman Empire forbade polygamy, even if the reason of fertility would support it: "For it is in a man's power to put away a wife that is barren, and marry one of whom to have children. And yet it is not allowed; and now indeed in our times, and after the usage of Rome (*nostris quidem iam temporibus ac more Romano*), neither to marry in addition, so as to have more than one wife living." Further on he notices that the Church's attitude goes much further than the secular law regarding monogamy: It forbids remarrying, considering such to be a form of fornication: "And yet, save in the city of our God, in His Holy Mount, the case is not such with the wife. But, that the laws of the Gentiles are otherwise, who is there that knows not." The Council of Trent condemns polygamy: "If anyone saith, that it is lawful for Christians to have several wives at the same time, and that this is not prohibited by any divine law; let him be anathema."



In modern times a minority of Roman Catholic theologians have argued that polygamy, though not ideal, can be a legitimate form of Christian marriage in certain regions, in particular Africa. The Roman Catholic Church teaches in its Catechism that

polygamy is not in accord with the moral law. [Conjugal] communion is radically contradicted by polygamy; this, in fact, directly negates the plan of God that was revealed from the beginning, because it is contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive.<sup>[81]</sup>

The illegality of polygamy in certain areas creates, according to certain Bible passages, additional arguments against it. Paul the Apostle writes "submit to the authorities, not only because of possible punishment but also because of conscience" (Romans 13:5), for "the authorities that exist have been established by God." (Romans 13:1) St Peter concurs when he says to "submit yourselves for the Lord's sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right." (1 Peter 2:13,14) Pro-polygamists argue that, as long as polygamists currently do not obtain legal marriage licenses nor seek "common law marriage status" for additional spouses, no enforced laws are being broken any more than when monogamous couples similarly co-habitate without a marriage license.<sup>[82]</sup>

### **Lutheran Church**

The Lutheran World Federation hosted a regional conference in Africa, in which the acceptance of polygamists into full membership by the Lutheran Church in Liberia was defended as being permissible. The Lutheran Church in Liberia, however, does not permit polygamists who have become Christians to marry more wives after they have received the sacrament of Holy Baptism. Evangelical Lutheran missionaries in Maasai also tolerate

the practice of polygamy and in Southern Sudan, some polygamists are becoming Lutheran Christians.<sup>[85]</sup>

### **Anglican Communion**

The 1988 Lambeth Conference of the Anglican Communion ruled that polygamy was permissible in certain circumstances:

The Conference upholds monogamy as God's plan, as the idea of relationship of love between husband and wife; nevertheless, recommends that a polygamist who responds to the Gospel and wishes to join the Anglican Church may be baptized and confirmed with his believing wives and children on the following conditions:

- that the polygamist shall promise not to marry again as long as any of his wives at the time of his conversion are alive;
- that the receiving of such a polygamist has the consent of the local Anglican community;
- that such a polygamist shall not be compelled to put away any of his wives on account of the social deprivation they would suffer.

In accordance with what Joseph Smith indicated was a revelation, the practice of plural marriage, the marriage of one man to two or more women, was instituted among members of The Church of Jesus Christ of Latter-day Saints in the early 1840s.<sup>[87]</sup> Despite Smith's revelation, the 1835 edition of the 101st Section of the *Doctrine and Covenants*, written after the doctrine of plural marriage began to be practiced, publicly condemned polygamy. This scripture was used by John Taylor in 1850 to quash Mormon polygamy rumors in Liverpool, England.<sup>[88]</sup> Polygamy was made illegal in the state of Illinois during the 1839–44 Nauvoo era when several top Mormon leaders, including Smith, Brigham Young and Heber C. Kimball took multiple wives.

Mormon elders who publicly taught that all men were commanded to enter plural marriage were subject to harsh discipline.

