

POLICY BRIEF ON THE EQUAL OPPORTUNITIES ACT 2007 & THE EQUAL OPPORTUNITIES POLICY 2006



Ministry of Foreign Affairs of the
Netherlands



diakonia

PEOPLE CHANGING THE WORLD



VISION:

A just society where gender equality is a reality.

MISSION:

To empower women and influence legislation and policy for gender equality in Uganda.

CORE VALUES:

- Integrity
- Commitment
- Learning
- Volunteerism
- Respect
- Teamwork

Core purpose:

Advocacy for gender equality and equity

This project is funded by the Government of the Kingdom of Netherlands; in partnership with Diakonia.

This publication has been produced with financial assistance from the Government of the Kingdom of Netherlands and Diakonia Sweden. The contents of this publication are the sole responsibility of Action for Development (ACFODE).

Contact:

Action For Development
P.O.Box 16729, Kampala
Tel: +256 414 531812
www.acfode.org
acfode.blogspot.com

Responsible for publication

Executive Director: Regina Bafaki

Authors:

© Action For Development 2013

All rights reserved. Reproduction of all or selected portions of this policy brief for educational or other non-commercial purposes is authorised without prior written permission from the copyright holder provided the source is fully acknowledged and any alterations to its integrity are indicated.

Reproduction of the policy brief for sale or other commercial purposes is prohibited without prior written consent of the copyright holder.

The contents of this publication can under no circumstances be regarded as reflecting the position of the Netherlands Government – Ministry of Foreign Affairs and Diakonia Sweden.

POLICY BRIEF ON THE EQUAL OPPORTUNITIES ACT 2007 & THE EQUAL OPPORTUNITIES POLICY 2006

Design Layout and Print by:

Hatch Concepts

Email: info.hatch@gmail.com

Foreword

A civil society group in Cambodia quipped, "It is not gender which is destroying our culture.... it is our interpretations of culture which has destroyed gender equality." As a member of the global civil society movement, Action For Development (ACFODE) is an avid supporter of this phrase, and ardently advocates for gender equality in Uganda.

Despite the fact that gender equality is catered for in the constitution of Uganda under articles 21, 32(1), and 33, there still remains a sharp contrast between the socio-economic status of men and women. The unfortunate arrangement of society is compounded by the inadequate implementation of the laws by duty bearers.

With the realization of the situation at hand, ACFODE has recognized the urgent need to bring the laws closer to the stakeholders through a simplification process that seeks to ease understanding as well as promote effective implementation of the regulations by relevant stakeholders in order to promote the advancement of a gender sensitive society.

This policy brief is therefore a result of a desk review of relevant documents from various stakeholders including; the Equal Opportunities Commission (EOC), the Ministry of Gender, Labour and Social Development (MGLSD), civil society organizations and development partners.

It offers an exhaustive analysis of the EOC Policy, and highlights the existent gaps there in, which if addressed by the relevant bodies, shall greatly improve the effectiveness of the EOC in achieving its goal of eliminating discrimination and inequalities against any individual.

ACFODE is thankful for the generous support of the Netherlands Government and Diakonia - Sida, who have significantly contributed to the publishing of this policy brief.

I hope that you shall find this policy brief a resourceful tool in addressing inequalities and discrimination in society.

Regina Bafaki
Executive Director

Acronyms

ACFODE:	Action for Development
CEDAW:	Convention on Elimination of all forms of Discrimination against Women
CRC:	Convention of the Rights of Child
DEVAW:	Declaration on Elimination of Violence Against Women
EOC:	Equal Opportunities Commission
EOP:	Equal Opportunities Policy
GBV:	Gender Based Violence
HSSIP:	Health Sector Strategy and Investment Plan
ICPD:	International Conference on Population and Development
ICGLR:	International Conference on Great Lakes Region
UBOS:	Uganda Bureau of Statistics
UDHS:	Uganda Demographic and Health Survey
UN:	United Nations
SDIP:	Sector Development Investment Plan

