

Table of Contents

Executive Summary

| | | |
|----------|---|-----------|
| 1 | INTRODUCTION | 2 |
| 1.1 | OBJECTIVES | 3 |
| 1.2 | METHODOLOGY | 3 |
| 1.3 | STRUCTURE OF THE REPORT | 3 |
| 2 | CONCEPTUAL FRAMEWORK FOR THE STUDY | 4 |
| 2.1 | THE CONCEPT OF GENDER | 4 |
| 2.2 | THE CONCEPT OF JUSTICE/ACCESS TO JUSTICE | 4 |
| 2.3 | GENDER AND ACCESS TO JUSTICE | 6 |
| 3 | GENDER AND ACCESS TO JUSTICE IN UGANDA: EFFORTS, ACHIEVEMENTS AND CHALLENGES | 8 |
| 3.1 | THE LEGAL AND POLICY FRAMEWORK | 8 |
| 3.1.1 | <i>The Constitution</i> | 8 |
| 3.1.2 | <i>The Poverty Eradication Action Plan (PEAP)</i> | 9 |
| 3.1.3 | <i>The National Gender Policy</i> | 10 |
| 3.1.4 | <i>The National Action Plan on Women</i> | 10 |
| 3.1.5 | <i>The Institutional Framework</i> | 10 |
| 3.1.6 | <i>The Formal Institutional framework</i> | 10 |
| 3.1.7 | <i>Alternative Means to accessing justice</i> | 13 |
| 4 | GENDER RELATED BARRIERS IN ACCESSING JUSTICE. | 15 |
| 4.1 | SUBSTANTIVE LAWS | 15 |
| 4.2 | ADMINISTRATION OF THE LAW | 19 |
| 4.3 | THE COMMUNITY WHERE DISPUTES OCCUR | 24 |
| 4.4 | SUMMARY OF KEY FINDINGS | 28 |
| 5 | STRATEGIC ENTRY POINTS AND GOOD PRACTICES FROM OTHER JURISDICTIONS | 32 |
| 5.1 | STRATEGIC ENTRY POINTS FOR GENDER RELATED BARRIERS IN ACCESSING JUSTICE | 32 |
| 5.1.1 | <i>Law Creation and Reform</i> | 33 |
| 5.1.2 | <i>The Administrators of the Law and Law Enforcement Personnel</i> | 33 |
| 5.1.3 | <i>The End Users of the Justice System</i> | 34 |
| 5.2 | GOOD PRACTICES FROM OTHER JURISDICTIONS AND ACTORS | 34 |
| 6 | POLICY CONSIDERATIONS | 39 |
| 6.1 | THE COMMERCIAL JUSTICE REFORM PROGRAMME (“CJRP”) | 39 |
| 6.2 | CRIMINAL JUSTICE REFORM PROGRAMME | 40 |
| 6.3 | THE OVERALL SECTOR STRATEGIC PLAN | 41 |
| 6.4 | TRANSLATING THE STRATEGIC ENTRY POINTS INTO THE J/LOS POLICY FRAMEWORK | 42 |

ANNEXES

| | |
|----------|--|
| A | List of Respondents |
| B | Existing Interventions and Strategies |
| C | Terms of Reference |

1 INTRODUCTION

The mission statement of the Justice, Law and Order Sector is “to enable all people in Uganda to live in a safe and just society”. Reality however, is that many people in Uganda, particularly the poor and marginalized groups like women, the disabled and children have very little access to justice and little protection from the justice system to ensure their safety and security. It is a fact that women in comparison to men have more difficulties with the justice system as they constitute the majority of the poor, they have a lower status in society and are subject to classified gender roles. Various studies relating to gender and access to justice have been undertaken at the levels of academic and applied research. In the circumstances, a study on ‘Gender and Access to Justice’ that seeks to consolidate existing attempts is not only relevant but also timely as it: (i) enhances the understanding of gender and its implications for access to justice; (ii) provides an assessment of specific gender constraints in gaining safety, security and access to justice. (iii) makes recommendations for policy direction on gender and access to justice.

Gender concerns are vital to the Justice, Law and Order Sector to ensure that equal and fair rights and treatment is upheld towards both women and men. Women have for many years comprised a marginalized group in this sector and efforts at policy level and in action-oriented terms should be made to strengthen particularly the status of women and girls.

Several scholars and authors in the field of law, gender and law, domestic violence, human rights and poverty and other subjects relating to gender, justice and the law have raised and discussed various schools of thought regarding what constitutes formal justice and the barriers that fetter access to formal justice for both men and women. These have demonstrated how the capacity by both men and women to access justice are constrained, when their civil, political, property rights and personal security are violated by many factors which have been categorised as social, economic, cultural, legal, institutional, procedural and geographical. They also indicate that gender and poverty are two crosscutting and significant issues in accessing justice for both men and women in both legal and social terms.

The barriers to justice are broad and interlinked such that the elimination of a single one brings others to the surface. When geographical / physical barriers to physical access have been removed, financial barriers have been removed, social constraints surmounted, there are still constraints inherent in the legal provisions, technicalities and procedures followed during litigation processes as well as the structural arrangement of the institutions in the justice delivery system, which constrain access to justice for both men and women. But these constraints are exacerbated for women because of structural disadvantages resulting from gender based discrimination that permeate all areas of their lives.

The position taken by this study is that access to justice is a prerequisite and object of development because when a society is safe and just, the capacity of its men and women to work toward poverty eradication is enhanced.

1.1 Objectives

The purpose of the study was to identify the critical gender issues with respect to safety, security and access to justice in Uganda.

1.2 Methodology

The methodology was mainly qualitative involving desk based reviews and conducting of interviews with stakeholders.

As mentioned in the terms of reference the field of gender and justice has been widely studied and much information already exists on the current situation in Uganda. Significant effort was therefore placed on reviewing documents (policies, strategies, studies, - national as well as selected international), academic and applied research, unpublished documents and reports.

Qualitative interviews and discussions were carried out with selected stakeholders in order to supplement and confirm the findings from the desk study. The purpose was to generate lessons from their experiences and solicit their views and opinions. The stakeholders were amongst others selected from: academic legal training institutions, Human Rights Organisations, Women's organisations, law enforcement agencies, the legislature, legal aid bodies, relevant government ministries and donor agencies.

Interviews were carried out in a semi-structured way in order to allow for personal and spontaneous narrations to supplement the facts on paper. A common interview guide was developed in order to organise the information gathering process. [See Annex 3]

The entire study (both desk study and interviews) were conducted in the spirit of an appreciative inquiry, where positive experiences and constructive lessons learned were identified as important building blocks for future policy efforts and interventions.

1.3 Structure of the report

The report is presented in six chapters. Following this introductory chapter, the next one presents the conceptual framework for the study. Chapter three examines the efforts, achievements and challenges regarding access to justice in Uganda by analysing the legal and policy framework as well as the institutional arrangements in place. In the fourth chapter, gender related barriers in accessing justice are presented and discussed. Chapter five presents good practices on gender and access to justice from other jurisdictions and actors. On the basis of the findings in chapter 4 and lessons from other jurisdictions, the chapter also presents the strategic entry points for addressing gender related barriers in accessing justice. The final chapter discusses critical gender issues within the policy frameworks of the criminal and commercial justice reform programmes, as well as the overall J/LOS policy framework. It is within this chapter that the strategic entry points and actions from the fourth chapter are translated into the J/LOS policy framework.

2 CONCEPTUAL FRAMEWORK FOR THE STUDY

This chapter outlines the conceptual framework of the study and provides a discussion of the main areas of focus. It seeks to delineate the palpable and crucial link between the issues and as a final point it seeks to summarise the conceptual framework for the study.

2.1 The Concept of Gender

The derivative of gender as a social construction of roles and responsibilities is that it confers power, status, opportunities, and privileges, differently to men and women. It creates stereotypes and therefore influences attitudes and biases at a very early stage of the socialisation process. These lessons remain deeply entrenched and part of the norm so much so that even formal education and professional qualifications are more influenced by the socialisation than vice versa.

Gender analysis as a tool for understanding how society allocates roles and responsibilities for men and women and the effects of this has established that invariably, women are more at a disadvantage than their male counterparts. The result is unequal gender relations and their attendant effects, which include: marginalisation, disempowerment, negative biases and a wide range of injustices to women to mention but a few. It follows also that men and women's experience of the legal system occurs within complex sets of differing social and cultural expectations.¹

This study takes note of the reality that women and men do not constitute a homogeneous group and that among them are differences created by social status, education, and financial position. It follows therefore, that in some instances, some categories of women for instance those who are educated and financially strong, may have a sound capacity to pursue legal justice than poor women and men. The discussion therefore attempts to highlight areas where class, social and financial status may impact on how the different categories of women and men may experience gender related barriers in accessing justice.

It has been aptly observed that the struggle for gender equality, far from being a women's struggle against men, is a struggle for justice and for human rights.² Strategies to address or realise gender equality seek to correct the imbalances resulting from unequal gender relations and to ultimately ensure social (de facto) justice (which the society understands and can relate to) for all persons. It follows therefore, that interventions to realise social justice should focus on both women and men.

2.2 The Concept of Justice/Access to Justice

Literally, 'Access' may be perceived in terms of mere contact, or right of entry or right to use. In the context of the study, access is conceived in a comprehensive sense to include all aspects of contact, entry and use of the legal system.

¹ Australian Law Reform Commission; Paper 10 (DP54:1993)

² Hassan Keynan: Researcher, Norwegian Institute for Urban and Regional Research at the Session of the Preparatory Committee for 2000 Special Assembly Session on Women. 15 March 1999.

Any qualification given to the concept of justice as social or economic presupposes the existence of other forms. The WLSA group in Zimbabwe understandably grappled with the difficult task of elaborating the concept of justice for conducting research on “Women and Justice Delivery in Zimbabwe”.³ They indicated the difficulty of a precise definition of the concept resulting from the fact that it is used both as a descriptor of the delivery system for legal intervention and arbitration as well as an abstract concept of fundamental values and aspirations. On the other hand, notions of economic and social justice had to be taken into account in responding to internal questions of the relevance of legal justice to situations of poverty.⁴

In a strict legal sense, the concept of justice derives from law itself as one of its attributes.⁵ Justice in that sense refers to standards of rights set or defined by (substantive and procedural) law and enforced by specific institutions (justice delivery system), with the State bearing primary responsibility for the protection of those rights.

In order to acquire its legitimacy and the force of law, it is important that legal (de jure) justice does to a large extent mirror social ideals and aspirations of rights for all people. In essence, the two forms of justice should be mutually reinforcing, with the role of law being to strengthen the promotion and protection of social rights and therefore social justice from which the former derives its legitimacy. This is the core on which other forms and components of justice such as safety and security, economic and political justice are founded.

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

Access to justice therefore relates to whether or not individuals, groups and communities realise de facto justice from the enforcement of substantive law as well as the quality of justice meted out on them by the justice delivery system. The study considered access to justice at three main levels:

- Physical access – how close the users are to law enforcement agencies
- Access in financial terms – how affordable legal services are to the users
- Access in technical terms – how comfortable users are with the legal language and procedural requirements. This also relates to the treatment of users by the law enforcement personnel as well as their representation by experts in law and its techniques and their ability to use them i.e. cost

There is a dynamic relationship between the three. How close or far the law enforcement institution is from the user becomes irrelevant if it is too expensive for them to utilise it. On the other hand, affordable law enforcement institutions that are too far from the users also constitute a constraint to access. Furthermore, if the process of accessing justice through law enforcement institutions is too complex for the user, it will destroy the initiative of prospective users regardless of how affordable and physically accessible they are.

³ “In the Shadow of the Law: Women and Justice Delivery in Zimbabwe” WLSA, 2000.

⁴ Id. at 18.

