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Engendering Employment Relationships:

Intergrating a Gender Perpective into the Ugandan Employment Law

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ABSTRACT

The employment law in Uganda focuses on individual employment relationships and connected matters. Although the Employment Act provides for the promotion of equality, the law is not designed to address the institutional and systemic barriers to gender equality. The Act does not incorporate a gender equality perspective in the various provisions. Legal principles that promote gender equality in the Employment Act co-exist with seemingly 'neutral' standards that reinforce gender inequality. The legal rules in the Act are based on the traditional 'ideal worker' with limited or no family responsibilities. The new goal of promoting equality between men and women enshrined in the Employment Act has an impact on the set up of traditional employment relations. Therefore, designing legal standards that accommodate both men and women is essential. This essay is structured around two feminist and gender perspectives guided by two questions: 'What is the role of the Employment Act in describing society and how can we integrate gender in the framework of the employment law to promote gender equality? The first gender perspective involves identifying the experiences of men and women in relation to the law and examining whether legal provisions favour one sex and disadvantage the other. The second perspective recommends modifying employment standards to incorporate a feminist and gender perspective to ensure that worker's rights of men and women employees are covered by the law. This includes reviewing the working time to accommodate workers with family and care responsibilities and legal recognition of indirect discrimination and increasing the involvement of the state and employers in promoting gender equality in employment.

Key Words: Gender, Feminist Legal Theory, Employment Law and Gender Equality

I. INTRODUCTION

The purpose of employment law in Uganda is to regulate individual employment relationships.[1] The standard employment legal rules do not distinguish between women and men. The assumption of non-distinction is derived from the principle of equality. In 1995, the Uganda Constitution provided for the right to equality between men and women. Chapter Four of the Constitution prohibits discrimination on the basis of sex, provides for the rights of women to have equal rights and dignity with men and prohibits laws, customs and practices which undermine the status of women. Article 40 provides for rights of workers and mandates parliament to enact laws to accord workers rest and reasonable working hours, equal payment for equal work without discrimination. The equality principle in the Constitution flows into the 2006 Employment Act.

The legislation contains provisions on non-discrimination, maternity and paternity leave, equal pay for work of equal value, sexual harassment, resting days, working hours, disciplinary processes and wages. Even with a goal of promoting equality, the structural design of the law remains intact. The basic premise of the discussion in this essay is that the employment law is neither neutral nor impartial. The goal in this essay is to understand what sort of ideas and norms underlie employment relationships regulation in Uganda, how these norms are embedded in masculine values and how they impede the promotion of gender equality. The essay applies a feminist analysis and gender perspectives to the employment law in Uganda with an eye towards effectuating law reform.

Brief History of Employment Law Relating to Women Workers' Rights

The history of women and employment law in Uganda is interwoven with the history of British colonialism and early International Labour Organizations documents and is part of the broader labour laws. During the colonial period, employment law was based on statute and common law. Legislation enacted during colonialism did not focus on worker's rights although later a number of laws, such as the Employment of Women Ordinance No.32/1931 and No.11 of 1938, were enacted in line with obligations under the International Labour Organization.[2] The origin of the organized employment law in Uganda was the Employment of Children Ordinance (No.18/1938) and the Employment of Women (N0.32/1931 and No. 11/1938), and later the

[1] The purpose is derived from the long title to the Employment Act, 2006.

[2] Jean-John Barya, *Workers and the Law in Uganda* (Kampala: CBR Publications,1991), 51.

Employment Decree No. 4/ 1975. The law on Employment shortly after independence, the Employment Act Cap 192, the Employment Decree No.4/1975 and later the Employment Act Cap 219 mirrored colonial laws on employment and international labour law standards especially in relation to working hours.[3] Part V of the Employment Act Cap 219 contained provisions on employment of women. Although substantive worker's rights were provided for under the earlier legislations, the state continued to neglect sex discrimination issues throughout the years before the enactment of the 1995 Constitution.[4]

Women's rights were peripheral to worker's rights provided for under the labour laws. The laws that regulated women's employment in Uganda were restrictive and protective in nature. For instance, the Employment of Women Ordinance restricted women's movement and employment of women in underground work.[5] The employment relationship in labour laws was built on and assumed a gender division of labour in which men were expected to work within the public sphere of employment as bread-winners while women were care givers who performed unpaid domestic labor to sustain the family. These norms are consistent with the ideological boundaries between public sphere and private sphere for men and women respectively.[6] Colonial labour laws in Uganda were therefore based on gender-based expectations.

The Employment Act Cap 219 attempted to give protection to women. It provided that no woman may be employed in underground work except if she was the manager and did not perform manual work, if she was employed in health or welfare services, was undergoing training or was working for an undertaking where only members of the same family were employed. The protective norms, which purportedly "favoured" women workers, were challenged by some women workers and unionists as limiting women's job opportunity because

[3] ILO Hours of Work (Industry) Convention, 1919 (No.1).

[4] For example, the 1967 Constitution of Uganda, the Employment Decree No. 4 of 1975and the Employment Act Cap 219 lacked provisions relating to sex discrimination.

[5]George Muwanguzi, *Law and the Working Conditions of Female Workers: The Uganda Case (*Makerere: University LLB Dissertation,1992).

[6] Employment law provisions on rights of employees were borrowed from early International Labour Law Conventions. These norms were based on a division for household labour and caring responsibilities in which women did this work on an unpaid basis. Judy J. Fudge, "Working-Time Regimes, Flexibility, and Work-Life Balance: Gender Equality and Families" in *Demystifying the Family/Work Conflict: Challenges and Possibilities*, ed C. Krull and J. Sempruch (Vancouver: University of British Columbia Press, 2011), 172.; Heidi Gottfried "Why Worker's Rights Are Not Women's Rights," *Law Journal* 4: (2015):140.

their effects may be discriminatory.[7] These provisions remained in the Employment Act until the amendment of the employment laws in 2006. There were also provisions on maternity leave. An employer was required to give female employee one month paid or two months unpaid leave if necessary.[8] Even with the enactment of the 1995 Constitution with clear provisions prohibiting sex discrimination, labour laws remained silent on discrimination based on sex.

In 2006, a new Employment Act was enacted repealing and consolidating laws related to employment. The Employment Act, 2006 introduced new provisions on sex discrimination, increased maternity leave days, paternity leave, equal pay for work of equal value for men and women, and sexual harassment.[9] However, the legal provisions in the earlier employment law were retained in the law with a few amendments. The legal standards for women's employment in Uganda have transformed from exclusion and protection to non-discrimination and gender equality. While the employment law in Uganda is seemingly gender neutral and contains provisions on equality in the workplace, the law does not confront institutional and systemic barriers to gender equality: the employment law does not contain provisions on indirect discrimination, it assumes equality in all employment relations and requires workers to adopt normative masculine behavior that constrains gender equality.

