

APPREHENSIONS AND THE STRENGTHENING OF GENDER EQUALITY: UGANDA'S LEGAL FRAMEWORK IN PERSPECTIVE

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ABSTRACT

Traditionally, informal occurrences like religion and practices like cultures may have been identified as the causes of gender inequality in economic and leadership opportunities in Uganda and Africa at large. These gender imbalances may have through these practices, operated to the advantages and disadvantages of genders, before the advent of Millennium Development Goals and Sustainable Development Goals SDGs, which heightened the gender equality campaign. Uganda, beginning with the 1995 Constitution and other enabling laws made on that authority, together with case laws, has progressively corrected and achieved the SDG targets of economic and leadership advantage on women even to the disadvantage of the male gender. While legislations with perceived imbalances considered discriminatory to the female gender have been amended, or even nullified, those considered discriminatory to the male gender have not received such heightened attention. Adopting the doctrinal methodology, appraising Uganda legal framework on gender issues; like the constitution, statutes, and judicial decisions, this work argues that Uganda has created equal opportunities for both genders and even surpassed same to the manifest disadvantage of the male gender. The paper concludes by stating that economic and political gender imbalance has been greatly reformed by the formal legal sector in Uganda, creating equality of opportunities; the paper argues that gender gaps may exist which do not translate to inequality. The paper commends Uganda for the legislative intervention and recommends the legislative model to other African countries.

Keywords: Gender equality, Gender gaps, Sustainable development goals, Uganda, legal

1.0 INTRODUCTION

In the animal world which comprise humans, creation or nature as others may deem it had designed that each species of animal is in two sexes, the male and the female. Each of the sexes came with a different anatomy and physiology from the other, except where they are unusually classified as hermaphrodites¹. Interestingly too, a look at nature will reveal that these sexes; whether male or

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female have their natural activities that are attributed to their kind. For humans, given our extra intelligence, we have made advancements in learning and have modified substantially our nature of activities that could be termed as traditionally assigned to a kind of the sexes². Humans unlike other animals have successfully altered the order of nature principally in pursuit of their desires and in expression of their God given rights. Example, it is humans' desires that a same class of sex should marry their kind and even have sex against the ordinary order of nature in expression of their rights to such a pleasure³.

In Africa, the human male and female gender, grew up realizing their differences in anatomy and physiology. These realization shaped roles, determined dressings and influenced activities. Perhaps each sex grew up to assimilate those roles, lived by them and were contented. As society evolved perhaps, evolution or other factors often made some sexes to abdicate their roles to the opposite gender⁴. These others are forced to assume the roles that were not traditionally theirs, and realized also perhaps that those roles were perfectly executed. For example, a woman that loses her husband to death may find herself assuming the duties of a man in caring for the family. A man may run away from home abdicating his roles and the woman left without an option but with instinct for survival, fight for herself and the kids⁵. A man may similarly, lose his wife and assume domestic roles that were hitherto thought to be female. As society developed also phrases like; "what a man can do a woman can do better" began to find expression. Gradually too, sexes began to feel discriminated against in some roles they performed and which have characteristically become assigned to such roles or not assigned to such sexes. This gradual evolution perhaps accounts for the increase agitations against gender discriminations⁶.

¹ A M Goetz. 'Women in politics & gender equity in policy: South Africa & Uganda'. (1998) 25(76) Review of African Political Economy. 241–262. <https://doi.org/10.1080/03056249808704312> accessed 2nd October 2024.

² A.Theeuwes, V. Duplat C. Wickert and B Tjemkes, "How Do Women Overcome Gender Inequality by Forming Small-Scale Cooperatives? The Case of the Agricultural Sector in Uganda." (2021) 13: 4 Sustainability. 1797. <https://doi.org/10.3390/su13041797>

³ C. Lwanga-Ntale, "Inequality in Uganda: Issues for discussion and further research." 2014. 57 Development 601–617 <https://doi.org/10.1057/dev.2015.44>

⁴ Godfrey Ssekabira, Specioza Asimwe, Judith AtwongireTushabe and Pamba Shatson Fasco "Gender equality and development in Uganda" (2024) 23: 2 World Journal of Advanced Research and Reviews. 2226–2232 DOI: <https://doi.org/10.30574/wjarr.2024.23.2.2539>

⁵ Ijeoma Blessing Anumaka, "Land Acquisition and Use: Key Factor for Equity and Women Empowerment in Africa-Uganda Experience" (2012) 2: 3 International Journal of Environment, Ecology, Family and Urban Studies (IJEFUS) 93-111.

⁶ J T Atwongire, S Asimwe, S F Pamba, G Ssekabira, "Gender Equality and Development in Uganda," (2024)5: 4. International Journal for Multidisciplinary Research.

The advocacy against gender discrimination gained prominence in the new millennium, particularly ranging from the Two thousands (2000s). The reasons for this may not be far fetch, the world had just introduced a set of new millennium goals and one of it was to ensure gender equity and balance and eliminating all forms of discrimination based on gender. This goal was amongst other set of goals identified as priority areas of development. The Millennium Development Goals (MDGs) were unanimously endorsed by all 189 UN member states and then looked upon as a favourite mechanism to combat global poverty and accelerate a peoples centered development. The MDGs had a timeframe to achieve the targets in the goals, and this was between the year 2000 and 2015. Civil societies with interest in any specific goals had started advocacies to achieve the realisation of their focal goal. Thus, this amongst other reasons explained the upsurge in the advocacy for gender equality with a favored bias for female equality with their male counterparts. In Africa, rightly so, there was a great need to for the advocacy for equality of rights of the sexes because women were generally perceived to be to be marginalised in all fronts.

Back to the MDGs, its origin lies with the UN Millennium Declaration, which was endorsed and adopted by the Heads of States of 189 UN member states on September 8, 2000. The Declaration marked a strong commitment to the right to development. Goal three of the eight goals specifically focused on promoting gender equality and empowering women⁷. From the coinage of the goal, it was obvious that the UN had concluded that there was gender inequality against women and hence the need to equal it and further empower the female gender. Even though the goal had one target which was to eliminate gender disparity in primary and secondary education by 2005 and in all levels of education by the year 2015, there were other forms of targeted advocacies which found themselves into the revised Sustainable Development Goals SDGs of 2015. This article will specifically address how Uganda, a nation in the Eastern Region of Africa, has dealt with gender inequality and its attendant discrimination in target five of goal three of the eight goals of the sustainable development goals.