⁵ In Legal Theory, law is defined by its attributes as (i) a power relation (ii) a standard of justice (iii) a social process.

2.3 Gender and Access to Justice

The relevance of gender to social justice and the significant mutual link between legal and social justice, provided the basis for review of documents and consultations with stakeholders. There are common elements in the ultimate objectives of addressing gender inequalities and those of the justice delivery system. On the other hand, there are elements of friction when the law obstructs social justice and when the social set up obstructs access to justice. The text box below summarises the paradoxical interface between gender and access to justice.

Gender and Access to Justice

Social justice enhancing legal justice – common goals

Strategies to realise gender equality seek to achieve social justice and in turn, enhance legal justice. In theory, the content of law and the legal system operates on the presumption that every person is equal and that equality of opportunity exists for all persons to seek protection of the law. Strategies for gender equality seek to bring both women and men to a status of social equilibrium from which the law and the legal system can operate meaningfully to achieve justice.

Law enhancing social justice – common goals

Law as a standard of justice is an effective tool for ensuring social justice. In this regard, a society can legislate against various aspects of social behaviour including gender-based discrimination and use the force of law to ensure compliance. Whereas such legislative action has its limitations, it is one way of using the law to induce a dynamic and faster change in society.

Law obstructing social justice - the friction

Since law is made by human beings, it is not totally devoid of influence. It follows therefore, that when law promotes the interests of a particular group it can be perceived as a power relation. In the context of gender, laws have sometimes explicitly promoted or further entrenched gender-based discrimination in their provisions. In other instances, the law remains completely silent on issues of gender oppression due to the lack of representation of voices of the oppressed within the law making process.

Moreover, when the legal system operates on the inaccurate presumption that every person is equal and that equality of opportunity exists for all persons to seek protection of the law, it further widens the gap between legal and social justice to the detriment of those already socially oppressed.

The Social set up obstructing legal justice – the friction

As noted earlier, the derivative of gender as a social construction of roles and responsibilities is that it confers power, status, opportunities, and privileges, differently to men and women. It creates stereotypes and therefore influences attitudes and biases at a very early stage of the socialisation process. These very attributes of the social set up affect both the legal system and its users with the effect that justice is obstructed for the less powerful, the less privileged, stereotyped as weaker and submissive - invariably women.

The study presents both positive and negative aspects of the interface between gender and access to justice and makes relevant recommendations for policy direction.

Whereas the positive aspects of the interface between gender and access to justice are easily identifiable, the negative are more complex and call for more in-depth analysis.

The three main levels for examining gender issues in the Justice, Law and Order sector include: (i) the substantive laws (ii) the administration of the law and (iii) the Community in which conflicts or disputes occur⁶.

⁶ Adopted from Taaka Awori: "Gender and Poverty Mainstreaming in the Justice, Law and Order Sector" (2001)

3 GENDER AND ACCESS TO JUSTICE IN UGANDA: EFFORTS, ACHIEVEMENTS AND CHALLENGES

3.1 The Legal and Policy framework

The fact that the government of Uganda is signatory to major international human rights instruments provides a positive and strong basis for a policy framework to integrate gender into the social, political, economic and legal spheres. The key instruments that are of particular relevance to gender and access to justice and to which Uganda ascribes include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights.

Building upon the strong foundation of international legal and human rights principles, the government of Uganda has put in place various policy measures toward integrating gender into the justice delivery system. Key policy measures include the Constitution, the Poverty Eradication Action Plan, the National Gender Policy and the National Action Plan on Women.

3.1.1 The Constitution

The Constitution of the Republic of Uganda under Article 21 guarantees equality of all persons before and under the law in all spheres of political, economic social, and cultural life, and the enjoyment equal of protection of the law in all respects.

Key and specific aspects of the Constitution that are supportive of eliminating gender related constraints in accessing justice could be summarised as follows:

1. The National Objectives and Directive Principles of State Policy
 - Gender balance and fair representation of marginalized groups (Obj. VI)
 - Recognition of the role of women in society (Obj. XV)
2. Substantive Provisions of the Constitution
 - All laws and customs that are inconsistent with the Constitution are void to the extent of the inconsistency (Art.2.2)
 - Women can confer citizenship to their children (Chapter 3)
 - Equality and freedom from discrimination (Art.21)
 - Rights of the family (Art.31)
 - Affirmative action in favour of marginalized groups (Art.32)
 - Rights of women (Art.33)
 - Rights of Children (Art.34)
 - Composition of Parliament (Art.78)
 - Principles for the exercise of judicial power (Art.126)
 - Composition of Local Government Councils (Art.180)

Whereas Article 274 of the Constitution requires that existing laws be repealed, modified or adapted to bring them in harmony with the Constitution, this has not been systematically done regarding the provisions listed above. Apart from the laws relating

to representation in Parliament and Local Government Councils, all other laws and customs that reinforce gender based discrimination and which limit women's access to justice are yet to be repealed or amended. Specific examples include the laws governing marriage and divorce.

It should also be noted that the Equal Opportunities Commission remains as the only constitutional body not yet established, five years after the enactment of the 1995 Constitution.

3.1.2 The Poverty Eradication Action Plan (PEAP).

The national development strategy for Uganda is enshrined in the Poverty Eradication Action Plan (PEAP). The PEAP has guided the formulation of government policy since its inception in 1997.⁷ It provides a framework within which the government's planning effort is conducted. The principles set out in the PEAP guide the formulation of sectoral plans at both national and district level.

The PEAP recognises that poverty is a multi-dimensional problem. It follows therefore that apart from economic growth; other ingredients including good governance, peace and local security, are essential in the promotion of effective and sustainable delivery of basic services. In this regard, the PEAP is structured around four overarching goals which are:

- Rapid and sustainable economic growth and structural transformation
- Good governance and security
- Increased ability of the poor to raise their incomes
- Enhanced quality of life of the poor

During the participatory poverty assessment project (UPPAP) conducted in 1998-1999, the poor identified lack of access to justice, non-observance of human rights, lack of security of person and property as major components of their poverty perceptions.⁸ Yet these are among the collective goods, which the state should provide for its population.

In the context of the PEAP, although accessibility to justice for the poor is mainly addressed under Goal 2, it is relevant to all the other goals. It is therefore not only an object of development but also a prerequisite. In order to ensure access to justice for all, the government of Uganda is working toward a more effective and efficient justice system. This is through the development of a long-term development plan for what has been defined as the Justice, Law and Order Sector. Current priorities include reform of the Commercial and Criminal Justice Systems. Efforts such as this study illustrate the commitment to ensure that gender specific constraints in access to justice are taken into account.

⁷ Following and using the UPPAP findings, the PEAP has been revised and now has a 2000 version.

⁸ UPPAP is the Uganda Participatory Poverty Assessment Project. Under the project, a poverty assessment study was conducted in 1998-1999 with a focus on involving the poor in the assessment and then make an input into the Poverty Eradication Action Plan (PEAP).

3.1.3 The National Gender Policy

The National Gender Policy enshrines the framework for mainstreaming gender into all government policies and development programmes. Among the strategies for achieving the policy objectives is; promoting a holistic and integrated approach to development planning to ensure that gender issues in the various sectors are adequately defined, analysed and addressed. The other is promoting and carrying out gender oriented research to identify gender concerns.

Whereas the National Gender Policy has been in place since 1997, it is difficult to assess the impact it has had. Since its inception, the policy has not been supported by an implementation framework with the attendant resources. As currently framed, the policy lacks the “teeth to bite” and is evidently under utilised.

3.1.4 The National Action Plan on Women

The National Action Plan on Women, 1999 (NAPW) emerged out of a consultative process that sought to implement government commitments at the 4th World Conference on Women in Beijing. The Plan identifies ‘*the legal framework and decision making*’ as one of the four priority areas of concern. The strategic objectives under this area mainly relate to the promotion of gender sensitive administration of justice as a strategy toward improving overall access to justice, particularly for women. However since its launch, there is no evidence of how the plan has been utilised.

In summary, whereas a conducive policy framework exists for addressing gender related constraints in accessing justice, there is a need for a logical and synergetic linkage to consolidate and translate the policies into concrete strategies and actions.

3.1.5 The Institutional Framework

The institutional framework pertaining to gender and access to justice is perceived at two levels:

- i. The formal institutional arrangements comprising all agencies within the J/LOS. For purposes of this report, the focus is on those agencies and institutions with core responsibilities in the areas of gender and justice delivery.
- ii. The alternative institutional arrangements comprising institutions which, either facilitate users to access the formal system or provide an alternative approach to accessing justice. This study recognises that the institutions discussed here are not exhaustive as there are many more avenues including religious and spiritual institutions that provide alternative approaches to accessing justice.

3.1.6 The Formal Institutional framework

(a) The Ministry of Gender; Labour and Social Development (MGLSD)

This is the national machinery that bears the responsibility to initiate, coordinate and monitor gender responsive development. In that regard, the Ministry spearheaded the development of the National Gender Policy, followed by a process of mainstreaming

gender into various sectoral policies and district development programmes⁹ The MGLSD has made some significant contributions towards addressing gender constraints in accessing justice. Specific interventions include: spearheading efforts for a integrating gender into the constitution making process, legal awareness activities, disseminating some laws through booklets of simplified and translated versions, piloting a community-based paralegal programme, and the development of gender training materials as well as actual training of judicial officers, state attorneys, police and sub-county local council officials. Ministry of Gender has established a Committee, which is geared towards ensuring that the women's voice and perspective is heard by the Constitutional Review Commission.

Whereas the efforts of the MGLSD are commendable, they have had a limited impact for various reasons: due to the limited finances and staff capacity, the interventions have not covered the whole country and have in many cases been one-offs without follow up. Until the recent initiatives toward developing a sector wide approach to law and justice, the Ministry lacked the capacity to work comprehensively with each agency. The establishment of a J/LOS provides the best window of opportunity for MGLSD and J/LOS to jointly develop a systematic strategy for addressing gender constraints in accessing justice. It should also be noted that "Gender Equity and Justice" is one of the priority areas in the social development sector plan currently being developed by MGLSD.

(b) The Justice Delivery Agencies

The agencies with core responsibilities in justice delivery include the Ministry of Justice, Police, Prisons, the bar, the Judiciary and the Legislature. Table 1 below presents the representation of men and women in the justice delivery agencies as at September 2001:

Table 1: Representation of Men and Women in the Justice Delivery Agencies as at September 2001.¹⁰

| Agency | No. of Women | No. of Men | % of Women | % of Men |
|---------------------------------|--------------|------------|------------|----------|
| 1. State Attorneys in DPP | 16 | 37 | 25% | 75% |
| 2. State Prosecutors | 50 | 128 | 28.1% | 77.9% |
| 3. Police Force ¹¹ | 1,436 | 13,438 | 9.7% | 90.3% |
| 4. Judges | 11 | 33 | 25% | 75% |
| 5. Registrars ¹² | 5 | 15 | 25% | 75% |
| 6. Magistrates ¹³ | 33 | 61 | 35% | 65% |
| 7. The Bar ¹⁴ | 68 | 456 | 13% | 87% |
| 8. Prison Service ¹⁵ | 356 | 1,964 | 18% | 82% |

⁹ By 1999, the Ministry had covered about 8 ministries with gender mainstreaming of policies and plans.

¹⁰ The statistics represent the situation as at September 2001 because they were secured from the various agencies during the study.

¹¹ This includes Police Officers of all ranks from constable to Inspector General

¹² Includes Assistant Registrars

¹³ Includes all except Grade II.

