A CRITICAL ANALYSIS OF THE EFFECTS OF CULTURE ON GENDER DISCRIMINATION IN UGANDA A CASE STUDY OF APAC DISTRICT

BY

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APPROVAL

This research dissertation has been submitted for examination with my approval as a University supervisor.

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LIST OF INTERNATIONAL INSTRUMENTS

- The Universal Declaration of Human Rights 1948.
LIST OF CASES

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10. Babiruga Vs Karegye and others DR. CA No. MKA 13 of 1993 (Un reported).
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CHAPTER ONE

1.0 Introduction

Uganda is located in East Africa and lies a stride the equator\(^1\). It is bordered by Tanzania in the South, Kenya in the East, Democratic Republic of Congo (DRC) in the West and South Sudan in the North\(^2\). It is a country with several districts inter alia Apac district\(^3\) with numerous indigenous communities among which is Lango Community\(^4\).

Apac District is approximately 300km from Kampala\(^5\). It lies between Longitude 32\(^0\)E and 34\(^0\)E and latitudes 2\(^0\)N\(^6\). It is bordered by the Districts of Oyam in the North, Lira in the East, Masindi in the West and Amolatar in the South - East\(^7\). The Southern boundaries of the district are also a long Lake Kwala and the River Nilé. The district covers a total area of 3,908km\(^2\) of which 9% is under open swamps, water while 15% under forests, leaving 2970km\(^2\) for human settlement, Arable land covers 2,524km\(^2\)\(^8\). Apac became a district in 1974 when it was curved out of the Lango District\(^9\). Oyam District was further curved out of Apac in July 2006, essentially to enhance service delivery to the communities\(^10\).

Culture was defined as the whole complex of distinct spiritual, intellectual and emotional features that are characterized as social group\(^11\). Whilst Gender discrimination is the situation in which people are treated differently simply because they are male or female, rather than on the basis of their individual skills or capabilities\(^12\).

\(^1\)MacMillan School Atlas, MacMillan Publishers Kampala Uganda.
\(^2\)Ibid.
\(^4\)Ibid
\(^6\)Ibid
\(^7\)Ibid
\(^8\)Ibid
\(^9\)Ibid
\(^10\)Ibid
\(^12\)Plan international organization.
systematically denied the resources, information and freedom of action they need to fulfill this responsibility.

Therefore, this research intends to show how women and girls have been discriminated socially, economically, politically and culturally in their respective societies particularly in Apac District in Uganda.

1.1 Background to the study
To give a brief background of the situation relating to cultural practices in Apac District, the majority of the people in this area affiliate gender relations to customs. Customs of Lango people do not believe in the existence of gender equality and in fact many consider women inferior to a man as far as gender relations are concerned. In their customary marriage, husband and wife are never equal since their society is built on a patriarchal belief that man is superior over woman.

The people of Apac District most especially those in rural areas practice child marriage where parents or guardians choose to collect dowry from their young daughters rather than to continue paying their school fees, given the fact that a younger bride incurs a higher price to the husband. As well, parents living in poverty believe that marriage holds greater and more immediate potential for their daughter’s financial security compared to completing secondary and post-secondary schooling. The unfortunate reality is that 1 in a very 10 girls in Apac District are married before the age of 15. And nearly 1 in every 2 is married before 18 years.

Dowry can take a varied number of forms across culture but in Lango, it involves the exchange of cows for a wife. When a man is able to provide ten or fifteen or more cows to the bride’s family, it’s considered proof that he will be able to support his wife and their future family. Not only does this practice place a considerable amount of pressure on young men to dedicate their savings to the purchase of cows, but it also

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20 Judy Adoko and Simon, the Hierarchy of societies of Northern Uganda, 2010, page 162, para 3.
that perpetuate gender inequality, it's equally significant to dig deeper to isolate the underlying actors in such practices.

Having knowledge of these practices can help an organization or individual bring sustainable change to their community because it leads to an enriched understanding of the explicit and implicit structures that give shape to social norms. When we begin to question the aspects of our culture that are not favorable to equality, like media that objectifies women or marriage norms that enforce gender roles, we can enrich traditions by transforming them into practices that benefit everyone rather than accessories to inequality.

1.2 Statement of the problem
Over the past decade, the global emphasis on human rights and gender equality has grown considerably across the socio-political realm. Even the Sustainable Development Goals (SDGs), which succeeded the millennium Development Goals (MDGs) lists gender equality as the fifth of seventeen global goals, which makes it clear that it is not a primary issue to call for first priority consideration thus not existing as a stand-alone issue. This research therefore intends to address the glaring gender gaps that are so endemic in Apac district.

1.3 Objectives of the study

1.3.1 Main Objective
1. To examine the effects of culture on gender discrimination in Apac District of Uganda.

1.3.2 Specific Objectives
1. To assess the effects of gender discrimination on women in Apac District of Uganda.
2. To analyze the legal, political, economic and social status of women in Apac District of Uganda.

1.4 Research Questions
1. To what extent has culture contributed to gender discrimination in Apac District?
1.8 Research Methodology
This involved much use of desktop that is to say, library research has been extensively used to collect information from the existing statutes, Text books, Law reports, law Journals, Annual reports and internet searching have been highly used.

1.9 Limitation of the study
- Limited time to attend lectures and at the same time carry out research.
- Numerous costs incurred like the costs of typing and printing the proposal among others.

1.10 Chapterisation
Chapter one covers the introduction, background of the study, statement of the problem, objectives of the study, research questions, hypothesis, scope of the study, significance of the study, research methodology, limitation of the study and chapterisation.

Chapter two covers scholarly work of different authors on topics relating to study topic.

Chapter three covers the legal framework governing women’s rights.

Chapter four shows the effects of culture on gender discrimination in Apac district.

Chapter five contains recommendations and conclusion of the study.
The author adds that culture profoundly shapes gender identity by defining roles\(^{29}\) of women. Women are still regarded as care takers of infants, sick and elderly, while men are still recognized as bread winners of families. It is hence more acceptable for instance, for a woman rather than a man not to have a job. Men see work as compulsory to them. About the value of assigned roles, the feminine role remains subordinate to the masculine; Men are house heads even when their wives earn more.

I agree with the views presented by Author Kramer and Julia because culture designs the way of life of people. Culture guides people on what should or not to do. Therefore people conduct themselves and their affairs according to the culture they belong to. However, because of intermarriages, culture have mixed up thereby making people copy other people's culture neglecting their own.

**The Convention on the Elimination of All Forms of Discrimination Against Women\(^{30}\)**, defines discrimination Against Women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, social, cultural civil or any other field.

**Irene Yuan in her book\(^{31}\)**, explains that gender inequalities persist in four major areas; rights, resources, wages, and political voice. In no developing region of the world do women have equal rights with men in all these areas. this asymmetry of basic right – ranging from marriage to inheriting property to moving outside the home – severely limits the opportunities women have. For example, in Botswana, Namibia and Swaziland women have no independent right to manage property. In Egypt and Jordan, women cannot travel without their husband’s permission. In Bolivia, Guatemala and Syria, women’s employment can be restricted by their husbands. As for political and legal rights, in those developing countries where women technically have equality under their national constitutions, they do not fully enjoy such rights in practice. Outside of

\(^{29}\) A role is a set of expected behaviors and the values associated with them.  
\(^{30}\) CEDAW, 1981, article 1  
The Constitution of the Republic of Uganda\textsuperscript{35}, further allows cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the constitution to be developed and incorporated in aspects of Uganda life. If any other law or any custom is inconstant with any of the provisions of the Constitution, the Constitution shall prevail and that other law or customs shall to the extent of the inconsistency be void\textsuperscript{36}. Still, laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalized group is prohibited\textsuperscript{37}. All these provisions of the Constitution are intended to enforce the rights of women\textsuperscript{38}, undermined by the culture of people in Uganda.