2.0 BACKGROUND OF STUDY

⁷ Josephine Ahikire and Amon A. Mwiine, "The politics of promoting gender equity in contemporary Uganda: Cases of the Domestic Violence Law and the policy on Universal Primary Education" 2015. <https://ssrn.com/abstract=2695727> accessed 24 November 2024.

As previously stated, the Sustainable Development Goals SDGs, replaced the Millennium Development Goals MDGs. Goal 5 of the SDG specifically addresses Gender equality and the need to empower women. The conclusion from the SDG was that women suffer inequality and there were certain targets highlighted to be improved upon and accomplished. A set of 9 targets⁸ were to be accomplished for the successful realization of this goal on gender equality. However, target 5 of the goal was to *“Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life”*. The realization of this goal and especially the target, will be the focus of the discussion in this paper. This discussion is necessitated because of negative narratives sometimes put out to discredit Uganda, as a country where women are discriminated upon and where the men dominate the public space. The UN Women in their recommendation for achieving these targets have advocated the enactment of progressive laws. Their recommendation is summarised thus; *“Gender equality by 2030 requires urgent action to eliminate the many root causes of discrimination that still curtail women’s rights in private and public spheres. For example, discriminatory laws need to change and legislation adopted to proactively advance equality.”*⁹ The entire gamut of this paper essentially discusses Uganda’s compliance with this top notch recommendation and strategy to achieving equality and equity. However, for a detailed understanding of this discussion, certain terms need to be clearly understood.

3.0. CONCEPTUAL CLARIFICATION

It is very important that for a proper understanding of how the Ugandan political, legal and judicial system has rectified the inequality of opportunities related to the sexes in Uganda, we should first properly understand the concepts that will define this discussion. It is this clear understanding that will justify the positions in this discourse.

Gender Inequality has been defined as *“Legal, social and cultural situation in which sex and/or gender determine different rights and dignity for women and men, which are reflected in their unequal access to or enjoyment of rights, as well as the assumption of stereotyped social and*

⁸ The SDGs were sequel to the agreement reached by all 193 member countries of the UN and about 23 International Organisations on how they wanted the world to look by 2015. For a full reading of the targets, please visit https://sdgs.un.org/goals/goal5#targets_and_indicators.

⁹ UNWOMEN SDG 5: ‘Achieve gender equality and empower all women and girls’.
<https://www.unwomen.org/en/node/36060> accessed 13th May 2024

cultural roles.”¹⁰ Another different but similar definition sees gender inequality as “*Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political economic, social, cultural, civil or any other field*”¹¹ In simple parlance, gender inequality represents unevenness of the sexes; but the unevenness that stems from unequal opportunities to persons on account of their sex or gender and deriving from discrimination.¹² It should not be extended to a situation where one outcompetes the other, given an equal level playfield without any form of stereotype or undue advantage placed at the beginning, or in the middle or at the end of such a competition. Where a person becomes disintitle from a competition or venture very outrightly because of the gender he or she belongs, then there is gender inequality. It suffices also from this definition that both gender can be discriminated against, and the term should not be used to portray a one sided affair against a specific gender, as it has become popularly known, to be synonymous with female discrimination or inequality with the male gender. When a legislation is deliberately skewed to confer more advantage on a female gender to the exclusion of the male gender on account of historical gaps that exist between the sexes, then such legislation is rightly perceived to be unequal in gender opportunities. In direct contrast to gender inequality, is the concept of gender equality. This connotes that the sexes; boys and girl or men and women have equality of treatment, equality of opportunities, equal valuation and given the right conditions. Equality in this case does not mean that the two genders will assume equality, but that the opportunities that exists will not depend on whether they are born male or female. Thus, central to the inequality discuss, there must be discrimination on account of sex. Where discrimination does not preexist, nor exists in any of the processes leading to the outcome, then it does not qualify as the inequality contemplated by this piece. Where there only exists gaps between the genders which does not exclude opportunities, then the situation focuses on gender gaps less inequality. To better

¹⁰ European Institute for Gender Equality. <https://eige.europa.eu/publications-resources/thesaurus>, accessed 13th May 2024

¹¹ UNICEF Regional Office for South Asia Publication ‘Gender Equality: Glossary of terms and Concepts. 2017’ <https://www.unicef.org/rosa/media/1761/file/Genderglossarytermsandconcepts.pdf> accessed 13th May 2024

¹² Oogu, Peter, "The Effects of Foreign Direct Investment on Gender Inequality in Uganda" (2021). *Walden Dissertations and Doctoral Studies*. 10262. <https://scholarworks.waldenu.edu/dissertations/10262> Accessed 20th September 2024.

understand the concept of gender inequality is to properly understand what gender equality represents. No explanation simplifies it better than the one offered by UN women¹³. Their explanation is thus; *“Equality between women and men (gender equality) refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men.”*

Gender Gaps on the other hand depicts a situation where the numbers in terms of quantities in a given role are tilted significantly in favour of a gender¹⁴. This may or may not be occasioned by impediments or outright discrimination, it could be caused by preference for roles, negative impression by a certain gender to a certain activity or role or even a populist opinion concerning that role. A gender gap which is a display of numbers, on the surface, may show a gender inequality but this might not necessarily be so. After all the numbers are not the same and that displays inequality. A probe into the cause of that first impression may reveal that there is no inequality. Example, where disparity of numbers is from a lack of interest by a gender as against lack of opportunities for the gender, the gaps does not ipso facto spells ‘inequality’ in the sense of the popular understanding of gender inequality. A typical example is the lack of interest by the female gender in physically exhausting jobs requiring lots of human energy. Also, the existence of the small numbers of the male gender in the nursing profession as against the female is more from the lack of interest than the lack of opportunities.