¹⁴ This is based on number of practicing lawyers as given by Uganda Law Society

¹⁵ This refers to uniformed staff

| | | | | |
|----------------|----|-----|-----|-----|
| 9. Legislature | 74 | 295 | 25% | 75% |
|----------------|----|-----|-----|-----|

The table above indicates that the majority of officers responsible for the administration and enforcement of law are male dominated. Apart from the magistrates, there is a lack of gender-balanced representation in the justice delivery agencies. This is in view of the fact that none of the other agencies meets the globally recognised standard for effective representation for the marginalized, which should be at least a third of the total.

The situation in the police force warrants special comment. The police is the first point of contact for users of the justice delivery system. For as long as women are so marginally represented there, the likely effect is that equally few women will be encouraged to utilise the police in their search for justice.

The unbalanced representation has implications for women and men’s access to justice in the following ways:

- i. The men will find it easier than women to approach the agencies in expectation of maximum co-operation from their counterparts;
- ii. Although sex category is not synonymous with gender sensitivity, some of the issues that women bring to the agencies in search for justice are best appreciated by fellow women in their gendered positions as wives, mothers or nurturers. The limited numbers of women in the agencies could thus constitute a barrier to justice for women.
- iii. As exemplified by Tamale in “When Hens Begin to Crow”¹⁶, the weak representation of women’s voices and experiences in the law making process is a major factor in the passing of gender-biased or gender-neutral laws.

A recent review of criminal trial procedures highlighted gender constraints among the factors affecting the efficiency and effectiveness of these agencies.¹⁷ Within this report, specific gender constraints in accessing justice pertaining to the justice delivery agencies are highlighted in Chapter Four.

Some agencies are already making significant interventions towards eliminating gender constraints in accessing justice. Some of the interventions are mentioned below:

- The establishment of specific Family and children’s courts in the Judiciary is a positive step towards improving access to justice for women and children. The courts are intended to provide a quick and formal but user friendly forum for resolving family or domestic problems and juvenile justice matters.
- The Judiciary is also implementing a policy of recruitment in which at least 30% of vacant posts are reserved for women.
- The Prisons Department is working with the Uganda Human Rights Commission to come up with a Human Rights Training Syllabus for Prisons Officers. The initiative provides an opportunity to integrate gender and human rights training into the programme.
- During a recent Training Evaluation and Impact Assessment for the Directorate of Public Prosecutions (DPP), “Gender and Human Rights Training” was one of

¹⁶ Dr. Sylvia Tamale: “When Hens Begin to Crow. Gender and Parliamentary Politics in Uganda”. (1999)

¹⁷ The Justice, Law and Order Sector programme “A Review of Criminal Trial Procedures” by S. Mukasa and M.Owor (2001).

the major recommendations for improving the capacity of Prosecutors to handle their day-to day work effectively.

- The initiative of the Police Force to establish a Child and Family Protection Unit is another step toward redressing gender constraints. In addition, UNICEF commissioned the production of a training manual for Police Officers (Child and Family Protection Unit) on the Protection of Women and Children's Rights.
- The bar, through the Uganda Law Society implements a "Legal Aid Project" to facilitate the poor and indigent in accessing justice.

Although faced with various constraints, a formal and functional institutional framework is in place through which men and women should access justice. The subsequent challenge becomes identifying and responding to the gender specific constraints in accessing justice through these agencies. It is however evident that some of the agencies are already making significant interventions.

3.1.7 Alternative Means to accessing justice

(a) The Local Council Courts

The Local Council Courts constitute an alternative means of accessing justice, available in the communities. A baseline survey on the courts revealed that the courts which amount to approximately 4000 in number handle a minimum of 2 cases a week, thus handling a volume of about 8000 per week countrywide.¹⁸ In that regard, the courts not only reduce the work load of formal courts and other agencies, but are also easily accessible, cheap and they dispense quick justice. The survey critiques the Local Council Courts on the lack of gender sensitivity and basic legal rights in their operations. The proposed amendment bill (2000) to the Resistance Councils and Committees (Judicial Powers Statute) 1988 provides for more gender balanced and responsive courts. The bill also proposes increased jurisdiction so the courts can handle a broader scope of matters in the communities. This should be matched with programmes to strengthen the capacity of LC courts to handle their functions and improve access to justice.

(b) The Uganda Human Rights Commission

The Uganda Human Rights Commission is another mechanism that provides alternative approach to accessing justice outside the formal justice delivery agencies.

Among its priority actions, the investigation and handling of complaints of human rights violations by the Commission provides opportunities for improved access to justice for women and men. In its third year, the Commission received 1239 complaints of which 909 were dealt with and finalized. According to its annual report for 1999, complaints registered by women were 29.4% compared to 70.6% by men. Similar to the LC courts, the Commission reduces the workload of other formal justice delivery agencies while at the same time ensuring access to justice. The Commission has also contributed to increased knowledge of rights and therefore access to justice through its extensive civic education programme.

¹⁸ Judiciary-Danida Programme: "A Baseline Survey on the Operations of Local Council Courts" by Nordic Consulting Group (1998).

In view of the ability of the Commission to handle and dispose of complaints at remarkable rates, its functions could be broadened to take on equal opportunity complaints. This would be a more cost effective way of realising the constitutional provision on the Equal Opportunities Commission.

The increased representation of the Commission throughout the country as well as its collaboration with legal aid organisations is bound to realise a significant improvement in access to justice.

(c) Centre for Arbitration and Dispute Resolution (CADRE)

The Centre which is under the Commercial Justice Reform programme presents another avenue for accessing justice particularly in commercial disputes. In view of the length of time that civil cases take in the formal system, the Centre is also expected to expedite access to justice by reducing delays. Being in its early stages of design and operation, there is an opportunity to ensure that its procedures are gender responsive and do not hinder access to justice in any way.

(d) Civil Society Organisations

Civil society organisations have mainly contributed to improving access to justice by facilitating users to access the formal justice system. This has been through the provision of free or subsidized legal representation for the poor and indigent men, women and children. The organisations include: the Association of Women Lawyers (FIDA-U), the Legal Aid Project of the Uganda Law Society (LAP), the Legal Aid Clinic (LAC) and the Public Defenders Association.

In addition to legal aid, the organisations have played a significant role in educating the public about their rights which is key to accessing justice.

The role played by agencies involved in the provision of alternative means of accessing justice is undisputable. Major challenges include the need for more gender responsive approaches, strengthening inter agency collaboration, and increased representation and access throughout the country.

4 GENDER RELATED BARRIERS IN ACCESSING JUSTICE.

The 1999/2000 National Service Delivery Survey indicated that 14.1% of the women interviewed did not feel confident at all that they would get recourse and redress in their favour from formal institutions, as compared to 10.8% men.

Whereas the body of substantive and procedural law is rather broad and diverse involving civil and criminal aspects, law enforcement institutions are standard and provide the site for how men and women, groups and communities experience the enforcement of substantive law. Access to justice therefore relates to whether or not individuals, groups and communities realise de facto justice from the enforcement of substantive and procedural law as well as the quality of justice meted out on them by the justice delivery system.

As earlier noted gender related barriers in accessing justice are discussed at the levels of Substantive laws, Administration of the Law and the Community in which conflicts or disputes occur. The discussion draws out access to justice;

- In physical terms,– how close the users are to law enforcement agencies
- Access in financial terms – how affordable legal services are to the users
- Access in technical terms – how comfortable users are with the legal language and procedural requirements. This also relates to the treatment of users by the law enforcement personnel as well as their representation by experts in law and its techniques and their ability to use them i.e. cost

4.1 Substantive Laws

Gender related barriers in accessing justice within substantive laws mainly relate to gender biased laws, which are overtly discriminative; and gender neutral laws where discrimination is veiled and needs to be corrected through laws that are protective of specific concerns of women or men.

(a) Gender biased Laws

As earlier noted, law can be a standard of justice as much as it can be a power relation. For the content of a law to be overtly gender biased and therefore discriminative relates to the circumstances in which it is debated and drafted. Consultations indicated that a number of laws that exist today in the statute books are gender biased thereby acting as a barrier to women accessing justice. This was mainly attributed to the time they were passed and the fact that they were passed by male-dominated legislative organs. Where the majority of law-makers are male and seek to protect a specific interest, privilege or status that society confers on them, they could pass a gender biased law. In such situations, the law will be a reflection of power relations.

The dynamics of various interests of law makers are reflected in the Hansards where parliamentary debates are recorded. The discussion toward the amendment of the law on

defilement in 1990 provides a good example¹⁹ Also, the recent saga with the Land Act and the attendant co-ownership clause also clearly demonstrate how much opposition exists in trying to have a gender sensitive law. The co-ownership clause in the Land Act has remained on the shelf for two years now, yet it would have afforded women security of tenure as a key ingredient of economic independence. The appreciation of the negative effects of gender discrimination is therefore crucial for law makers in ensuring access to justice for men and women.

There is a paucity of research and documentation regarding gender analysis of laws in Uganda. Existing efforts have focused on the personal laws of marriage, divorce, adultery, inheritance, defilement, domestic violence and such others. These are also the areas where the majority of NGOs working on women and law tend to focus.²⁰ The specific laws highlighted below should therefore be understood for their illustrative purposes and not as an exhaustive representation of the status quo. A more systematic gender analysis exercise of existing legislation is a strategic entry point for correcting gender related barriers in accessing justice.

Adultery and Divorce: The law that relates to adultery and divorce is discriminatory in that there are different ingredients for the offence of adultery and grounds for divorce for men and women respectively. The privilege given to men in the legal construction of adultery means that a man may have a series of sexual partners, as long as they are not married. On the other hand, the law ensures the restriction of his spouse for whom it is illegal to have sexual intercourse with any man. In legal terms therefore, a married woman cannot liberate herself from the mental and psychological effects of the infidelity on her spouse. Such discrimination affects all women across the board regardless of class or other status.

Difficult as it is for a woman to prove adultery on the part of her spouse, the requirement for her to prove an additional ground makes the exit of women from undesirable relationships more difficult than for their male counterparts who only need to prove adultery. The discriminatory treatment for men and women in this area of law has implications for their access to justice comprised in the constitutional guarantee for equal rights of men and women at marriage, during marriage and at its dissolution.

The gender biases in the law on adultery and divorce actually reinforce gender biases in society and thus limiting access to justice for women. Outside the legal arena, where the majority of “marriages” fall, the social construction of relationships sanctions multiple partners for men while at the same time constructing divorce on the basis of a fault principle on the woman’s part.

Defilement: The law of defilement as framed is strictly protective of girls under the age of 18 years from the offence, to the detriment of a large number of boy children who are victims of sexual violation. This provision in the penal code has been criticised as gender biased and contrary to the constitutional principle of equal protection before the

¹⁹ See Republic of Uganda. Parliamentary Debates (Hansard). National Assembly Official Report. Fourth Session 1990-91, First Meeting, Issue No.13: 30th April-21st June 1990.

²⁰ These include FIDA(U), LAP, LAW-U, ACFODE, Gender Resource Centre, UWONET, WLEA, ISIS-WICCE to mention a few.

law. A review needs to be done of various laws to identify and address existing gender biases.

Burden of proof: The strict rules of evidence applied in respect of sexual offences, frustrate access to justice for the victims – who technically can only be female. In the rape case of *Maina vs. Republic*, Chief Justice Mwendwa, warned magistrates that "girls and women do tend to tell an entirely false story which is very easy to fabricate, but extremely difficult to refute...". It is therefore a matter of judicial practice that the evidence of victims of sexual offences be corroborated. The stereotype underpinning the evidential rules in respect of sexual offences is that women and girls are liars and should take some blame for sexual offences against them. The gender stereotype within the warning issued by the Chief Justice is passed to others because it is on record as an authority. The implication therefore is that unlike their male counterparts (as complainants in all other cases), female complainants (as the only ones who can technically be raped) come before the witness stand with different standards of objectivity from the presiding judicial officer. While the requirement of corroboration is essential to protect the rights of the accused, its stringent and biased application in cases where the victim has been a credible witness deprives the victims of the right to a remedy.

