

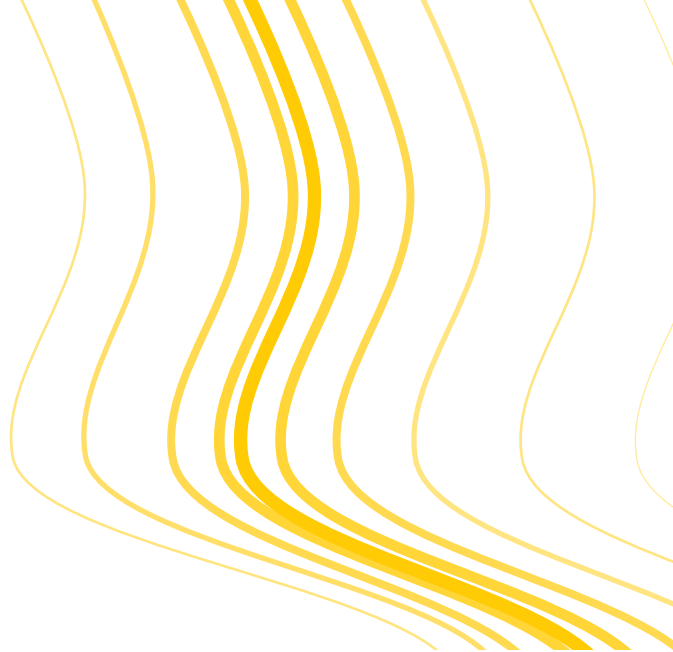


**Women's
Probono
Initiative**
Your rights, Your life

UPHOLDING THE FAMILY INSTITUTION

**Analysis of the draft Uganda
National Family Policy**

April 2024



“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, and equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

- Eleanor Roosevelt¹

¹ Ms. Eleanor Roosevelt she served as the Chairperson of the UN Human Rights Commission in 1946. She was instrumental in drafting the Universal Declaration of Human Rights: Available at <https://unfoundation.org/blog/post/10-inspiring-eleanor-roosevelt-quotes/> (Accessed 12/02/2024)

ACKNOWLEDGEMENT

Sincere appreciation to the Ministry of Gender, Labour and Social Development for developing the policy and continued collaboration with other stakeholders to input in the policy and ensure that the final policy will be accepted by all and improve the stability of all families in Uganda and achieve the desired social transformation and macro development.

Further appreciation to the Women's Probono Initiative (WPI) staff and partners for commissioning this study and contributing more towards the protection and promotion of the fundamental human rights for all especially women and children in Uganda.

We also recognise and appreciate the research and intellectual input of Dr. Patricia Atim P'Odong (Lead Consultant) and her Research Assistant Mr. Alado Lawrence for his invaluable intellectual input and time.

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ABBREVIATIONS AND ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ADR	Alternative Dispute Resolution
Cap	Chapter
CBO	Community-Based Organization
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSO	Civil society Organizations
ENNHRI	European Network of National Human Rights Institution
FGM	Female Genital Mutilation
FIDA	Association of Women Lawyers
HiIL	Hague Institute for Innovation and Law
HRBA	Human Rights Based Approach
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Convention on Civil and Political Rights
LASPNET	Legal Aid Service Providers Network
MDA	Ministries, Departments and Agencies (of Government)
MGLSD	Ministry of Gender Labour and Social Development
NODPSP	National Objectives and Directive Principles of State Policy
PANEL	Participation, Accountability, Non-discrimination and equality; Empowerment, and Legality
PILAC	Public Interest Law Clinic
SDGs	Sustainable Development Goals
UBOS	Uganda Bureau of Statistics
UHRC	Uganda Human Rights Commission
UDHR	Universal Declaration of Human Rights
WPI	Women's Probono Initiative

1.0 INTRODUCTION

Globally the family is a critical aspect of society, for at times it is within the family institution that people achieve many things including: having children; nurturing their children into productive human beings for the family, society, and the State; acquire property; build relationships with other people through affinity or kindred; ensuring the general wellbeing of their family members and supporting each other through the stresses of life among others.

This role that the institution of the family was underscored by the *House of Lords in Huang v Secretary of State for the Home Department* when referring to a family it observed that, “Human beings are social animals. They depend on others. Their family, or extended family, is the group upon which many people most heavily depend, socially, emotionally, and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives.”¹

The State must rely on the family institution for its survival.² It is through the family institution that national values may be instilled, and children are born to subsequently become productive adults for the State.³ No wonder Article 18 of the African Charter on Human and Peoples’ Rights stipulates that,

The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

The institution of the family remains a significant bedrock of Uganda’s society. It is recognized as the natural and fundamental unit of society entitled to protection by the society and the State.⁴

According to the Uganda Bureau of Statistics (UBOS), Uganda’s population currently stands at 40.9 million people at a sex ratio of 49.1% male and 50.9% female, and the population is predominantly young.⁵ Of this population, 73% live in the rural area and 26.6% in the urban area.⁶

The report further reveals that 69% of the households are male-headed and 31% are female-headed.⁷ This population is also characterized by various forms or types of families headed by both men and women. It is imperative, therefore, that a National Family Policy that addresses the variations in the family institution is adopted.

“The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community”.
(African Charter on Human and Peoples’ Rights)

Despite the well-intentioned purpose of the policy, it still falls short of meeting the aspirations of the people and standards set by the Constitution and other legal frameworks in Uganda.

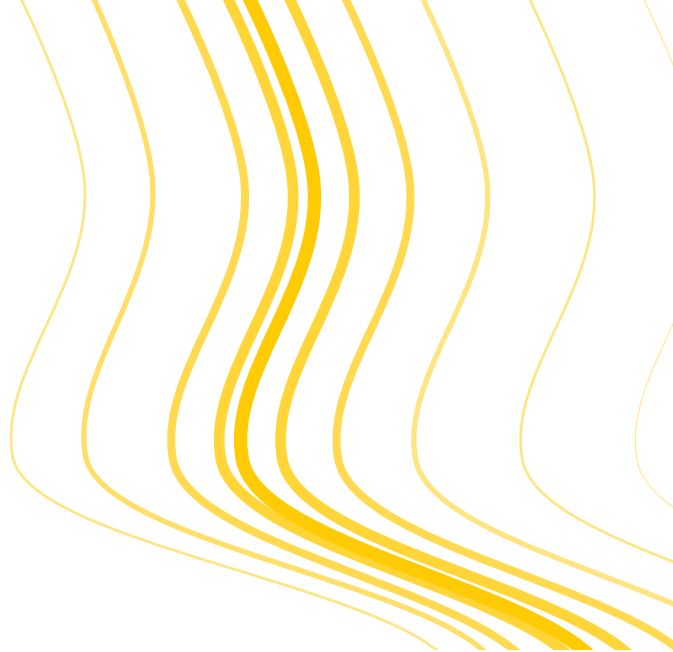
The Ministry of Gender Labour and Social Development (MGLSD) is applauded for rising to the occasion to develop the now Draft Uganda National Family Policy (*version of September 2023*) which lays its overall objective as to outline a framework for the development, implementation and monitoring of policies, programs and initiatives that ensure protection and support to the Family as the core unit for social transformation and formation of the country's development and stability.⁸

Despite the well-intentioned purpose of the policy, it still falls short of meeting the aspirations of the people and standards set by the Constitution and other legal frameworks in Uganda.