Table of content

Foreword	1
Acronyms	2
1.0 Background	4
2.0 The current state regarding equal opportunities and enforcing gender equality	5
3.0 The Equal Opportunities Commission Act and the limitations there under;	6
4.0 ACFODE Recommendations;	9
5.0 ACFODE recommendations on the Equal Opportunities Policy and its limitations.	11
6.0 Equal opportunities policy and the Need to address the gender-based violence effects by the policy planners	13
6.1 ACFODEs call for combative redress to gender equality	14
7.0 Conclusion	16

1.0 Background

Marginalization and Discrimination are some of the challenges that Uganda has been grappling with since time immemorial. Many Ugandans have found themselves over the years as marginalized groups excluded from the benefits of development and are particularly vulnerable, to exploitation and livelihood risks or shocks .¹

Issues of equal opportunities have continued to arise in all spheres of Uganda. These have taken the form of regional imbalances, work distribution and regional developments. Others have come as a result of political divisions and cultural or religious intolerance.

The causes of this inequality and the said marginalization which the EOC has been mandated to address are enormous. Many of these range from historical perceptions, gender, cultural and religious concerns among groups.

Marginalization has been defined as a situation of being left at the periphery and margin of opportunities, resources, services, as well as inability to position particular issues and situations on the agenda of decision and policy making .² Discrimination denotes any act, omission, policy, law, rule, practice distinction, condition, situation, exclusion or preference which, directly or indirectly, has the effect of nullifying or impairing equal opportunities or marginalizing a section of society or resulting in unequal treatment of persons in employment or in the enjoyment of rights and freedoms on the basis of sex, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability.

1 The National action plan for the national equal opportunities policy 2009-2013

2 Ibid

2.0 The current state regarding equal opportunities and enforcing gender equality

The situation described above prompted for the enactment of such laws and policies to redress the marginalization and discrimination. Such laws included the 1995 Constitution of Uganda, the Equal Opportunities Commission Act, 2007, and policies such as the National Equal Opportunities Policy 2006 and the National Action Plan for the National Equal Opportunities Policy 2009-2013.

The Government of Uganda is empowered by the Uganda Constitution of 1995 as amended to realise gender equality and equal access of all people to opportunities in the political, economic and social sectors of society. The Constitution of Uganda reflects this as a matter of objectives of State policy and directive. Objectives, XI, XV and XVI of the Constitution enjoin the recognition of, the highest priority in the enactment of legislation establishing measures that protect and enhance the rights of the people to equal opportunities in development, the “role of women in society” and the rights of persons with disabilities to respect and human dignity” respectively.

According to Article 32 of the Constitution, certain groups of the society are marginalised and discriminated against on the basis of gender, age, disability or other reasons created by history, tradition, custom, or any other attribute. Thus provided for the establishment of the Equal Opportunities Commission under Article 32(3.)

With the above disposition, ACFODE recommends that the EOC swings into action on enforcing gender equality as provided for by different legislations and Constitutional Articles. Much more importantly the Commission should be progressive in applying international customary law where Uganda law is not supportive or lacking.

3.0 The Equal Opportunities Commission Act and The Limitations Therein;

According to the long title of the Act, the act is meant to among others, give effect to the state's Constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, creed, or religion, health status, social or economic standing, or disability and take affirmative action in favour of groups marginalised on that basis.

Despite these achievements, the Commission faces a number of challenges in ensuring that gender equality and equity is achieved in Uganda. The Commission faces a situation characterized by resource inadequacies in implementation of its mandate, report findings, monitoring and evaluation of laws. With an inadequate staff, an outreach program to engage in public awareness and learning cannot be implemented.

Section 3 of the EOC Act, provides for the independence of the Commission and its being non subjective to the control of any person or authority. This however has continued to be a myth because from 2007, when the Commission was to be operational, the government has denied the Commission a separate vote regarding its resources. The Commission is under the control of the Ministry of Gender Labour and Social development in clear contravention of the law. The Commission gets its wage and non-wage subvention from the Ministry, making its operations hard and almost impossible to implement.

The mode of appointment of Members of the Commission stipulated for under section 5(2) is wanting. The Members of the public should participate in the appointment as this will make the members directly answerable and accountable to the public thus resulting in organisational accountability, commitment, efficiency and effectiveness.