Succession: Gender analysis of the law relating to succession has pointed to gender biases in the law's recognition of a customary heir and in the distribution of estates under intestate succession. The recognition of a customary heir under the Succession Act has far reaching implications for women's opportunities to have an equitable share in the distribution of estates in the short term, and their pursuit for economic empowerment in the long term. Restriction of the provision to an "heir" not only implies that they must be male, but that they should be succeeding a deceased male as required under the patrilineal system that prevails in the majority of African societies. The logical conclusion is that the law-makers did not envisage females as having estates to bequeath. A review of the laws and procedures in the office of the Administrator General also confirmed this conclusion from the framing of the form on which a report of death is made.²¹ This is one of the instances where the law mirrors and reinforces injustices in society.

The allocation of 15% to the surviving spouse in intestate succession effectively discriminates against women and needs to be revised. Whereas in a polygamous marriage all surviving widows have to share 15%, a widower who survives more than one of his spouses takes 15% from each of their estates.

Respondents indicated that having gender responsive laws is contingent on a law making and law reform process that is supported by gender oriented legal research – where a gender analysis is conducted on the proposed area of reform. It was noted that efforts to support the legal reform process with gender oriented legal research are still limited and weak among the government agencies responsible for law reform and within civil society organisations.

²¹ Research Project on Women and Inheritance: Ministry of Women in Development, Youth and Culture (1994). On recommendation of the report, the form has since been revised.

(b) Gender Neutral Laws

A law or policy is categorised as gender neutral when it is designed or framed in a manner that presumes that it will apply equally to all persons (men and women) without taking cognisance of gender related barriers that could contradict the presumption. The law or policy is in essence “blind” to and veils the underlying structural gender inequalities. When the “veil is lifted” [barriers are encountered], the gender-neutral law that is apparently positive may result in a discriminatory effect on access to justice. Addressing the discriminative effects of gender-neutral laws and policies mainly involves implementing the law or policy in a manner that takes gender issues into account. On the other hand, provisions can be inserted in the law that specifically cater for the gender concerns that may obstruct access to justice. An example is given below:

There is a gender-neutral policy in Banks and financial institutions that all persons are entitled to receive credit on the basis of collateral. The presumption of the policy is that men and women can access and present collateral in terms of land titles. In view of the glaring statistic that only 7% of women in Uganda own registered land, the gender-neutral policy on access to credit effectively discriminates against women.

In response to the gender related constraints of women’s access to land, some banks and financial institutions have adjusted the requirement of collateral to include group and character loans for women.

According to a study by WLSA 1994, the nature of the law within the post colonial state despite its efforts towards gender neutrality remains undeniably patriarchal in character. It has also been observed that the law in its functioning is often characterized as being primarily directive and determinative.²² But also that the law reinforces values and pre-existing norms and hence in its reform measures proceeds from the perspective of the existing power base.²³

Similar to gender biased laws, gender neutrality of laws and policies has much to do with those who make laws. Jones 1980:3:1 in her observations about American law states as follows:

“The body of law, made by men, for men and amassed down through history on their behalf, codifies masculine bias and systematically discriminates against women by ignoring the woman’s point of view. Today the law is largely enforced, interpreted and administered by men, so it still works in the interests of men as a group. Women too accept the law’s male bias as objective justice – when women jurors, lawyers, judges etc uphold the same male standard. And whether that male standard constitutes sex discrimination or the innocent side effect of a shared male point of view, the result for women is the same: they are deprived at every step of equal protection under the law.”

Morris (1998) on a study of criminology observed that crime and criminality were for a long time and almost universally regarded as male phenomena and consequently the nature and extent of female criminality were neglected. Causes of crime among women were hardly analysed and Morris observed that theories of criminality have been

²² Helleum 1993: 243 Paliwala (1993):

²³ Many scholars have refuted that there is no such a thing as gender-blind laws and that in fact those so called laws actually discriminate against women because they have an inherent male bias.

developed from male subjects and validates on male subjects. Therefore the assumption is that the theories are gender neutral and will apply to all criminals, women inclusive.

According to Morris: “theories of crime should be able to take account of both men’s and women’s behaviour and to highlight those factors which operate differently on men and women. Whether or not a particular theory helps us to understand women’s crime better is of fundamental, not marginal significance for criminology. In Uganda, the law on assault provides a classic example:

The offence of assault under the penal code covers all forms of assault ranging from street or bar brawls between strangers to fights between intimate partners in the domestic sphere. The law does not assist the police officer, attorney or judicial officer to take into account the gendered power relations underlying domestic violence (gender-based violence) of which the case before them is only a manifestation. Taking the gendered power relations into account may provide valuable explanations that could mitigate the sentence of the one at fault or call for a different approach to resolving the conflict.

Relevant issues emerging from a gender analysis of domestic violence include the following²⁴:

- Women as perpetrators may have a battered women’s syndrome arising from an accumulation of violence that induces them to act violently toward their spouses
- Where men are at fault, their spouses want the violence to stop without necessarily taking their partners into custody – because they entirely depend on them financially, or they are afraid of the reaction from the man’s family.

Gender must be given a central place in the understanding of female and of course male criminality because gender appears to be the single most crucial variable associated with criminality. Laws and policies that are not gender-responsive, are not merely incomplete; they are misleading. This argument is well exemplified by a publication on “Women’s Violent Crime in Uganda”.²⁵

4.2 Administration of the Law

Gender related barriers in accessing justice have been identified as relating to; physical accessibility to the agencies for administration and enforcement of law, the training and orientation of those responsible for administration and enforcement of law, the degree of gender sensitivity of both technical and non-technical officers in the system, the degree of technicality involved in the justice system, confidence in the justice delivery system as impartial and transparent and delayed delivery of justice.

(a) Physical accessibility to justice delivery agencies

Evidence from the National Service Delivery Survey shows that delivery of justice to the poor by the Magistrates Courts is still limited country-wide, particularly in rural areas.²⁶ Whereas the majority of Uganda’s population reside in the rural areas²⁷ and are

²⁴ Stella Mukasa: “Women and the Law of Domestic Violence in Uganda” (1994); H.Mwesigye and Yeri Wakabi: “A Study on Domestic Violence” FIDA(U) (1993); National Association of Women Judges of Uganda: “Domestic Violence in Uganda” (1997); LAW-U: “A Study on Domestic Violence” (2000).

²⁵ Lillian Tibatemwa Ekirikubinza: “Women’s Violent Crime in Uganda. More Sinned Against Than Sinning.”(2000).

²⁶ Uganda Poverty Status Report,2001. p.36

²⁷ The 1991 census enumerated people in the urban areas representing 11.3% of the total population.

mainly poor (below the poverty line), the justice delivery agencies are mainly situated in urban areas and centres and therefore far from most of the users, thus implying transport costs for users. In addition most of the legal aid services providers are urban based, for example FIDA has offices in Kampala, Arua, Mbarara, and Mbale. The Legal Aid Project in Kampala has presence in Kampala, Fort Portal and Gulu.

The National Service Delivery survey results indicate that only 18.2% of the people in rural areas are able to access a magistrate Court within a distance of less than 5km compared to an overwhelming 56% in urban areas. Taken from a gender perspective, there are a number of implications for women who have a heavier workload at home and have to complete it before they leave; the long walking distance may mean late attendance after court has adjourned or non-attendance for lack of transport. Whatever the situation, the end result is limited or total lack of access to justice for such women. The situation may not be as ominous for their male counterparts who have a much lighter workload and also control the household income. Ensuring equal access to justice for men and women, calls for an appreciation by the persons within the justice delivery agencies of the socio-economic realities of the users of the justice delivery system.

It is common occurrence for witnesses to fail to appear in court due to lack of transport thus delaying progress of cases. An example is given below, regarding the use of courts:²⁸

The multiple and expensive trips to court frustrate due process of law

Discussions with various judicial officers indicate the failure of witnesses to attend court as a major factor contributing to delays and case backlog. The scenario commonly described is as follows: witnesses are summoned and they are expected to attend court at their own expense. A day's trip to the court and back is a major financial sacrifice for a poor man or woman earning a daily income. For the woman, she will still find her gender roles and responsibilities in the home awaiting her. Upon reaching court, there may not be a police file or the accused is for some reason (either having jumped bail or is on remand but is left behind by the prison warders) is not in court. Such situations may result in more than one adjournment, witnesses are fatigued and the case may eventually be dismissed for want of prosecution.

The court is however within the conclusive phase of the path to justice. In order to realise a meaningful impact, there is a need to improve the representation of all justice delivery agencies throughout the country. In increasing the distribution of justice delivery agencies all over the country, their design and size need to be in tandem with the rural setting.

The office of the Probation and Welfare department was indicated as having the highest representation in the rural areas. In that regard, the office receives so many cases from the rural poor seeking resolution of various disputes especially women. In other words, the office provides an alternative channel for access to justice that needs to be recognised and assisted in terms of capacity to handle the matters.

²⁸ This is based on the scenarios described in the Platt Report on "Commission of Inquiry (Judicial Reform), 1995.

(b) Training and Orientation of Persons Responsible for Administration and Enforcement of the Law

Respondents observed that those responsible for the administration of justice, the lawyers, judges, police, (the majority of whom are men) and legal aid providers are not trained to understand and appreciate the gender concerns in relation to accessing justice. The curriculum at the major police and legal training centres like the Police Training School, Makerere Law Faculty and Law Development Centre respectively, teach the law without systematically relating it to the social environment of poverty and gender discrimination. The training focuses on producing Police officers, advocates, judicial officers and attorneys who know the content and technical procedures of the law. This lacuna only serves to accentuate an already hostile or unaware environment. Considering that most of the fledging law students are a product of the patriarchal value system, they are all potential obstacles to efforts to place gender issues on the agenda of justice delivery.

There are a few exceptions among the students who opt for a paper on ‘Gender and the Law’ as an option in the third year of the LL.B. A similar opportunity exists for prospective policy makers (non-lawyers) who compulsorily study ‘Gender, Law and Human Rights’ at the Department of Women and Gender Studies both at the bachelors and masters levels.

As Jones notes, “at every step of the legal process, the prevailing standard of justice is male, the acts of men and women are subject to a different set of legal expectations and standards.-----. Often that male bias shows up at one stage or another of the legal process in the exercise of discretion. That built in flexibility, which allows a judge or prosecutor or a police officer to use “better judgement”, is essential, experts agree to a legal system that tries to deal fairly with individual cases. But where discretion is exercised by men or by women trained with a gender blind or biased standard, it is usually exercised in the same manner. Discretion repeatedly exercised to protect the powers and privileges that society prescribes to men, becomes a mask for the law’s underlying systematic discrimination against women....

The professional training that those responsible for administration of justice undergo should assist them to unlearn entrenched gender biases and apply their knowledge and skills in a manner that is sensitive of gender related barriers as illustrated in (c) below.

(c) Gender sensitivity of both technical and non-technical officers in the system.

Gender analysis has shown that the socialisation process creates biases that we may not be aware of unless we make a conscious effort to be more sensitive and objective. These biases if not checked could occasion a miscarriage of justice.

Police officers, state attorneys, members of the bar and judicial officers are in contact with witnesses, offenders and victims at various stages of a case. The officers are in a position of authority and it is therefore important that those appearing before them are comfortable in their presence. This environment can only be created by the officers, hence the need to constantly remind them through sensitisation and training.