A combination of gender inequality and gender gaps has led to the agitation for gender parity. This simply focuses on equaling the numbers in certain cases. Equaling the numbers involves the methodology of Gender equity, which in itself embodies a situation where fairness is employed in terms of the numbers, with a view to balancing it. Affirmative action as championed is a call for gender equity. When not properly defined, a gender equity may become a reverse discrimination,

¹³ <https://www.unicef.org/rosa/media/1761/file/Genderglossarytermsandconcepts.pdf> accessed 13th May 2024

¹⁴ Ijeoma Blessing Anumaka, “Land Acquisition and Use: Key Factor for Equity and Women Empowerment in Africa-Uganda Experience” (2012) 2: 3 *International Journal of Environment, Ecology, Family and Urban Studies (IJEEFUS)* 93-111.

which in itself still translates to gender inequality. Gender equity is undertaken to have a balanced outcomes of numbers. Gender equity in this case justifies a temporary deviation from the rules to favour a particular gender provided the gender is disproportionately disadvantaged in numbers. Intrinsically, it justifies a ‘reversed gender discrimination’ if that initiative is aimed at unfairly treating a gender with a view to closing the gaps. Conversely, it justifies a lowering of standards or even so an increase in incentives to the favour of a particular gender with a view to promoting a balancing of the gaps that exist. However, if it is purely seen from fairness, then it may escape the reversed discrimination label. Fairness, in this case means treatment according to needs, special needs be grouped together and treated specially in that category.¹⁵

Ironically and most often too, when issues of gender relating to inequality are raised, some persons automatically express gaps as inequality. While gaps may be a symptom of inequality it doesn’t always portend so. Others too, often list all unique problems confronting the female gender and express them as cases of inequality. A typical expression that is often brandished in this regards is as stated here;

“There remain serious obstacles to access to education and health services for women and girls in Uganda. In rural areas, girls often start schooling at an already advanced age, in part due to risks associated with walking long distances to school. Girls also have higher drop-out rates, in part due to early marriage and pregnancy. Maternal mortality remains very high. In 2011, according to the Coalition to stop maternal mortality in Uganda, 16 women died every day of preventable death in childbirth. Clandestine abortions are a major cause. The level of access to family planning services and contraception remains very low.”¹⁶

Comments like the above have been dignified and raised to the level suggestive of female gender inequality. Whereas their true situation should be situated within the problem of poverty which bedevils both genders. There could also be disparity in property ownership as noted by Madinah¹⁷ between the sexes, this goes to gaps and not inequality by discrimination. The truth remains that poverty and governmental failure or even lack of governance in some spaces has pushed both men

¹⁵ www.unicef.org/gender/training/content/resources/Glossary.pdf. Accessed 13th May 2024.

¹⁶ FIDH/FHRI ‘Women’s rights in Uganda: gaps between policy and practice’. A 2012 report of FIDH/FHRI. www.fidh.org. Accessed 15th June 2024

¹⁷ Nabukeera Madinah, “The Gender Issues in Uganda: An Analysis of Gender-Based Violence, Asset Ownership and Employment in Uganda”(2020) 3:3 *Urban Studies and Public Administration* URL: <http://dx.doi.org/10.22158/uspa.v3n3p131>

and women to experience the above situations”¹⁸. Granted that there is government neglect and abundance of poverty,¹⁹ it would be most inappropriate then for anyone to classify social and economic deprivations to people inclusive of women as a result of poverty or governmental neglect as a case of gender inequality. Most problems as highlighted above which are often social problems that confront humanity with women inclusive are often singled out as women discrimination when in fact they are commonly driven by poverty which does not exclude the male gender. Poverty is an example of such a social problem that confronts humanity in Africa²⁰ leading to forced choices with often unpleasant results.²¹ Both male and females face the dangers of poverty. Often the male gender drop out of school in search of other income yielding ventures much as women, but that of the female is often projected and given a posture of deliberate frustrations where in fact it is poverty that force those choices. Eliminating poverty in those households or communities, will automatically lead to better choices. This should not be brandished as women discrimination which is the fulcrum of inequality.

3.1. CAUSES OF GENDER INEQUALITY AND DISPARITY

Laws could account for an immediate cause of gender discrimination, if not properly legislated to recognise equality of treatment or erode discrimination on account of sex or other condemnable considerations. At the same time, laws could be permissive of gender discrimination leading to inequality; this can occur when law remains silent to a discriminatory practice. In this situation, law, even though does not compel a gender discriminatory action, it does not condemn it either. Such that a person who engages in gender discriminatory activity will not be termed as offending the law. Even though law will act as the most compelling revolution to attaining gender equity, law also, when permissive can further the inequality practices and can be blamed as its cause.

¹⁸¹⁸ The Republic of Uganda. 2018 Annual Report of The Republic Of Uganda on the Implementation of the Solemn Declaration on Gender Equality in Africa In 2017 (SDGEA) <http://www.mglsd.go.ug> Accessed 15th June 2024

¹⁹ R. K. Muriisa, ‘The Role of NGOs in Addressing Gender Inequality and HIV/AIDS in Uganda’ (2010). *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines*, 44(3), 605–623. <https://doi.org/10.1080/00083968.2010.9707547>. Accessed 2nd October 2024.

²⁰ C. Lwanga-Ntale, “Inequality in Uganda: Issues for discussion and further research.” 2014. 57 *Development* 601–617 <https://doi.org/10.1057/dev.2015.44> Accessed 2nd October 2024.

²¹ C. Lwanga-Ntale. Ibid N .14

Closely associated with law, as a generator of gender inequality is custom²². Custom in this case refers to a long established practice, even though unwritten as it is associated with certain cultures and which have formed part of their beliefs and practices. Custom generally, sometimes attains the status of law. It attains the level of law when it transcends mere recognition into a 'binding state'. Some customs have deep recognition amongst its practitioners even though it does not attain compulsive 'bindingness' and recognition by superior courts of a country. Whichever level of recognition is the custom, people who practice it are influenced by it. Customs have a stronghold on peoples' perception of gender and their roles and this could ultimately discriminate some genders from certain assigned roles depending on the nature of the custom²³.