**Dr. Lilian Tibatemwa 1998\textsuperscript{39},** in his journal observes that despite the constitutional provisions that empower women what is more important for them is to register equality as a practical and meaningful concept. And at the extent to which this can be achieved critically depends on rights within the family context. I agree with her views because merely having institutional principles, which entitles women to protection and equal opportunities when they are not in practice makes their emanation remain futile. However the author has under looked the achievements which have been reached on in enforcing women’s rights like girl child education, majority women now working at the international and national level. With that her argument reduces its sense.

**Rutabingwa Athanase\textsuperscript{40}** noted that Gender equality is a basic human right, but its inequality is still greatly entrenched in society, where women continue to suffer several forms of discrimination in their homes, workplace, justice system and the political arena. Women are still facing domestic and sexual violence, discriminated in the educations sector, land and inheritance rights, limited participation in decision making and legal systems, hence a hindrance to good governance.

\textsuperscript{36}Ibid, Article 2(2).
\textsuperscript{37}Ibid, Article 32(2).
\textsuperscript{38}Ibid, Article 33.
\textsuperscript{39}The 21\textsuperscript{st} century legacy of the 1995 Constitution / East Africa Journal of peace and Human Rights 1998.
\textsuperscript{40}Chairperson strategic litigation and human rights committee.
According to Agnes Bohen in her article\(^44\), in Germany women were seen to be weak and sinful like Eve\(^45\). Agnes reports that under the Marian Cult\(^46\), women are socialized to lead a nun’s life filled with piety, so as to purify themselves from Sin. She also quotes incidents where women were punished as witches, portrayed as inferior to men, were punishable for Eve’s original Sin of tempting Adam with the forbidden fruit, they were tortured, hanged and burned as (watches).

**Gwyn Kirk Margo Okazawa in her book\(^47\),** provides that for the Individual, gender construction starts with assignment to a sex category on the basis of what the genitalia look like at birth. A sex category becomes a gender status through naming, dress code and the use of other gender markers as a social institution. She adds, gender is a process of creating distinguishable social statutes for the assignment of the rights and responsibilities.

**H.F Moriss 1996 in his article\(^48\),** says that wife has not only a duty of obedience to her husband and normal domestic obligations as the core of the house and the children but also to carry out manual duties such as regards punishment for her obedience. However, modern native custom would put limits to the degree of punishment. Morris specifically dealt with certain customary practices of a given society without necessary looking at all customary practices in Uganda. He should have stated the reasonable cause which would make a man ill-treat his wife.

**Ms Pamela Montagomery in her report\(^49\),** manifested that wife battering is being regarded as a normal part of marriage life by a good number of women. Out of 181 female staff she questioned at Befast Hospital, half of the women surveyed said that a man who beats his wife should receive a suspended sentence and of those, quarter opposed any sentence if the couple has been married for more than 20 years.

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\(^{44}\) Agnes Bohen, Women in Society -Germany.

\(^{45}\) The first women in the Bible, what’s blamed for eating forbidden fruit.

\(^{46}\) A religious sect where women lead a nun’s life in order to purify themselves from sin.


\(^{48}\) H.F Moriss, Outline of native law and customs on family matters, 1996.

\(^{49}\) Montgomery Survey conducted at Queen’s University Befast.
activities that can lead to development of the society. As we all know that women are mothers of nations, there is a need to appreciate their contributions respect and protect their rights. Therefore to build a strong nation, mothers of the nation should be allowed to exhibit their full potential towards the development of a Nation.
In the case of Joseph Tumushabe Vs A.G Constitutional Petition No 6/2004, the Constitutional Court held that all provisions of the Constitution are binding on all authorities in Uganda unless specifically excepted by the Constitution itself.

In the case of Al Hajji Nasser Ntege Sebaggala V A.G and Ors Constitutional Petition No. 1/1999, the issue in this case was whether the Constitutional court still had jurisdiction as conferred upon it under 137 of the Constitution to entertain the petition in face of some provisions of the Constitution that had been incorporated in the Local Government Act depriving it of jurisdiction. The Constitutional court held that it still had jurisdiction to entertain the petition by virtue of article 137 of the Constitution. The Court could not lose jurisdiction merely because the Local Government Act has incorporated certain articles of the Constitution. Provisions of the Constitution cannot be diluted by incorporation because this would derogate from the provisions of Article 2 that guarantees supremacy of the Constitution. Therefore the provision of the constitution are binding on all authorities and persons regarding rights of women in Uganda particularly Apac district. The above case laws clarifies that the Constitution of the Republic of Uganda 1995 is the Supreme Law where women’s rights are derived in Uganda and they make the Constitution binding on all people and Authorities to enforce but not to violate women’s rights enshrined into it. Any law or custom which is inconsistent with any provision of the Constitution providing the rights to women, the constitution prevails and that Law or Custom is Null. From the above case law any action for violation of women’s Rights is brought into the Constitutional Court or any other Competent Court.

The Constitution contains chapter four which advocates for the protection and promotion of Fundamental and other human rights and freedoms. Article 20 of the Constitution is to the effect that fundamental rights and freedoms of the individuals are inherent and not granted by the state, and they deserve to be respected, upheld and promoted by all organs and agencies of government and by all persons.
The Constitution also protects every person from deprivation of property.58 Article 26(1) allows every person to have a right to own property either individually or in association with others.59 This article of the Constitution directly allows women also wherever they are in Uganda to own their property without restrictions. A few cases have been decided that recognizes the rights of women to own property, an example is the case of Uganda Vs Jemmima Kyanda,60 Court held that a woman can own property in her own right. Another is the case of Moonlight Sengooba Vs Administrator General,61 where the judge retaliated the above principle that women had a right to own property in their own right. Consequently women have all the rights to inherit property when their husbands or fathers die. These provisions of the law are of essence because they allow women to own property in their own names and to inherit any property from either their parents or husbands.

In the Constitution of the Republic of Uganda 1995, men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.62 This marriage should be entered into with the free consent of the man and women intending to marry.63 Article 31(2) allows parliament to make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children. It is the right and duty of parents to care for and bring up their children as per Article 31(4) of the Constitution. Therefore Article 31 makes married man and women to have equal rights in marriage and it prohibits the culture of early marriage as a practice seen in Apac. The tendency of leaving obligations on the woman to care and rise for children is also automatically prohibited as the responsibilities to care for the children are on both the father and mother.

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59 Ibid, Article 31(1)
60 (1977)HCB III
62 Ibid, Article 31(3)
63 Ibid, Article 31(1)
also established Uganda Human Rights Commission, which can investigate at its own initiative or on a complaint made by any person or group of persons against the violation of any human right. Therefore the above authorities allow any responsible citizen to bring action against the violator of women's rights either by petitioning Constitutional court or lodging a complaint to Uganda Human Rights Commission. The above provisions of the Constitution allow any person or woman to bring an action where his or her right has been violated. Still any person or woman is allowed to bring action on behalf of any person or woman whose rights have been violated. The avenues where complaint may be lodged are the Constitutional Court or any other competent court and Uganda Human Rights Commission or any other tribunal responsible.

3.1.2 Succession Act Cap 162
This is an Act providing for the distribution of a deceased's property. Section 24 of the Succession Act provides for the property of a deceased dying intestate. A person dies intestate in respect of all property which has not been disposed of by a valid testamentary disposition. All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property.69 This provision is important because it does not discriminate whether a man or woman who dies intestate, his or her property passes to his or her personal representatives upon trust for his or her sons and daughters. The emphasize is that women's properties can also be distributed, and also women can be beneficiaries of the property left by their parents or husbands.