It is against this background that the Women's Probono Initiative (WPI) undertakes an analysis of the said policy to establish its veracity in protecting all persons in the family and the extent to which it is in harmony with legal safeguards and fundamental human rights enshrined in various international and regional legal trellis to which Uganda is part, and the various enacted national laws.

Utilising a human rights and feminist paradigm, the consultant undertook a doctrinal analysis of the policy. This involved a desk review of the draft policy and other relevant scholarly articles, reports, and jurisprudence to support the arguments contained herein.

The analysis is pertinent in so far as it can be utilized to inform and enrich the finalisation of the first-ever Uganda National Family Policy that can be used to not only transform the social and economic status of the family, hold duty bearers accountable but also build resilient and stable families.



PART ONE

ANALYSIS OF THE POLICY

1.0 ANALYSIS OF THE POLICY

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”
(*Universal Declaration of Human Rights*)

1.1 The Glossary: Understanding key terminologies

a) **Adult and child**

Commendably, the definitions of a child and adult are in line with Articles 34 and 257(c) of the Constitution of Uganda, which clearly stipulates that a child is any person below 18 years.

It must also be emphasized that the term ‘child’ here must also include those acquired by couples (married or not) through Assisted Reproductive Technology.⁹

Recommended

In addition, Uganda needs to ratify the Convention on the Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages.¹⁰ This instrument will buttress the guarantees in the various international and regional instruments ratified by Uganda and the 1995 Constitution and other domestic laws like: the Penal Code Act Cap 120 (As Amended)¹¹ so as to enhance the protection of children from vices like early child marriages, teenage pregnancies and elopement and reduce the incidences of child-headed households following the death of an adult partner.

b) **Meaning of family**

The family is traditionally defined as the natural and basic unit of society and is entitled to protection by society and the State.¹² This definition also manifests in the various international and regional treaties ratified by Uganda. For instance, the Universal Declaration of Human Rights (UDHR), 1948 provides that,

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹³

It is laudable that the Policy recognises the significant formative and function-based role of the family plays in society. It states that

The family is the foundation of every society and a source of strength for guidance and social support for its members. It is the basic unit for reproduction, production, consumption, accumulation and community development. The Family as an institution promotes a sense of identity and safety instils values and morals for continuity from generation to generation. In addition, the Family is a source of wisdom and experience that provides its members with lifelong skills that enable them to live to their full potential.¹⁴

Despite this eloquent stipulation, the type of family that must be protected by both society and the State is not elucidated. Traditionally, the family was idealized as one that is heterosexual and comprising only a husband, a wife, and their biological children for the formation of the State.¹⁵

However, due to various social, economic, and political factors, the family institution has structurally evolved resulting in the existence of various types of families including nuclear families, extended families, single-parent families, child-headed families, cohabiting couple families, and in some countries legally recognised families comprising of same-sex couples.¹⁶ The non-recognition of many of these family types mainly comprised of women especially the cohabiting families, single parent families and elderly-headed lives many women unprotected by law and disenfranchised various rights enjoyed by their married counterparts.¹⁷

As a result, the Human Rights Committee of the International Covenant on Civil and Political Rights has called on State parties like Uganda to define what constitutes a family within their respective jurisdictions. *Paragraph 2* of General Comment No. 19¹⁸, the Committee states that,

The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in Article 23.

Consequently, State Parties should report on how the concept and scope of the family are construed or defined in their own society and legal system. Where diverse concepts of the family, “nuclear” and “extended”, exist within a State, this should be indicated with an explanation of the degree of protection afforded to each.

In view of the existence of various forms of family, such as unmarried couples and their children or single parents and their children, State Parties should also indicate whether and to what extent such types of families and their members are recognized and protected by domestic law and practice.

When a group of persons is regarded as a family under the legislation and practice of a State, it must be given protection. (ICCPR Human Rights Committee)

Although the definition is quite expansive, it still does not take into consideration families of parties in cohabitation, children from assisted reproductive technologies, and families as a result of foster care and guardianship

In disaggregating data relating to the characteristics of household heads in Uganda, UBOS has reported that:

In Uganda, the highest percentage of household heads were in the age groups 25-34 years and 35-44 years (24% each). Thirteen percent of household heads were in the age group 65 years and above with a higher percentage of female-headed households (19%) compared to male-headed households (10%). A negligible proportion of households were headed by persons aged less than 18 years.¹⁹ Considering the marital status of the household heads, overall, the majority (57%) were married in monogamous unions or living together as if married. Disaggregation by sex shows wide variation in the marital status of the household heads.²⁰

This reality calls for the need for an expansive or all-inclusive definition of what constitutes a family in Uganda's context.

Both the Uganda National Action Plan for the National Family Policy and the Draft National Family Policy defines the family as "A primary social group of two or more people, related through blood ties (of birth, siblings, and extended family ties), marriage, adoption, and placement regardless of whether or not, they are living together under the same roof (household)."²¹

Although the definition is quite expansive, it still does not take into consideration families of parties in cohabitation, children from assisted reproductive technologies, and families as a result of foster care and guardianship (alternative placement in the best interest of the child).

The African Commission recently defined family as "a unit that consists of a man, a woman or women and, other persons who can be defined as such by national laws of a state party."²²

Recommended:

The family may be more broadly defined as "the basic unit of society where two or more people who may or may not be related by blood or by marriage, or in relation to children either biological or not, but through/by alternative care arrangements including (adoption, foster care, custody, guardianship, and assisted reproductive technologies) live together in one unit, share common values, aspirations and other aspects of life, support each other spiritually, emotionally, economically and socially, share a close identity, and identify as members of a single unit headed by anyone of the members. The family unit is entitled to protection by both society and the State."

c) **Parenting and parental responsibility**

The definition of parenting provided by the policy is limited to 'offspring'.²³ It is a norm in Uganda's society that a family may have children who are not necessarily offspring or biological children of the person providing parental care or responsibility to ensure the wellbeing of the child/ children.