II. FEMINIST LEGAL THEORY AND GENDERED ANALYSIS OF LAW

The analysis of employment law in this essay is undertaken within the framework of feminist and gender conceptualisation of law. In describing the complex relationship between employment law and society, it is gender, the social construction of woman and men, as opposed to biological sex which is the focus for this feminist and gender analysis.[10] Feminist conceptualization of law views the world as "shaped and controlled by men who for this reason possess larger shares of power and privilege".[11] The common goal for feminist legal theorists

[7] Barya, op. cit., p. 59.

[8] Sections 47 and 48 of the Employment Act Cap 219.

[9] Section 6 of the Employment Act.

[10] Raewyn Connell W., *Gender* (Cambridge: Polity Press, 2009), 10.

[11] Nancy Levit and Robert Verchick, *Feminist Legal Theory: A Primer* (New York: NYU Press, 2006),15.

is political, social and economic equality of men and women.[12] Law is not neutral, law is gendered and gendering. Law is gendering because gendered dynamics of power are (at least in part) produced by law.[13] According to Joanne Conaghan, it is better to view law as gendered as opposed to male because speculating that law is male clearly, relies upon a fixed and unitary conception of masculinity in terms of a core set of features which serve as an appropriate indicator of maleness.[14] Legal systems that exist in a patriachal society and are premised on a liberal male subject and his experience are sites of gendered legal struggle.[15] Butler's performance theory has influenced the notion of viewing law as gendering. Butler articulation of gender as constituted through stylized repetitive acts over time which men and women come to believe and to perform based on the beliefs has impacted the feminist legal scholarship on the relationship between gender and law.[16] Law emerges as a site in which such performances routinely take place. Law enables certain acts to become valid and acceptable in society. Butler's analysis of gender provides an understanding of women' s oppression as produced, reproduced and maintained through individual repetitive acts, social contexts and law.[17] The performance theory is essential for feminist legal scholars considering how gender inequality is produced, reproduced, maintained and challenged in law.

Feminists concerned about law often analyse issues in terms law's relationship to patriachicy. Mackinnon, Smart and Eisteen have theorised on law's patriachy and they all view law as gendered. [18] Masculine thoughts and assumptions have determined much of the content and shape of law. Law therefore becomes one of the sites used to produce, reproduce and maintain male hegemony. Herderson Lynne gives a review of the three scholars' feminist conceptulaisation of law. For Catherine MacKinnon, patriarchy's engendering of law is rooted in power, specifically male sexual power. The state legitimates and incorparate male

[12] Levit and Verchick, *Feminist Legal Theory*, 15.

[13] Joanne Conaghan, *Law and Gender* (Oxford University Press, 2013), 103.

[14] Ibid., 76.

[15] Emily Snyder, "Indigenous Feminist Legal Theory," *Canada Journal of Women and the Law* 26: (2014), 369.

[16] Judith Butler, "Performative Act and Gender Constitution: An Essay in Phenomenology and Feminist Theory", *Theatre Journal* 40: (1988), 481.

[17]Ibid., 523.

[18] Lynne Henderson "Law's Patriarchy", *Scholarly Works*, Paper 876: (1991). In this article she reviews the following books: Eisenstein, R Zilla, *The Female Body and the Law* (Berkeley: University of California Press, 1988); Catherine MacKinnon A, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press,1989); Carol Smart, *Feminism and the Power of Law*, (London: Routledge,1989).

dominance and male point of view in and as law. To Carol Smart, law is a site of patriachal power. From the feminist perspectives, even where the law appears gender neutral, it masks masculine standards and perceptions.[19]

One of the feminist legal methods used is "unmasking patriachy" through a series of questions designed to uncover male biases hidden beneath supposedly neutral laws. This technique helps to identify the gender based consequences that law creates.[20] Katherine Bartlett recommends asking the 'woman question'. This entails examining how the law fails to take into account the experiences and values that seem more typical of women and how the rules implicitly privilege one sex and disadvantage the other. She observes that the purpose of the woman question is to expose the masculine features of law, how they operate and how they can be corrected.[21] Based on this method, this essay will resolve the following issues: whether the employment law considers experiences of women and men? whether the legal rules implicitly favour one sex? Whether the law promotes gender stereotypes? and how the law can be modified to correct the gender bias?

One of the goals of this essay is to discuss how employment law in Uganda can be modified to incorporate feminist perspectives. All feminist legal scholars agree on the goal of equality and ending women's subordination. If law plays a role in maintaining patriachy, then, one of the reconstruction of social relations becomes a matter of changing law's efforts in the surbodination of women. Feminists have used various approaches in advocating for gender equality within the law that inform recommendations in this essay.

One of the approaches is the gender sameness/equal treatment theory. Feminist scholarship has long advocated equal treatment of men and women. The equal treatment principle is that the law should not treat a woman different from a similarly situated man.[22] In its earliest form, feminist legal theory was embedded in the equal treatment theory. For example, in the United States of America, feminists in the 1970s and 80s sought to break down barriers denying women equal opportunity in areas such as employment, politics and education.[23] The equal treatment

[19] Ibid.

[20] Levit and Verchick, *Feminist Legal Theory,* 45.

[21] Bartlett T. Katherine, "Feminist Legal Methods," *Harvard Law Review* 103, no. 4, (1990): 837

[22] Levit and Verchick, *Feminist Legal Theory,* 17.

[23] Cynthia Becker et. al., *Feminist Jurisprudence: Taking Women Seriously* (Eagan Minnesota: West Publishing Co., 1994), 50.

theory has been critiqued for accepting male experience as the norm thus conceiving the universal subject of law as masculine. Women must therefore assimilate to male norms to enjoy protection under the law. Women can attain equality only to the extent that they are like men.[24]

The limitations of the equal treatment theory led some feminists to start emphasizing differences between men and women. This feminist legal theory is often refered to as the gender difference theory/special treatment theory. The special treament theory emphasizes designing strategies that take into account gender differences related to child bearing or cultural differences reflected in social relationships.[25] For example, feminist special treatment theorists have sought efforts to include maternity leave provisions in employment laws.

Feminists like Mackinnon and Fudge have critiqued both the the equal treament and special treatment approaches. For MacKinnon, the gender difference approach "supports legal measures on behalf of women as abstract persons with abstract rights without scrutinizing the gendered nature embedded in these legal norms and standards".[26] Fudge observes that the sameness and difference approaches are not sufficiently attentive to the dynamics structures of inequality that permeates the employment relationship.[27] Despite the success that has been registered by the equal treatment approach, which entails removing overt discrimination, women still complain of numerous inequalities on all sorts of issues in the workplaces and other settings including gender stereotypes and sexualisation of women's bodies in the workplace.[28]

The gender disadvantage approach (dominance/subordination approach) has evolved as an alternative to the gender difference approach. This approach was devised by feminist scholars like Catherine Mackinnon and Rhode in the 1980s. The disadvantage approach looks at laws to determine whether they operate to maintain women in a subordinate position.[29] Rhode observes that much of the difficulty in conventional frameworks stems from two fundamental limitations: 'the law's traditional preoccupation with gender difference rather than with gender

[24] Levit and Verchick, *Feminist Legal Theory*, 20.

[25] Levit and Verchick, *Feminist Legal Theory*, 18.

[26] Catherine MacKinnon, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence," *Signs, the University of Chicago* 8, no. 4(1983): *642*.