Section 26(1) of the Succession Act allows the residential holding occupied by a person dying intestate to be held by his or her personal representative upon trust for his or her legal heir, and any other residential holding possessed by the intestate at his or her death shall be held by his or her representative upon trust and subject to the rights of occupation and terms and conditions set out in the second schedule to this Act shall be dealt with in accordance with the remaining provision of the part.70

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69 Succession Act, Cap 162, section 25.
70 Ibid, section 26(2)
Succession Act do not discriminate between sons and daughters and the marital status of the daughter is no bar to the inheritance from the deceased’s estate.

In addition, under section 27, a cohabitant widow has a right to inherit her deceased cohabitant husband’s estate as it was held in the matter of the estate of Stephen Wanyoike Muhia, where the dispute was whether a woman who cohabited with the deceased and the child she had brought a long with her were a widow and a child for succession purposes, the court stated that both the woman and the child were heirs to the estate of the deceased. However, that is not the position in Apac district because women are seen as properties who are also inherited at the demise of their husbands.

Section 36 of the Succession Act allows every person of sound mind and not a minor to dispose of his or her property by will. A married woman may by will dispose of any property which she could alienate by her own act during her life. Where a person, by his or her will dispose of all his or her property without making reasonable provision for the maintenance of his or her dependent relatives, section 38 shall apply, which gives power to court to order payment out of the estate of the deceased for maintenance of dependents. In the case of Charles Harwood Vs Maria Baker, Court held that to constitute a sound disposing mind, the testator or testatrix must have a sound mind enabling him/her to understand the nature of will making, a sound memory enabling him /her to recollect the property he or she is disposing of and a sound understanding to enable him or her remember the persons he or she is morally bound to provide for having regard to the person’s relation to him /her, but a will made by a person who is of unsound mind during lucid moments is valid as it was held in Vajay Chandrankant Shakh Vs Public Trustee.

From the above authorities, a woman is seen to have a right to own property and to dispose of her property by a will. A woman has a right to inherit her father’s and
with the Customary Law of the community concerned.\textsuperscript{86} However, it precludes the application of any customary practices that discriminate against children, women, and people with disabilities contrary to Articles 33, 34, and 35 of the Constitution.\textsuperscript{87} The Judicature Act also empowers the Courts to apply and enforce the observance of customary practice for as long as it is not repugnant to natural justice, equity and good conscience and provided it is not inconsistent with any written or applied law.\textsuperscript{88} To make nit clear courts of Uganda are allowed to apply Customary Laws as long as those Laws do not violate or undermines Women’s Rights.

The Land Act also puts restrictions on transfer of land by family members. No person is allowed to sell, exchange, transfer, pledge, mortgage or lease any land except with prior written consent of the spouse and the dependent children of majority age.\textsuperscript{89} The spouse or children of majority age, not being the owners of any land may lodge a caveat on the certificate of title or certificate of customary owner of the land to indicate that the property is subject to the requirement of consent.\textsuperscript{90} It has to be understood that man or husband wishing to sell or transfer any land, his woman or wife has to consent to that transfer otherwise she has a right to claim afterwards.

The Act also requires a person who owns or occupies land to manage and utilize it in accordance with the law.\textsuperscript{91} The law requires not only men but also women who own land to occupy, manage and utilize the land according to the Law.

**THE PENAL CODE ACT CAP 120.**

Penal Code Act is an Act which establish a code of criminal law. It contains chapter 14, which provides for offences against morality. It includes offences committed against women.

\textsuperscript{86} The Land Act, Cap 227, section 27
\textsuperscript{88} The Judicature Act, Cap 13 section 15(1).
\textsuperscript{89} The Land Act, cap 227, section 39(1)
\textsuperscript{90} Ibid, section 39(7).
\textsuperscript{91} Ibid, section 43
Sub-section 5 of section 129 also makes a person who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in sub-section (4) commits an offence and is liable on conviction to imprisonment for life. And where a person is charged with the offence that person shall undergo a medical examination as to his or her Human Immune Deficiency Virus (HIV) status.\textsuperscript{98}

However, where the offender in the case of any offence under section 129 is a child under the age of twelve years, the matter shall be dealt with as required by Part (v) of the Children Act.\textsuperscript{99} And where an offence under section 129 is committed by a male child and a female child upon each other when each is not below the age of twelve years of age, each of the offenders shall be dealt as required by part X of the Children Act.\textsuperscript{100} Section 129 B provides for payment of compensation to victims of defilement, the court may in addition to any sentence imposed on the offender order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offence. Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful Carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an Idiot or imbecile, commits a felony and is liable to imprisonment for fourteen years.\textsuperscript{101} Section 129 of the Penal Code Act has become relevant in protecting Women's Rights or girl child as it avails the punishment for imprisonment for life if any person performs any sexual act with a girl below eighteen years. Women are protected from the likelihood of being infected by AIDS/HIV and other sexual diseases which can be contracted as a result of sexual acts.

In Law and Advocacy for women in Uganda Vs A.G, Constitutional Petition No. 2 of 2002) sought a declaration that section 154 of the Penal Code Act which

\textsuperscript{98} Ibid, section 129 (6)  
\textsuperscript{99} Ibid, section 129 A.  
\textsuperscript{100} Ibid, section 129 A (2)  
\textsuperscript{101} Ibid, section 130
woman with adultery, rape, sodomy or bestiality, adultery coupled with cruelty or adultery coupled with desertion without reasonable excuse for two years or upwards.\textsuperscript{105}

This provision is relevant as for as women's rights are concerned because it has openly allowed women to apply to court to terminate her marriage where her husband has changed the religion, is guilty of bigamy, Adultery, sodomy and other grounds. Woman is at liberty to enforce her rights in marriage by initiating divorce proceedings against her husband.

Women are also allowed under \textbf{section 11 of the Divorce Act} to present a petition to the court praying that their marriage be declared null and void. She has to prove that her husband was permanently impotent at the time of the marriage and that her consent was obtained by force as \textbf{per-section 12 of the Divorce Act}. These provisions ensures women's rights in marriage.

\textbf{Uganda Association of Women Lawyers and 5 others Vs Attorney General, Constitution Petition No. 13/5 and 05/06 2007}, sought a declaration that \textbf{sections 4(1) and (2), 5, 21, 22, 23, 24, and 26} of the Divorce Act Cap 249, that set sticker evidentiary standards for women, when seeking a divorce, women had to show that their husband had not only committed adultery, but also provide evidence for additional grounds for divorce such as bigamy, sodomy, rape and desertion, discriminated on the basis of sex and contravened the Constitution and thus were held null and void. This case is relevant because it nullified the laws which were in violation of women's rights in marriage.

\textbf{3.2 INTERNATIONAL INSTRUMENTS OF WOMEN'S RIGHTS}

The International Instruments are meant to recognize and promote the observance of Internationally recognized women values. Several International Human Rights Instruments have been adopted, signed or ratified regarding on the women's rights, to which Uganda is a signatory.

These International instruments are as shown below:-

\cite{105} Ibid, section 15
The Instrument also allows men and women of full age to marry and to found a family, and it should be entered into with only free and full consent of the intending spouses.\footnote{Ibid, Article 16.} Women should not be forced to enter marriage but they should do it out of their willingness. Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property.\footnote{Ibid, Article 17} Women can not be denied their rights of owning property in their own names. The Declaration under\footnote{Ibid, Article 16.} Article 23 allows everyone to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment,\footnote{Ibid, Article 23(1)} and everyone without any discrimination has the right to equal pay for equal work.\footnote{Ibid, Article 23(2)} Women are at liberty to do any work of their choice without restrictions from their husbands and not subject to sexual harassments in their work place.