Besides, parental responsibility must also prevail in situations where the children are as a result of reproductive technologies.²⁴

Recommendation

A broader definition may be adopted as "parenting refers to the roles, responsibilities, and duties any person having care and custody of any child/ children, has over the child/children to ensure their general wellbeing and their best interest."

d) **Marriage**

Marriage is still a critical aspect in Uganda and is largely cherished by society.²⁵ There are five types of marriages recognized in Uganda and these include the church marriage, the Hindu marriage and the civil marriage which are monogamous²⁶; the customary marriage and the Islamic marriage which are potentially polygamous.²⁷

Despite the existence of the various forms of marriages, couples in Uganda live together in various forms of relationships and found families as revealed by the UBOS findings in the table below.²⁸

Selected characteristic	Male %	Females %	Uganda %
Married monogamous/ living together	75.8	16.9	57.4
Married polygamous/ living together	10.5	12.7	11.2
Divorced/ separated	6.2	27.6	12.9
Widow/widower	1.9	37.6	13.0
Never married	5.6	5.2	5.5

The policy connotes that,

"Marriage is a lifelong union between one man and one woman, an institution of God and a foundation for society. Marriage is the intimate union and equal partnership of a man and a woman and is viewed both as a natural institution and a sacred union so because it is rooted in the original plan of creation, the free consent of the spouses (man and woman) makes a marriage through a contract with each other."²⁹

Despite the existence of the various forms of marriages, couples in Uganda live together in various forms of relationships and found families. (Uganda Bureau of Statistics)

The policy must recognize that parties need not remain in an abusive or toxic marriage for fear of religious or cultural perceptions or economic dependency, yet the law gives an avenue for peaceful exit.

The definition in the policy continues to idealise marriage from a religious perspective and yet Uganda is a secular state.³⁰ It should be noted that the right to marry and found a family by any person of marriageable age is guaranteed under Article 31 of the 1995 Constitution.³¹ Noteworthy, is that the Constitution also prohibits marriage between parties of the same sex.³² Hence, upholding the heterosexual nature of marriage.

Recommendation

The Policy could define marriage from a legal point of view as:

A voluntary legal union between a man and a woman (or women) of marriageable age for life in accordance with the laws of Uganda, that grants the man and women (or women) the status of being husband and wife (or wives), and from this union they acquire marital rights and responsibilities.

It should be remembered and emphasized however, that although marriage is intended for life between the parties, it may still be dissolved either by death or by dissolution by a competent court as stated in Article 31(1) of the 1995 Constitution. The UBOS report clearly indicates that 12.9% of the population are divorced or separated.³³ The policy must recognize that parties need not remain in an abusive or toxic marriage for fear of religious or cultural perceptions or economic dependency, yet the law gives an avenue for peaceful exit.³⁴ And when any marriage is dissolved, the family is still entitled to State protection. Hence the policy must also define the dissolution of marriage in line with the Divorce Act 249.

Recommendation:

Dissolution of marriage means termination of the marriage by either death or an order of a competent court.

e) Household

Recommendation:

For harmonisation the policy can adopt the definition provided by the UBOS report which defines a household as:

“A household is defined as a person or group of related or unrelated persons who live together in the same dwelling unit(s), who acknowledge one adult male or female as the head of the household, who share the same housekeeping arrangements, and who are considered a single unit”³⁵

f) Cohabitation

Cohabitation is a reality in our society, and many families are a result of cohabitation relationships. Unfortunately, cohabitation and cohabiting couples have limited protection under the law in Uganda.³⁶ In fact, UBOS reports that more couples are living in cohabitation than legally recognized marriages. The table below illustrates the percent distribution of women aged 15-49 by marital status and type of marriage in Uganda, as of 2011.³⁷

57.4% of the population are married in monogamous unions or living together as if they are married as such; 11.2 % of the population are married in

Age	Civil marriage	Customary marriage	Religious marriage	Living together
15-19	0.2	7.7	0.7	11.4
20-24	0.9	27.0	4.0	35.5
25-29	1.3	33.3	10.0	37.9
30-34	1.7	32.4	14.1	32.9
35-39	1.4	34.9	15.0	28.6
40-44	1.4	30.3	19.2	25.0
45-49	1.6	26.6	18.1	15.8
Total	1.1	25.4	9.1	26.9

A more recent UBOS 2019/2020 report further reveals that 57.4% of the population are married in monogamous unions or living together as if they are married as such. And 11.2 % of the population are married in a polygamous unions or living together as if they are married as such.³⁸ Certainly, a considerable percentage of couples in Uganda are living in cohabitation relationships as indicated above. Therefore, the fact of cohabitation cannot be wished away.

a polygamous unions or living together as if they are married as such.
(Uganda Bureau of Statistics)

In fact, the CEDAW Committee in the General recommendation on Article 16 stated that:

In States parties where de facto unions exist, and with regard to those relationships in which neither partner is married to another person or is in a registered partnership with another person, the Committee recommends that the State party considers the situation of women in these unions, and the children resulting from them, and takes the necessary measures to ensure the protection of their economic rights.³⁹

Non-recognition of cohabitation relationships largely disadvantages women who often loss out in acquiring interest in property upon termination of the relationship or death of a partner

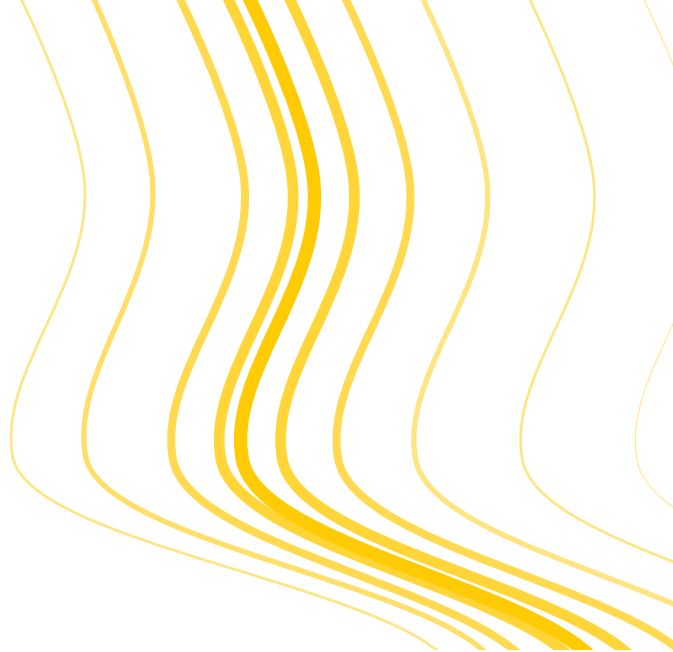
It is imperative therefore, that the National Draft Family Policy recognizes this fact and includes such families within the protection of the policy and the law since they too are families that deserve protection by both the society and the State as stipulated in Objective 19 of the NODPSP.⁴⁰