[27] Judy Fudge, "Rungs on the Labour Law Ladder: Using Gender to Challenge Hierarchy," *Saskatchewan Law Review* 60 no. 2 (1996): 239.

[28] Becker et al., *Feminist Jurisprudence,* 51.

[29] Reg Graycar and Morgan Jenny, "Thinking About Equality," *UNSW Law Journal* 27 no.3 (2004): 836.

disadvantage and its focus on abstract rights rather than the social context that constrains them'.[30]

The merger of the different feminist ideas and theories is mutually reinforcing and relevant to legal changes. For example, the Convention on Elimination of All Forms of Discriminations Against Women (CEDAW) has its origins in different feminist theories.[31] By requiring equal treatment between men and women and similar rights in workplaces, the Convention reveals the influence of the equal treatment theory.[32] By requiring member states to introduce maternity leave with pay, the provision reveals the special treatment theory. And by requiring states to take into account social and cultural patterns in designing measures to eliminate discrimination, the convention reveals the influence of the gender disadvantage theory.[33] CEDAW merges the feminist ideas into two models: formal equality and substantive equality.[34] The formal equality model is similar to the gender difference approach and substantive equality model is similar to the gender disadvantage approach. Formal equality is useful in combating overt discrimination against women in law. On the other hand, there is substantive equality; this model, in varying degrees, focuses on gender disadvantages and *de facto* equality.[35] The Committee recommends combining the formal equality and substantive equality models to fully realise equality.[36]

The toolkit for this analysis draws on other gender relations concepts like the masculinities theory to explain gender issues that may not be covered by the feminist legal theory. A key principle in the masculinities theory is that there are multiple masculinities.[37] Legal rules, just

[30] Deborah Rhode, *Justice and Gender: Sex Discrimination and the Law* (Cambridge, Massachusetts: Harvard University Press, 1989), 2.

[31] Preston R. Christopher and Ronald Z. Ahrens (2001), "United Nations Convention Documents in Light of Feminist Theory," *Michigan Journal of Gender and Law* 8 no. 1(2001): 17-18.

[32] Article 11 of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), Article 11(2) (d).

[33] Article 5(a) of CEDAW.

[34] CEDAW General Recommendation No. 25 para. 6.

[35] De Vos, Marc (June 2007), *Beyond Formal Equality*, Positive Action under Directives 2000/43/EC and 2000/78/EC, European Commission- Directorate-General for Employment, Social Affairs and Equal Opportunities Report, Available at: ec.europa.eu/social/BlobServlet?docId=1679&langId=en [Accessed January 7, 2016], 10.

[36] CEDAW General Recommendation No. 25 para. 6.

[37]Nancy Dowd E., "Masculinities and Feminist Legal Theory", *Wisconsin Journal of Law, Gender and Society* 23 no.2 (2008): 210.

like social norms, emerge from complex gender relations in society. Legal scholar Nancy E. Dowd recommends to "ask the man question" in feminist theory. In her words:

> First, asking about men as men will enhance the analysis of women's equality and justice issues by replacing presumed universality with the realities of multiple masculinities. The analysis of men's power will be more subtle and complex. Exposing how structures and culture are "male," a core feminist claim, will be enriched and further substantiated. Second, asking about men will expose where men are disadvantaged by the existing gender system.[38]

The masculinities theory can reinforce feminist claims about the gendered masculine nature of work structures. In relation to Dowd's view, although employment structures and law are "male" and men as a group benefit from the power of all men conceived by the patriarchal structures and legal rules, some men may not be in position to live up to the normative masculine legal standards set under the law. This analysis takes into account legal rules and standards that disadvantage men.

It should be observed that the above gender and feminist legal theories have an origin in Western ideological movements. What is not debatable is the fact that the Western feminist legal theories and methods have influenced and continue to influence legal changes in national jurisdictions across the world and in international human rights law. Feminist legal theories have streamed into the domestic laws of Uganda mainly through the United Nations legal instruments that Uganda has ratified. Uganda has ratified a number of international human rights treaties providing for the rights of women, including the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985, the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1987, the International Covenant on Civil and Political Rights (ICCPR) in 1995 which mirror various feminist theories. United Nations documents have influenced the language of domestic legislation. For example, the provisions on non-discrimination and equal pay are similar to the provisions in the Discrimination (Employment and Occupation) Convention and the Equal Remuneration Convention of the International Labour Organization.[39] The feminist legal theory helps feminists concerned with analysing and changing employment law in Uganda to understand the intended meanings of the legal rules. However, although the above feminist legal theories have influenced Uganda

[38] Ibid., 204.

[39] In 2005, Uganda ratified the Discrimination (Employment and Occupation) Convention and the Equal Remuneration Convention.

legislation, this analysis is placed within broader historical, philosophical and socioeconomic frameworks in Uganda.

III. EMPLOYMENT LAW PROVISIONS ON GENDER EQUALITY

The Employment Act of 2006 introduces legislative protection against sex discrimination and improved provisions on gender equality in the workplace, including increased days of maternity leave, prohibition of sexual harassment, paternity leave and equal pay for work of equal value. Below, I analyse provisions of the Employment Act that relate to gender equality in the workplace.

A. Prohibition of Sex Discrimination

The Employment Act addresses discrimination in employment.[40] The Act prohibits discrimination on the basis of age, *sex,* religion, political opinion, social origin, HIV Status or disability. [41] The law is based on fundamental constitutional principles embedded in human rights and equality principles. Pursuant to section 6(1) of the Employment Act, all parties including the Minister, labour officers and the Industrial Court, have a duty to promote equality of opportunity in employment with a view to eliminating discrimination. However, the law does not ban gender discrimination in hiring, prevent employers from asking about family status in a job interview and does not require employers to provide break time for nursing mothers.[42] Even with the legal provisions in place, discrimination is still widespread in workplaces in Uganda. Unfortunately, there is lack of documented evidence on discriminatory practices both in the private and public sectors which can help in assessing the nature and magnitude of the problem.[43]

[40] Section 6 of the Employment Act.

[41] Section 6(2) of the Employment Act.

[42] Gender Development Partners Group, *Gender Equality in Uganda: A situation Analysis and Scoping Report,* March, 2014, Available at: http://www.gsdrc.org/docs/IDEVREAN13007UG_Final%20Situation%20Analysis%20Report.pdf [Accessed January 6, 2016].

[43] ILO Direct Request to Uganda, Direct Request (CEACR), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Uganda (Ratificatio*n: 2005),* published 99th ILC session (2010), 2009.