3.2.2 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW).

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an International legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women’s and girls’ equal rights.\footnote{\url{www.unwomen.org}.}

Instrument is often described as the International Bill of Rights for Women, and is one of the key International agreements that guides the work of UN Women in achieving gender equality and empowering all women and girls.

The instrument prohibits discrimination against Women. Article 1 defines discrimination, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying women’s enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This is irrespective of their marital status, on a basis of equality of men and women. The
CHAPTER FOUR
EFFECTS OF CULTURE ON GENDER DISCRIMINATION

4.0 Introduction
Lango Culture produced a hierarchical social order vigorously maintained through social compliance to a central value system.

These values were connected to a spiritual world which in turn was intimately connected with the conduct of persons in everyday life. The Langi valued first and foremost the unity of the clan. As a result, each member of the social unit was expected to fulfill different but complementing productive, reproductive and culture roles. The spiritual and religious worlds through spiritual and human representatives actively enforced codes of behavior. Therefore it is the value of this research work to analyze the effects of Lango culture on gender discrimination ranging from social, economic to political manner of living.

4.1 Effects of Culture on Gender Discrimination.
Although Uganda’s laws are quite clear about women being as free as men to own and dispose of property including,\textsuperscript{122} in practice women have not accessed the land market sufficiently, they either access it by the help of their husband’s and they end up jointly owning property.\textsuperscript{123} Women’s lack of access is likely explained by a shortage of funds due to their income activities being confined to the garden and kitchen. Property rights violations keep women unequal and dependent on men and can even threaten their survival. After suffering property rights violations, women end up living as squatters and at risk for violence and disease.\textsuperscript{124}

\textsuperscript{122} Registration of Titles Act, Cap 205, laws of Uganda.
\textsuperscript{123} UWOCNET (2010) Policy Brief on progress and challenges on the legal Frame work for protection of women against Discrimination and promotion of their social, political and economic rights Kampala.
\textsuperscript{124} Ibid
emanating from culture. Despite that the African Charter on Human and people’s Rights which promotes sustainability of culture,\textsuperscript{128} it is important to respect diversity of culture, discriminatory aspects of culture just like any other norm must be transformed.\textsuperscript{129}

In Uganda, the law provides for co-ownership of assets, but does not recognize the contributions whether monetary or not which a woman makes towards improvement of property which is not matrimonial property acquired before or during marriage presently non-monetary contributions like labor or maintenance are not considered, any considerations have had to rely on courts consideration. This is clear in Edita Nakiyingi Vs Merekicadeki,\textsuperscript{130} where court relied on the principle of equity and common law that woman made only contributions in the form of house work. In Mayambala Vs Mayambala,\textsuperscript{131} the court in reaching its decision relied on the financial contributions made by the wife. At divorce, a woman’s contribution in marriage will be taken into consideration. Financial contributions and contributions through house work are only considered by the court in determining their reward granted. Such consideration however is a matter of case law as there is no written law that recognizes a wife’s contribution. This shows how women’s contributions are undermined.

By tracing lineage after the male decent, customs do not allow a daughter to become heir to her father despite the fact that she is a linear descendant. It is only the son or in absence, another male relative who can become heir to his father, even if such a male is a collateral relative or not, in contrast to the daughters over whom collateral relative-in-laws may be preferred. When you look at this practice you realize that women or girls are treated as foreigners or strangers if not so as refugees in their own homes. In the latter case, an ageing father invites clan elders to physically witness the distribution of his land to his children, amongst the heir (who retains the largest portion) and those sons who previously did not benefit from the donations. On his death, the clan elders accordingly implement the wishes of the deceased. In event of absence of the above

\textsuperscript{129}[1978] HCB 107.
\textsuperscript{130}[(Divorce Cause No. 3 of 1998) [1998]] UGHC 16 (3rd November 1998)
supposedly to cleanse the woman of her dead husband's evil spirits. Wife inheritance and ritual cleansing makes many widows not to be allowed to stay in their homes or on their lands unless they succumb to these practices, but it is not guarantee to entitlements on property. These practices are sometimes said to be protective of women since the women gain the legitimacy and security of being in a male - headed household and are "purified" of evil spirits. The other side of the story is that these practices are predatory and exploitive in that the "protector" gains the widow's labor and her deceased's husband's property and contribute to the spread of HIV/AIDS.134

Unequal access to control resources, while women own about 40 percent of private businesses in Uganda135, their role in socio-economic development is still seen to be peripheral. They still have unequal access to and control of productive assets like land, with only 20 percent of registered land owned by women,136 yet women contribute 70-75 percent of the total agricultural production.137 This affects their ability to access other productive resources and undermines the potential of women's hard work and their ability as entrepreneurs.138 Lack of severe access, ownership and control of land has resulted into a poor and low socio-economic status of women in society with direct implications for their investment in agriculture and the development of the entire economy.139 For example, this would imply that because, women mainly own land in joint ownership with their husbands, makes it difficult for them to pledge that land as security for loan without the consent of their husband, and who if consulted will not approve of the loan if it is entirely meant to improve on the economic position of the woman. Because no men do wish to have women as their equal in the home as they are interested in maintaining their position as head of family.

134 Judy Adoko and Jeremy Akin (2011), understanding and strengthening Women’s Rights under customary Tenure in Uganda, the land and equity movement in Uganda (LEMU) and International Development Law Organization (IDLO).
136 National Development Plan (2013)
137 Uganda Bureau of statistics (2016).
138 Judy Adoko and Jeremy Akin (2011) supra.
To sum up with this chapter, because of culture women in Apac district lack access to property ownership, their autonomy and rights are degraded as they are deemed to be protected by men. Inheritance is a dream to them as women are not considered as heirs to their parents or husbands. They are also taken as belongings which are inherited upon the death of their husbands. Women have no rights to choose their husbands for marriage as their fathers are responsible for choosing for them husbands. Women are purchased and therefore taken as belongings to men who purchase them. Women are not allowed to be with more than one man as men are the only ones with that right. All these are effects of culture on gender discrimination in Apac district as explained above.
Judges and magistrates should also use judicial activism to bring forward fairness and justice. It should be understood that in Uganda, cases of judicial activism are very few because the judges use restraining method where they follow substantive laws in passing their judgments leaving them with no option, they usually say, "according to the law, our hands are tired, there is nothing else we can do". This restraining method is usually unfair when it comes to matters of women since many laws discriminate against women. Judges should use judicial activism to do away with those customary laws which discriminate against women and they should be able dispense justice fairly whether one is a woman or man.

The government should also enhance the existing interventions, address gender-based obstacles to growth and productivity explicitly in policy and programs, including in the revision of the medium-Term competitiveness strategy aimed at developing entrepreneurship, and in other initiatives aimed at expanding and diversifying trade, such as the strategic exports initiative. Monitor the effective implementation of the NAADS provisions relating to the access by both men and women farmers to agricultural services provided under the PMA. Implement the poverty reduction support credit provisions relating to women's access to land, including development of a management tool under the land strategic sector plan to provide baseline for determining awareness among stakeholders of women's land rights, and continuation of information campaigns relating to women's land rights. Deepen the analysis of cultural dimensions of land rights, and monitor the effective implementation of the "security of occupancy" provisions of the Land Act. Ensure provision of agricultural financing at reasonable interest rates and pay back periods.