It must be recalled that marriage is a right that one can choose to exercise or not to do so. In addition, the family institutions may or may not have children, and not all families are a natural consequence following marriage. The status of couples in cohabitation and having families must be brought within the ambit of legal protection as endeavoured by the learned Justices in *Kigongo v Kigongo*⁴¹ and *Baryamureeba v Kabakonjo*⁴² decisions. Such judicial activism has been fundamental in upholding gender justice and protecting the rights of women who are often marginalised by the cultural, religious or even legal dictates of the society.

Recommendation

It is imperative, therefore, that the term cohabitation is also defined in the policy. Cohabitation may be defined as the ‘arrangement where a man and a woman of marriageable age live together as husband and wife but without formalizing their relationship in accordance with any of the legal marriages recognized by law.

Non-recognition of cohabitation relationships largely disadvantages women who often loss out in acquiring interest in property upon termination of the relationship or death of a partner. It should be noted that the Succession Act cap 120 and the Succession (Amendment) Act 2022 excludes cohabitating couples.



PART 2

EXAMINING THE LEGAL AND POLICY FRAMEWORK

2.1 Examining the Legal and Policy Framework

The policy refers to a few and, in some cases, non-binding legal frameworks. Uganda being a secular State, it is important that the policy is well embedded within the legislative benchmark as opposed to religious principles. The table below outlines the missing legal frameworks and the relevant provisions.

2.2.1 International

Instrument	Date of ratification by Uganda	Relevant provisions
International Convention on Civil and Political Rights (ICCPR)	21 st June 1995 (Accession)	-Articles 2 on equality and non-discrimination -Article 23 right to marry and found a family - General Comment No. 19: Protection of the family, the right to marriage, and equality of the spouses
Convention on Elimination of all Forms of Discrimination Against Women (CEDAW)	22 nd July 1985	-Article 16 elimination of discrimination against women in marriage and family relations -General Comment No. 31 on Elimination of Discrimination Against Women -General Comment N0.36 on the rights of women and girls in Education -General Comment No.25 on Gender-based Violence Against Women
UN Convention on the Rights of the Child (CRC)	17 th August 1990	- General Comment No. 14 on the Best Interest of a Child Principle -General Comment No. 18 on Harmful practices - General Comment No.20 on the Rights of Children in Adolescence
UN Convention on the Rights of Persons with Disabilities (UNCRPD)	30 th March 2007	-Article 23 right of persons with disabilities to marriage and found a family -General Comment No.5 on Independent Living and Community Inclusion -General Comment No. 6 o Equality and Non-Discrimination -General Comment No.3 on Rights of Women and Girls with Disabilities General Comment No. 1 on Equal recognition before the law

2.2.2 Regional

African Charter on Human and Peoples' Rights (1981/1986)	10 th May 1986	<ul style="list-style-type: none"> -Article 2 on equality and non-discrimination -Article 16 on the highest attainable state of mental and physical health -Article 18 on the right to family and its protection by the State Article 29 imposes a duty on individuals to preserve the harmonious development of the family; to respect their parents at all times and to maintain them in case of need.
Protocol to the ACHPRs on the Rights of Women in Africa (2003/2005)	22 nd July 2010	<ul style="list-style-type: none"> -Article 2 Elimination of discrimination against women -Article 6 on the right to marriage for women above 18 years -Article 5 on Elimination of harmful practices - General Comment No. 6 on the Right to property during Separation, Divorce or Annulment of Marriage -Article 7 on separation and annulment of marriage -Article 20 on rights of widow -Article 21 on the Right to inheritance Article 22 on the protection of elderly women -Article 23 on the protection of women with disabilities
Protocol to the ACHPRs on the Rights of Persons with Disabilities in Africa (2018)		<ul style="list-style-type: none"> -Article 3 on inclusion and effective participation of persons with disabilities in society -Articles 5 and 6 on equality and non-discrimination -Article 11 on the prohibition of harmful practices -Article 14 on the Right to live in the community -Article 20 on adequate standard of living -Article 26 on the right to marry and have a family -Article 27 on rights of women with disabilities -Article 28 right of children with disabilities -Article 29 on the rights of youth with Disabilities
African Youth Charter	6 th August 2008	<ul style="list-style-type: none"> -Article 2 on no discrimination -Article 8 on protection of the family and right for parties of marriageable age to marry

<p>Protocol to the African Charter on the Rights of Citizens to Social Protection and Social Security (2022)</p>		<p>-Articles 2 and 3 on State obligation to ensure social protection of the citizens</p> <p>-Article 9 enjoins States to ensure that the family as the fundamental unit of society and the natural environment for the growth and well-being of all its members particularly children, is appropriately assisted and protected.</p> <p>-Article 19 on State parties to adopt social protection measures</p>
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2.2.3 National legislations and policies

- a) The Constitution (See Article 2, 20, 21, 24, 30, 32, 33, 34, 35, 36, 42 (work))
- b) The Divorce Act and the Law Reform Miscellaneous (Amendments) Act 2023
- c) The Customary Marriage (Registration) Act Cap 248
- d) The Marriage and Divorce of Mohammedan Act Cap 252
- e) The Hindu Marriage and Divorce Act Cap 250
- f) The Children Act Cap 59 and the Children Amendment Act 2016
- g) The Succession Act Cap 160 and the Succession Amendment Act 2022
- h) The Domestic Violence Act 2010 (cited but more detail what there is shallow)
- i) Penal Code (Amendment) Act Cap 120.
- j) The Prevention and Prohibition of Female Genital Mutilation Act (2010)
- k) The Persons with Disabilities Act 2020
- l) The Mental Health Act 2019
- m) The Land Act (Section 25 and 39 land rights for vulnerable people)
- n) The Prevention and Prohibition of Torture Act (2012)
- o) The Prevention of Trafficking in Persons Act (2009)
- p) The Anti-Pornography Act (2014)
- q) The Anti- Homosexuality Act 2023
- r) The National Children's Policy 2020
- s) Orphans and Vulnerable Children's Policy (2004)
- t) The Child Diversion Guidelines (Juvenile Justice) (2019)
- u) The National Disability Policy 2023 (The policy refers to the old National Disability Policy 2006)

2.2.4 Jurisprudential Developments

This section embodied key judicial decisions that have had an impact on the legal landscape in relation to the family institution. The decisions therein must be considered as we develop the policy.