B. The Right to Equal Pay for Work of Equal Value

The Employment Act has an express provision for the right to equal pay for work of equal value.[44] However, it is not clear whether the principle is applied in practice[45] A survey conducted by the Uganda Bureau of Statistics indicates that the median salary of men is about double that received by women in Uganda regardless of the type of work undertaken.[46] The bulk of the variation in wage was attributed to gender discrimination. The survey indicated that it is possible that the wage differences may be due to the type of activities undertaken by men and women in the workplace.[47] The International Labour Organization Committee of Experts has noted that historical attitudes towards the role of women in society and gender sterotypes regading women's status and competencies contribute to occupational sex segegreation. As a result, certain jobs are predominately held by women and others by men. Thus, stereotypically "female jobs" are undervalued and paid less as compared to predominately "male jobs".[48]

One of the factors that hinders the implementation of the principle of equal pay for work of equal value is the lack of clarity in the legal definition of work of equal value. The Employment Act does not provide for what amounts to "work of equal value. The concept of comparable worth is synonymous to the principle of equal pay for work of equal value. According to Steinberg, "comparable worth broadens the scope of equal pay for equal work legislation."[49] It obligates employers to pay same wages for dissimilar jobs of equivalent worth. She further observes that the concept of comparable worth addresses the systemic undervaluation of work predominately done by women.[50] The Employment Act should state expressly that work of equal value is composed of same work and work which is comparable in relation to levels of skill, responsibility, effort and working conditions. The Act should give specific guidance to

[44] Section 6(7) of the Employment Act obligates every employer to pay male and female employees equal remuneration for work of equal value.

[45] ILO Direct Request (CEACR), Equal Remuneration Convention, 1951 (No. 100)-Uganda (Ratification: 2005)-Adopted 2009, Published 99th ILC Session (2010), 2009.

[46] Uganda Bureau of Statistics, *Gender and Productivity Survey: Analytical Report*, 2009, Available at: *www.ubos.org/unda/index.php/catalog/24/download/136 [Accessed January 24, 2017]*, 45.

[47] Ibid.

[48] ILO Direct Request to Costa Rica, 2009 citing the ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts), General Observation on Convention No. 100, 2007.

[49] Steinberg, R.J, "Comparable Worth in Gender Studies," *International Encyclopedia of the Social and Behavioral Sciences*, 2001: 2393.

[50] Steinberg, "Comparable Worth in Gender Studies," 2393.

the meaning of 'equal value' as clearly differentiated from work which is the 'same or substantially similar'. The Employment Act should elaborate on the meaning of the concept of equal pay for work of equal value. The Act should also deal with pay practices which are indirectly discriminatory to women by imposing a duty on employers to put in place positive measures to ensure equal pay for work of equal value, for example, an obligation to put in place an equal pay policy.[51]

C. Sexual Harassment

Until the enactment of the 2006 Employment Act, sexual harassment was one of the problems that the law discreetly overlooked in employment relationships. The injuries stemming from harassment were therefore internalized, institutionalized and inaudible. The Employment Act 2006 introduced provisions prohibiting sexual harassment at the workplace. Legal recognition of sexual harassment unmasked the problem and allows it to be redressed.[52] Section 7 of the Employment Act prohibits sexual harassment by an employer or his representative. For it to amount to sexual harassment, the act must directly or indirectly subject the employee to behavior that is sexual in nature and has a detrimental effect on the employee's employment.

The International Labour Organization Committee has commended Uganda's adoption of the Employment (Sexual Harassment) Regulations.[53] The Regulations supplement the provisions on sexual harassment in the Act and provide clear indications of what would constitute sexual harassment, sets out what is to be included in a sexual harassment policy, provides details on the composition and functioning of enterprise sexual harassment committees, and provides that sexual harassment is to be included in collective agreements. It also contains provisions for complainant and witness protection.

The development of sexual harassment as a legal theory is often attributed to Catharine MacKinnon. According to MacKinnon, "sexual harassment merely imitates the inequitable

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[51] Sandra Fredman, *The Right to Equal Pay for work of Equal Value, Background Paper for the Working Group on Discrimination against Women in Law and Practice,* 2015, Available: www.ohchr.org [Accessed March 16, 2016]

[52] Section 7(2) provides for a right to lodge a complaint with a labour officer.

[53] ILO Direct Request to Uganda (CEACR), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), 2012.

social structure of male supremacy and female subordination". [54] Although there have been criticisms on the feminist bias of the sexual harassment towards women, clearly indicating that harassment occurs even to men, feminism named the violence of sexual harassment.[55] MacKinnon designed the now fully accepted two forms of sexual harassment. In the first instance, the activity that constitutes sexual harassment is a direct exchange of sex that is made a condition for preferential treatment or detrimental treatment of an employee at the workplace. The second prohibition expands beyond this type of *quid pro quo* harassment to include continued verbal, physical, or psychological harassment that creates an abusive and hostile-environment.[56]

In the Employment Act, the standard of unacceptable behaviour is that which is unwelcome or offensive to the employee.[57] The right of individual woman to challenge the norms of offensive behaviour in the workplace is recognized under the Employment Act. But the onus is on the woman to prove that the action or behaviour has a detrimental effect on her employment, job satisfaction or job performance. However, it is important to note that the behavior of men in the workplace reveals the systemic and pervasive control that patriarchy exerts over social life, making sexual harassment appear natural, normal, and right.[58] Provisions in the Employment Act on sexual harassment cannot deal with these forms of subordination. This may also explain the limited number of cases reported on sexual harassment in workplaces to the labour office. The International Labour Organization Committee has on a number of occasions requested Uganda to provide information on the implementation of the Employment Act provisions on sexual harassment and the specific measures taken by employers to prevent and address sexual harassment in employment.[59] However, Uganda has not responded to the International Labour Organization direct requests.

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[54] Kelly Linda Hill, "The Feminist Misspeak of Sexual Harassment," *Florida Law Review* 27 no. (2005): 145.
[55] Ibid.

[56] Ibid., 146.

[57] Section 7(1) of the Employment Act.

[58] Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Colorado: West View Press, 1999), 132.

[59] ILO Observation (CEACR), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Uganda (Ratificatio*n: 2005),* published 104th ILC session (2015), 2014.

A contradiction apparent in labour law's treatment of women's sex at work is how it responds to sexual harassment in the workplace.[60] Although the formal definition of what constitutes sexual harassment is expansive in various human rights and labour legislations across the world, two vexatious problems continue to plague this area of labour law: when is harassment sexual and what is the standard of unacceptable conduct or behavior. For example, by requiring the harassment to be explicitly sexual, the Ugandan Employment Act ignores the fact that more men manage and supervise women than vice versa. Sexual harassment in Uganda is mainly perpetuated by male supervisors.[61] Due to the hierachies at the workplace, sexualisation of women‘s bodies is often considered as part of masculine behaviour.[62]

Another limitation in the Employment Act is that the definition of "sexual harassment" does not cover harassment by co-workers. While noting that the Employment Act has introduced a specific provision on sexual harassment, the CEDAW Committee in its concluding recommendations to Uganda was concerned about the narrow definition which is limited to sexual harassment by an employer or his representative.[63] In addition to the above limitation, the only employers with more than 25 employees have an obligation to put in place positive measures to prevent sexual harassment, including having a sexual harassment policy.[64] The Employment Act takes on the traditional labour law response to sexual harassment which ignores the fact that harassment of women workers may not be explicitly sexual and that no worker, whether male or female, should be subjected to demeaning behaviour in the workplace. The Employment Act does not challenge subordination in the workplace per se. It simply prohibits invidious forms of subordination on enumerated grounds.[65] The provisions on sexual harassment should be modified to address underlying causes.