Section 14 of the EOC Act mandates the Commission to audit, monitor, and evaluate policies, plans, programs, activities, practices, traditions, cultures to ensure that they are compliant with equal opportunities. The section does not

bring out how gender equality plays an important role in all the stated areas. This leaves gender equality issues in the hands of the Members or staff of the Commission thus subject to individual or personal influence in the interpretation.

Section 15(6) (d) (i) & (ii) of the Act stipulates that the Commission shall not investigate any matter involving behaviour which is considered to be; Immoral and socially harmful, or un acceptable by the majority of the cultural and social communities in Uganda. The possible challenge in this section is that issues such as wife beating, domestic violence, female genital mutilation, spousal sexual consent or 'marriage rape' and sexual violence would pass this test as acceptable by the majority of the social and cultural institutions given the chauvinistic nature of Uganda's society. In addition, the EOC Act, has become a centre of challenge including a constitutional petition³ under S. 15 and 16 as observed in the case of; Adrian Jjuko V Attorney General Constitutional Petition no 1 of 2009. This case challenged Section 15(6)(d) of the EOC, which blocks the Equal Opportunities Commission from investigating matters involving behaviour that is regarded as 'immoral or socially unacceptable' by the majority of cultural groupings in Uganda.

This simply defeats the whole purpose of the commission which is to 'eliminate discrimination and inequalities against any individual ...and take affirmative action in favour of groups marginalized on the basis of sex, gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them'.

The case was filed on 5th January 2009 in the Constitutional Court of Uganda. Section 15(6) (d) was argued as being inconsistent with Article 20(1) of the Constitution of the Republic of Uganda 1995 which recognizes the inherent nature of human rights, Article 21(1) which guarantees equality of all persons before and under the law, Article 21(2) which prohibits discrimination that negates equal protection of the law, Article 28(1) which guarantees the right to a fair hearing before an impartial tribunal and Article 36 which protects the rights of minorities. The case was heard on 3rd October 2012 by a panel of judges led by Justice Amos Twinomujuni and the verdict is yet to be pronounced

3 Adrian Jjuko V. Attorney General Constitutional Petition no 1 of 2009

Section 17 of the EOC Act provides for the Commission as a self-accounting body which shall deal directly with the Ministry in-charge of finance. Two years after its establishment, this has not materialised as the Commission instead deals with the Ministry of Gender Labour & Social Development. This inability to independently deal with the Ministry of Finance has compromised the enforcement of gender equality provisions and guidelines as circulated through budget calls.

The existing labour legislations such as, Employment Act 2006, provides conditions for the employment of categories of persons, in particular, women and children. However, the EOC Act contains no specific provisions relating to equal opportunities in the labour market to promote equality of opportunities for women in the private sector. Section 39 of the Employment Act 2006 provides for maternity leave, sick leave and paternity leave. However, the EOC Act does not provide a clear framework on how the Commission may respond to the denial of such fundamental rights.

In addition, the women workers in agricultural sector, who form over 80% of labour, benefit less if any from their hard labour. This form of women enslavement is not taken care of by way of Compensation in any policy or legal framework. Whereas the EOC Act deals with redressing imbalances caused by history, culture or any other attribute, it does not take care of lost labour or reparations as a result of unpaid slave labour that women undergo at household level.

The EOC Act, as it may be noted, addresses certain matters that are of concern; however, it also has certain shortcomings that are not addressed yet they are very pertinent. The concerns can be identified as the following:

- (i) Enforcement of "equality of opportunity" in private sector as to eliminate discrimination in employment. Most expectant mothers are denied jobs due to pregnancy.
- (ii) Protection of rights of female migrant workers, refugees and their families.
- (iii) Enforcement of equal pay (remuneration) for men and women for work of equal value.

4.0 Recommendations on the Equal Opportunities Act;

Equal opportunities are realistically never given on the silver platter. The state through the EOC is mandated to put in place such actions/ plans to stabilise the equilibrium. As the primary actor, the EOC must undertake a reformative proactive approach to ensure equality and equity in Uganda. Specifically the EOC should ensure that all sectors are compliant with its mission and vision.