Cases	citation	Brief import of the case
Aboneka Micheal & Kira Martin v The Attorney General	Constitutional Petition No.035 of 2022	Confirmed the age of consent to marry at eighteen years
Law and Advocacy for Women v The Attorney General	Constitutional Petition No. 8 of 2007	Held that the practice of FGM is unconstitutional
Law and Advocacy of Women v The Attorney General	Constitutional Petition No. 13 of 2005	Nullified some sections of the Succession Act, cap 160
Uganda Association of Women Lawyers v The Attorney General	Constitutional Petition No. 2 of 2003	Nullified some sections of the Divorce Act 249
Mifumi & Anor v The Attorney General & Another	Constitutional Appeal No. 2 of 2014	Declared that the return of bride price in customary marriages is unconstitutional
Julius Rwabinumi v Hope Bahimbisomwe and Ambayo Joseph v Aseru Jackline	Civil Appeal No. 10 of 2009.	On the division of matrimonial property

2.2.5 Conclusion

These instruments and progressive jurisprudence propel the continued protection of women's rights and ensuring gender equity in society, and should provide a Human Rights Based Approach (HRBA) to guide the national family policy-making process in Uganda. By so doing, the National Family Policy will be awake to the legal and jurisprudential developments in the country and transition away from any inclination to Judeo-Christian dogma. It will also set the stage for addressing any glaring legal lacunas. As earlier contended by WPI,

The value of a human rights-based approach is that it centres on those who are most marginalized, excluded, or discriminated against. This requires an assessment of how gender norms, power imbalances, and the different forms of discrimination interact and how these interactions affect the most marginalized segments of the population. The HRBA uses human rights standards and principles to guide all government action. Its point of departure is the standards contained in international and national human rights law.⁴³

3.0 CRITIQUE OF THE SUBSTANTIVE POLICY PROVISIONS

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society. (ICESCR)

The government is applauded for embarking on the process of adopting a National Family Policy which is the first of its kind in Uganda. This government effort is in line with the obligations placed on the government to undertake measures and programmes that promote the well-being and development of the family institution and all its members as stipulated in the various legal instruments. For instance, Article 10 of the ICESCR provides that

The State Parties to the Covenant recognize that,

(1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment, and while it is responsible for the care and education of dependant children.

The Policy lays out sound guiding principles and values that inform the implementation of policy.⁴⁴ However, the vision, mission statement and goal must be revisited. The mission statement does not clearly outline the strategies to be used to achieve the goal and vision of the policy. The Goal equally reflects more a definition of the family rather than a goal. A goal is usually a precise broad purpose of the policy. It also outlines the policy objectives.

3.1 The Objectives of the Policy

The broad objective of the policy is to outline a framework for the development, implementation and monitoring of policies, programs and initiatives that ensure protection and support to the Family as the core unit for social transformation and formation of the country's development and stability.

The specific objectives include:

- i. To strengthen family relations
- ii. To curtail erosion of family socio-cultural values, norms, moral and practices
- iii. To improve quality and quantity of goods produced in a family
- iv. To promote Peace, Democracy and Security within family

These sound objective speak well to the formative and functional purpose of the family. They also create a good road map for the State to ensure inclusion of all families and its obligation to adopt policies and programmes that enhance the protection and promotion of the health of the family institution.

Recommendation:

A specific objective could be added that address the need to enhance access to justice and legal remedies. It must also embrace the application of Alternative Dispute Resolution (ADR) mechanisms. This would enable peaceful resolution of conflicts that may arise within the institution of the family and better enforcement of the progressive laws adopted.

Guiding Principles reflect a reliance on or promotion of the human rights-based approach to national building

3.1.1 Guiding Principles

These are comprehensive and well laid out. A principle on Accountability and Transparency of all duty bearers could be added.

It is commendable that the Guiding Principles reflect a reliance on or promotion of the human rights-based approach to national building. The European Network of National Human Rights Institution (ENNHRI) spells out five key principles of the HRBA that is: Participation⁴⁵, Accountability⁴⁶, Non-discrimination and equality⁴⁷; Empowerment⁴⁸, and Legality⁴⁹ (PANEL).⁵⁰

3.1.2 Policy Outcomes and Priority Actions

Juvenile justice is not reflected in the outcomes or priority actions. And yet, there is an increasing number of juveniles finding themselves in conflict with the law and engaging with the judicial system.⁵¹ With barely sufficient dedicated juvenile justice system in Uganda, young people caught breaking the law often end up in places of detention that are inappropriate for their age and development, and, as such, will not increase the likelihood of their reintegration into society and rehabilitation, so as to enhance the human capital development which is essential for the development and productivity of the country.⁵²

Access to justice is a basic fundamental human right significant for ensuring redress for various forms of human rights human rights violations.⁵³ Access to justice may be defined as the right of individuals and/ or groups to obtain a quick, effective, and fair response to protect their rights, prevent or solve disputes, and control the abuse of power, through a transparent and effective process in which mechanisms are available, affordable and accountable.⁵⁴ Despite the recognition of access to justice as a universal and fundamental human right in various legal instruments, its realisation remains elusive for most people in Uganda.⁵⁵ It is reported that 84% of the 44 million people in Uganda have no access to lawyers.⁵⁶

HiiL further reports that, every year in Uganda, 4.7 million legal problems are abandoned without fair resolution, 1.9 million are ongoing and 2.13 million are considered to be resolved unfairly.⁵⁷

Juveniles in conflict with the law suffer gross forms of human rights violations and limited access to justice while in the justice system. (Public Interest Law Clinic)

This situation is worse for women, persons with disabilities, refugees, children, internally displaced persons, and poor persons in our society who are often subjected to discrimination, stigmatisation, marginalisation, and exclusion by disabling laws, unfriendly justice systems, environmental barriers, and the negative attitudes in the society in Uganda's.⁵⁸

Juveniles in conflict with the law suffer gross forms of human rights violations and limited access to justice while in the justice system.⁵⁹ These violations include but are not limited to unlawful arrests, limited application of principles of diversion, reconciliation, forgiveness to limit institutionalisation of children; detention with adult offenders in adult facilities, manipulation of their age due to wanton processes of age determination, slow judicial processes against the notion of expeditious justice, lack of child-friendly court environment and others.⁶⁰

Recommendations

Amend the Priority areas and outcomes to also include juvenile justice and access to justice

3.1.3 Legislative linkage

In view of the comprehensive legal framework, this section needs to be improved and reliance made on more primary laws as opposed to the Declarations that are considered soft law. The enabling laws have been comprehensively covered in *section 2.0 above*.