[60] Fudge, "Rungs on the Labour Law Ladder, " 244.

[61] Uganda Labour Resource Centre, *Baseline Survey on the Implementation of New Labour Laws in Uganda: A Case Study of Kampala, Wakiso, Jinja, Gulu, and Mbarara Districts*, (May 2011), Available at: http://www.fes-uganda.org/media/documents/Labour_Study_2011.pdf [Accessed May 5, 2017], 38.

[62] Fudge, "Rungs on the Labour Law Ladder," 246.

[63] CEDAW Concluding Recommendations, 2010 para. 33.

[64] Section 7(4) of the Employment Act.

[65] Fudge, "Rungs on the Labour Law Ladder," 248.

E. Maternity Protection and Benefits

There is a legal requirement for employers to make provision for maternity leave with pay of sixty working days.[66] However, Uganda's legislation puts the burden of pay during maternity leave wholly on employers. The costs associated with maternity leave negatively impacts the implementation of the provisions in the law. [67] It is therefore quite difficult to ascertain whether the provisions on paid maternity leave are effective and followed by employers. For example, not all employers, especially within the private sector, gurantee paid maternity leave.[68] Requiring employers to bear the entire burden of maternity leave pay can disadvantage women because employers may be reluctant to employ women due to the cost that they will have to incur should they get pregnant.

A number of countries have designed programs that do not require employers to bear the full cost of maternity leave pay as a way of mitigating the risk of discrimination against women with routine child care responsbilities. Progressive implementation measures of maternity leave/paternity leave and parental leave by various states include finanancing wholly by the state, joint contributions by the state and employers and combined contributions by the employer, the state and employee.[69] In Iceland, for example, the government has a maternity and paternity leave fund for working parents. Such measures decrease the burden associated with taking on employees who have family responsibilities or are likely to take on family responsibilities in the course of their employment, especially female employees.[70] The government of Uganda should consider state involvement in financing of maternity and parternity leave payments. For example, the costs that arise out of maternity leave can be shared between the employer and government. This will make employing women and individuals with family responsibilities less burdensome and affordable.[71]

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[66] Section 56 of the Employment Act.

[67] Gender Development Partners Group, *Gender Equality in Uganda*.

[68] CEDAW Concluding Recommendation to Uganda 2010 para. 33.

[69] Heening Thomsen and Helene Urth Ramboll Denmark, "Cost and Benefit of Maternity and Paternity leave," *Workshop FEMM/EMPL Europe 5 (2010).*

[70] Iceland Act on Maternity/Paternity Leave and Parental Leave, No. 95/2000.

[71] Rhode, op.cit., 2.

F. Paternity Leave

The Employment Act provides for a statutory right to paternity leave with pay of four working days.[72] The period for paternity leave is viewed by some employees as 'too short to be of any help'.[73] A short paternity leave is a reflection of gender roles and norms that traditionally assigned child care and family responsibilities to women. Such a provision may encourage men to leave family responsibilities to women. Research suggests that involvement of men in child care promotes gender equality and challenges the perceptions on gender division of labour in the home.[74]

In addition to the above considerations, cultural norms that oppose parternity leave provisions and discourage men from engaging in family responsibilities are institutionalised through workplace cultures, media and individual male resistance.[75] Due to these pressures, men tend avoid exercising their right to paternity leave. Failure to take on available parternity leave days by men indirectly disadvantages women (and some men) who need to take leave. Women become much less attractive as potential employees due to the cost that comes with taking maternity leave.[76] On the other hand, men who take on paternity leave and engage in child care responsibilities risk being discriminated against. Powerful incentives must be created to encourage fathers to get involved in child development. Uganda can learn from countries that provide for incentives for fathers to take paternity leave. For example, the policy in Germany allows two additional months for parental leave if they are taken by the father. Sweden has a policy of ''daddy days,'' which reserves a portion of parental benefits for fathers, and provides for financial benefits for families who share parental leave.[77] Clearly, the Employment Act should be reviewed to make provision for adequate duration for paid paternity leave.

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[72]Section 57 of the Employment Act.

[73] The Observer *Paternity Leave is Too Short to Be of Any Help*, July 24, 2015, Available at: http://www.observer.ug/lifestyle/38909-paternity-leave-is-too-short-to-be-of-any-help [Accessed August 8, 2016].

[74] ILO *Maternity and Paternity at Work: Law and Practice Across the World, ILO Policy Brief,* 2014, Available at: www.ilo.org/maternityprotection [accessed July 7, 2016].

[75] Ariel, Ayana, "Aggressive Parental Leave Incentivizing: A Statutory Proposal Toward Gender Equalization in the Workplace," *University of Pennyslvania Journal of Labour and Employment Law* 9 (2007); Sylvia Tamale, (2004), "Gender Trauma in Africa: Enhancing Women's Links to Resources," *Journal of African Law* 48 (2004).

[76] Ayana, "Aggressive Parental Leave Incentivizing," 297.

[77] Rebecca Ray et al., *Parental Leave in 21 Countries: Assessing Generosity and Gender Equality, Centre for Economic and Policy Research*, 2008, Available at: www.lisdatacenter.org/wp-content/uploads/parent-leave-report1.pdf [Accessed October 10, 2016].

The employment law has made an effort to adapt to the changing nature of employee relationships by providing workers with more days of maternity leave and introducing parternity leave. Legal provisions have been introduced to promote gender equality, including equal pay for work of equal value, prohibition of sex discrimination and sexual harassment. However, these provisions have proved inadequate in achieving gender equality in workplaces. For example, prohibiting discrimination has not stopped employers from prefering one sex to another for specific jobs or discriminating against women with child care responsibilities.[78] There is evidence that sexual harassment exists in workplaces.[79] Some employers, especially within the private sector, are simply ignoring maternity and paternity leave provisions.[80] First, this information suggests that the problem in the enforcement of legal provisions needs to be addressed. Secondly, a better approach to gender equality must consider transformining the entire employment law based on the different gender equality perspectives.

IV. INSTITUTIONAL AND SYSTEMIC BARRIERS NOT ADDRESSED BY EMPLOYMENT LAW

While the provisions under the Employment Act seem neutral, they are biased. A realistic feminist and gender approach to employment law must question the law as a whole. It must propose changes to employment rules that are seemingly neutral but indirectly discriminates against women and other categories of people in society. It must prohibit organization rules, practices and procedures that reflect only masculine ideas and values and unfairly exclude women. It must consider how other aspects of gender and feminist ideas like taking into account context, intersectionality and anti-essentialism can be built into the employment standards to accomodate the different categories of employees but at the same time avoid disadvantaging maginalised groups**.**

A. Masculine and Gendered Employment Law Subject: Working Hours

To critique the working hours in the Employment Act, this essay asks the "woman question". Do hours of work consider experiences of women? Do they fail to take into account values that seem more typical of women than men? Do the rules implicitly favour one sex to the disadvantage of the other? These are the core questions that guide the feminist analysis of the

[78] Uganda Bureau of Statistics, *Gender and Productivity Survey*, 45.