The Employment Act 2006 and Succession Act Cap 162 should be amended so as to provide fair laws for women for example the Employment Act, does not allow women to work in the army or do underground jobs, Succession Act gives women less portion of inheritance of their deceased's husband's property. These sections should be amended to be both gender sensitive. The Constitution of the Republic of Uganda 1995 should
Finally, the status of women in Apac District as well as the world in general has been to a greater extent lowered by gender discrimination through negative cultural attitude, positive change of cultural beliefs will go a long way in the future improvement of the women’s status in life.


9- Goran Hyden, “The challenge of Constitution making policies in Uganda”.

**JOURNALS**
- NGO Contribution to women’s recognition in Uganda.
- Gender Audit of Key Laws affecting Women in Uganda.
- Women married in customary law: No longer permanent minors.

**INTERNATIONAL INSTRUMENTS**
- Universal Declaration of Human Rights (1948).
- The European Convention on Human and people’s Rights.

**WEBSITES**

**NEWS PAPERS**
- The New Vision/ http://www.newvision.co.ug/news
- Daily Monitor/ http://www.monitor.co.ug/news
A CRITICAL ANALYSIS OF THE EFFECTS OF CULTURE ON GENDER DISCRIMINATION IN UGANDA A CASE STUDY OF APAC DISTRICT

BY

OGWANG ECHONGA BENSON

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APPROVAL

This research dissertation has been submitted for examination with my approval as a University supervisor.

MRS. ERINAH .P. NANTEGE

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LIST OF INTERNATIONAL INSTRUMENTS

- The Universal Declaration of Human Rights 1948.
LIST OF CASES

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CHAPTER ONE

1.0 Introduction
Uganda is located in East Africa and lies a stride the equator\(^1\). It is bordered by Tanzania in the South, Kenya in the East, Democratic Republic of Congo (DRC) in the West and South Sudan in the North\(^2\). It is a country with several districts inter alia Apac district\(^3\) with numerous indigenous communities among which is Lango Community\(^4\).

Apac District is approximately 300km from Kampala\(^5\). It lies between Longitude 32\(^0\)E and 34\(^0\)E and latitudes 2\(^0\)N\(^6\). It is bordered by the Districts of Oyam in the North, Lira in the East, Masindi in the West and Amolatar in the South - East\(^7\). The Southern boundaries of the district are also a long Lake Kwala and the River Nile. The district covers a total area of 3,908km\(^2\) of which 9% is under open swamps, water while 15% under forests, leaving 2970km\(^2\) for human settlement, Arable land covers 2,524km\(^2\)\(^8\).

Apac became a district in 1974 when it was curved out of the Lango District\(^9\). Oyam District was further curved out of Apac in July 2006, essentially to enhance service delivery to the communities\(^10\).

Culture was defined as the whole complex of distinct spiritual, intellectual and emotional features that are characterized as social group\(^11\). Whilst Gender discrimination is the situation in which people are treated differently simply because they are male or female, rather than on the basis of their individual skills or capabilities\(^12\).

\(^1\)MacMillan School Atlas, MacMillan Publishers Kampala Uganda.
\(^2\)Ibid.
\(^4\)Ibid
\(^6\)Ibid
\(^7\)Ibid
\(^8\)Ibid
\(^9\)Ibid
\(^10\)Ibid
\(^12\)Plan International organization.
systematically denied the resources, information and freedom of action they need to fulfill this responsibility.

Therefore, this research intends to show how women and girls have been discriminated socially, economically, politically and culturally in their respective societies particularly in Apac District in Uganda.

1.1 Background to the study
To give a brief background of the situation relating to cultural practices in Apac District, the majority of the people in this area affiliate gender relations to customs. Customs of Lango people do not believe in the existence of gender equality and in fact many consider women inferior to a man as far as gender relations are concerned. In their customary marriage, husband and wife are never equal since their society is built on a patriarchal belief that man is superior over woman.

The people of Apac District most especially those in rural areas practice child marriage where parents or guardians choose to collect dowry from their young daughters rather than to continue paying their school fees, given the fact that a younger bride incurs a higher price to the husband. As well, parents living in poverty believe that marriage holds greater and more immediate potential for their daughter’s financial security compared to completing secondary and post-secondary schooling. The unfortunate reality is that 1 in a very 10 girls in Apac District are married before the age of 15. And nearly 1 in every 2 is married before 18 years¹⁹.

Dowry can take a varied number of forms a cross culture but in Lango, it involves the exchange of cows for a wife. When a man is able to provide ten or fifteen or more cows to the bride’s family, it’s considered proof that he will be able to support his wife and their future family²⁰. Not only does this practice place a considerable amount of pressure on young men to dedicate their savings to the purchase of cows, but it also

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²⁰ Judy Adoko and Simon, the Hierarchy of societies of Northern Uganda,2010,page 162,para 3.
that perpetuate gender inequality, it's equally significant to dig deeper to isolate the underlying actors in such practices.

Having knowledge of these practices can help an organization or individual bring sustainable change to their community because it leads to an enriched understanding of the explicit and implicit structures that give shape to social norms. When we begin to question the aspects of our culture that are not favorable to equality, like media that objectifies women or marriage norms that enforce gender roles, we can enrich traditions by transforming them into practices that benefit everyone rather than accessories to inequality.

1.2 Statement of the problem
Over the past decade, the global emphasis on human rights and gender equality has grown considerably across the socio-political realm. Even the Sustainable Development Goals (SDGs), which succeeded the millennium Development Goals (MDGs) lists gender equality as the fifth of seventeen global goals, which makes it clear that it is not a primary issue to call for first priority consideration thus not existing as a stand-alone issue. This research therefore intends to address the glaring gender gaps that are so endemic in Apac district.

1.3 Objectives of the study
1.3.1 Main Objective
1. To examine the effects of culture on gender discrimination in Apac District of Uganda.

1.3.2 Specific Objectives
1. To assess the effects of gender discrimination on women in Apac District of Uganda.
2. To analyze the legal, political, economic and social status of women in Apac District of Uganda.

1.4 Research Questions
1. To what extent has culture contributed to gender discrimination in Apac District?
1.8 Research Methodology
This involved much use of desktop that is to say, library research has been extensively used to collect information from the existing statutes, Text books, Law reports, law Journals, Annual reports and internet searching have been highly used.

1.9 Limitation of the study
- Limited time to attend lectures and at the same time carry out research.
- Numerous costs incurred like the costs of typing and printing the proposal among others.

1.10 Chapterisation
Chapter one covers the introduction, background of the study, statement of the problem, objectives of the study, research questions, hypothesis, scope of the study, significance of the study, research methodology, limitation of the study and chapterisation.

Chapter two covers scholarly work of different authors on topics relating to study topic.

Chapter three covers the legal framework governing women’s rights.

Chapter four shows the effects of culture on gender discrimination in Apac district.

Chapter five contains recommendations and conclusion of the study.
The author adds that culture profoundly shapes gender identity by defining roles of women. Women are still regarded as caretakers of infants, sick and elderly, while men are still recognized as bread winners of families. It is hence more acceptable for instance, for a woman rather than a man not to have a job. Men see work as compulsory to them. About the value of assigned roles, the feminine role remains subordinate to the masculine; Men are house heads even when their wives earn more.

I agree with the views presented by Author Kramer and Julia because culture designs the way of life of people. Culture guides people on what should or not to do. Therefore people conduct themselves and their affairs according to the culture they belong to. However, because of intermarriages, culture have mixed up thereby making people copy other people’s culture neglecting their own.

The Convention on the Elimination of All Forms of Discrimination Against Women, defines discrimination Against Women to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, social, cultural civil or any other field.