Secondly, when making an interpretation of law and fact, technical officers need to constantly remind themselves to avoid conclusions influenced by gender stereotypes and biases. Such biases include for example stereotyping men as having a higher propensity to commit violent crimes than women, blaming female victims of sexual offences, and such others. In a recent study on criminal trial procedures it was indicated that it is common practice that when police officers receive complaints from women, they interrogate them to ascertain whether the complainant is not linked to retaliation by a co-wife or rival or a wronged partner – as if to justify the actions of the perpetrator. Similarly, the common response of police officers to victims of domestic violence to go and sort it out privately limits access to justice for women.²⁹ A review of decided cases indicated that a sensitive Judicial Officer can avoid undue regard to legal technicalities and unfair decisions by being gender sensitive as indicated below.

In **Uganda v. Apai Stephen, Criminal Session Case No. 23/94**, a victim of rape made a statement that she was made accused's wife as a euphemism for sexual intercourse. The judge described the statement as useless and acquitted the accused for lack of compelling evidence. "In this case, apart from the vague and meaningless statements uttered by PW1 to the effect that the accused made her his wife at the material time, and that he worked on her etc., there is nothing on record to throw light on what actually took place

"Before I take leave of this matter, may I also point out that the complainant (PW1) has only herself to blame for the fact that this case collapsed. Indeed, the learned Resident Senior State Attorney endeavoured to guide her in her evidence for more than one and half hours, but she stubbornly refused to say exactly what took place inside the accused's hut on the day in issue. She was very satisfied with leaving the court with the useless statements above. By her looks, PW1 was probably a grandmother. Children under the age of 18 years have on countless number of times before, given valuable evidence to this Honorable court on matters such as these. Court therefore expected PW1 to perform a lot better than she did." (emphasis added).³⁰

The case is, therefore, illustrative of the manner in which a judge's insensitivity towards a rape victim undermines the ability of the judicial process to be a real vehicle for the protection of women's human rights.³¹

The gender analysis of the cases in the report illustrates the difficulties faced by women in protecting their rights through the legal system. The report observes that unless the system can operate based on the principles of fairness and justice, closing the gap between the formal legal rights of women and their rights in practice will remain but a dream. The report further shows that while the record does not show wholesale gender bias or insensitivity,³² there is enough to warrant concern. In order to address these concerns it is recommended that:

- Members of the judiciary should be given the necessary knowledge to enable them to appreciate the perspectives of women and the consequences of discrimination.

²⁹ S. Mukasa and M.Owor in "A Review of Criminal Trial Procedures" for The Justice, Law and Order Sector Programme, 2001.

³⁰ **Uganda v. Apai Stephen, Criminal Session Case No. 23/94 (Justice E.S. Lugayizi)(16/3/95)**, taken from a Study on Gender, Equity and Justice: A Gender Analysis of Locally Decided Cases prepared for The Ministry of Gender and Community Development (1997).

³¹ Study on Gender, Equity and Justice, 1995

³² See, e.g., Harriet Kizito v. Paulo Kigozi, Civil Suit No. 231 of 1980 (Justice P.A.P.J. Allen)(22/8/80).

- All laws that undermine the women’s inherent right to equality should be abolished.
- Continuous gender analyses and research should be conducted to determine the existence of discriminatory attitudes and practices within the judiciary.

The study emphasizes that of all agencies, the judiciary have a duty to ensure that the victims of sexual violence are able to enforce their rights to a remedy in court.

The report accurately notes that apart from the courts, focus needs to go to individuals, from police officers to prosecutors, whose prejudices and biases will influence the ability of women to enjoy equality under the law.³³

Non- technical officers include receptionists, office attendants, court clerks, interpreters, office supervisors, secretaries, as well as Registry staff. These too come into contact with witnesses, offenders and victims. The non-technical officers need to appreciate the need to be sensitive to issues of poverty and gender as they affect users of the justice delivery system. It must be impressed upon them that they too have a role to play in ensuring access to justice.

(d) Confidence in the justice delivery system as impartial and transparent.

Related to attitudes and the need for a user friendly environment is the need to increase confidence on the end users in the justice delivery system. The feeling of powerlessness and inability to influence things around you is a common denominator of effects of gender oppression and poverty situations as illustrated by the UPPAP Report. It is crucial that the advocates, attorneys, police, judicial officers and all support staff of the system appreciate that in their search for justice, such persons need their support and encouragement. Initiatives include placing user guidelines and directions in English and local languages in conspicuous places within the premises of the justice delivery agencies, ensuring that office attendants approach all persons to ensure they are receiving service and know what to do.

(e) The degree of technicality involved in the justice system.

The language and technicalities involved may prove a barrier to access to justice for the poor women and men who often have none or very limited education. This results in the lack of or limited participation in the administration of justice.

The law, whether civil or criminal, found in statute books is couched in technical language, (legalese³⁴) which is obscure to lay persons even when they understand English used as the official language of the court. This situation which WLSA has described as “distance through communication” creates barriers to justice for both men and women who may not be able to engage the services of a lawyer.³⁵ The situation is exacerbated for women who because of the gendered construction of opportunities for education and income, are less capable than men of appreciating their legal rights, later on engaging the services of legal experts to represent them.

³³ Id : 14-15

³⁴ Disapproving language similar to that used in legal documents.

³⁵ In the Shadow of the Law, p.120.

Statistics on forms of employment show that the majority of women, almost 67 per cent,³⁶ are highly preoccupied with the domestic sphere and are thus less exposed than their male counterparts whose gender roles tend to occupy them in the public sphere at 60 per cent where the legal system is located. Thus the women's limited exposure and knowledge of procedures form a barrier to justice as it inhibits the initiative to lodge claims in court.

Thus, illiteracy and poverty resulting from gender based discrimination combine with the technical barriers to deny more women access to justice than men.

Describing a typical court scene where all justice delivery agencies were represented, WLSA aptly conclude that procedures followed [read legal rituals] during a hearing are alienating, abrupt, too technical, insensitive, and exclusionary leading to lack of participation. This in turn keeps poor and illiterate men and women in the shadow of the law – the women's situation being aggravated by the compound effects of gender based discrimination.³⁷

(f) Delayed delivery of justice.

“Justice delayed is justice denied”. During the National Service Delivery Survey, approximately 30% of the respondents indicated that it takes more than six months to obtain a hearing, while 33% indicated a period between 1-6 months. The delays in obtaining a hearing reflect problems within all agencies that are involved in the process that precedes it – police, the State attorneys, the bar, the Judiciary and the prison service.

The causes of delays need to be identified and responded to by all agencies in order to improve access to justice for men and women.

4.3 The Community where disputes occur

The community where disputes occur is another location of gender related barriers in accessing justice. The barriers mainly relate to role of culture and patriarchy in community management, the plurality of community based decision-making fora, poverty and the cost of justice, the private-public divide, illiteracy and ignorance and conflict and insecurity in the community.

(a) The Role of Culture and the Patriarchal System

The study reflected that the major constraint that inhibits women from accessing justice is the patriarchal cultural value system that prevails within our society. By virtue of giving one group, [the men], higher status over the other, [women], patriarchy creates unequal power relations right from the basic unit of society – the family to the larger community. The system of patriarchy like other systems of dominance thrives on various rules and ideologies to maintain the status quo. In patriarchal societies, culture and religion play a significant role in defining what men and women may or may not do. Such rules include the culture of silence that forbids women from exposing domestic problems in the public sphere (read the formal legal system). The compound effect of these social and economic inequities on women is a powerless and disadvantaged position that limits their ability to utilise opportunities, and access

³⁶ Women and Men in Uganda; Facts and Figures 1998 p.41

³⁷ Ibid

services including those from the legal system. It was indicated that many women fear to seek justice through the courts because this option is perceived as inappropriate. It is worth noting that the vast majority of women live in the rural areas where this patriarchal value system is most cherished and practiced.

(b) The Household

At the household level unequal power relations affect access to justice in various ways. The lack of financial independence places women in situations where they are forced to compromise on their rights. Where the financial independence exists, the problem of illiteracy and ignorance of rights hinder access to justice for women who are more relegated to the domestic sphere than their male counterparts who have contacts in the public sphere. Where the violation of rights is perpetrated by her spouse, the cultural dictate of male supremacy in some cases prohibits even financially independent women from accessing justice through the formal system.

(c) Attitudes of Officers responsible for Administration of Justice

Linked to the issue of attitudes, it was also noted that some of the officers responsible for the administration of justice are not free from the shackles of the patriarchal value system. That is to say when a woman comes into contact with the justice system which is manned by mostly men, she will invariably meet a prejudiced mind set which makes her hopes of getting justice all the more bleak. An example of the police was cited where a number of women who come to lodge complaints of domestic violence are told to go back home and sort it out privately. For as long as the agencies responsible for administration of justice continue to perceive the private as an area that is not within the scope of their work, access to justice will elude women for a long time.

(d) Culture and Religion

Culture and religion were also identified among the factors that constrain women's accessibility to justice. For example, Islam defines how a woman should behave, and pursuing a cause of action of a complaint through the formal justice mechanisms might be seen as a deviation from religiously defined norms of behaviour. The Catholic Church on the other hand is very clear on the issue of contraception which to a large extent restricts the reproductive health rights of women. Other religions such as Christianity too, lay down certain norms and codes of expected behaviour for women, who are encouraged to be meek and subservient. This may prevent women from seeking justice through established formal mechanisms if it is perceived as deviation from religious principles.

There are certain practices which are justified as cultural and customary practices, but which pose a threat to women's safety and security of the person thus limiting access to justice. Examples include female genital mutilation, domestic violence particularly wife battery, early marriage, widow inheritance, food taboos, customary bailment (using young virgins) and the practice of property grabbing from widows and orphans.³⁸ There is a need for specific strategies through law and pilot projects to respond to these barriers.

³⁸ Stella Mukasa and Monica Twesiime: "A Study on Violence Against Women in Uganda", 2000 Commonwealth Secretariat.

Cultural practices and community perceptions also interfere with due process of law. A recent study on defilement indicated that extra –legal negotiations frustrate cases of defilement in the criminal justice system and affects its efficiency and effectiveness.

(e) The plurality of community-based dispute resolution fora, which are not always gender responsive

As was indicated by the legal aid service providers, the majority of complaints by women relate to the domestic sphere where their gender roles have relegated them. Apart from the cultural practice of strict privacy in domestic disputes, women lack the courage and confidence to utilize justice delivery agencies, which apart from being within the public sphere and therefore unfamiliar, are male dominated. Women and men tend to resort to various dispute resolution mechanisms that exist within the communities because they are less technical and cheap. A quantitative survey of Gender Violence in Apac and Mbale Districts showed that where violence was perpetuated against individuals only a small percentage for both men and women made a formal report to court or sought legal advice. In observance of the rule of privacy in domestic disputes, 60% of the people surveyed cited the fact that the abusers were their partners as the reasons for failure to report.³⁹

The community based dispute resolution mechanisms begin at family level with power centralized in the head of household who is invariably male, then there are family elders who may include a few women (without decision making powers); and finally the clan heads who are male. Apart from a male dominated profile, the community based mechanisms apply customary norms which in a patriarchal setting favour the male. It follows therefore that the quality of justice for women and men before these fora is clearly biased in the men's favour.

As noted earlier, the Local Council Courts as a community-based dispute resolution mechanism have been critiqued for the lack of gender sensitivity and basic legal rights in their operations. A baseline survey on local council courts recommended that if these weaknesses are addressed, the courts could make valuable contribution in access to justice particularly for poor women and men⁴⁰. Some of the recommended interventions include a gender balanced representation of women on the courts, as well as gender sensitisation of the court personnel.