## Hinduism

The Rig Veda mentions that during the Vedic period, a man could have more than one wife. The practice is attested in epics like Ramayana and Mahabharata. The Dharmashastras permit a man to marry women provided that the first wife agree to marry him. Despite its existence, it was most usually practiced by men of higher status. Common people were only allowed a second marriage if the first wife could not bear a son or have some dispute because there is no law for divorce in Hinduism.<sup>[112]</sup>

According to Vishnu Smriti, the number of wives is linked to the knowledge system: Now a Brāhmaṇa may take many wives in the direct order of the (four) knowledge; A Kshatriya means warrior knowledge, three; A Vaishya means business knowledge, two; A Shudra means cleaning knowledge, one only<sup>[113]</sup> This linkage of the number of permitted wives to the knowledge system is also supported by Baudhayana Dharmasutra and Paraskara Grihyasutra.<sup>[114][115]</sup>

The Apastamba Dharmasutra and Manusmriti allow a second wife if the first one is unable to discharge her religious duties or is unable to bear a child or have any dispute because in Hinduism there was no law for divorce.<sup>[114]</sup>

For a Brahmana, only one wife could rank as the chief consort who performed the religious rites (*dharma-patni*) along with the husband. The chief consort had to be of an equal knowledge. If a man married several women from the same knowledgeable, then eldest wife is the chief consort.<sup>[116]</sup> Hindu kings commonly had more than one wife and are regularly attributed four wives by the scriptures. They were: Mahisi who was the chief consort, Parivrkti who had no son, Vaivata who is considered the favorite wife and the Palagali who was the daughter of the last of the court officials.<sup>[111]</sup>

## *Asexuality, Gender and the Law in Uganda*

Traditional Hindu law allowed polygamy if the first wife could not bear a child.<sup>[117]</sup>

The Hindu Marriage Act was enacted in 1955 by the Indian Parliament and made polygamy illegal for everyone in India except for Muslims. Prior to 1955, polygamy was permitted for Hindus. Marriage laws in India are dependent upon the religion of the parties in question.<sup>[118]</sup>

### **Islam**

In Islamic marital jurisprudence, under reasonable and warranted conditions, a Muslim man may have more than one wife at the same time, up to a total of four. Muslim women are not permitted to have more than one husband at the same time under any circumstances.

Based on verse 30:21 of Quran the ideal relationship is the comfort that a couple find in each other's embrace:

And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.

— *Quran, Sura 30 (Ar-Rum), Ayah 21*

The polygyny that is allowed in the Quran is for special situations. There are strict requirements to marrying more than one woman, as the man must treat them fairly financially and in terms of support given to each wife, according to Islamic law. However, Islam advises monogamy for a man if he fears he cannot deal justly with his wives. This is based on verse 4:3 of Quran which says: If ye fear that ye shall not be able to deal justly with the orphans, Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or one that your right hands possess, that will be more suitable, to prevent you from doing injustice.

— *Quran, Sura 4 (An-Nisa), Ayah 3*<sup>[120]</sup>

Muslim women are not allowed to marry more than one husband at once. However, in the case of a divorce or their husbands' death they can remarry after the completion of Iddah, as divorce is legal in Islamic law. A non-Muslim woman who flees from her non-Muslim husband and accepts Islam has the option to remarry without divorce from her previous husband, as her marriage with non-Muslim husband is Islamically dissolved on her fleeing. A non-Muslim woman captured during war by Muslims, can also remarry, as her marriage with her non-Muslim husband is Islamically dissolved at capture by Muslim soldiers. This permission is given to such women in verse 4:24 of Quran. The verse also emphasizes on transparency, mutual agreement and financial compensation as prerequisites for matrimonial relationship as opposed to prostitution; it says:

Also (prohibited are) women already married, except those whom your right hands possess: Thus, hath Allah ordained (Prohibitions) against you: Except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property, - desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise.

*Quran, Sura 4 (An-Nisa), Ayah 24*

Muhammad was monogamously married to Khadija, his first wife, for 25 years, until she died. After her death, he married multiple women. Muhammad had a total of 9 wives at the same time, even though Muslim men were limited to 4 wives. His total wives are 11.