Religion²⁴ has also had an overwhelming influence over how gender is perceived by adherents of that religion. Writers of holy books have expressed the minds of their creator about how and how not, certain genders should conduct their activities. Firm belief in this supernatural ordinances have had a lasting impact and continue to be transferred to unborn generations. Some practices on account of the ordinances of the divine have precluded some genders from certain activities leading to huge gaps in that activity. Some ordinances, in situations where states formally practice theocracy have found their ways to national constitutions and have become law which have added to their 'justified' inequalities of sexes.

There could be many other causes of gender inequalities in Africa and the world generally, but my interest is limited to the three discussed above. Laws, customs and religion remain dominant, others may be arising from personal choices, which are however often traced back to those three: especially, religion and customs have shaped how persons perceive certain roles assigned to certain genders. These two have an influence from infancy on a child and continues to influence his or her outlook about certain roles, this has led to gender norms. Unfortunately, these norms are often

²² Lane Kenworthy and Melissa Malami 'Gender Inequality in Political Representation: A Worldwide Comparative Analysis' (1999) 78:1 *Social Forces*. 235-268. <https://doi.org/10.1093/sf/78.1.235>. Accessed 2nd October 2024.

²³ Godfrey Ssekabira, Specioza Asiimwe, Judith Atwongire Tushabe and Pamba Shatson Fasco "Gender equality and development in Uganda" (2024) 23: 2 *World Journal of Advanced Research and Reviews*. 2226–2232 DOI: <https://doi.org/10.30574/wjarr.2024.23.2.2539>

²⁴ Felix Meier Zu Selhausen and Jacob Weisdorf 'A colonial legacy of African gender inequality? Evidence from Christian Kampala, 1895–2011' (2015–2016) 69:1 *The Economic History Review*. 229–25 https://onlinelibrary.wiley.com/doi/full/10.1111/ehr.12120?casa_token=63kVYalDTMEAAAAA%3Aa20ZK5b15dQcZnxTKd1exU6anBCFism-wyYlPhMww--EnQbck4RDgy3uyg-HRrvZDJgG2r_HSWA6vCzWZg. Accessed 2nd October 2024.

discriminatory. But because both sexes have grown up within this community or religion, none perceives the norms as discriminatory. Outsiders may, but the adherent of the community or religion do not necessarily perceives it so. Then the poser could be; would a person who is not unhappy about exclusion from certain roles be considered as discriminated against?

Communities in Africa, could have negative gender norms, but an investigation into the genealogy of the norms could portend protection for the excluded gender. It could also have other motives that were altruistic and not meant for harm to the ‘discriminated’ gender. For instance, in traditional Africa, farming was a main economic activity; introducing a female child to farming was training her in a gainful economic activity. Granted that formal education was later introduced by the colonialists, the process of formal education involved flogging of children, there was a lack of trust for the white man as well and people naturally preferred to shield their female children from that nature of education.²⁵ Overtime, the perception may have changed and those male children who saw the benefits of the formal education never failed to extend same to their female children. Same could explain some religious practices that had negative gender perceptions. An investigation may have intended protection for the certain excluded gender than ‘suffering’ as being viewed by others.

4.0. UGANDA’S LEGAL FRAMEWORK FOR THE RECTIFICATION OF THE INEQUALITY OF GENDERS

Uganda is a country comprising different ethnic nationalities. The amalgamation of these ethnic nationalities into a nation is traceable to the influence and impact of colonialism. The country gained independence from colonial masters in 1962 and have had her own share of political instabilities and strive. These experiences led the country to enacting a wholesome new constitution in 1995. The constitution represents a grundnorm that holds the country together and have led the nation through progressive years of political stability. Article 2 of the constitution emphasizes the supremacy of the constitution by stating that; “*This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda*”. The implication of this brave supremacy provision is that every other law or institution or personality and their action is measured by their compliance with the constitution.²⁶ Being the supreme law, how has the law dealt with the notable problem of gender inequality?

²⁵ This story was told to me by my grandmother Ama Justina Utianlikong Ugbe who lived 92 years and passed on to eternal glory on the 28th of July 2023 as the reason why she was not educated by her parents.

²⁶ 1995 Constitution of Uganda as amended. Article 2 (2)

Chapter four of the Ugandan constitution contains express provisions regarding human rights where it places a duty on all organs of the state to uphold and protect the rights.²⁷ Regarding the rights of gender to be free from discriminations, the constitution provides; *‘Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability’* For the purposes of the above article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.²⁸ This generic provision alone without more is strong enough to describe the intention of Uganda to eliminate discrimination based on gender. However, emphasizing the priority accorded the equality of sexes, the Ugandan constitution further provides definitive and clear statements leading to additional provisions for the rights of the women. Some of the provisions contained in the constitution are recapped hereunder: *“Women shall be accorded full and equal dignity of the person with men. The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.”*²⁹ Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. The constitution similarly contains a provision called affirmative action for the purpose of redressing any imbalances created by history, tradition or custom on women.³⁰

To justify the special recognition accorded women, it is displayed by the lack of a similar provision for the male gender anywhere in the constitution. To further make the rights efficacious, the constitution gives unhindered access to whoever is aggrieved or discriminated against access to courts to enforce their rights³¹. Perhaps realizing that women may be too poor to enforce these rights, the constitution has given unhindered access to groups, persons etc. to enforce these rights

²⁷ Ssenyonjo, Manisuli, “Women's Rights to Equality and Non-discrimination: Discriminatory Family Legislation in Uganda and the Role of Uganda's Constitutional Court” (2007 21:3 *International Journal of Law, Policy and the Family* 341-372

²⁸ 1995 Constitution of Uganda as amended .Article 21 (2) and (3)