(f) Illiteracy and Ignorance

The community where disputes occur is characterised by low literacy levels and hence widespread ignorance of rights. Respondents alluded to the problem of low literacy levels and ignorance as constraining access to justice. Statistics put the literacy levels of women at 57% compared to men at 74%.⁴¹ It was noted that most of the women are illiterate and ignorant of the law and their rights. One of the explanations to this situation can be traced to the patriarchal value system. This system places a high premium on educating the boy as opposed to the girl child. The net effect of this is that more girls find themselves outside the education system thus creating a large body of

³⁹ An assessment of Gender violence in Apac and Mbale Districts of Uganda. A Qualitative study conducted by the Coalition Against Gender Violence Project 2000

⁴⁰ Judiciary- Danida Programme: "Report on A Baseline Survey On the Operations of Local Council Courts": Nordic Consulting Group (U) Ltd (1998).

⁴¹ Uganda National Household Survey, 2000.

illiterate and ignorant women. The laws are written in English and the vast majority of the women cannot write or read and therefore constrained in using the justice system. In the words of one respondent:

“The justice system is complex and highly ritualized, and even educated people find it perplexing. How much more for the uneducated?”

This statement clearly points to the need for reviewing the legal rituals and undue technicalities that limit access to justice.

The consequences of ignorance of the law are aggravated by a strict interpretation and application of the law. It was indicated that a number of women who file for letters of administration are shocked to be told by personnel in the office of the Administrator General that they have no rights as a wife since they were not legally married. The legal definition of a wife is in sharp contrast with the reality where majority of the population build homes and families on the basis of cohabitation relationships. This is a matter that should be addressed by the next law on domestic relations.

(g) Poverty and the Cost of Justice.

The ability of the poor to afford the cost or reduce their dependency on the expensive, scarce and highly technical expertise of those who ordinarily manage and work with the system of justice is a crucial factor in ensuring access to justice for them.

Poverty, interpreted as limited access to finances and money earning opportunities, is another major constraint that curtails women's ability to access justice compared to their male counterparts. It was established that women who are mainly involved in non-monetised employment (tilling the land, home-based income generating activities and doing house hold chores) do not have the money to engage lawyers or even pay the court fees. As already noted, even in cases where some organizations provide free legal services most women cannot afford to come to these institutions, since in most cases it is the husband who controls the household income.

It was further noted that most women cannot afford the popular "user fees" that are required to obtain services in most offices that deliver justice in our country today. These "*user fees*" or "*facilitation*" range from fees to have a case filed, get a police man to visit the place of the alleged complaint and a lawyer to go and interview potential witnesses. This situation clearly indicates that women's access to justice is highly contingent on their access to commercial justice (read economic empowerment and independence).

It should however be noted that there are women who can afford to utilise the formal justice system and thus skip the cost hurdle. This however does not mean that they may not encounter other barriers such as those relating to the biased attitudes of those responsible for administration and enforcement of the law.

It was also established that poverty / lack of resources affects many of the institutions in the justice system, thereby exacerbating the difficulties of poor individuals seeking justice through the system. For example, it was found that one of the major problems faced by prisoners on remand, both men and women, is lack of transport to take them to court. The prisons department which is responsible for transporting remand prisoners to

court; is severely under-funded. Accordingly, many innocent people end up staying on remand for long periods of time, and access to justice is delayed

(h) The Private vs. Public Divide

Consultations with legal aid providers indicated that the majority of matters they handle are reported by women and they relate to matters in the domestic sphere such as lack of maintenance, violence, child custody, and such others. As noted earlier, the patriarchal system dictates that disputes occurring in the private sphere to which most women are relegated are not to be resolved in the public domain. The potential sanctions for falling out of line include ostracism by society and are effective in keeping women in check.

The private vs. public divide also means that many women have very many responsibilities at home, such as taking care of children, the sick, the elderly, cleaning, cooking, and so on. Pursuing justice through formal mechanisms takes time, which many women cannot spare simply because their domestic duties do not allow them to be absent from home for a long time. In some cases they have no one with whom to leave their children, no one to prepare meals for the family during their absence, and so on. The opportunity cost between a woman valuing their security in a home against pursuing a single case through the legal system leaves many with no option but to give up the latter. Because their male counterparts do not have to deal with the difficult considerations of domestic responsibilities, they have better opportunities to pursue their rights through the justice delivery system.

(i) Conflict and Insecurity

The absence of security at the macro level of a community has implications for safety, security and access to justice for men and women. Today there are about six districts in Uganda, which are directly affected by conflict.⁴² It has been documented that during conflict situations, women suffer the brunt of gender specific forms of violence and have no recourse because the systems of law and order tend to break down completely. Experiences in Uganda illustrate that whether the conflicts are politically motivated (Kitgum, Gulu, Bundibugyo) or resulting from scarcity of resources (Katakwi); the safety and security of women is compromised as they become the targets through which conflicting parties hit at each other using rape, murder and abduction of women as weapons.

Moreover, conflicts have resulted in internal displacement of persons, a situation that curtails safety and security of persons and property in that the rate of crime and violence inevitably escalates. Government interventions for internally displaced persons should among others provide gender responsive channels for them to access justice.

In addition to identifying and responding to the causes of conflict, there is need for legal redress for victims of human rights violations in situations of armed conflict.

4.4 Summary of Key Findings

Although they appear at different levels of substantive laws, the administration of law and the community where disputes occur, gender related barriers in accessing justice are

⁴² These include Kitgum, Gulu, Bundibugyo, Kasese, Katakwi, and Moroto.

interlinked and should be responded to comprehensively. The study has established that there are factors that affect access to justice for both men and women, the structural gender inequalities and biases that permeate all levels of society invariably aggravates and in some cases increases the hurdles that women must overcome in order to access justice. On the whole, men have easier access to justice than their female counterparts. As illustrated in Table 2 below. Apart from the obvious cases, the implications for access to justice reflect whether it is in physical, financial or technical terms.

Table 2: Balance Sheet on Barriers to Justice for Men and Women

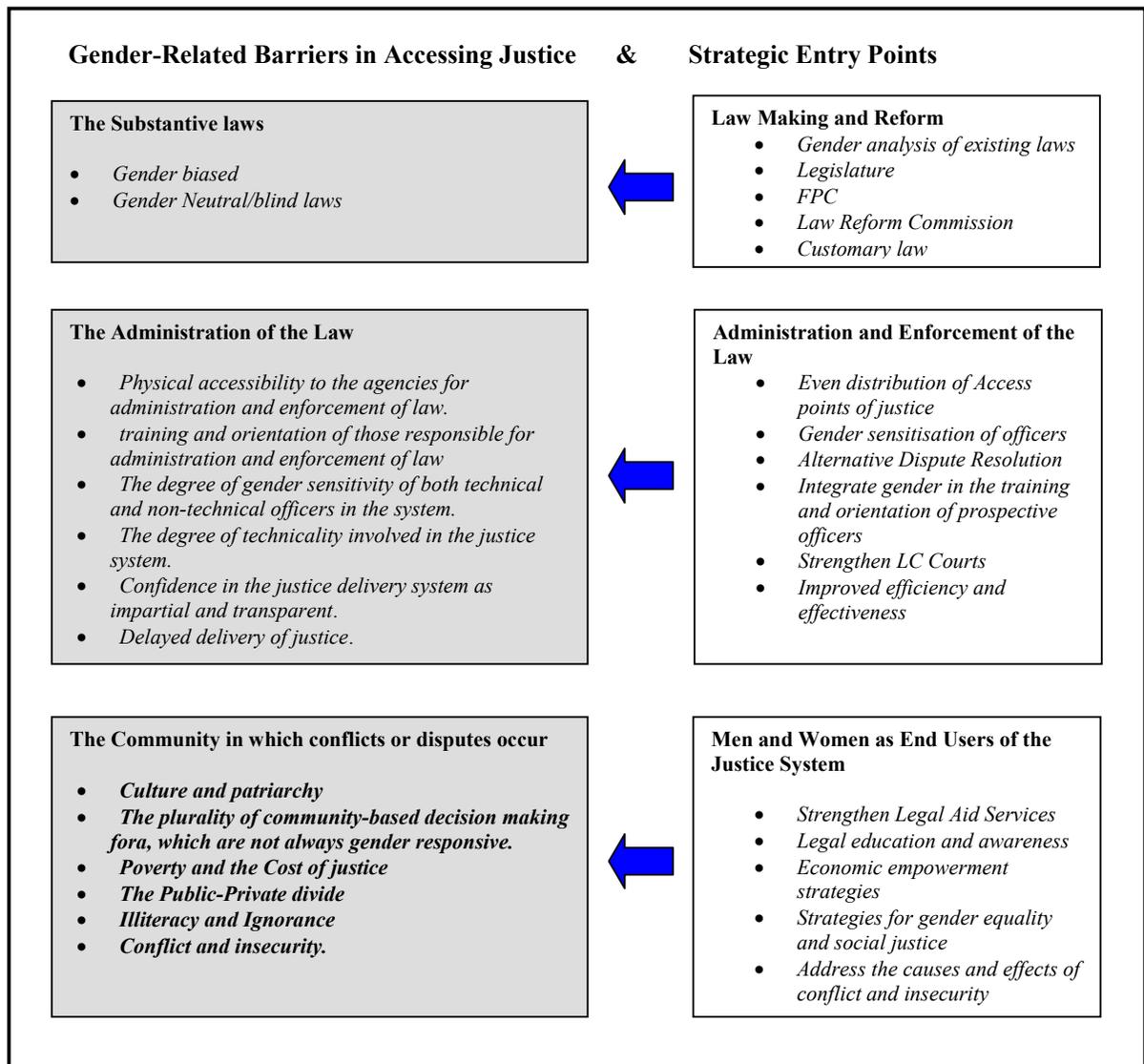
| Level at which barriers occur | Specific Barriers to Justice | Implications for Men | Implications for Women |
|--------------------------------------|--|---|--|
| Substantive laws | 1. Gender biased laws | Men dominate the law –making process and easily influence it with their gendered interests | Most gender- biased laws reflect the dominant power relations and interests of men, which limits women’s access to justice in technical terms. |
| | 2. Gender neutral laws | Gender neutral laws are made by male-dominated legislatures and processes thus reflecting male perceptions of justice as the standard | Gender-neutral laws effectively discriminate against women and obstruct justice, which also limits women’s access to justice in technical terms. |
| Administration of Law | 3. Representation in justice delivery agencies. | The agencies are male-dominated, hence more physically accessible to men | |
| | 4. Physical access to justice delivery agencies | Men control household incomes and can afford transport to the agencies. The men are also less burdened with domestic chores so they can make time to go to the justice delivery agencies | Majority of women have neither the time nor the money to make it to the justice delivery agencies. |
| | 5. Training and orientation of persons in justice delivery agencies | The training and orientation of persons in the justice delivery agencies is based on the male standard to the men’s benefit | Gender issues are not apparent to majority of persons in the justice delivery agencies, to the detriment of women. This limits access to justice in technical terms. |
| | 6. Gender sensitivity of technical and non-technical officers | Some of the technical and none technical officers carry gender biases and stereotypes that may obstruct justice for men in physical and/or technical terms. | Technical and support staff in justice delivery agencies have gender biases and stereotypes that invariably discriminate and marginalize women. This may limit access to justice in both physical and technical terms. |
| | 7. Confidence in the system as impartial and transparent affects access to justice in both financial and physical terms. | Gender as a social construction accords men status, privileges and power. Men’s confidence in the system is more affected by poverty. | The effects of poverty and gender oppression leave women more powerless and less confident |

| Level at which barriers occur | Specific Barriers to Justice | Implications for Men | Implications for Women |
|--------------------------------------|--|---|--|
| | 8. Technicalities and financial matters within the justice delivery system | There are more educated men than there are women and they have valuable contacts in the public sphere Majority of men are in a better financial position to engage the services of lawyers | Women are more illiterate than men and are relegated to the domestic sphere with minimal contacts in the public sphere. Women have limited access to finances for engaging lawyers |
| | 9. Delayed delivery of justice | Delayed delivery of justice obstructs justice for men and women | Delayed delivery of justice obstructs justice for men and women |
| The Community where disputes occur | 10. Culture and the patriarchal system | Culture and patriarchy uphold values that privilege men in allocation of roles and resources – which are essential for accessing justice | Culture and patriarchy disadvantage the women especially in allocation of productive resources, which are essential for accessing justice in physical, technical and financial terms. |
| | 11. Plurality of community-based dispute resolution fora | These are male-dominated and apply customary laws that privilege men. | The representation of women here is marginal and powerless in decision-making |
| | 12. Illiteracy and ignorance | There are more educated men and they have valuable contacts in the public sphere through which they pursue access to justice. | Women are more illiterate than men and are relegated to the domestic sphere with minimal contacts in the public sphere. This limits their access to justice particularly in technical terms. |
| | 13. Poverty and the cost of justice | Poor men are inhibited by the costs involved in the formal justice system. | Women who constitute the majority of the poor are more inhibited than men by the cost of justice |
| | 14. Public-Private Divide | The divide dictates that dispute resolution is restricted to the private sphere thus restricting women and men from using the justice delivery agencies | Dispute resolution in the private sphere is male dominated and upholds patriarchal values to the detriment of women's access to justice. |
| | 15. Conflict and Insecurity | Conflict and insecurity affect security of person and property for men thus obstructing justice. The breakdown of law and order during conflict and displacement constrain access to justice | Women are more vulnerable during situations of conflict and insecurity. They suffer gender specific forms of violence during conflict and displacement |