[79]Uganda Labour Resource Centre, *Baseline Survey on the Implementation of New Labour Laws in Uganda, 38.*

[80] CEDAW Concluding Recommendation to Uganda 2010 para. 33.

working hours in the Employment Act. A feminist approach to employment working hours provisions would suggest that the employment law rest on a masculine law subject. As far as the legal rules on hours of work are concerned, the maximum hours of work per week must not exceed 48 hours. An employer and employee may agree to increase on the hours of work. However, in such an arrangement the hours shall not exceed 10 hours a day and 56 hours a week. Working time may be extended beyond 10 hours for employees working in shifts for a period of three weeks but it shall not exceed 56 hours per week. Employees working for more than eight hours are entitled to a break of 30 minutes.[81]

The hours of work mirror masculine norms and values. The working norm is 8 hours a day and 48 hours a week continuing throughout the year. The Employment Act also permits working overtime to a limit of ten hours. Traditionally, in Uganda, women were expected not to work outside the home. Bantebya and McIntosh in their book *Women, Work and Domestic Virtue* have labelled the set of expectations where women were not supposed to work outside the home 'a model of domestic virtue'. This model leads to a clear gender division of labour in the home and in the workplace. Women in Uganda were expected to be wives, mothers and nurturers. They were expected to stay within the domestic context where they bore and raised children.[82] Therefore, the public space of work represented men. Working hours were set based on the male standards and values. By allocating unpaid domestic work and substance crop production to women, men could work for long hours.

Although the character of employment relationships has changed over time with the introduction and increase of women in wage employment, there has been no profound change in standard working hours in labour law reforms in Uganda. Working hours in the Employment Act are shaped by the standards set under the International Labour Organization Hours of Work (Industry) Convention, 1919 (No.1). The Convention requires a working day of eight hours and working week of forty eight hours with a few exceptions where the working hours can be exceeded.[83] The International Labour Organization Convention was designed on the basis of a division of labour in the home and in the workplace. Men were expected to work in the public

[81] Section 58 of the Employment Act.

[82] Grace Kyomuhendo Bantebya and Marjorie McIntosh, *Women, Work and Domestic Virtue in Uganda, 1900-2003*, Oxford: James Curry, 2006), 2.

[83] Article 2 of the Convention and Article 16 of the Convention required member states to apply the provisions of the Convention to their colonies, protectorates and possessions.

sphere, including the areas of politics and business and women were expected to work in the private sphere where they took on unpaid household and caring responsibilities.[84] By allocating unpaid domestic work to women, it was possible to assume a labour law subject (men) as free from any obstacles that could prevent an employee working eight hours or even longer works.

Feminists have demonstrated that the norms stipulated under the ILO Convention on Hours of Work were based on the ideal worker-a male breadwinner who had a dependant wife who performed the domestic unpaid labour.[85] Therefore, requiring employees to work for 48 hours a week with the posibility of overtime, the the Employment Act envisages a masculine subject of law. The employment law regulating employee-employer individual relationships based on working hours appears to be neutral, however these provisions only take into account men that do not bear domestic and social care responsibilities.

How time is allocated affects men and women differently and has an influence on gender equality.[86] Clearly, the law favours majority of men in Uganda who do not traditionally bear the responsibilities in the household. According to a survey conducted by the Uganda Bureau of Statistics, women spend more of their working hours on unpaid domestic work as compared to men.[87] Women who wish to enter into an employment relationships as stipulated under the law are forced to meet masculine standards. The set standard on working hours acts as a challenge to women‘s entry into and advancemrnt in the workplace. In the employment world, “female becomes the ``other'' who is constantly confronted with the hard choice of allocating her limited hours between work and unpaid domestic work and care.[88] The standards on working hours indirectly discriminate against most women (and some men) with child-care or domestic responsibilities. Majority of women cannot enjoy worker’s rights enshrined under

[84] Fudge, ‘Working-Time Regimes, Flexibility, and Work-Life Balance,” 171.

[85] Fudge, “Working-Time Regimes, Flexibility, and Work-Life Balance: Gender Equality and Families” in C. Krull and J. Sempruch, eds., *Demystifying the Family/Work Conflict: Challenges and Possibilities* (Vancouver: University of British Columbia Press, 2011), 171.

[86] Fudge, “Working-Time Regimes, Flexibility, and Work-Life Balance, ”171.

[87] According to the Uganda Bureau of Statistic Report, *Uganda Facts and Figures on Gender Report, 2013,* in 2005/2006, while women spent 60 percent of their total working time on unpaid domestic work, men spent only 30 percent.

[88] Sylvia Tamale, “Gender Trauma in Africa: Enhancing Women’s Links to Resources,” *Journal of African Law* 48, 2004, 53.

the employment Act when the domestic sphere remains a site of inequality. The provisions on working hours serve to reinforce the artificial public /private divide which has been cited as one of the root causes of inequality and women's subordination in Uganda.[89]

The issue of working hours has not been prominent in labour law reforms in Uganda.[90] Hours of work have not been adjusted to reflect the changing landscape in the labour market. Working hours in Uganda are still based on the archaic bread winner-dependent housewife model standards set out in earlier national and international labour law legal documents. The employment law needs to design more realistic working time regulations that provide an opportunity for all employees to reconcile work and family responsibilities.

B. Does Not Take into Account Unpaid Domestic and Care Work: Employment Leave Provisions

Drawing on the employment leave provisions, it can be stated that the employment law does not recognize the load of unpaid work and care on employees, mainly undertaken by women. The standard employment relationship in the Employment Act consists of continuous employment of a full year providing a wage and a range of entitlements. The employee is entitled to a one day's rest in a week.[91] An employee is entitled to a holiday once a year with full pay called the annual leave.[92] An employee is equally entitled to a day's holiday with full pay.[93] The Employment Act provides for sick leave of up to two months with pay for an employee who has worked for more than one year. These provisions are subjected to the "woman question". Do the provisions on employment leave consider the experiences of women? Do the provisions on leave fail to take into account values that seem more typical of women than men? Do the provisions on leave implicitly favour one sex?

The idea of limits to working hours and provision of resting periods was "to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and

[89] Sylvia Tamale, "Exploring the Contours of African Sexualities: Religion, Law and Power," *African Human Rights Law Journal* 14, 2014: 160.

[90] Section 39 of the Employment Decree of 1975 provided for the hours of work. The maximum hours of work per week did not exceed 48 and in industrial undertakings a maximum of nine hours per day but in other types of employment 10 hours. Employees working for more than six hours were entitled to a break of at least 30 minutes. Hours of work could be extended in emergencies but the onus of proving the extension lied on the employer. These provisions are explained further in Barya, op. cit., 57.

[91] Section 51 of the Employment Act.

[92] Section 54 (1) (a) of the Employment Act.

[93] Section 54 (1) (b) of the Employment Act.

social life".[94] The law refers to these days as "holidays" from work. Like working hours, the norm for the resting periods was based on "a malebreadwinner– dependent wife model" where time is allocated between paid work and leisure.[95] This norm shaped the past provisions on leave and resting days and have survived to date in the employment law of Uganda. The leave provisions are limited to annual leave, public holidays and sick leave. The Employment Act did not envisage employees engaging in other forms of unpaid labour in their social life, for example, child care, cleaning of homes, taking care of the eldery and the sick, cooking and other domestic related work.