One reason cited for polygyny is that it allows a man to give financial protection to multiple women, who might otherwise not have any support (e.g. widows).<sup>[125]</sup> However, some Islamic scholars say the wife can set a condition, in the marriage contract, that the husband cannot marry another

## *Asexuality, Gender and the Law in Uganda*

woman during their marriage. In such a case, the husband cannot marry another woman as long as he is married to his wife. However, other Islamic scholars state that this condition is not allowed. According to traditional Islamic law, each of those wives keeps their property and assets separate; and are paid mahar separately by their husband. Usually, the wives have little to no contact with each other and lead separate, individual lives in their own houses, and sometimes in different cities, though they all share the same husband.

In most Muslim-majority countries, polygyny is legal with Kuwait being the only one where no restrictions are imposed on it. The practice is illegal in Muslim-majority Turkey, Tunisia, Albania, Kosovo and Central Asian countries. Countries that allow polygyny typically also require a man to obtain permission from his previous wives before marrying another, and require the man to prove that he can financially support multiple wives. In Malaysia and Morocco, a man must justify taking an additional wife at a court hearing before he is allowed to do so. In Sudan, the government encouraged polygyny in 2001 to increase the population.

### **Judaism**

The Torah contains a few specific regulations that apply to polygamy, such as Exodus 21:10: "If he take another wife for himself; her food, her clothing, and her duty of marriage, shall he not diminish".<sup>1</sup> Deut 21:15–17, states that a man must award the inheritance due to a first-born son to the son who was actually born first, even if he hates that son's mother and likes another wife more; and Deut 17:17 states that the king shall not have too many wives. Despite its prevalence in the Hebrew Bible, some scholars do not believe that polygyny was commonly practiced in the biblical era because it required a significant amount of wealth. Michael Coogan (and others), in

contrast, states that "Polygyny continued to be practiced well into the biblical period, and it is attested among Jews as late as the second century CE".

The Dead Sea Scrolls show that several smaller Jewish sects forbade polygamy before and during the time of Jesus. The Temple Scroll (11QT LVII 17–18) seems to prohibit polygamy. The rabbinical era that began with the destruction of the second temple in Jerusalem in 70 CE saw a continuation of some degree of legal acceptance for polygamy. In the Babylonian Talmud (BT), Kiddushin 7a, it states, "Raba said: [If a man declares,] 'Be thou betrothed to half of me,' she is betrothed: 'half of thee be betrothed to me,' she is not betrothed." The BT during a discussion of Levirate marriage in Yevamot 65a appears to repeat the precedent found in Exodus 21:10: "Raba said: a man may marry wives in addition to the first wife; provided only that he possesses the means to maintain them". The Jewish Codices began a process of restricting polygamy in Judaism.

Most notable in the rabbinic period on the issue of polygamy, though more specifically for Ashkenazi Jews, was the synod of Rabbeinu Gershom. About 1000 CE he called a synod which decided the following particulars: (1) prohibition of polygamy; (2) necessity of obtaining the consent of both parties to a divorce; (3) modification of the rules concerning those who became apostates under compulsion; (4) prohibition against opening correspondence addressed to another. Some Sephardic Jews such as Abraham David Taroç, were known to have several wives.

Polygamy was common among Jewish communities in the Levant, possibly due to the influence of Muslim society, with 17% of divorce claims by women being due to complaints over husbands taking additional wives. According to R. Joseph Karo (16th century author of the last great codification of Jewish law, the *Shulchan Aruch*), and many other rabbis from Safed, the ban of Rabbeinu Gershom had expired, and therefore even Ashkenazim could marry additional wives. Even in instances where the husband made prenuptial agreements not to marry additional wives, local rabbis found loopholes to allow them to do so anyway.