5 STRATEGIC ENTRY POINTS AND GOOD PRACTICES FROM OTHER JURISDICTIONS

5.1 Strategic Entry Points for gender related barriers in accessing justice

The study has clearly established that gender related constraints in accessing justice are located in the laws, the administration of the law and the communities where disputes occur. It follows therefore that the entry points and strategies for addressing the constraints should target these three levels. The matrix below illustrates the strategic entry points that are proposed to address gender related barriers to accessing justice at each level. The strategies are then elaborated in detail below the matrix.



5.1.1 Law Creation and Reform

This involves developing strategies to target the sources of law (where laws are made and reformed) The major institutions include the legislature, the First Parliamentary Counsel, (FPC), the Law Reform Commission, the Judiciary, and Communities as sources of gender-biased customary laws and practices.

The following are recommended:

1. Conduct a gender analysis exercise of existing laws
2. Conduct gender training for officers in the FPC and the Law Reform Commission, and provide them with working tools for integrating gender into research and legislative drafting.
3. An external resource person on gender and the law should be attached to the Ministry of Justice to work with the FPC, and the Uganda Law Reform Commission towards integrating gender in their work.
4. Institute a gender audit mechanism within the FPC to review the content of the law and check for discriminatory provisions and gaps.
5. Conduct gender sensitisation for the legislature

5.1.2 The Administrators of the Law and Law Enforcement Personnel

Those who administer and enforce the law include police officers, probation and welfare officers, advocates, attorneys, judicial officers and prison authorities. The strategy should target those already in office as well as those who are undergoing training and therefore are yet to qualify. The following are recommended:

1. Introduce a mandatory general paper on ‘Gender and the Administration of Law for students at the under and post graduate levels in Legal training Institutions. The same should apply to the police and prisons training schools. The rationale of such a move would be to train those who are potential advocates, magistrates, judges, police officers, members of parliament and legal aid providers to appreciate the relevance of a gender perspective to the goal of ensuring access to justice.
2. Encourage Student Internship Programmes as a way of bringing legal services nearer to the Community
3. As already noted, those who are currently involved in the administration of justice should undergo gender sensitisation programmes and indicators for monitoring progress should be set and utilised during follow-up
4. The Chief Justice should direct a review of legal rituals and procedures with the aim of eliminating or changing those limiting access to justice.
5. The law enforcement agencies should strengthen their public relations offices. They should also undertake to prepare Users Guides, manuals and directions to improve access to justice for users. The guides should be translated into the six major local languages used in Uganda.
6. Strengthen the capacity of the Probation and Social Welfare offices through gender training and legal education to enable them assist the large numbers of women that utilise them as alternative means of accessing justice.
7. As recommended under the proposed amendment bill, strengthen the Local Council Courts as part of Alternative Dispute Resolution Mechanisms.
8. Establish a legal aid scheme that is independent from government to provide legal services to the most vulnerable. The scheme should be responsible for co-

ordinating legal aid services and ensure equitable distribution through out the country.

9. Strengthen legal aid service providers – these should receive financial as well technical support, particularly towards a rights-based and gender responsive approach to legal aid.
10. Broaden the scope, functions and capacity of the Human Rights Commission to take on functions hitherto envisaged for the Equal Opportunities Commission.
11. ***The Creation of a “Human Rights Watch” / Ombudsman:*** The creation of an organ responsible for ensuring that human rights are observed and enforced during court processes would help to curb abuses of human rights associated with the criminal justice system, such as overstaying on remand, denial of bail, and other rights of accused persons which are usually ignored in many courts. The watchdog could also be responsible for ensuring that all other government departments promote and protect human rights.
12. Ensure equitable distribution of access points for the mainstream agencies – police, DPP, courts, prisons, probation and welfare. For a start, all agencies should be represented at county level at the minimum.

5.1.3 The End Users of the Justice System

The barriers to justice that are located in the community are not easily legislated against. In that regard, non legal strategies are essential in addressing the barriers faced by men and women as end users of the justice delivery system. It is recommended that sensitization and awareness programs that cover the nation and that cut across the male and female divide be embarked on. The following strategies for sensitisation are recommended:

1. Legal rights education
2. Community –based Paralegal programmes
3. Dissemination of simplified versions of the laws in various languages
4. Review the National Gender Policy and development of an implementation framework for it. Strategies for gender equality and social justice such as gender oriented planning, implementation and monitoring of development programmes should be strengthened
5. Strategies for improved adult literacy and economic empowerment for the poor, women in particular have a crucial link to their ability to access justice and should be strengthened.

Apart from the sensitisation and awareness activities, there is a need to address problems of illiteracy, and poverty as they affect men and women differently and in turn affect their ability to access justice.

5.2 Good Practices from other Jurisdictions and Actors

The study encountered a number of good practices and experiences in addressing gender related barriers in accessing justice from other jurisdictions and actors. Information on experiences from other jurisdictions that was easily accessible included Australia, Canada, USA, Zimbabwe, South Africa, Namibia, and New Zealand. Even then, the examples highlighted are a combination of government and non-government agencies. Other actors include development agencies such as the World Bank, and Research Institutions.

The good practices are categorised as Institutional Mechanisms, Institutional, Reform measures, Legal Reforms, Advocacy/Research and Training Programmes.

Table 3 below presents the good practices and experiences from other jurisdictions and actors.

The table illustrates that some of the practices in other jurisdictions are being implemented in Uganda. This is especially true of advocacy initiatives, legal education and training on gender and the law.

As noted earlier, there is a paucity of gender oriented legal research in Uganda, yet this is an area in which other countries and actors have gained valuable experience. Strategies especially through the internet should be designed to ensure that academicians, research institutions and civil society benefit from this experience.

The lack of a systematic gender analysis of laws has been identified as a gap in Uganda. There are experiences to be shared with Canada in developing a similar initiative in Uganda. The design and implementation of gender training programmes for police, attorneys and judicial officers is another area from which Uganda can gain from the experiences of others such as the United States of America.

Table 3: Good Practices and Experiences from other Jurisdictions and Actors

| Jurisdiction/ Actor | Institutional Mechanisms | Institutional Reform measures | Legal Reforms | Advocacy/Research and Training Programmes |
|--------------------------------|--|---|---|---|
| Canada | <i>Established the “Diversity, Equality and Access to Justice” Division within the Dept of Justice</i> :to improve the justice system’s response to the needs and concerns of women and a fair system of justice that promotes respect of rights and freedoms. | Under the Gender Equality Initiative introduced the Gender Equality analysis which: -ensures that every justice issue is analysed for its impact on gender equality - helps identify the adverse impact of “neutral” laws on women; - shapes laws and policies which recognize women’s social realities and thus respond to their needs | Use of substantive approach to equality and contextualised legal reasoning in Canadian Courts | Federal plan for Gender Equality which includes a commitment to ensure that future legislation and policies include an analysis of their potential for unequal impacts on women and men and adoption of strategies that advance gender equality |
| Australia | <i>National Women’s Justice Program</i> to ensure equality before the law and improve women’s access to the legal system | - more government funding for legal aid to assist women - more funding for community legal education programmes/legal advice services - establishment of community-based legal centres/training of paralegals - establishment of court support schemes -introduction of more user-friendly and gender sensitive court facilities and procedures - production of guidelines and standing orders to judicial officers on the handling of gender-based crimes | | |
| South Africa | <i>Department of Justice</i> developed a gender policy that aims at eradicating all obstacles to women’s access to justice | Launched a National Gender Forum whose main functions are to: - facilitate the coordination and mainstreaming of gender issues into planning and policies - implementation of policy in the dept’s activities | Prevention of Family Violence Act No:133, 1993 which provides for - the granting of an interdict with regard to family violence an obligation by certain persons to report cases of ill treatment of children - conviction of a husband for rape | |
| Namibia | | | Domestic Violence Act which provides for: - a wide definition of domestic violence covering all levels of r/ships at the household level - both criminal and civil remedies to suit particular circumstances | |

| Jurisdiction/ Actor | Institutional Mechanisms | Institutional Reform measures | Legal Reforms | Advocacy/Research and Training Programmes |
|---------------------------------|---|--|--|--|
| | | | - police powers of search and seizure - protection orders | |
| Zimbabwe | | | | The University of Zimbabwe in conjunction with the University of Oslo runs Diploma, M.Phil and Ph.D programmes on 'Women's Law' targeting people within the legal fraternity. The Musasa Project has raised awareness about violence against women in the legal system and by targeting the police and raising their consciousness of DV and negative attitudes through a series of workshops on the plight of battered women |
| United States of America | The Washington State Supreme Court established the Gender and Justice Commission to: promote gender equality in the system of law and justice. The Commission has 21 reps from within the public/private legal entities | -establishment of gender fairness, diversity and equality committees in judicial and legal associations - judicial education programmes for judges, attorneys and court personnel - gender bias studies in federal circuit courts - guidelines and manuals for judges in handling of DV cases - changes in code of professional conduct of judicial officers | - development of gender sensitive operating by-laws | |
| New Zealand | | | | The women's access to justice project set up to examine the response of the legal system to the experiences of women in New Zealand |
| The World Bank | | | | The Bank has supported various research initiatives and conferences on gender and the law. Specific ones include: World bank working papers on gender and the law Research on legal constraints to women's economic empowerment in Uganda Research and conferences gender and the law in both Eastern Africa and Francophone Sub-Saharan |

| Jurisdiction/ Actor | Institutional Mechanisms | Institutional Reform measures | Legal Reforms | Advocacy/Research and Training Programmes |
|---|-------------------------------------|--|--------------------------|---|
| | | | | Africa. The Bank has also provided support to organisations that work to improve access to justice for the poor |
| Women and Law In Southern Africa Research Trust (WLSA) | | | | WLSA has implemented various research projects on women and the law and have highlighted and documented gender gaps and constraints in access to justice in several southern African countries. |
| The North- South Institute (Toronto) | | | | In 1999, the institute issued competitive grants to conduct research on Gender and Economic Reforms in Africa. |

6 POLICY CONSIDERATIONS

6.1 The Commercial Justice Reform Programme (“CJRP”)

Critical Gender Issues in the Sector Policy and Reform Framework

The main objective of the “CJRP” is to increase the incomes of the poor as well as increased private sector investment and development. The components of the Commercial Justice Reform Programme include: The Commercial Court and the Centre for Arbitration and Dispute Resolution as well as other Commercial Courts and tribunals, The Registries (Companies and Land), Commercial laws and Commercial Lawyers.