²⁹ 1995 Constitution of Uganda as amended Article 33

³⁰ 1995 Constitution of Uganda as amended Article 32

³¹1995 Constitution of Uganda as amended Article 50(1)

on behalf of others.³² The Ugandan constitution therefore represents a firm affirmation for the elimination of any form of discrimination against women, moving from the general eliminations to the specific provision for rights and equality of treatment for women. Most African constitutions only have the generic provision which eliminate discrimination on account of sex, yet boasts that they have eliminated female gender discrimination³³. But Uganda have done much more by including detailed female gender protective provisions in the constitution, and not only in the constitution but in the fundamental rights chapter of the constitution. It is worthy of note that affirmative actions in most countries remain a slogan but in Uganda it has found its way into the constitution and into the fundamental rights chapter of the constitution for that matter. The constitution further empowers parliament to make laws to further enhance the rights of women and even cure the historical imbalance against women that custom or tradition had enabled.³⁴ This is a commendable provision, it does not only proscribe discriminations, but recognises past discriminations and revisits such recognition with a mind set to cure the imbalances. This constitution therefore leaves no one in doubt about the bold and loud intention to totally eliminate gender inequality issues. Not many African constitutions have this bold intents. If you thought these were mere statements, the constitution emphasizes an affirmative action against marginalized groups, notably gender and importantly women. The constitution eliminates all forms of repressive laws against women, abolishes cultures that hold down women, establish the Commission for affirmative action and empowers the parliament to further make laws to address the imbalance.³⁵

4.1. UGANDAN'S PARLIAMENTARY RECTIFICATION OF THE INEQUALITY OF GENDERS

The Uganda's parliament is established by the constitution³⁶ and represents the legislature of the country, which is an important arm in a modern democracy. Commencing from the composition of the Parliament, the constitution not only eliminates discrimination of the female gender, but instead confers an unusual advantage to them to the disadvantage of the male gender. What is this unusual advantage conferred that is talked about here? It is imply this; article 78 of the constitution entitles every qualified citizen of Uganda to represent a constituency to the parliament. There is no

³² 1995 Constitution of Uganda as amended Article 50 (2)

³³ A clear example of a country with such generic provision without a detailed provision favouring additional rights of the women in the constitution is Nigeria.

³⁴ 1995 Constitution of Uganda as amended .Article 33 (5)

³⁵ 1995 Constitution of Uganda as amended .Article 32 (5)

³⁶ 1995 Constitution of Uganda as amended .Article 77

distinction on sex, but same constitution goes ahead to selectively and specially provide for a woman representative each per every district of Uganda in the parliament.³⁷ This is a special provision for women only, notwithstanding that women they can still compete against the men for representation under the same constituency level. The composition in the parliament therefore represents a bold elimination of the inequality fears and instead confers a huge advantage to the detriment of the male gender and exhibits one of the most outstanding affirmative action globally which is not much emphasized. Each of the 111 districts of the Uganda Districts all have at least one woman representative to Parliament. Ordinarily, that unfair advantage should be considered a discrimination against the male gender, but when one looks at the affirmative action recognised under article 32 of the constitution, the tag of discrimination is not used in this instance. What is this affirmative provision? It says that nothing should be considered discriminatory if it seeks to confer advantage on women on account of affirmative action due to age long discriminatory practices. Additionally, according to parliamentary rules, all committees of the parliament are to have at least 30% of women representation.³⁸ Similar provision is replicated at the Local Government Council, where special seats are accorded women as well,³⁹ such that women collectively add up a majority. One may then wonder if affirmative action for women represents a form of reversed discrimination in order to close gaps and overtake the male gender. To this end Goetz⁴⁰ notes that there are more women in politics in Uganda than many other developing African Countries. This legislative and policy provision is a strong redress for the apprehensions for the female gender discrimination in Uganda.

The rights of women are granted by various international treaties. Both on a continental and international level, Uganda has accepted and even ratified these accords and treaties. Uganda ratified the Convention on the Elimination of All Forms of Discrimination Against Women

³⁷ Vibeke Wang, "Women changing policy outcomes: Learning from pro-women legislation in the Ugandan Parliament," (2013) 41:2 *Women's Studies International Forum*, 113-121, ISSN 0277-5395, <https://doi.org/10.1016/j.wsif.2013.05.008>.
<https://www.sciencedirect.com/science/article/pii/S0277539513000873>)

³⁸ Arostegui Julie and Eragu B Veronica 'Women, Peace and Security: Practical Guidance on Using Law to Empower Women in Post---Conflict Systems. Best Practices and Recommendations from the Great Lakes Region of Africa. Case Studies of Uganda and Rwanda'(2014) <http://wiisglobal.org>. Accessed 27th July 2024

³⁹ Local Governments Act. Cap 243 Section 10

⁴⁰ A M Goetz. 'Women in politics & gender equity in policy: South Africa & Uganda'. (1998) 25(76) *Review of African Political Economy*. 241–262. <https://doi.org/10.1080/03056249808704312> accessed 2nd October 2024.

(CEDAW) in 1985 without any objections. State parties committed to pursuing a policy of eradicating discrimination against women immediately and by all reasonable measures after the convention denounced discrimination against women in all its manifestations. In addition, Uganda ratified the Convention Against Torture in 1986, the Convention on the Rights of the Child in 1990, the International Covenant on Economic, Social, and Cultural Rights in 1987, and the International Covenant on Civil and Political Rights in 1995, all of which uphold women's rights and condemn discrimination. Uganda has also ratified the African Charter on Human and Peoples' Rights (ACHPR) and, in July 2010, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Uganda is also a signatory to the African Union Solemn Declaration on Gender Equality in Africa. All these ratifications represent a strong determination to ensure equality of sexes. In fact it is recorded that Uganda is one of the Countries that immediately signed in 2003 and on July 22nd 2010 ratified the Maputo Protocol, becoming the 28th Country to ratify the Maputo Protocol. The passage of other female beneficial laws like the Domestic Violence Act and the Prohibition of Female Genital Mutilation Act all represents the commitment of parliament to ensure women's rights and eliminate female discriminatory practices.