- The EOC should undertake a voluntary approach to information self disclosure. While the law is silent on releasing information within the confines of the Commission, there is need to inform the general public on the workings and findings of the Commission from its various interventions and success stories. This comes from the fact that at the backdrop that as a newly established institution, few Ugandans are aware of its workings and may approach it for service. Thus the EOC should conduct public hearings regionally and engage exchange and dissemination drives to bridge the public knowledge gaps that exist.
- The Commission should seek to amend the EOC Act especially section 15 to avoid limitation sections which may be used to curtail the interests of other stakeholders.
- Review of the EOC Act should ensure integration of the mandate to vet gender insensitive bills and legislations.
- Government should immediately consider the granting of an independent vote to the Commission so as to enable and not disable it function independently.
- Section 2 of the EOC Act on appointment of Members of the Commission should be amended so as to open the vetting of Members by the Public and Civil society. This will ensure quality service and citizen/voice accountability.
- The EOC Act should be amended to ensure that all agencies, government parastatals, authorities, organs of the state, private enterprises, civil societies, cultural and faith-based institutions submit regular annual reports/returns on gender equality to the Commission. This will move gender equality to a higher and more meaningful level.

- The Commission should be proactive in its approach regarding gender equity and equality. A specialised directorate on gender equality should be established at the Commission. This is so far lacking in the Law. The provisions on staffing are general. There is a likelihood of missing out on key resource persons at the Commission to address issues of gender.
- The Commission should operationalize the tribunal and handle gender discriminatory practices and issues. Without this tribunal, gender equality and equity enforcement will remain elusive hence a disservice to Women and men of this Country. The tribunal should employ a gender equality legal clerk to advise and handle gender specific issues within the set up of the Commission.
- Minister of Gender should ensure that annual reports of the EOC are regularly laid before Parliament as stipulated by S. 22 of the EOC Act and debated for better service delivery by the EOC and its recommendations implemented.
- The regulations envisaged under S. 32 of the EOC Act should be put in place to give effect to the full operationalization of the Act and the full working force of the EOC.
- The EOC should publish all its work and disseminate it to reduce information gaps. Decisions especially on compliance for better best practices.
- In order to increase on service delivery, the EOC should establish regional offices to enhance its outreach capacity.
- The Commission should also establish toll free help/hotlines for the public to access the Commission services and send complaints.
- An interactive website should be established to assist its clients to submit complaints electronically.

5.0 ACFODE recommendations on the Equal Opportunities Policy and its limitations.

The National Equal Opportunities Policy aims at promoting equality of opportunities for all persons in Uganda, irrespective of gender, age, physical ability, health status or geographical location, in all activities, programmes, plans and policies of Government, private sector and Non Governmental Organizations in all spheres of social, economic, political and civil life.

This policy is intended to guide and direct planning processes, resource allocation and implementation of activities. This policy came into effect in 2006. The review period as outlined is supposed to be after five years of its implementation.

- It should therefore be noted that the policy is long overdue for review. This should be brought to the attention of the government and specifically to the Ministry of Gender, Labour & Social Development since the Commission does not have policy making or review powers. The statistical information and analysis therein, is of 2006 Uganda Demographic House Hold Surveys (UDHS) as per Uganda Bureau of Statistics (UBOS). Currently there are new statistics and indicators of house hold poverty of 2011/12 (UDHS). The situation has therefore changed thus there is need for policy review.
- A policy is defined as a 'plan of action or a statement of aims and ideals made by a government'.⁴ Therefore, the Equal Opportunities Policy should ideally articulate a plan of action and framework for which the law will provide the legal principles, penalties, sanctions, incentives and enforcement machinery. The word 'law' in its generic sense is a body of rules of action or conduct prescribed by a controlling authority, and having the binding legal force.
- Parliament is mandated to make laws for the purpose of giving full effect to affirmative action in favour of marginalized groups (Art. 32). These laws are preceded by a policy, which policy should articulate a plan of action for the implementation of the policy. Funding of the Equal Opportunities policy action plan should go hand in hand with the funding of the Commission. This is not the case as the policy is not funded.