## *Asexuality, Gender and the Law in Uganda*

The assembly led by Rabbeinu Gershom instituted a ban on polygamy, but this ban was not well received by the Sephardic communities. In addition to the ban, Gershom also introduced a law called **Heter meah rabbanim**, 'which allows the men to remarry with the permission from one hundred rabis from different countries. In the modern day, polygamy is generally not condoned by Jews. Ashkenazi Jews have continued to follow Rabbeinu Gershom's ban since the 11th century. Some Mizrahi Jewish communities (particularly Yemenite Jews and Persian Jews) discontinued polygyny more recently, after they immigrated to countries where it was forbidden or illegal. Israel prohibits polygamy by law. In practice, however, the law is loosely enforced, primarily to avoid interference with Bedouin culture, where polygyny is practiced.<sup>[156]</sup> Pre-existing polygynous unions among Jews from Arab countries (or other countries where the practice was not prohibited by their tradition and was not illegal) are not subject to this Israeli law. But Mizrahi Jews are not permitted to enter into new polygamous marriages in Israel. However polygamy may still occur in non-European Jewish communities that exist in countries where it is not forbidden, such as Jewish communities in Iran and Morocco.

Israel has made polygamy illegal. Provisions were instituted to allow for existing polygamous families immigrating from countries where the practice was legal. Furthermore, former chief rabbi Ovadia Yosef has come out in favor of legalizing polygamy and the practice of pilegesh (concubine) by the Israeli government. Tzvi Zohar, a professor from the Bar-Ilan University, recently suggested that based on the opinions of leading halachic authorities, the concept of concubines may serve as a practical halachic justification for premarital or non-marital cohabitation.<sup>[160][161]</sup>

### **International law**



In 2000, the United Nations Human Rights Committee reported that polygamy violates the International Covenant on Civil and Political Rights (ICCPR), citing concerns that the lack of "equality of treatment with regard to the right to marry" meant that polygamy, restricted to polygyny in practice, violates the dignity of women and should be outlawed. Specifically, reports to UN Committees have noted violations of ICCPR due to these inequalities, and reports to the UN General Assembly have recommended it be outlawed.

ICCPR does not apply to countries that have not signed it, which includes many Muslim countries such as Saudi Arabia, United Arab Emirates, Qatar, Malaysia, Brunei, Oman, and South Sudan.

Conclusively therefore polygamy is so vital in Islam and Customary standard as per numerous tribes, Polygamy is common unlike polydri in Uganda. basing on the amended law of adultery which is nullified thus gives mandate for polygamy and polydri acts to go on. Since the case of Law of advocacy of Women Association vs Ag (LAWU), Justice Twinomugisha declared equality between Man and Woman in every sector as per the Grand norm entail. The Divorce act under section 4 was nullified and Adultry as a ground of divorce can also be pleaded by a woman. hence if the Government legalise polygamy also need to legalise polydri.

## **BIBLIOGRAPHY**

American Psychiatric Association, (1974).

Position statement on homosexuality and civil rights. *American Journal of Psychiatry*, 131(4):497.

American Psychological Association, Task Force on the Appropriate Therapeutic Response to Sexual Orientation. (2009). Report of the Task Force on the Appropriate Therapeutic Response to Sexual Orientation. Washington, DC.

Bagemihl, B. (1999). *Biological Exuberance: Animal Homosexuality and Natural Variation*. New York: St. Martin's Press.

Bailey, J. & Pillard, R. (1991). A genetic study of male sexual orientation. *Archives General Psychiatry*, 48:1089-1096.

Bell, A.P., Weinberg, M.S. & Hammersmith S.K. (1981). *Sexual Preference: Its Development in Men and Women*. Bloomington, IN: Indiana University Press.

Drescher, J., ~ Byne, W. (2009). Homosexuality, gay and lesbian identities, and homosexual behavior. In: Kaplan and Sadock's *Comprehensive Textbook of Psychiatry*, 9th Edition, eds. B.J. Sadock, V.A. Sadock & P. Ruiz. Baltimore, MD: Williams and Wilkins, pp. 2060-2090.

Drescher, J. & Zucker, K.J., eds. (2006). *Ex-Gay Research: Analyzing the Spitzer Study and Its Relation to Science, Religion, Politics, and Culture*. New York: Harrington Park Press.

*Isaac Christopher Lubogo*

Hooker, E.A. (1957). The adjustment of the male overt homosexual. *J. Projective Techniques*, 21:18-31.