4.2. INSTITUTIONAL RECTIFICATION

The constitution of Uganda, the parliament and the President of Uganda have differently established institutions to rectify, protect and promote gender discrimination. The President in exercise of his administrative powers has established the Ministry of Gender, Labour and Social Development (MGLSD). aimed at developing and implementing policies regarding gender issues with an additional mandate to protect, promote and ensure the achievements of rights of women by eliminating discriminatory practices and ensuring the attainment of affirmative actions for women. The constitution on its part has established topical institutions like, The Human Rights Commission, and the Equal Opportunities Commission with a focal interest and mandate on gender based issues. The Uganda Human Rights Commission (UHRC) was established under the 1995 Constitution of the Republic of Uganda.⁴¹ Their functions under the constitution suggests that it has overwhelming duties to protect, promote and ensure respect for human rights. The constitution deemed it wise to put women rights as fundamental rights upon which the commission must act to uphold them. The Commission has in the past acted to protect women right against torture. The constitution gives it

⁴¹ Established by Article 51 of the 1995 Constitution.

powers similar to a court and she can summon any person or authority, order compensation and commit for contempt of its orders.⁴²

The Equal Opportunities Commission is another commission mentioned and recognised by the constitution but established by the Parliament with the aim of achieving the fundamental right of the affirmative action of women or any other marginalized groups as recognised in Article 32. The Equal Opportunities Commission is mandated to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion and others.⁴³ The commission is an independent body free from external control and has power over public and private bodies regarding their activities that discriminate or marginalize female groups or other marginalized groups. The commission has powers to investigate and monitor and make recommendations regarding any such cases or instances of discrimination. The commission shall have power to hear cases brought before it and order the summons of any person or authority and give out orders to such parties.⁴⁴ A disobedience or contemptuous action to the summons of the commission is an offence. It is in pursuant of its powers to determine petitions that the Commission made a decision in *Bwengye Deusdedit Versus Bishop Stuart University*⁴⁵ where the petitioner alleged that the Defendant University discriminated against the petitioner when the constitution of the guild of the university reserved the position of guild president strictly for only members of the Anglican faith who are the owners of the University. The tribunal of the commission gave a considered ruling and deleted the discriminatory provisions of the constitution of the guild and affirmed that they were inconsistent with the Constitution of Uganda and other international instruments. Establishing the Commission by the Constitution and the Parliament for the purpose of enforcing provisions and activities that are permissive of discrimination is a bold and decisive step by Uganda that is novel amongst many African countries.

The Ministry of Gender, Labour and Social Development is another frontline executive institution in the frontline of administering gender issues. Headed by a Minister who is a cabinet member, the ministry is saddled with developing policies and implementing both policies and laws that guarantees women and children rights amongst others.⁴⁶ One of the dominant policies implemented

⁴²1995 Constitution of Uganda as amended. Article 53.

⁴³ <https://eoc.go.ug/>

⁴⁴ Equal Opportunities Commission Act 2007 Section 14

⁴⁵ Complaint EOC/CR/020/2018

⁴⁶ <https://mglsd.go.ug/policies/>

by the ministry is the national gender policy developed in 1997 and revised in 2007.⁴⁷ The document presents practical strategies for implementing the affirmative action guaranteed by the constitution especially against women that are perceived to be disadvantaged.⁴⁸ The combination of all these factors ensure that despite the gender gaps that are still being reported in some sectors, Uganda does not practice gender exclusion but working steadily to achieving gender equity. The implementation of some policies across ministries, like the Universal Primary Education has been recognised as a strong measure to reducing inequality amongst the sexes in school enrolment for example.⁴⁹

5.0. JUDICIAL INTERVENTIONS IN INEQUALITY OF SEXES

Moving beyond legislative provisions and interventions for the safe guard of gender equality and the removal of all discriminatory practices that hinder gender equality, the courts of Uganda have also been affirmative in the safe guard of gender equality. The courts of Uganda are established by article 129 of the Ugandan Constitution with judicial power which is derived from the people.⁵⁰ The courts have not spared the opportunity of using cases brought before it to emphasize the intention of the Ugandan people, expressed through the constitution to uphold gender equality by removing any perceived discriminatory provisions in any other law. In *Mifumi (U) Ltd. & Another v. Attorney General & Another*⁵¹ the Supreme Court of Uganda which is the highest court of the land examined the practice of paying pride price before marriage as well as demanding for pride price before a valid dissolution of marriage and pronounced on it. The petitioner s had sought an order of court to declare the above practices as unconstitutional since they perceived that it violated the right to marriage as protected under the Ugandan Constitution⁵². The Supreme Court in her appellate role overruled the prayer to declare the practice of payment of pride price as unconstitutional but upheld that the demand for a refund of pride price as a condition for dissolution of customary marriage offended the dignity of a woman as well as offended the right of a woman

⁴⁷ Kabinga David Humphry, "Critical Analysis on the Effectiveness of Laws Governing the Social and Political Laws on Gender Equality in Uganda" (2024) 3(3): Research Invention Journal Of Law, Communication And Languages 42-48.

⁴⁸ Blacker, John and Collins Opiyo "Fertility in Kenya and Uganda: A comparative Study of Trends and Determinants. *Population Investigation Committee*"(2005).59, 3 PIC . 355-373.

⁴⁹ Kato Mukasa, Lydia Nakato Mirembe and Amina Nalule Kabugo "Assessing the Impact of Universal Primary Education Policy on Gender Equality in Education in Uganda" (2024) 3:4 *Research and Advances in Education*. 21-25 doi:10.56397/RAE.2024.04.04

⁵⁰1995 Ugandan Constitution as amended. Article 126.

⁵¹ CONSTITUTIONAL APPEAL NO: 02 OF 2014 decided by the Supreme Court of Uganda.

⁵² 1995 Ugandan Constitution as amended Article 31 (1). A man and a woman are entitled to marry only if they are each of the age of eighteen years and above and are entitled at that age.

who ordinarily should be considered an equal partner in a marriage. Beyond that ratio by the court, the court held that a custom that demanded a refund of bride price when a marriage fails undermined women rights to marriage. This is what the court said;

“...completely ignores the contribution of the woman to the marriage up to the time of its break down. Her domestic labour and the children, if any, she has produced in the marriage are in many ethnic groups all ignored” the court went further to hold that ... *“If a man is not subjected to valuation for the refund of bridal gifts (“emihingiro” in Runyankole) when the marriage breaks down, it is not right or just that a woman should be subjected to valuation. She is not property that she should be valued. It is my view that refund of bride price violates Article 31(1) which provides that “men and women of the age of eighteen and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution”.*

Similarly, in *Uganda Association of Women Lawyers and 5 others v Attorney General of Uganda*⁵³ the constitutional court of Uganda had the opportunity against all limitation of access to the courts to construe the discriminatory illegality of section.4 of the Divorce Act of 1904 that had placed different conditions for males and females for filling for divorce. The argument of the petitioners was that the section violated articles 21, 31 and 33 of the constitution because it imposed only one condition of divorce for men while many for women. Even though this section was perceived as discriminatory against the male gender, the court nevertheless upheld it as discriminatory on basis of gender and nullified the offending sections. Section 5, 21 and 23 of the said law that it had discriminatory wordings.