4 Oxford Advanced Learner's Dictionary p.893

- The situation analysis does not cover all the marginalized groups articulated in articles 21 and 32 of the Constitution. The Constitution provides that marginalized groups include those discriminated against on the basis of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability, gender, age, disability or any other reason created by history, tradition or custom. The situation analysis does not cover race, colour, ethnic origin, tribe, birth, creed or religion, political opinion, age (elderly, youth, children), or make reference to the Persons with Disability Policy.
- The situation analysis quotes facts and figures of 2006 UDHS. This has since expired since there is recent data/ statistics on UDHS of 2011/12 from UBOS. There is need to update the information.
- Reference should also be made to the National Planning Authority Act, wherein the EOC is affiliated as ex-officio Board Member.

6.0 Equal opportunities policy and the Need to address the gender-based violence effects by the policy planners

The UN Declaration on Elimination of Violence against Women (1993) defines violence against women as “any act of gender based violence which results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or are arbitrarily deprivation of liberty, whether occurring in public or private life.” Since Gender Based Violence almost always has greater negative impact on women and girls, it is often used interchangeably with the term Violence against Women. However, men also can be victims of GBV. Over time gender based violence has become an umbrella term for any harm that is perpetuated against a person’s will that results from power inequalities that are based on gender roles.

- The EOC Act and the policy should quantify the GBV costs to the economy and lay it bear on how much the economy loses in terms of GBV.

GBV refers to physical, sexual, economic or psychological violations which are subjected to individuals and/or a group of persons based on social expectations of men and women. The following forms of gender based violence should be incorporated in the Equal Opportunities Policy and the EOC Act since there is no mention of the vice in the two policy-legal documents;

- Physical violence which includes; battering and beating.
- Sexual violence which includes; rape, marital rape, child sexual abuse, defilement and incest, sexual assaults, sexual harassment, forced prostitution and trafficking in women.
- Harmful traditional practices such as Female Genital Mutilation, early and forced marriages and dowry related violence.
- Economic violence such as denial of assets and economic livelihoods.
- Emotional and psychological violence such as verbal abuse, humiliation, confinement and as a result of the above forms of GBV.

Gender based violence reinforces inequalities between men and women, girls and boys and compromises the health dignity and security of those affected. GBV occurs in the households and families (domestic violence), in the community, at work places, in schools and institutions as well as situations

of armed conflicts. It has physical, sexual and mental health consequences to those affected. It also has wide implications on the economic and social wellbeing of families and communities. Incidences of GBV in the country are mainly rooted in roles of men and women ascribed by society, male dominance and female subordination leading to unequal power relations in families and the community.

6.1 ACFODE's call for combative redress to gender inequality

As the Supreme law of the Country, the Constitution of the Republic of Uganda provides a strong legal foundation for the formulation of the Elimination of GBV Policy for Uganda. Objective XIV of the Constitution of the Republic of Uganda mandates the State to fulfil the fundamental rights of all Ugandans to social justice and economic development and in particular to ensure that all development efforts are directed at guaranteeing maximum social and cultural well being of the people.

The Equal opportunities policy is also in tandem with the National Development Plan (NDP) 2010/11-2014/15 which has mainstreamed gender equality as basis for development.

- The Policy gives legitimacy to other commitments such as the National Action Plan on Women (2007), the Uganda Action Plan on UN Security Council Resolutions 1325 & 1820, Justice, Law and Order, Sector Development Investment Plan, SDIP II, and Health Sector Strategy and Investment Plan (HSSIP).

This Policy takes cognizance of the international and regional instruments that address GBV which Uganda is a signatory to. These include; Convention on Elimination of all forms of Discrimination against Women (CEDAW), International Conference on Population and Development (ICPD, 1994), Convention of the Rights of Child (CRC), The Beijing Platform for Action (1995) and The Declaration on Elimination of Violence Against Women (DEVAW, 1993). Others are; UN Security Council Resolution 1325 on Women, Peace and Security, UN SCR 1820 on Sexual Violence in situations of armed conflict and the International Conference on Great Lakes Region Protocol (ICGLR, 2006) aims to provide protection for women and children against the impunity of sexual violence in the Great Lakes region.