3.1.4 Policy Implementation

This section falls short of placing responsibility on a few other duty bearers. The realization of stable and resilient families requires the action of various actors or duty bearers.

Recommendations

Hence the policy must state the clear actions expected of the various stakeholders/duty bearers listed below in realizing the goal of the policy. This may also be deduced from the National Action Plan for the Family Policy (Pages 19-25).

- a) Judiciary
- b) Uganda Police Force and Office of the Director of Public Prosecutions
- c) Uganda Law Reform Commission
- d) ECO
- e) UHRC
- f) CBOs
- g) Gender Officers and Community Development Officers
- h) Probation Officers

4.0 RECOMMENDATIONS

a) **Delimit clear actions or activities in the National Action Plan that inform the Log frame and output and outcomes**

The MGLSD is commended for adopting the National Family Law Action Plan, however, there is a need to set clear activities that will be implemented to achieve the desired outcome, outputs, and impact. The current Log frame is wanting in this regard, yet it's the road map for action. A leaf may be borrowed from Kenya's National Policy on Family Promotion and Protection (2019).⁶¹

b) **Advocate for legislative reform and the passing of the Marriage Bill 2022**

Laws governing the marriage institution in Uganda are archaic and in need of substantial legislative reform. It should be noted that these laws were received during the colonial era through the 1902 Order in Council. Marriage laws in Uganda were adopted in pursuance of Article 15(2) of the 1902 Order in Council; the *reception clause* essentially defined the law to be applied in the protectorate (Uganda as it was then). The order in council was an exercise of power granted to His Majesty's government under the Foreign Jurisdiction Act of 1890 to legislate regarding foreign territories of the United Kingdom.

Marriage and its related concepts form part of domestic relations which are an important aspect of human life and as such, there was need to regulate the law governing these relations. To that effect, on 1st April 1904; Uganda received the Marriage Act, cap 251, and the Marriage of Africans Act, cap 253 after which it received the Divorce Act cap 249 on 1st October 1904, the Marriage and Divorce of the Mohammedans Act, cap 252 on 15th April 1906, the Hindu Marriage and Divorce Act, cap 250 on 1st September 1961 and the Customary Marriage (Registration) Act, cap 248 on 1st October 1973.

Hence the legislative reform process commenced by the now Marriage Bill 2022, must be leveraged to push for an overhaul of these colonial laws.

c) **Ratification of the newly adopted African Protocols**

The Protocol to the ACHPRs on the Rights of Persons with Disabilities (2018) and the Protocol to the ACHPRs on the Rights of Citizens to Social Protection and Social Security (2022). Both protocols are of great significance in advancing the work of the MGLSD specifically. It is imperative therefore, that the MGLSD should take the lead to move the government for the ratification and domestication of the instruments.

d) Push for the recognition of Cohabitation and adoption of the Cohabitation Property Bill

As has already been discussed, cohabitation is a reality in our society, yet no law specifically protects the property rights of parties in cohabitation in case of termination of the relationship or death of a partner or death of a partner. Judicial activism as demonstrated in the decisions of *Musa Kigongo v Olive Kongo* and *Barayamereba v Kabakonjo & Others* is applauded. However, the government needs to pass the Cohabitation Property Bill to provide statutory law in this regard. Lessons can be drawn from Kenya and Tanzania that have since adopted the concept of presumption of marriage to protect the interest of cohabiting couples during separation, termination of the relation or even death.⁶²

e) Community sensitisation and awareness must be vehemently embarked on. (Not listed as one of the activities in the National Family Policy Action Plan

Popularizing the National Family Policy once adopted and all other family-related laws through community awareness and sensitization is pertinent to ensure adherence of all stakeholders. Unfortunately, community awareness is not one of the listed activities in the National Action Plan.

f) Advocate for the employing of judicial activism to address any legal lacunas (PIL) to provide progressive jurisprudence, protect human rights, and meet the aspirations of the constitution.

Judicial activism refers to the ability of judicial officers to interpret the law and make decisions that breathe life into the enacted laws and address the legal lacunas in order to provide progressive jurisprudence that meets the aspirations of the people, reflects the changing circumstances in society and protect fundamental human rights and freedoms enshrined in the various legal frameworks.⁶³

g) Promote economic empowerment of households through the proper management of economic empowerment initiatives like YLP, UWEP, National Disability Grant, PDM, Emyooga

Enhancing household incomes and combating poverty is pertinent in building resilient and stable families. It is commendable the Family Policy among others seeks *'To promote sustainable economic empowerment of families for social support that enhance Family stability.'* This is in line with the State obligations as stipulated in Articles 2 and 3 of the Protocol to the ACHPRs on Right to Social Protection.

The government is hence enjoined to fight corruption and effectively monitor the utilization of the grants under the above economic empowerment initiatives to achieve the desired social transformation within the family and the country at large. The government is also enjoined to put in place social security measures to ensure families facing financial hardships are supported through it. Deliberate efforts must be made to ensure that women access these social security initiatives.

h) Clarity of Data on marriage and family status from the forthcoming National Census Report. (See duty of UBOS under the National Action Plan)

The importance of accurate data in understanding the characteristics of the various aspects of society and ensuring adequate planning and resource allocation by the respective duty bearers cannot be underscored. As UBOS asserts data on the demographic characteristics of the country provide important background information and the necessary framework for the understanding of other aspects of the population, including economic activity and poverty, and provide information necessary for development planning, and resource allocation.⁶⁴

Article 25 of the Protocol to the ACHPR on the Rights of Citizens to Social Protection, calls on states to adopt and implement mechanisms to collect, analyse, compile, and publish social protection disaggregated data, statistics, and indicators with due regard to the need for data protection and individual rights to privacy.

i) Effective coordination with other entities like DPP (Ministry of Justice) Judiciary (seeks protection of victims of SGBV) Police, Labour to ensure effective implementation of laws and their respective mandate.

Effective implementation of the Policy also calls for adequate funding and effective coordination between the MGLSD, other Line Ministries, MDA, Judiciary, Parliament, Civil society Organisations (CSOs) Local leaders among others. The different duty bearers are well listed in the National Action Plan of the Family Policy.

5.0 CONCLUSION

The family institution is the cradle for all human beings and the engine of a State. It is from within this institution that life begins for all of us as toddlers until we blossom into adulthood to find our own feet and create our own families. Through our socialisations and interactions with those beyond our family settings, we interface with society, the nation, and then the global village. It is imperative, therefore, that this family institution is protected, supported, and promoted so as to promote human capital development which contributes to the labour force and productivity of a State.