The Ugandan Courts have also not spared pronouncements about laws that were enacted prior to the coming into effect of the 1995 Constitution. The constitution had saved all the laws of Uganda that were in existence prior to the enactment of the constitution. And only require that those existing laws that are saved be construed in line and in conformity with the constitution.⁵⁴ The term existing laws are defined to include both written and unwritten laws of Uganda that existed prior to the 1995 constitution. What this means is that customary laws which are unwritten and a product of different customs that make up Uganda are part of these existing laws that are saved by the constitution. Customary law has been defined meaning "the rules of conduct established by custom and long

⁵³ Constitutional Petition No 2 of 2003.

⁵⁴ 1995 Ugandan Constitution as amended. Article 274 (1).

usage having the force of law and not being formally enacted in any legislation or part of the common law"⁵⁵. Another Court decision had defined customary law in the case of *Magbwi v MTN (U) Limited* as the law that,

*"... concerns the laws, practices and customs of indigenous peoples and local communities. It is, by definition, intrinsic to the life and custom of indigenous peoples and local communities. What has the status of 'custom' and what amounts to 'customary law' as such will depend very much on how indigenous peoples and local communities themselves perceive these questions, and on how they function as indigenous peoples and local communities. Defining or characterising 'customary law' typically makes some reference to established patterns of behavior that can be objectively verified within a particular social setting or community which is seen by the community itself as having a binding quality. Such customs acquire the force of law when they become the undisputed rule by which certain entitlements (rights) or obligations are regulated between members of a community."*⁵⁶

In Africa generally and Uganda as part of the whole, Customary law plays a significant role in the day to day life of the people. Emphasizing the role customary laws play in the lives of the people, the High Court in *Dima Domnic Poro v Inyani*⁵⁷ said that for many local groups, customs and regulations are fundamental to who they are. Many facets of their lives are impacted by these rules and regulations. They can specify rights and obligations regarding land, inheritance, and property, as well as the conduct of their spiritual lives, the preservation of their cultural legacy, the use and access to natural resources, and many other essential areas of their lives. The right to culture is directly impacted by customary inheritance practices (naturally omitting laws that discriminate against persons or restrict other rights in a way that is irrational and contrary to the spirit of the other fundamental rights). The majority of people in many rural traditional villages identify with the customary laws of their native land.

Despite the utilitarian value of customary law in the lives of Africans, it is not without complaints and skepticism. One of the complaints about customary law is its discriminatory tendencies towards women. A typical complaint is captured comprehensively in this piece women presented to the Constituent Assembly that was saddled with task of producing a new Ugandan constitution in 1995 and as noted by Professor Mujuzi: that Oppressive and antiquated traditions, customs, and

⁵⁵ Local Council Courts Act, 2006. S. 2

⁵⁶ *Magbwi v MTN (U) Limited* (Civil Appeal No. 0027 of 2012) [2017] UGHCLD 53 (12 April 2017)

⁵⁷ (Civil Appeal No. 0017 of 2016) [2017] UGHCCD 154 (30 November 2017)

practices in the various tribes and communities discriminate against women by treating them like children. Laws that discriminate against them in a number of areas, including inheritance, property ownership, marriage, separation, divorce, and child custody, worry them. They are worried about the negative views that males have developed throughout the ages, which downplay the significance of women and fail to recognize their full potential, dignity, and contribution to society. They are worried about their roles in marriage and the family, which are often overlooked and receive little credit or compensation. They have not been given the opportunity by society to reach their full potential for both national and personal growth. Additionally, they worry about religious bodies and cultural institutions which deny them equality with men.⁵⁸

Quite interesting too, the constitution of Uganda make it a fundamental right to belong to a culture, to promote it and practice it⁵⁹. Practicing a culture demands practicing their laws and traditions. Customary laws therefore fall in these cultural rights and precede the constitution and were preserved by the constitution.⁶⁰ Prior to the 1995 constitution, customary law only existed and was recognised by the courts only subject to passing a public policy and repugnancy test. Those that got recognised and survived were sustained by the constitution in Article 273(1). Interestingly, the constitution had a safeguard, and ensured that customary laws that survived did not survive to perpetrate gender discrimination. It made the constitutional provisions the benchmark for survival and a watchdog to discrimination on grounds of sex. Thus the human right to practice culture did not override gender discrimination. The constitution recognizing this expressly provides, that Laws cultures, customs or traditions which are against the dignity, welfare, or interest of women or which undermines their status are prohibited by this Constitution.⁶¹ This therefore means that such customary laws with discriminatory tendencies against women are unconstitutional and cannot stand.⁶² The constitutional court also held this position when she considered the culture of female genital mutilation and emphasized that while the Constitution protects free exercise of cultural or

⁵⁸MUJUZI, Jamil Ddamulira. 'Reconciling customary law and cultural practices with human rights in Uganda' (2020.) 41. 2. *Obiter* online. <http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S168258532020000200003&lng=en&nrm=iso>. ISSN 2709-555X. Accessed 19th July 2024

⁵⁹ Ugandan Constitution as amended. Article 37 of the 1995

⁶⁰ Ugandan Constitution as amended .Article 273(1)

⁶¹ Ugandan Constitution as amended .Article 32(2)

⁶² Kironde V Kironde Civil Divorce Cause no. 006/2001 decided in the in the High Court of Uganda Holden at Kampala

religious custom, such exercise must not infringe on human dignity or the right to be free from cruel, inhuman, or degrading treatment.⁶³