With the introduction of paid wage labour in Uganda, there was a clear division of labour between men and women. Women were excluded from wage employment.[96] Historically, women have been relegated to the unpaid domestic work. [97] The law on employment in Uganda was (is) designed around the ideology of domesticity and private and public divide. It was based on the idea that men work in the public sphere of paid employment and women perform the unpaid domestic and social care responsibilities. Therefore, the employment act provisions on leave reflect the needs of men. By providing leave provisions that only take into account annual leave, public holidays and sick leave, female employees are expected in one way or another to continue shouldering the responsibilities in the family in addition to their paid work. This double burden placed on female employees negatively impacts on their participation in wage employment. According to the Uganda Bureau of Statistics 2013 report, women spend more time on unpaid work than men. The hours spent on domestic work reduces further for men when they get married and increases for women upon marriage. In 2005/2006, married women spent 10 times longer (7.0 hours) than married men (0.7 hours) doing unpaid domestic work. The report suggests that married women may have forfeit paid work to engage in unpaid domestic work.[98]

Based on the above statistics, the allocation of days between work and social life (unpaid domestic work) has a great impact on workers' lives and ultimately on the outcomes on gender

[94] International Labour Organization, *Report of the Committee of Experts on the Application of Conventions and Recommendations* (ILO Publication, 2005), 58.

[95] Fudge, 'Working-Time Regimes, Flexibility, and Work-Life Balance," 172.

[96] Tamale op. cit., 8.

[97] Bantebya and McIntosh, *Women, Work and Domestic Virtue in Uganda 1900-2003*, 79.

[98] Uganda Bureau of Statistics, Gender 2013, 84.

equality. Some feminist labour scholars in different jurisdictions claim that the most difficult challenge to employment law is the reconciliation of unpaid care and paid work.[99] The Employment Act in Uganda faces a similar challenge. It does not acknowledge unpaid domestic work as part of employees' social life in the design of worker's rights. The objective of limits to hours of work and resting days is to help employees balance work and leisure and other aspects of their social life. However, the provisions on leave in the Employment Act, which are similar to the older versions of the employment law, do not envisage social life related to unpaid domestic work.

While the employment Act does not envisaged an employee engaging in unpaid labour, in reality many employees, especially women, have a social life that is designed around unpaid domestic work. The law should acknowledge that a large section of employees that it seeks to protect are in fact parents with child care responsibilities and are also under obligations to take care of other members of the community depending on various relationships. And that these obligations impact on an individual's capacity to conform to the 'ideal worker' standards. The employment law leave provisions should provide employees with reasonable opportunities to engage in social life related to unpaid domestic work. The employment law should take into account socially important unpaid domestic work and care.

C. Lack of Legal Recognition of Indirect Discrimination

The Employment Act considers discrimination unlawful when an employer makes "any distinction, exclusion or preferences on the basis of race, colour, sex religion, political opinion, national extraction or social origin which has an effect of nullifying or impairing the treatment of person in employment or occupation, or preventing an employee from obtaining any benefit under a contract of service".[100] The Employment Act does not provide for indirect discrimination. The dangers of non-recognition of indirect discrimination in the employment law is that it may lead the employer to continue with discriminatory practices. The indirect discrimination theory, also known as the disparate impact theory, refers to the disproportionate exclusion of individuals on protected basis, such as race and sex/gender.[101] For the case of indirect discrimination in employment, it refers to an employer's use of an non-validated

[99] Nicole Busby, *A Right to Care? Unpaid Care work in European Employment Law* (Oxford Monograph on Labour Law, 2011); Fudge, "From Women and Law to Putting Gender and Law to Work".

[100] Section of the Employment Act.

[101] Rosemary Hunter C. and Elaine W. Shoben "Disparate Impact Discrimination: American Oditty or Internationally Accepted Concept," *Berkeley Journal of Employment and Labour Law* 19 no. 1 (1998),1.

organizational tools, policies, practices and procedures such as one for selection, retention, appraisal or promotion, that disproportionately excludes one sex. Indirect discrimination addresses these seemingly gender neutral policies, practices and procedures that lead to unfair exclusion.

Women are engaging in different kinds of work within the Ugandan labour force. The Ugandan government defines labour force to include the working population both employed and unemployed and exclude people engaging in non-economic activities, for example, domestic work.[102] The Uganda Bureau of Statistics considers two broad categories of employment, namely the self-employed, including employers, own account workers, contributing family workers and those working on household farms, and paid employees. According to the Uganda Bureau of Statistics, women constitute 52.8% of total working population while men constitute 47.2% of the total working population.[103] The statistics indicate that women constitute more than half of the working population. It is important to note that women's labour force is high in contributing family workers and household farms (small scale agriculture) sub-categories. Men dominate the remaining sub-categories. Although the number of women in the overall Ugandan labour force exceeds that of men, women only make up 33% in the sub-category of paid employees who fall under the protection of the Employment Act.[104] The report also highlights disparities in the different employment sectors with women working primarily in historically stereotypical "female jobs" such as accommodation, food services, health, teaching and social work.[105] The gender disparities in paid employment are interlinked with gendered and implicitly discriminatory organizational practices. Since women were historically excluded from wage employment in Uganda, male values and interests shaped the standards in workplaces.

The modern day wage employment has inherited the historical legacy of a masculine culture. Since wage employment is associated with masculine characteristics, it creates gender bias in favour of male employees and to the disadvantage of female employees. Based on the notion

[102] Uganda Bureau of Statistics, *Uganda Facts and Figures on Gender*, 72.

[103] Uganda National Household Survey 2009/2010 cited in the Uganda Bureau of Statistics, *Uganda Facts and Figures on Gender*, 74.

[104] Uganda Bureau of Statistics, *Uganda Facts and Figures on Gender*," 75.

[105] Uganda Bureau of Statistics, *Uganda Facts and Figures on Gender*, 76; Bantebya and McIntosh, *Women, Work and Domestic Virtue in Uganda, 1900-2003.*

of gendered organizations, Acker argues that many workplace policies, practices and processes are gendered. In her words: "it is the man's body, its sexuality, minimal responsibility in procreation, and conventional control of emotions that pervades work and organizational processes".[106] Therefore, any woman who wishes to join employment must meet the masculine requirements set by the employers.

Masculine standards operate as a barrier to women's entry and advancement in employment. Because of the demeaned nature of feminine attributes in many organizational contexts, women's employee status is subordinated to that of men.[107] Discriminatory normative masculine practices may be reflected in a job requirement that requires working relentless long hours which can unintentionally exclude women with family responsibilities and some men who do not match these standards. Such organizational practices are a reflection of male dominance and are discriminatory in nature. A feminist approach to employment law requires a legal framework that enables employees to challenge discriminatory normative masculine practices, policies and procedures in workplaces. Legal recognition of indirect discrimination paves way for substantive equality because it focuses on institutionalized practices arising out of gender and social relations.