Unfortunately, some family institutions are bedevilled with a number of challenges like parent absenteeism, alcoholism, child neglect, domestic violence, sex and gender based violence, child exploitation and abuse, the scourge of HIV/AIDS, the COVID-19 pandemic and its ramifications especially resulting into death of family members and financial loss, among others. These social ills erode the sanctity, haven, and harmony that ought to be enjoyed in the family resulting into dysfunctional families, a broken society, abused juveniles who end up in conflict with the law, and an unproductive populace. Hence the call for State action to not only save the family, but also protect the fundamental human rights and freedoms of all its members.

Therefore, Uganda's efforts in developing the National Family Policy must be applauded and accentuated for it deepens Uganda's commitment to her obligations to protect the family institution as enshrined in the various legal and policy frameworks. It is a step in the right direction in realizing the Sustainable Development Goals (SDGs) 2030. What remains wanting after the adoption of this policy, is the adequate funding to enable effective implementation of both the Family Policy and the National Action Plan for the Family Policy. so as to achieve resilient and stable families, social transformation, and to *'Leave no One Behind.*⁶⁵

ENDNOTES

- 1 Jonathan Herring, 'Family Law', 6th Edition (Pearson Education Limited: United Kingdom: 2013), at 1.
- 2 Adopted in 1981.
- 3 NODPSO: Objective XXIX stipulates the duties of the citizen which include: (a) to be patriotic to Uganda and promote its well-being; (b) to engage in gainful work for the good of that citizen, the family, and the common good and to contribute to national development; (c) to contribute to the wellbeing of the community were the citizen lives; (d) Promote responsible parenting among others.
- 4 The Constitution of the Republic of Uganda, 1995. National Objectives and Directive Principles of State Policy (NODPSP): Objective XIX.
- 5 Uganda Bureau of Statistics (UBOS): Uganda National Household Survey Report 2019/2020, at 9.
- 6 UBOS: Ibid, at 12.
- 7 UBOS: Ibid, at 2.
- 8 This version of the Draft National Policy 2023 replaces the previous version of Draft National Family Policy 2020/2021-2029/2030 (December 2021).
- 9 See the Assisted Reproductive Technology Bill (December 2021 version). It recognizes that even children got through a process of assisted reproduction are children within the meaning of the Constitution and the Children Act Cap 59 (as Amended).
- 10 Adopted on the 10th December 1962.
- 11 Section 129 of the Penal Code (Amendment) Act No.8 of 2007 provides for the offence of defilement committed when any person performs sexual act with another person who is below 18 years. Such person upon conviction is liable to life imprisonment.
- 12 NODPSP Objective 19.
- 13 International Covenant on Economic Social and Cultural Rights (ICESCR), adopted in 1966: Article 10; International Convention on Civil and Political Rights (ICCPR), adopted in 1966: Article 23; African Charter on Human and Peoples' Rights (ACHPR) adopted in 1981: Article 18.
- 14 The Draft National Family Policy,' at 1.
- 15 Fareda Banda and John Eekelaar, 'International Conceptions of the Family' in International and Comparative Law Quarterly Vol. 66, (2017), at 3.
- 16 Sylvia Tamale, 'Assessing the Context and Content in the Teaching of Family Law in Uganda' in 'The Politics of Putting Asander: The Family and Divorce in Uganda (2017) at 10; *Minister of Home Affairs & Anor v Marie Fourie & Anor*, Constitutional Court of South Africa (2005).); Kenji Itao and Kunihiko Kaneko, 'Evolution of Family systems and resultant social-economic structures', in the Humanities and Social Science Communication (2021), at 9. Available at <https://www.nature.com/articles/s41599-021-00919-2>. (Accessed on 19th-02-2024).

- 17 Uganda Association of Women Lawyers (FIDA-UG) report, 'Gender-responsiveness of the Judiciary in cases concerning Property rights of women in cohabitation relationships', (2023); *Fredman Bigala v Lornah Namuwenge* (Civil Suit No. 98 of 2020) [2023] UGHCCD 93, Justice Ssekana emphasized that, 'stressed that the status of 'concubinage' or 'meretricious cohabitation' afforded neither party any right to recover for services rendered to the other or contributions made for upkeep, unless the party seeking recovery was induced to provide services under a mistaken belief that the couple was validly married or by duress.'
- 18 General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23): 27/07/90. CCPR General Comment No. 19.
- 19 It is unfortunate that the report then does not provide the so called negligible figure to ensure appropriate action is taken to protect the rights of the children in these households. See Lisa Collins, Mathew Ellis, Edward Pritchard et al, 'Child-headed Households in Rakai District-Uganda: A Mixed method study', (2014). Available at https://www.researchgate.net/publication/267754891_Child-headed_households_in_Rakai_District_Uganda_A_mixed-methods_study. (Accessed on 14th-02-2024); The Daily Monitor newspaper, 'Lockdown worsens the Plight of Child-headed families', (July 2020). Available at <https://www.monitor.co.ug/uganda/news/national/lockdown-worsens-plight-of-child-headed-families-1890984>. (Accessed on 10th-02-2024).
- 20 UBOS: National Survey Report 2019/2020, at 4.
- 21 Draft National Family Policy,' at iv.
- 22 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to social protection and social security. (2022): Article 2.
- 23 Oxford Learners Dictionary, defines 'off-spring' as a child of a particular person or couple.
- 24 Zahara Nampewo, 'Reproductive technologies in Uganda: Law and Practice', in Routledge Handbook of Global Health Rights (Routledge:2021: New York) at 86.
- 25 Justice Stephen Mubiru, in *Solomon Ayiko v Lekeru Ayiko*, High Court Divorce Cause No. 0001 of 2015 stated that, 'marriage is viewed today as a shared partnership with important economic and non-economic expectations.'
- 26 Governed by the Marriage Act Cap 251 and the Divorce Act Cap 249.
- 27 Governed by the Customary Marriage (Registration) Act 248 and Marriage and Divorce of Mohammedan Act Cap 252. The right to culture and religion are recognised in Article 37 and Article 29 (2) respectively.
- 28 UBOS: National Household Survey 2019/2020, at 5.
- 29 Draft National Family Policy, at 9.
- 30 Article 7 of Constitution explicitly states that "Uganda shall not adopt a State religion." The supreme court of Uganda has also reiterated the position that, Uganda is a secular state. See Justice Esther Kisakye, *Julius Rwabinumi v Hope Bahimbisomwe* Civil Appeal No. 10 of 2009.
- 31 Article 31(1) of the Constitution provides that "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 to found a family and to equal rights at marriage, during marriage and at its dissolution."