Irene Yuan in her book, explains that gender inequalities persist in four major areas; rights, resources, wages, and political voice. In no developing region of the world do women have equal rights with men in all these areas. this asymmetry of basic right – ranging from marriage to inheriting property to moving outside the home – severely limits the opportunities women have. For example, in Botswana, Namibia and Swaziland women have no independent right to manage property. In Egypt and Jordan, women cannot travel without their husband’s permission. In Bolivia, Guatemala and Syria, women’s employment can be restricted by their husbands. As for political and legal rights, in those developing countries where women technically have equality under their national constitutions, they do not fully enjoy such rights in practice. Outside of

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29 A role is a set of expected behaviors and the values associated with them.
30CEDAW, 1981, article 1
The Constitution of the Republic of Uganda\textsuperscript{35}, further allows cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the constitution to be developed and incorporated in aspects of Uganda life. If any other law or any custom is inconstant with any of the provisions of the Constitution, the Constitution shall prevail and that other law or customs shall to the extent of the inconsistency be void\textsuperscript{36}. Still, laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalized group is prohibited\textsuperscript{37}. All these provisions of the Constitution are intended to enforce the rights of women\textsuperscript{38}, undermined by the culture of people in Uganda.

Dr. Lilian Tibatemwa 1998\textsuperscript{39}, in his journal observes that despite the constitutional provisions that empower women what is more important for them is to register equality as a practical and meaningful concept. And at the extent to which this can be achieved critically depends on rights with in the family context. I agree with her views because merely having institutional principles, which entitles women to protection and equal opportunities when they are not in practice makes their emanation remain futile. However the author has under looked the achievements which have been reached on in enforcing women’s rights like girl child education, majority women now working at the international and national level. With that her argument reduces its sense.

Rutabingwa Athanase\textsuperscript{40} noted that Gender equality is a basic human right, but its inequality is still greatly entrenched in society, where women continue to suffer several forms of discrimination in their homes, workplace, justice system and the political arena. Women are still facing domestic and sexual violence, discriminated in the educations sector, land and inheritance rights, limited participation in decision making and legal systems, hence a hindrance to good governance.

\textsuperscript{36}Ibid, Article 2(2).
\textsuperscript{37}Ibid, Article 32(2).
\textsuperscript{38}Ibid, Article 33.
\textsuperscript{39}The 21\textsuperscript{st} century legacy of the 1995 Constitution / East Africa Journal of peace and Human Rights 1998.
\textsuperscript{40}Chairperson strategic litigation and human rights committee.
According to Agnes Bohen in her article\(^{44}\), in Germany women were seen to be weak and sinful like Eve\(^{45}\). Agnes reports that under the Marian Cult\(^{46}\), women are socialized to lead a nun's life filled with piety, so as to purify themselves from Sin. She also quotes incidents where women were punished as witches, portrayed as inferior to men, were punishable for Eve's original Sin of tempting Adam with the forbidden fruit, they were tortured, hanged and burned as (watches).

Gwyn Kirk Margo Okazawa in her book\(^{47}\), provides that for the Individual, gender construction starts with assignment to a sex category on the basis of what the genitalia look like at birth. A sex category becomes a gender status through naming, dress code and the use of other gender markers as a social institution. She adds, gender is a process of creating distinguishable social statutes for the assignment of the rights and responsibilities.

H.F Moriss 1996 in his article\(^{48}\), says that wife has not only a duty of obedience to her husband and normal domestic obligations as the core of the house and the children but also to carry out manual duties such as regards punishment for her obedience. However, modern native custom would put limits to the degree of punishment. Morris specifically dealt with certain customary practices of a given society without necessary looking at all customary practices in Uganda. He should have stated the reasonable cause which would make a man ill-treat his wife.

Ms Pamela Montagomery in her report\(^{49}\), manifested that wife battering is being regarded as a normal part of marriage life by a good number of women. Out of 181 female staff she questioned at Befast Hospital, half of the women surveyed said that a man who beats his wife should receive a suspended sentence and of those, quarter opposed any sentence if the couple has been married for more than 20 years.

\(^{44}\) Agnes Bohen, Woman in Society - Germany.
\(^{45}\) The first women in the Bible, what's blamed for eating for bidden fruit.
\(^{46}\) A religious sect where women lead nun's life in order to purify themselves from sin.
\(^{48}\) H.F Morriss, Outline of native law and customs on family matters, 1996.
\(^{49}\) Montgomery Survey conducted at Queen's University Befast.
activities that can lead to development of the society. As we all know that women are mothers of nations, there is a need to appreciate their contributions respect and protect their rights. Therefore to build a strong nation, mothers of the nation should be allowed to exhibit their full potential towards the development of a Nation.
In the case of Joseph Tumushabe Vs A.G Constitutional Petition No 6/2004, the Constitutional Court held that all provisions of the Constitution are binding on all authorities in Uganda unless specifically excepted by the Constitution itself.

In the case of Al Hajji Nasser Ntege Sebaggala V A.G and Ors Constitutional Petition No. 1/1999, the issue in this case was whether the Constitutional court still had jurisdiction as conferred upon it under 137 of the Constitution to entertain the petition in face of some provisions of the Constitution that had been incorporated in the Local Government Act depriving it of jurisdiction. The Constitutional court held that it still had jurisdiction to entertain the petition by virtue of article 137 of the Constitution. The Court could not lose jurisdiction merely because the Local Government Act has incorporated certain articles of the Constitution. Provisions of the Constitution cannot be diluted by incorporation because this would derogate from the provisions of Article 2 that guarantees supremacy of the Constitution. Therefore the provision of the constitution are binding on all authorities and persons regarding rights of women in Uganda particularly Apac district. The above case laws clarifies that the Constitution of the Republic of Uganda 1995 is the Supreme Law where women's rights are derived in Uganda and they make the Constitution binding on all people and Authorities to enforce but not to violate women's rights enshrined into it. Any law or custom which is inconsistent with any provision of the Constitution providing the rights to women, the constitution prevails and that Law or Custom is Null. From the above case law any action for violation of women's Rights is brought into the Constitutional Court or any other Competent Court.

The Constitution contains chapter four which advocates for the protection and promotion of Fundamental and other human rights and freedoms. Article 20 of the Constitution is to the effect that fundamental rights and freedoms of the individuals are inherent and not granted by the state, and they deserve to be respected, upheld and promoted by all organs and agencies of government and by all persons.
The Constitution also protects every person from deprivation of property. Article 26(1) allows every person to have a right to own property either individually or in association with others. This article of the Constitution directly allows women also wherever they are in Uganda to own their property without restrictions. A few cases have been decided that recognizes the rights of women to own property, an example is the case of Uganda Vs Jemmima Kyanda, where the Court held that a woman can own property in her own right. Another is the case of Moonlight Sengooba Vs Administrator General, where the judge retaliated the above principle that women had a right to own property in their own right. Consequently women have all the rights to inherit property when their husbands or fathers die. These provisions of the law are of essence because they allow women to own property in their own names and to inherit ant property from either their parents or husbands.

In the Constitution of the Republic of Uganda 1995, men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution. This marriage should be entered into with the free consent of the man and women intending to marry. Article 31(2) allows parliament to make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children. It is the right and duty of parents to care for and bring up their children as per Article 31(4) of the Constitution. Therefore Article 31 makes married man and women to have equal rights in marriage and it prohibits the culture of early marriage as a practice seen in Apac. The tendency of leaving obligations on the woman to care and rise for children is also automatically prohibited as the responsibilities to care for the children are on both the father and mother.