V. A GENDER APPROACH TO EMPLOYMENT LAW IN UGANDA: STRATEGIES FOR LAW REFORM

Part III and IV reveal that discriminatory legal standards are not impartial and organizational practices privilege male cultural attributes. While masculine culture is embedded in legal provisions and organizational structures, the Ugandan government has an obligation to design legal strategies to ensure that there is no discrimination direct and indirect on the basis of gender. Pragmatic legal strategies to promoting equality in the employment law need to be designed from a perspective that brings a gender lens in future amendments. Incorporating a gender perspective will affect both the standards under the law and employers' policies, practices and procedures that are not standardised by law. The law should provide a remedy for unfair exclusionary organizational practices that are unintended by employees. Expanding the statutory definition of discrimination to include indirect discrimination in the employment

[106] Joan Acker, "Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations," *Gender and Society* 4 no.2 (1990), 152.

[107] Tamale, "Gender Trauma in Africa," 53.

law in Uganda and other legal texts will help in addressing systemic and structural discrimination in Employment.[108]

The concept of indirect discrimination has been adopted in international and regional human rights instruments and statutes at state level. The Convention on Elimination of All Forms of Discrimination Against Women obligates member states to eliminate direct and indirect discrimination against women in laws and ensure the protection of women against indirect discrimination committed by public authorities, private business enterprises and individuals.[109] CEDAW calls for states to implement measures that go beyond formal equality to addressing substantive equality. At the international level, Uganda is under an obligation to ensure the absence of indirect discrimination in laws and organizational policies, procedures and practices.

The idea of indirect discrimination has been adopted in number of jurisdictions including majority of member states of the European Union, Canada and Australia. Uganda has examples that can guide the drafting of provisions on indirect discrimination in the Employment Act. By amending the provision on discrimination to include indirect discrimination, employers will have the responsibility to take necessary steps to address discriminatory practices, policies and procedures. The reasoning behind placing an obligation on the employers on one hand rests on the fact that the employers have the power and privilege to discriminate and maintain discriminatory practices. On the other hand, employers have the power to deconstruct and create organizational practices that reflect the principle of gender equality.

Legal rules regulating employment relationships are clearly a gender issue. The Employment Act must be reviewed as a whole. Two areas that are discussed above relate to working time and employment leave provisions. Working hours should be designed to reflect the diversity of employee needs in the Ugandan labour market. The legal norms based on ideal worker with no family responsibilities or the bread winner-dependant female care giver model are out of touch with the realities in the labour market. The provisions in the Employment Act merely reinforce the traditional division of labour between women and men for caring responsibilities. The law should be reviewed to accommodate caring responsibilities of employees. This includes reduced working hours and proving for care leave. Uganda regulates working hours by imposing 48 hours per week limit with possibility of extension of up to 56 hours by

[108] Colleen Sheppard, "Mapping Anti-Discrimination Law onto Equality at Work: Expanding the Meaning of Equality in International Labour Law," *International Labour Review 151, 2012.*

[109] CEDAW Committee General Recommendation No. 25.

agreement reached between the employer and the employee. While regulating hours of work is a good to check on the powers of employers, the hours of work need to be redesigned to accommodate unpaid domestic care work. Europe has taken what has been entitled as a "progressive model" as a solution towards reconciling work, private and family by designing strategies that endeavour to allocate child care responsibilities to both parents rather than one.[110] These include part time and flexible working hours, the right to organise working, rights to remote working and homeworking through an agreement between the employee and the employer and entitlement to care leave to enable workers to take care of family members and dependant relatives who do not qualify to take parental leave.

While family friendly policies are important, some labour law feminists caution against getting preoccupied with these policies and advise to broaden the focus to destabilizing the gender contract that rests on a bread winner and a dependant house wife, a norm on which a substantial portion of employment law rests.[111] To this effect, feminists have recommended shorter working hours[112], greater control over working time through legislative measures, for example, restricting overtime periods and providing the right to refuse excess hours[113] and recognition of the right to care.[114]

VI. CONCLUSION

Regulating employment relationships is central to the promotion of gender equality in workplaces. However, the current legal provisions related to gender equality focus on equal treatment of men and women in the workplace without challenging structural and institutional barriers that hinder the promotion of equality. A feminist and gender approach would consider whether the employment law takes into account the experiences of women and values that seem more typical of women. It would also consider whether legal provisions implicitly favour one

[110] Aileen McColgan, *Measures to Address the Challenges of Work-Life Balance in the EU Member States, Iceland, Liechtenstein and Norway* (European Commission, 2015).

[111] Judy Fudge, *Commodifying Care Work: Globalisation, Gender and Labour Law*, The Inaugural Labour Law Research Network Conference, Barcelona, June 13-15, 2013, Available: https://www.upf.edu/documents/3298481/3410076/2013-LLRNConf_Fudge.pdf/f6b151bf-c3a4-47bb-b8c3-07b90d523f16 [Accessed April 26, 2017].

[112] Ania Zbyszewska, *Gendering the European Working-Time Regimes: The Universe of Political Discourse, Working Time-Regulation and Gender Equality in Wider European Union and in Poland* (PHD Dissertation: University of Victoria 2012), 339-340.

[113] Fudge, "Working-Time Regimes, Flexibility, and Work-Life Balance," 190.

[114] Busby, op.cit.

sex and disadvantage the other? And lastly, how to redesign the employment legal rules to reflect the experiences of women and the changing lives of all workers. This is important because employment law is traditionally designed from a masculine point of view.

Embedded in the employment law are masculine legal standards. The law presumes a homogenous employment group based on the ideal worker with no family and care responsibilities. However, the labour market today is diverse and includes not only men with no family responsibilities but women, men with domestic responsibilities, informal sector workers, elderly employees and employees with disabilities. The legal standards must be modelled around a diverse spectrum of workers. The employment law must be redesigned to reflect a realistic worker who engages in unpaid labour. This recommendation is based on the assumption that unpaid domestic work affects all workers, both men and women who choose or are forced to take on caring responsibilities at a certain period of their employment. The legal framework should consider the fact that the burden of unpaid domestic work disproportionately affects women because this is a gender role that is traditionally performed by women in Uganda. Undoing the gender division of labour may necessitate redesigning rules around working hours to enable workers reconcile paid work and unpaid domestic work. Additionally, legal measures around socially important unpaid domestic work and care should be introduced in legislation.

Workplace cultures, practices and policies mainly designed around masculine standards put a lot of pressure on workers to live up to these masculine standards and may lead to unfair exclusion based on gender/sex. It is necessary to provide legal remedies to employees who are discriminated against based on rules that implicitly bias one sex. The Employment Act should recognise indirect discrimination to remedy unfair exclusionary practices. Policies, procedures and practices that are designed with one sex in mind privilege that sex category and disadvantages the other. Therefore, seemingly neutral workplace practices should be subject to legal interpretation. On the whole, the government of Uganda has an obligation to design better legislation to accord women full equality and dignity with men. The framework of the employment law is only going to be better if feminist and gender perspectives are brought to it.

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