- 32 Article 31 (2a) states that, marriage between persons of the same sex is prohibited. Also see the Anti-Homosexuality Act, 2022; Jamil Ddamulira Mujuzi, 'The Absolute Prohibition of same-sex Marriages in Uganda,' in *International Journal of Law, Policy and the Family* 23, (2009), 277–288.
- 33 UBOS: National Survey Report, 2019/2020.
- 34 Article 31 (1b), the Divorce Act Cap 249 and now the Law Revision (Miscellaneous Amendment) Act 2023 particularly section 18.
- 35 UBOS: Uganda National Household Survey Report, 2019/2020, at 0.
- 36 Justice Musa Sekana in *Bagala Frediman v Lornah Namuwenge*, High Court Civil Suit No. 98 of 2020 reasoned inter alia that, "The status of 'concubinage' or 'meretricious cohabitation' afforded neither party any right to recover for services rendered to the other or contributions made for upkeep, unless the party seeking recovery was induced to provide services under a mistaken belief that the couple was validly married or by duress."; In *Micheal Mulyanti v Batalingaya* (2009) UGHC 99, where the issue was whether one of the plaintiffs was a spouse to the deceased, court held that mere cohabitation did not amount to marriage for marriage is a creation of law and not a question of sentiment; *Musa Kigongo v Olive Kigongo* Civil Suit No. 295 of 2015; *Baryamureeba Steven v Kabakonjo and 6 Others* High Court Civil Suit No. 20 of 2013.
- 37 UBOS: Uganda Demographic Health Survey Report 2011, at 48. Available at <https://dhsprogram.com/pubs/pdf/FR264/FR264.pdf>. (Accessed on 10th August 2023). Hopefully the forthcoming National Census scheduled for 27th August 2023 will provide more updated data in this regard.
- 38 UBOS" Uganda National Survey Report 2019/2020, at 5.
- 39 See paragraph 31 of the General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women of 26th February, 2013
- 40 Jamil Damulira Mujuzi, 'Presumption of Marriage in Uganda', *International Journal of Law, Policy and the Family* (2020) Oxford University Press, at 25; Jamil Ddamulira Mujuzi, 'Distribution of Property at the termination of *de facto* unions (marriage by cohabitation/ repute) in some African countries', *International Journal of Law, Policy and the Family* (Oxford University Press: 2023); CEDAW Committee General Recommendation No.29 (2013) on Article 16 of the CEDAW (Economic consequences of marriage, family relations and their dissolution), Paragraph 30-31 refer to such relationships as 'De facto unions'. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=11
- 41 *Haji Musa Kigongo v Olive Kigongo*, Civil Suit No. 295 of 2015.
- 42 *Baryamureeba James v Kabakonjo Abwoli and 6 Others*, High Court Civil Suit No. 20 of 2013.
- 43 Women's Probono Initiative (WPI), 'Analysis of the Uganda National Family Policy' (2023) at 15.
- 44 Draft National Policy, at 12-13
- 45 Everyone is entitled to active participation in decision-making processes which affect the enjoyment of their rights.
- 46 Duty-bearers are held accountable for failing to fulfil their obligations towards rights-holders. There should be effective remedies in place when human rights breaches occur.

- 47 All individuals are entitled to their rights without discrimination of any kind. All types of discrimination should be prohibited, prevented and eliminated.
- 48 Everyone is entitled to claim and exercise their rights. Individuals and communities need to understand their rights and participate in the development of policies which affect their lives.
- 49 Approaches should be in line with the legal rights set out in domestic and international laws.
- 50 ENNHRI, 'Human Rights-Based Approach'. Available at <https://ennhri.org/about-nhris/human-rights-based-approach/#:~:text=Principles,and%20Equality%2C%20Empowerment%20and%20Legality>. (Accessed on 20th-02-2024).
- 51 Public Interest Law Clinic (PILAC), 'Examining the Challenges faced by the Juvenile Justice Courts in Enhancing Access to Justice for Juvenile Offenders in Uganda' (2020).
- 52 Uganda Police Force, 'The Children Diversion Guidelines for Police Officers,' (2019); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); UN Rules for the Protection of Juveniles Deprived of their Liberty (1990).
- 53 United Nations Development Programme Access to Justice Practice Note New York: United Nations Development Programme, 2004, 3.
- 54 United Nations Development Programme, Access to justice concept New York: United Nations Development Programme Justice System Program, 2011, 31.
- 55 Hague Institute for Innovation and Law (Hiil), 'Justice Needs and Satisfaction in Uganda, 2020' at 34.
- 56 LASPNET, 'Cost Benefit Analysis of the Uganda National Legal Aid Policy, 2016', at 32.
- 57 Hiil Report, 'Justice Needs and Satisfaction in Uganda, 2020,' at 34.
- 58 Legal Aid Service Providers Network (LASPNET) report, 'Access to Justice for the Poor, Marginalised and Vulnerable People in Uganda,' (2015).
- 59 Public Interest Law Clinic (PILAC), 'Examining the Challenges faced by the Juvenile Justice Courts in Enhancing Access to Justice for Juvenile Offenders in Uganda' (2020).
- 60 Public Interest Law Clinic (PILAC) report, (Ibid).
- 61 Kenya Ministry of Labour and Social Protection. Available at <https://www.socialprotection.go.ke/sites/default/files/Downloads/FINAL-Family-policy-Dec-2019.pdf>. (Accessed 20-02-2024).
- 62 Uganda Association of Women Lawyers (FIDA-UG) report, 'Gender-responsiveness of the Judiciary in cases concerning Property rights of women in cohabitation relationships', (2023), see the report for a detailed discussion on cohabitation and property rights and a comparative analysis Kenya, Tanzania, South Africa and the United Kingdom.
- 63 Joe Oloka-Onyango, '*When Courts Do Politics: Public Interest Law and Litigation in East Africa*', (Cambridge Scholars Publishing; 2017); Damalie Naggita-Musoke and Grancia Mugalula, 'When Judicial Activism Leads the Way: Disability Rights Development in Uganda,' *Uganda Law Society Journal, Volume 1*, (2023), at 227.
- 64 UBOS: Uganda National Survey Report 2019/2020, at 9.
- 65 Sustainable Development Goals: Goals 1-17 are all vital for family sustainability, stability and peaceful development. Available at <https://sdgs.un.org/goals>. (Accessed 19-02-24).

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