An account of the process of formulating the Commercial Justice Reform Programme revealed that gender was not systematically taken into account. This was a critical oversight in the selection of priorities and the definition of components and activities there under. One of the reasons for the oversight was the fact that a Commercial Justice Baseline Survey that could have raised some of the critical gender issues has only been conducted after the commencement of the programme.

On the initiative of the ‘Working Group on Gender’⁴³, gender was integrated into the terms of reference and study tools for the Commercial Justice Baseline Survey. It is expected that the findings and recommendations of the study will provide pointers for integrating gender into the Commercial Justice Reform Programme.

The majority of Ugandans operate within the informal sector characterised by small sized enterprises, low capital investments and business volumes. It is also true that women constitute the majority of the informal sector. Commercial disputes of the small enterprises in the informal sector will best be resolved under the Centre for Arbitration and Alternative Dispute Resolution, a mechanism that is cheaper than the formal civil justice system. A study on integrating gender into the Private Sector Development Programme revealed that women in the informal sector face several constraints from the municipal law enforcement officers.⁴⁴ It is therefore recommended that the “CJRP” finds entry points to address barriers to justice for those operating within the informal sector.

The involvement of poor women and men in the large commercial enterprises is mainly as employees and their commercial justice issues therefore relate mainly to labour rights. It is therefore essential that as part of ensuring access to commercial justice for employees, the Industrial Court is not only functional but also gender responsive in its operations

As regards the component of registries, an efficient land registry for land is essential for improved commercial justice. However, the majority of women in Uganda do not own land, and therefore improving commercial justice for women is contingent on improved land ownership as a priority.

⁴³ This is a voluntary initiative involving individuals from donor agencies, Civil society, Civil Service and independent Consultants.

⁴⁴ “Putting Gender on the Agenda of Economic Reforms in Uganda: The Private Sector Development Programme” in “Gender and Economic Reforms in Africa” (2000)

Under the Commercial Court, there are initiatives to improve access to justice through the development of a Users' manual as well as the Commercial Court Customer Service Strategy, which is mainly targeting support service.

Recommendations

1. Utilise the findings of the Commercial Justice Baseline Survey to identify critical gender issues relevant to each of the components of the Commercial Justice Reform Programme and adjust the work plans accordingly.
2. The User Surveys planned to follow after a period of implementation of the "CJRP" should be conducted from a gender perspective. The same goes for Studies and other Consultancies under the programme. This entails ensuring that the 'Working Group on Gender' provides comments on the terms of reference as well as the reports to ensure that gender is taken into account.
3. Joint working sessions between the Working Group on Gender and the Technical Committee would provide an opportunity for the former to demonstrate to the Advisor "CJRP", and the Committee how to assess gender issues within activities under the programme. The sessions could focus on terms of reference and reports for studies and other assignments under the "CJRP".
4. The SPEED Project supporting the CADRE should continue the collaboration with the Working Group on Gender to mainstream gender into the operations of the Centre.

6.2 Criminal Justice Reform Programme

Critical Gender Issues in the Sector Policy and Reform Framework

Unlike the Commercial Justice Reform Programme, the Criminal Justice Reform Programme (CJS) is in its formulation stages. The formulation process involves conducting a number of studies and formulation of strategic plans by the various agencies involved in criminal justice.

The study noted that to a large extent, gender has been taken into account during the formulation process of the CJS. This has mainly been through the inclusion of a specific requirement to integrate gender in the Terms of reference for some of the studies and consultancies that are to feed into the CJS. Examples include: The Review of Sentencing, The Review of Criminal Trial Procedures, and Development of a Strategic Plan for the DPP.

Unlike the CJRP, the CJS does not yet have a specific advisor attached to it and thus all the workload has to be handled by the two technical staff in the secretariat of the J/LOS. In addition to all their other responsibilities, it is too much to expect the Secretariat to do a systematic and comprehensive assessment on the integration of gender in the reports of the formulation studies and strategy documents. Support of the 'Working Group on Gender' to the activities under the CJS component is not as evident as under the CJRP.

This study on “Gender and Access to Justice” has identified some specific gender constraints relevant to the CJS. The study report should therefore be utilised during the process of drafting the CJS strategy.

Recommendations

1. The Advisor on the CJS should ensure that gender is taken into account during the development of the programme on the basis of the formulation studies and institutional strategic plans.
2. The ‘Working Group on Gender’ should provide support to the CJS as is the case with the CJRP.
3. Integrate gender into the Criminal Justice Baseline Survey

6.3 The Overall Sector Strategic Plan

Until very recently, gender has not been visible on the agenda of the J/LOS programme. Yet, ensuring that gender gets onto the agenda of the J/LOS strategic plan should be the collective responsibility of the agencies in the sector as well as the donor agencies supporting the process. It is apparent that this responsibility has not been seriously and systematically taken, hence the intervention of a ‘Working Group on Gender.’ The decision of the steering committee to establish a Gender working group under it is a laudable initiative in that it is now institutionalised. It follows therefore that their comments and input will be responded to by the relevant officers to whom they are made. The inclusion of gender on the J/LOS agenda creates an obligation to allocate resources to implement necessary interventions. It is propitious and an indicator of goodwill that the ‘Working Group on Gender’ has so far received the strong support and co-operation of both J/LOS agencies and donors. As a demonstration of serious commitment to the integration of gender into J/LOS, it is essential that this goodwill and support be consolidated in concrete terms especially through resource allocation.

Recommendations:

1. The J/LOS agencies and supporting donors should commit themselves to the allocation of resources toward the activities of the Working Group and the implementation of its recommendations.

6.4 Translating the Strategic Entry Points into the J/LOS Policy Framework

| Gender related barriers | Policy Action | Proposed Activities |
|---|---|--|
| | A. LEGAL SERVICES | |
| Limited physical access to justice delivery agencies | 1. Improve physical access to justice delivery agencies through out the country. | Improve physical access to the agencies accordingly: <ol style="list-style-type: none"> i. Effective Police presence at parish level ii. At least 3 DPP state attorneys per district iii. Representation of the Administrator General in each district iv. Magistrate Grade 1 at county level v. Juvenile Justice Agencies in each district vi. Prisons/Community Service Programme in each district |
| Limited availability of legal aid services | 2. Increase the representation of legal aid services throughout the country and move them closer to the communities from urban centres to sub-county level. | i. Civil Society organisations should co-ordinate their representation towards having at least one legal aid service provider in each district. |
| Unbalanced representation of men and women within justice delivery agencies | 3. Improve the ratio of male to female personnel in all justice delivery agencies offering services. | <ol style="list-style-type: none"> i. Each agency should set a target to improve the ration of female to male officers. ii. The Ministry of Education, Civil Society and Communities should promote interventions to reduce female school drop out rates. |
| Lack of awareness of civic rights and obligations | 4. Conduct a civic education programme | i. The Judicial Service Commission in collaboration with the Human Rights Commission should develop a national civic education programme to improve awareness of rights. |
| Illiteracy and Ignorance of | 5. Disseminate information on the operational procedures of the J/LOS agencies. | i. Agencies of the J/LOS should develop user manuals and guides in English and the major local languages and distribute them. |

| | | |
|---------------------|---|---|
| the content of laws | 6. Improve awareness of the content of laws | The Ministry of Justice – Legal and Advisory Services could i. Produce and disseminate simplified versions of laws in English and the major local languages ii. Sponsor a regular radio programme (in various languages) on dissemination of laws |
|---------------------|---|---|

| Gender related barriers | Policy Action | Proposed Activities |
|--|---|---|
| Failure to take gender into account within programmes of J/LOS agencies. | <p>B ADMINISTRATION OF JUSTICE</p> <p>1. Mainstream gender into the monitoring indicators for access to justice within the various J/LOS agencies</p> | <p>i. The Ministry of Gender, Labour and Social Development should collaborate with the Working Group on Gender to assist various J/LOS institutions to mainstream gender into their own monitoring indicators for access to justice.</p> |
| Gender blind/biased Probation and Welfare officers. | <p>2. The MGLSD should equip Probation and welfare Officers with skills for gender responsive approaches to legal aid and dispute resolution.</p> | |
| Lack of monitoring mechanism for access to justice. | <p>3. Civil Society should establish an “Access to Justice Watch” mechanism to monitor the administration and enforcement of law.</p> | |
| Gender blind/biased support staff within J/LOS agencies | <p>4. Each of the agencies under the J/LOS should develop a gender responsive Customer Service Strategy, to improve the contribution of particularly support staff in ensuring access to justice.</p> | |
| Gender blind/biased attitudes of technical staff within J/LOS agencies | <p>5. Continue with gender sensitisation activities of officers within the J/LOS agencies</p> | <p>Gender Sensitisation of police, advocates, attorneys, judicial officers, Prison officers and legal aid providers should continue within the respective institutions.</p> |

| Gender related barriers | Policy Action | Proposed Activities |
|--|---|---|
| <p>Gender blind law enforcement personnel</p> <p>Gender biased law enforcement personnel</p> | <p>C. LEGAL EDUCATION</p> <p>Integrate gender into the training of prospective Law enforcement personnel</p> | <ul style="list-style-type: none"> i. The Faculty of Law should introduce a paper on “Gender, Poverty and the Law” at the under-graduate level. ii. The Faculty of Law should introduce a more comprehensive programme on “Gender, Poverty and the Law” introduced at the post-graduate level. iii. The Law Development Centre should include a paper on “Gender, Poverty and the Law” on the Bar Course. iv. A gender component should be incorporated into the training at Police and Prisons training schools. |
| <p>Ignorance of legal rights</p> | <p>Increase legal rights awareness</p> | <ul style="list-style-type: none"> i. The Ministry of Justice – Legal and Advisory Services should develop a programme to establish community-based Paralegal programmes funded by local authorities throughout the country. |
| <p>Gender blind/biased Local Council court officials</p> | <p>Strengthen the capacity of LC courts to operate in a gender responsive manner</p> | <ul style="list-style-type: none"> i. Conduct capacity building as well as gender sensitisation for officials of LC courts following the amendment of the RC (Judicial Powers) Statute 1988. |

| Gender related barriers | Policy Action | Proposed Activities |
|--|---|---|
| <p>Gender neutral laws</p> <p>Gender biased laws</p> | D. LAW REFORM | |
| | Conduct gender analysis exercise of substantive legislation both civil and criminal towards gender oriented law reform. | <p>The Law Reform Commission should undertake a gender analysis exercise of various laws. Priority areas include:</p> <ol style="list-style-type: none"> i. The Companies Act ii. The Education Act iii. |
| | Ensure gender responsive law making and reform | <ol style="list-style-type: none"> i. The Ministry of Justice should engage an external advisor (outside the Civil service) on gender and the law to provide technical support to the Law Reform Commission and the FPC. The support should include skills for gender oriented legal research. ii. The Ministry of Justice should have a gender audit mechanism instituted in the FPC to check that the laws drafted are gender responsive iii. Conclude enactment of pending legislation seeking to address gender related barriers in access to justice. Priorities include <ul style="list-style-type: none"> • Defilement • The RC (Judicial Powers) Statute 1988 • Domestic Relations • Succession • Land matters • Employment |
| | Conduct gender oriented legal research towards law reform | <p>The Ministry of Justice (Law Reform Commission), the Faculty of Law in collaboration with the Faculty of Social Sciences should establish a national research programme/institute on Gender and Access to Justice towards law reform. Priority Areas include:</p> <ol style="list-style-type: none"> i. Implications of Culture on Access to Justice ii. Gender Issues in the Employment Sector iii. Legal recourse for internally displaced persons |
| | | |