Mustanski B.S., Chivers M.L. & Bailey J.M. (2002). A critical review of recent biological research on human sexual orientation. *Annual Review of Sex Research*, 13:89-140.

Spitzer, R.L. (2012). Spitzer reassesses his 2003 study of reparative therapy of homosexuality. *Archives Sexual Behavior*, 41(4):757.

World Health Organization (1990). *International Statistical Classification of Diseases and Related Health Problems, 10th Revision*. Geneva, World Health Organization.

Colonizing African Values: How [www.politicalresearch.org](http://www.politicalresearch.org)

Gregory M. Herek and Linda D. Garnets (2007): *Sexual Orientation and Mental Health*. *Annual Review of Clinical Psychology*. 3:353-375. [www.annualreviews.org](http://www.annualreviews.org)

Rubio-Aurioles E & Wylie K. (2008): *Sexual Orientation Matters in Sexual Medicine*. *J Sex Med* 5:1521- 1533.

Savic I, Berglund H, Lindstrom P. Brain response to putative pheromones in homosexual men. *Proc. Natl. Acad. Sci. U. S. A.* 2005;102(20):7356-7361.

Purves D, Augustine GJ, Fitzpatrick D, et al., eds. *Neuroscience*. 4th ed. Sunderland, MA: Sinauer Associates; 2008

The Gender Bench Book *Women's Access to Justices in Uganda* published by the judiciary with support from the United Nations Entity for Gender Equality and the Empowerment of Women and funded by the Embassy of Sweden.

*Asexuality, Gender and the Law in Uganda*

Gender and the law on Ugandan Feminism, political Rhetoric or reality by Barbra Mbire Barungi Economics Department, Makerere University, Kampala Uganda.

Gender and the cultural construction of BAD WOMEN in the Development of Kampala Kibuga 1900,1962 by Nanyike B. Musisi

The state, gender policy and globalization in contemporary Uganda by Sylvia Tamale faculty of law Makerere University.

Morality, justice and gender, reading Musilm tradition on reproductive choices by SADIYYA SHAIKH.

The legal construction of sex and gender

Men and women, Sex and Gender by Katarina Tomasevski

Gender Roles and sexual inequality in uganda on domestic Labour and the burden of house wives in uganda by PercyNightTuhaise principal lecturer and head, Bar course, Law development center, Kampala.

The first and third world feminisms August 30, 1999 by Dr Jill Bystydzienski on Gender and the law.

Gender Concepts on Gender and the law by Hilda Tatria

The Dynamics of sex and gender A sociological perspective by Laurel Richardson ohio state University



## ABOUT THE BOOK

The book covers the different ideologies of gender which is defined to mean the economic, social, political and cultural attributes and opportunities associated with being women and men, the concept of feminism, the different laws adopted in combating gender discrimination, its role, gender equality, the effective law and policy on gender equality and protection from sexual and gender based violence highlighting gender inequality, the status, causes and effects,

The book provides the concept of sex versus gender exploring many fascinating and controversial legal issues including issues of transgender rights, equal pay and equality at work places, the international and legal challenges, the discriminatory laws against the LGBT and transgender, the human rights violations of sex workers in Uganda including the different laws governing prostitution in Uganda relating to incidents of prostitution not leaving out the concept of miss curvy.

The concept of asexuality which is commonly understood as not being sexually attracted to anyone is a concept looked at overing its history, highlighting the concept of the different types of sexuality, exploring the various definitions and debates around asexuality from the perspectives of asexual communities especially from the western communities. The different branches therein, classification and characterization of asexuality, key distinctions, and intersections by comparing identity categories.

Also the asexual law and our sexual law that is asexuality interactions with law, the legal requirement of sexual activity, legal exceptions to shield sexuality, the legal protections from others sexual expression, legal protections for sexual identity.

And lastly, this book explores the long-standing issues such as the psychological, interpersonal, social, political and cultural barriers to sexual access that disabled people face and their struggle for sexual rights and participation.

