

Chapter 13

Gender and Access to Justice and Uganda's Criminal Justice System

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ABSTRACT

Using Uganda as a case study, this chapter discusses culture and its contribution to poverty, illiteracy, restricted movement, silence syndrome, and gender biases and stereotypes in the legal and institutional framework as barriers and obstacles to access to justice. The chapter also discusses significant strides in legislation and judicial activism on topics such as specialized courts, domestic violence, community service, marital rape, and the battered woman syndrome among others in a bid to foster access to justice. However, a glaring need to repeal gender-biased laws and carry out continued education and sensitization to raise awareness against gender discrimination is also noted. The chapter seeks to raise awareness of the obstacles and barriers that women and men face along gender lines while navigating the criminal justice system.

INTRODUCTION

Historically, the legal system was fashioned to protect members identifying as male in society. However, in the last couple of decades, it has opened its doors to other genders. A look at current jurisprudence coming from courts indicates increased legislation and jurisprudence on gender and access to justice, such as; the introduction of rape shield laws, protection of LGBTI-Q rights, recognition of men and boys

DOI: 10.4018/978-1-7998-2856-3.ch013

as victims of sexual violence, the introduction of the offense of marital rape, and criminalization of the offense of domestic violence and Female Genital Mutilation. Despite the developments in the law, women and members of the LGBTI-Q are continuously disproportionately affected than persons who identify as male. This experience has led to questions on the relationship between gender and access to justice. The basis of this discussion is the relevance of gender and access to justice and the significance of the mutual link between legal and social justice advanced under two primary schools of thought.

The first school of thought consists of the Rule of Law theorists with foundations in the works of Aristotle, *The Politics* (Aristotle & Everson, 1988). The Rule of Law theorists believe that everyone should be accountable to the law and protected by the law. The aspects of the rule of law have a heavy emphasis on the legal process and procedural justice. However, there is substantial disagreement about whether societies necessarily benefit from all that is invoked under the term “rule of law”.

This skepticism has led to the founding of the second school of thought consisting of substantive justice theorists with their genesis in the works of Plato *The Statesman* (Plato. et al., 1995). These have equated the Rule of Law to a stubborn, stupid person who refuses to allow the slightest deviation from his own rules, even when the situation has changed for the better (Plato. et al., 1995). The substantive legal theorists argue that heavy emphasis on the formal aspects of the rule of law—for example, on procedural justice—may distract the court from the content and consequences of those laws and end up generating significant vices such as: exaggerated legalism and neglect of real-world dimensions of legal conflicts.

Within the framework of these two theories, this chapter discusses how a person's gender affects their case experience or the outcome of a case. In doing so, the chapter situates the gender-focused jurisprudence of access to justice. The chapter focuses on Uganda as a case study. The scholarly knowledge and current data on the connections between gender and access to justice make for an exciting scholarly project and one that promises to introduce a broader research agenda on the subject. The paper is divided into five sections. The first section lays a theoretical framework on which the chapter is based by highlighting the work of the Rule of Law theorists and that of the substantive legal theorists. The second section discusses “gender” and “access to justice” and reviews the existing literature on gender and access to justice. The third section discusses gender as a human rights issue using the human rights framework of both international, regional and national legal and policy work. The fourth section discusses the Ugandan jurisprudence of gender and access to justice, analyzing how courts have looked past the letter of the law to interrogate direct and indirect gender discrimination embedded in the law. The fifth section concludes the chapter by urging the courts to continue increasing positive jurisprudence with recommendations on gender-related issues and possibilities for further research.

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