59 Ibid, Article 26(1)
60 Ibid, Article 31(1)
61 Ibid, Article 31(2)
62 Ibid, Article 31(3)
also established Uganda Human Rights Commission, which can investigate at its own
initiative or on a complaint made by any person or group of persons against the
violation of any human right. Therefore the above authorities allow any responsible
citizen to bring action against the violator of women's rights either by petitioning
Constitutional court or lodging a complaint to Uganda Human Rights Commission. The
above provisions of the Constitution allow any person or woman to bring an action
where his or her right has been violated. Still any person or woman is allowed to bring
action on behalf of any person or woman whose rights have been violated. The avenues
where complaint may be lodged are the Constitutional Court or any other competent
court and Uganda Human Rights Commission or any other tribunal responsible.

3.1.2 Succession Act Cap 162

This is an Act providing for the distribution of a deceased's property. Section 24 of
the Succession Act provides for the property of a deceased dying intestate. A person
dies intestate in respect of all property which has not been disposed of by a valid
testamentary disposition. All property in an intestate estate devolves upon the personal
representative of the deceased upon trust for those persons entitled to the property.69
This provision is important because it does not discriminate whether a man or woman
who dies intestate, his or her property passes to his or her personal representatives
upon trust for his or her sons and daughters. The emphasize is that women's properties
can also be distributed, and also women can be beneficiaries of the property left by
their parents or husbands.

Section 26(1) of the Succession Act allows the residential holding occupied by a
person dying intestate to be held by his or her personal representative upon trust for
his or her legal heir, and any other residential holding possessed by the intestate at his
or her death shall be held by his or her representative upon trust and subject to the
rights of occupation and terms and conditions set out in the second schedule to this Act
shall be dealt with in accordance with the remaining provision of the part.70

69 Succession Act, Cap 162, section 25.
70 Ibid, section 26(2)
Succession Act do not discriminate between sons and daughters and the marital status of the daughter is no bar to the inheritance from the deceased’s estate.

In addition, under section 27, a cohabitant widow has a right to inherit her deceased cohabitant husband’s estate as it was held in the matter of the estate of Stephen Wanyoike Muhia, where the dispute was whether a woman who cohabited with the deceased and the child she had brought a long with her were a widow and a child for succession purposes, the court stated that both the woman and the child were heirs to the estate of the deceased. However, that is not the position in Apac district because women are seen as properties who are also inherited at the demise of their husbands.

Section 36 of the Succession Act allows every person of sound mind and not a minor to dispose of his or her property by will. A married woman may by will dispose of any property which she could alienate by her own act during her life. Where a person, by his or her will dispose of all his or her property without making reasonable provision for the maintenance of his or her dependent relatives, section 38 shall apply, which gives power to court to order payment out of the estate of the deceased for maintenance of dependents. In the case of Charles Harwood Vs Maria Baker, Court held that to constitute a sound disposing mind, the testator or testatrix must have a sound mind enabling him/her to understand the nature of will making, a sound memory enabling him/her to recollect the property he or she is disposing of and a sound understanding to enable him or her remember the persons he or she is morally bound to provide for having regard to the person’s relation to him/her, but a will made by a person who is of unsound mind during lucid moments is valid as it was held in Vajay Chandrankant Shakh Vs Public Trustee.

From the above authorities, a woman is seen to have a right to own property and to dispose of her property by a will. A woman has a right to inherit her father’s and
with the Customary Law of the community concerned.\textsuperscript{66} However, it precludes the application of any customary practices that discriminate against children, women, and people with disabilities contrary to Articles 33, 34, and 35 of the Constitution.\textsuperscript{87} The Judicature Act also empowers the Courts to apply and enforce the observance of customary practice for as long as it is not repugnant to natural justice, equity and good conscience and provided it is not inconsistent with any written or applied law.\textsuperscript{88} To make nit clear courts of Uganda are allowed to apply Customary Laws as long as those Laws do not violate or undermines Women’s Rights.

The Land Act also puts restrictions on transfer of land by family members. No person is allowed to sell, exchange, transfer, pledge, mortgage or lease any land except with prior written consent of the spouse and the dependent children of majority age.\textsuperscript{89} The spouse or children of majority age, not being the owners of any land may lodge a caveat on the certificate of title or certificate of customary owner of the land to indicate that the property is subject to the requirement of consent.\textsuperscript{90} It has to be understood that man or husband wishing to sell or transfer any land, his woman or wife has to consent to that transfer otherwise she has a right to claim afterwards.

The Act also requires a person who owns or occupies land to manage and utilize it in accordance with the law.\textsuperscript{91} The law requires not only men but also women who own land to occupy, manage and utilize the land according to the Law.

**THE PENAL CODE ACT CAP 120.**

Penal Code Act is an Act which establish a code of criminal law. It contains chapter 14, which provides for offences against morality. It includes offences committed against women.

\textsuperscript{66} The Land Act, Cap 227, section 27
\textsuperscript{88} The Judicature Act, Cap 13 section 15(1).
\textsuperscript{89} The Land Act, cap 227, section 39(1)
\textsuperscript{90} Ibid, section 39(7).
\textsuperscript{91} Ibid, section 43
Sub-section 5 of section 129 also makes a person who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in sub-section (4) commits an offence and is liable on conviction to imprisonment for life. And where a person is charged with the offence that person shall undergo a medical examination as to his or her Human Immune Deficiency Virus (HIV) status.\textsuperscript{98}

However, where the offender in the case of any offence under section 129 is a child under the age of twelve years, the matter shall be dealt with as required by Part (v) of the Children Act.\textsuperscript{99} And where an offence under section 129 is committed by a male child and a female child upon each other when each is not below the age of twelve years of age, each of the offenders shall be dealt as required by part X of the Children Act.\textsuperscript{100} Section 129 B provides for payment of compensation to victims of defilement, the court may in addition to any sentence imposed on the offender order that the victim of the offence be paid compensation by the offender for any physical, sexual and psychological harm caused to the victim by the offence. Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful Carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an Idiot or imbecile, commits a felony and is liable to imprisonment for fourteen years.\textsuperscript{101} Section 129 of the Penal Code Act has become relevant in protecting Women’s Rights or girl child as it avails the punishment for imprisonment for life if any person performs any sexual act with a girl below eighteen years. Women are protected from the likelihood of being infected by AIDS/HIV and other sexual diseases which can be contracted as a result of sexual acts.

\textbf{In Law and Advocacy for women in Uganda Vs A.G, Constitutional Petition No. 2 of 2002) sought a declaration that section 154 of the Penal Code Act which}
woman with adultery, rape, sodomy or bestiality, adultery coupled with cruelty or adultery coupled with desertion without reasonable excuse for two years or upwards.105

This provision is relevant as far as women’s rights are concerned because it has openly allowed women to apply to court to terminate her marriage where her husband has changed the religion, is guilty of bigamy, Adultery, sodomy and other grounds. Woman is at liberty to enforce her rights in marriage by initiating divorce proceedings against her husband.

Women are also allowed under section 11 of the Divorce Act to present a petition to the court praying that their marriage be declared null and void. She has to prove that her husband was permanently impotent at the time of the marriage and that her consent was obtained by force as per-section 12 of the Divorce Act. These provisions ensures women’s rights in marriage.

Uganda Association of Women Lawyers and 5 others Vs Attorney General, Constitution Petition No. 13/5 and 05/06 2007, sought a declaration that sections 4(1) and (2), 5, 21, 22, 23, 24, and 26 of the Divorce Act Cap 249, that set sticker evidentiary standards for women, when seeking a divorce, women had to show that their husband had not only committed adultery, but also provide evidence for additional grounds for divorce such as bigamy, sodomy, rape and desertion, discriminated on the basis of sex and contravened the Constitution and thus were held null and void. This case is relevant because it nullified the laws which were in violation of women’s rights in marriage.