5.1. ACCESS TO JUDICIAL PROTECTION

Law is nothing without access to judicial pronouncement and enforcement when it is breached. Lack of access to court can hamper protection for those whose rights are breached and promote impunity by law breakers. Encumbrances to judicial protection can be evidenced by bottlenecks to instituting as well as securing favourable pronouncements of Judges. One of the bottlenecks to a successful institution of a suit in courts has often been ‘*locus standi*’. This denotes a legal standing of a person to successfully prosecute a wrong in court following a complaint of breach of a right accorded by the law. To successfully file and sustain such an action, a person must show that he has a cause of action protected by law and that such a right has been breached by the defendant. It must relate to real life situations as academic and hypothetical situations are not entertained in courts. This often means where there is no relationship between the wrong and the petitioner/claimant you cannot sue. Justice Christopher Madrama Izama in the case of *Hon. Abdu Katuntu & Anor V Mtn Uganda Ltd & Gors*⁶⁴ defined ‘*Locus standi*’ adopting the Osborn’s Concise Law Dictionary definition to mean ‘a place of standing’. The right to be heard in a court or other proceeding.” In most countries, access to court is strongly hampered by the strict application of the common law doctrine of *locus standi*. A claimant that cannot sufficiently and convincingly establish before the court how his right is breached, is denied access to court and his grievance is hardly entertained. A strict enforcement of *locus standi* will often hamper access to court especially by poor rural women whose rights are breached.

However, in Uganda, the constitution and the courts have been very liberal in the interpretation of *locus standi*. The constitution has expressly permitted access to court by someone else on behalf of the person aggrieved and whose fundamental rights are breached. You do not have to be the one wronged, you only have to be interested only on behalf of the person wronged. The constitution provides that; “*any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court*

⁶³ Law & Advocacy for women in Uganda v. Attorney General Constitutional Court of Uganda (2010)

⁶⁴ The High Court Of Uganda At Kampala(Commercial Division) Hccs No 248 Of 2012

for redress which may include compensation. Any person or organisation may bring an action against the violation of another person's or group's human rights ⁶⁵.

This constitutional revolution of the common law limitation of access to courts on account of legal standing has eased access to courts in Uganda. The courts have similarly been liberal in their interpretation of the legal standing principle in Uganda, becoming permissive of another person instituting suits on behalf of others. For instance the courts have simply identified liberal conditions which the claimant/ petitioner will establish for a *locus standi* to include that he is a citizen of Uganda and he has sufficient interest in the matter while the issues that are raised in the matter are grave and of public importance. ⁶⁶

It is in this permissive interpretation of the *locus standi* rule that several matters have been instituted by the NGOs in Uganda for and on behalf of many women or group of women in constitutional courts and other courts of the land. This access has removed the impediments women would have been plagued with, such as poverty, ignorance and lack of access to professional legal practitioners in accessing the courts. It has also further deepened the ease of redress for breaches occasioned by gender discrimination. This was the situation in the case of *Law and Advocacy for Women in Uganda vs Attorney General* ⁶⁷ where the civil right organisation challenged the provisions of section 154 of the Penal Code of Uganda for being discriminatory. The court agreed with the petitioners and expunged the offence of adultery from the Penal code. The issue before the institution of the matter in court was that, the offence of adultery had prescribed a punishment for women in marriage who have intercourse with any other men while restricting the man to punishment if only he had intercourse with another married woman. This was considered discriminatory and held as such.

6.0. CONCLUSION

Uganda has made serious progress in eliminating gender discrimination and ensuring parity of sexes especially in the political and governance space. ⁶⁸ The economic opportunities for participation

⁶⁵1995 Ugandan Constitution as amended. Article 50 (1) and (2)

⁶⁶ The High Court Of Uganda At Kampala(Commercial Division) Hccs No 248 Of 2012

⁶⁷ Constitutional Petition No13/05 and 05/06

⁶⁸ Josephine Ahikire and Amon A. Mwiine, "The politics of promoting gender equity in contemporary Uganda: Cases of the Domestic Violence Law and the policy on Universal Primary Education" 2015. <https://ssrn.com/abstract=2695727> accessed 24 November 2024.

granted the female gender has also increased. In the African developing nations which Uganda is characterized under, the legal framework for eliminating gender discrimination is tilted to reverse past discriminations of the female gender, thereby promoting the affirmative action.⁶⁹ Uganda's legal framework especially since the coming into effect of the 1995 Constitution, has demonstrated the commitment to eliminate all forms of gender discrimination. Even though the Constitutional framework preceded the advent of millennium goals, it represents far in advance of Uganda's commitment to promote and practice gender equality. The constitution not merely provide for women rights, it elevated the rights to fundamental rights, creating constitutional institutions for their safeguards. Affirmative action is also not a 'workshop talk' but a right and elevated to the level of a fundamental right as well. The courts have maintained also a liberal approach to protection of women rights, removing substantially access to courts and weakening the age long limitation of *locus standi*. In final conclusion, the Uganda legal framework has rectified all female gender discrimination enablers and instead is on a progressive path of reversed discrimination through its affirmative actions against the male.

7.0. RECOMMENDATION

Law, everywhere represents a firm foundation through which societies drive change as well as create rights: while it is not the only means, it is a strong means. The Ugandan commitment to achieve equality of sexes is made firm by her legal framework and the liberalization of access to judicial protection. This paper therefore recommends the basic provisions of these articles discussed to other African countries to be included in their constitutions. Beyond removing legal disparities and discriminations as Uganda has done, this paper would recommend poverty alleviation measures that would improve the economic fortunes of both males and females and help them acquire information that would lead to better choices. Government must develop policies that are focused on tackling poverty in novel ways through sustainable economic growth, social inclusion, and environmental protection, free and compulsory quality education and a guaranteed access to free or subsidized healthcare if not in all diseases, at least in selected tropical diseases. Without these,

⁶⁹ UNDP Gender Equality Strategy 2022-2025 United Nations Development Programme Uganda Country Office *Rethinking and rebalancing economic, political, social and environmental systems to become inclusive and sustainable.*

most citizens, women inclusive, would continue to exhibit poor standards of living which may continue to be ascribed as gender discriminations.

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