In post conflict communities such as Northern Uganda, GBV is prevalent. Ministry of Health Report, 2007 revealed that GBV occurs within households

and mainly perpetrated by intimate partners; in families by relatives and in the community where it was perpetrated by armed combatants', gatekeepers and those in authority. The report highlights the most prevalent forms of GBV as wife battering (30%), defilement (25%), rape (20%), marital rape (13%) and sexual exploitation (12%).

- There is therefore the need for policy joint programming between all the stakeholders in as far as it relates to voice and accountability for the victims of gender-based violence. Women voices and decisions are supposed to be respected regarding their rights to choice. The EOC Act and the EOP should address this challenge.
- Physical violence incidences according to UDHS 2011 have slightly decreased among women aged 15-49 years from 34% in 2006 to 27% in 2011, while 16% of pregnant women who are experiencing violence have remained the same. The women in rural areas with no education/ low level of education are more likely to experience physical violence, in comparison to women in the same age group living in urban areas.

Similarly, sexual violence has significantly decreased from 39% (2006) to 28% (2011). However, the trend among men aged 15-49 is different, with cases of physical violence having increased from 20% in 2006 to 22% in 2011 but sexual assault decreased from 11% (2006) to 9% (2011). It is also critical to note, that the majority of the GBV survivors are children. 55 % of female survivors of sexual violence had the first sexual abuse before 19 years old (UDHS 2006) The above scenario is aggravated by challenges related to unequal access to justice. The Uganda Annual Crime Report 2010 indicated that, the investigated SGBV cases by police included 7,564 defilement cases of which only 3,401 were taken to court; 709 rape cases of which only 252 were taken to court; 372 indecent assault cases of which none was taken to court and 4781 child related cases of which 452 cases were taken to court.

7.0 Conclusion

Issues of equal opportunities arise at different levels, starting from the family, community, institutions and the state. They occur in the private sector and across all persons and agencies. The manifestation of gender inequality include; disempowerment, gender-based violence and social-economic losses and breakdown. It is therefore opportune that the Commission oversees enforcement of realization of opportunities and affirmative action at all levels with special focus on structural challenges. The Commission should ensure that gender equality is realized tangibly.

APPENDIX 1: REFERENCES

- MGLSD (2006) The National Equal Opportunities Policy. Ministry of Gender Labour and social Development, Kampala Uganda.
- MGLSD (2007) The national Action Plan on Women (2007). Ministry of Gender, Labour and Social Development, Kampala Uganda.
- MGLSD (2008) Evaluation of Gender Outcomes in the PEAP 1997 – 2008. Ministry of Gender, Labour and Social Development, Kampala Uganda.
- MGLSD (2009) The Nation Action Plan for Equal Opportunities Policy 2009 – 2013. Ministry of Gender Labour and Social Development, Kampala Uganda.
- MGLSD (2010) Survey Report on Equity and Equal Opportunities capacity Gaps Vulnerable Groups in Northern Uganda.

Republic of Uganda (2007): the Equal Opportunities Commission Act, 2007. Government of the Republic of Uganda.

SPSS - PC+Statistics (2007): Statistical Analysis (Version 13.0) {Computer Software} Chicago: SPSS, Inc.

The Constitution of the Republic of Uganda (1995, As Amended).

UBOS (2002): Uganda Population and Housing Census Report. Uganda Bureau of Statistics. Kampala Uganda

UDHS 2011: Uganda Demographic and Health Survey. Uganda Bureau of Statistics. Kampala Uganda.

Wandiembe, S.P (2009): Sample Survey Theory Introduction. Department of Statistical methods, Makerere University, Kampala.

Mujuni Benard. M. 2010, Uganda has Laws on Discrimination, New Vision, Kampala – Uganda www.newvision.co.ug



For more information contact,
The Executive Director
Action For Development
ACFODE House, Plot 623/624, Bukoto
P.O.Box 16729, Kampala - Uganda
Telephone: +256 414 531812
Email: acfode@gmail.com
info_acfode@acfode.org
URL: www.acfode.org