3.2 INTERNATIONAL INSTRUMENTS OF WOMEN’S RIGHTS

The International Instruments are meant to recognize and promote the observance of Internationally recognized women values. Several International Human Rights Instruments have been adopted, signed or ratified regarding on the women’s rights, to which Uganda is a signatory.

These International instruments are as shown below:-

105 Ibid, section 15
The Instrument also allows men and women of full age to marry and to found a family, and it should be entered into with only free and full consent of the intending spouses.\textsuperscript{112} Women should not be forced to enter marriage but they should do it out of their willingness. Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property.\textsuperscript{113} Women can not be denied their rights of owning property in their own names. The Declaration under Article 23 allows everyone to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment,\textsuperscript{114} and everyone without any discrimination has the right to equal pay for equal work.\textsuperscript{115} Women are at liberty to do any work of their choice without restrictions from their husbands and not subject to sexual harassments in their work place.

3.2.2 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW).

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an International legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women’s and girls’ equal rights.\textsuperscript{116}

Instrument is often described as the International Bill of Rights for Women, and is one of the key International agreements that guides the work of UN Women in achieving gender equality and empowering all women and girls.

The instrument prohibits discrimination against Women. Article 1 defines discrimination, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying women’s enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This is irrespective of their marital status, on a basis of equality of men and women. The

\textsuperscript{112} ibid, Article 16.  
\textsuperscript{113} ibid, Article 17  
\textsuperscript{114} ibid, Article 23(1)  
\textsuperscript{115} ibid, Article 23(2)  
\textsuperscript{116} www.Un women.org.
CHAPTER FOUR
EFFECTS OF CULTURE ON GENDER DISCRIMINATION

4.0 Introduction
Lango Culture produced a hierarchical social order vigorously maintained through social compliance to a central value system.

These values were connected to a spiritual world which in turn was intimately connected with the conduct of persons in everyday life. The Langi valued first and foremost the unity of the clan. As a result, each member of the social unit was expected to fulfill different but complementing productive, reproductive and culture roles. The spiritual and religious worlds through spiritual and human representatives actively enforced codes of behavior. Therefore it is the value of this research work to analyze the effects of Lango culture on gender discrimination ranging from social, economic to political manner of living.

4.1 Effects of Culture on Gender Discrimination.
Although Uganda’s laws are quite clear about women being as free as men to own and dispose of property including, in practice women have not accessed the land market sufficiently, they either access it by the help of their husband’s and they end up jointly owning property. Women’s lack of access is likely explained by a shortage of funds due to their income activities being confined to the garden and kitchen. Property rights violations keep women unequal and dependent on men and can even threaten their survival. After suffering property rights violations, women end up living as squatters and at risk for violence and disease.

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122 Registration of Titles Act, Cap 205, laws of Uganda.
123 UWONET (2010) Policy Brief on progress and challenges on the legal Frame work for protection of women against Discrimination and promotion of their social, political and economic rights Kampala.
124 Ibid
emanating from culture. Despite that the African Charter on Human and people’s Rights which promotes sustainability of culture, it is important to respect diversity of culture, discriminatory aspects of culture just like any other norm must be transformed.

In Uganda, the law provides for co-ownership of assets, but does not recognize the contributions whether monetary or not which a woman makes towards improvement of property which is not matrimonial property acquired before or during marriage presently non-monetary contributions like labor or maintenance are not considered, any considerations have had to rely on courts consideration. This is clear in Edita Nakiyingi Vs Merekicadeki, where court relied on the principle of equity and common law that woman made only contributions in the form of house work. In Mayambala Vs Mayambala, the court in reaching its decision relied on the financial contributions made by the wife. At divorce, a woman’s contribution in marriage will be taken into consideration. Financial contributions and contributions through house work are only considered by the court in determining their reward granted. Such consideration however is a matter of case law as there is no written law that recognizes a wife’s contribution. This shows how women’s contributions are undermined.

By tracing lineage after the male decent, customs do not allow a daughter to become heir to her father despite the fact that she is a linear descendant. It is only the son or in absence, another male relative who can become heir to his father, even if such a male is a collateral relative or not, in contrast to the daughters over whom collateral relative—in—laws may be preferred. When you look at this practice you realize that women or girls are treated as foreigners or strangers if not so as refugees in their own homes. In the latter case, an ageing father invites clan elders to physically witness the distribution of his land to his children, amongst the heir (who retains the largest portion) and those sons who previously did not benefit from the donations. On his death, the clan elders accordingly implement the wishes of the deceased. In event of absence of the above

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130 [(Divorce Cause No. 3 of 1998) [1998]] UGHC 16 (3rd November 1998)
supposedly to cleanse the woman of her dead husband’s evil spirits. Wife inheritance and ritual cleansing makes many widows not to be allowed to stay in their homes or on their lands unless they succumb to these practices, but it is not guarantee to entitlements on property. These practices are sometimes said to be protective of women since the women gain the legitimacy and security of being in a male–headed household and are “purified” of evil spirits. The other side of the story is that these practices are predatory and exploitive in that the “protector” gains the widow’s labor and her deceased’s husband’s property and contribute to the spread of HIV/AIDS.134

Unequal access to control resources, while women own about 40 percent of private businesses in Uganda135, their role in socio-economic development is still seen to be peripheral. They still have unequal access to and control of productive assets like land, with only 20 percent of registered land owned by women,136 yet women contribute 70-75 percent of the total agricultural production.137 This affects their ability to access other productive resources and undermines the potential of women’s hard work and their ability as entrepreneurs.138 Lack of severe access, ownership and control of land has resulted into a poor and low socio-economic status of women in society with direct implications for their investment in agriculture and the development of the entire economy.139 For example, this would imply that because, women mainly own land in joint ownership with their husbands, makes it difficult for them to pledge that land as security for loan without the consent of their husband, and who if consulted will not approve of the loan if it is entirely meant to improve on the economic position of the woman. Because no men do wish to have women as their equal in the home as they are interested in maintaining their position as head of family.

134 Judy Adoko and Jeremy Akin (2011), understanding and strengthening Women’s Rights under customary Tenure in Uganda, the land and equity movement in Uganda (LEMU) and International Development Law Organization (IDLO).
136 National Development Plan (2013)
137 Uganda Bureau of statistics (2016).
138 Judy Adoko and Jeremy Akin (2011) Supra.
To sum up with this chapter, because of culture women in Apac district lack access to property ownership, their autonomy and rights are degraded as they are deemed to be protected by men. Inheritance is a dream to them as women are not considered as heirs to their parents or husbands. They are also taken as belongings which are inherited upon the death of their husbands. Women have no rights to choose their husbands for marriage as their fathers are responsible for choosing for them husbands. Women are purchased and therefore taken as belongings to men who purchase them. Women are not allowed to be with more than one man as men are the only ones with that right. All these are effects of culture on gender discrimination in Apac district as explained above.
Judges and magistrates should also use judicial activism to bring forward fairness and justice. It should be understood that in Uganda, cases of judicial activism are very few because the judges use restraining method where they follow substantive laws in passing their judgments leaving them with no option, they usually say, “according to the law, our hands are tired, there is nothing else we can do”. This restraining method is usually unfair when it comes to matters of women since many laws discriminate against women. Judges should use judicial activism to do away with those customary laws which discriminate against women and they should be able dispense justice fairly whether one is a woman or man.

The government should also enhance the existing interventions, address gender-based obstacles to growth and productivity explicitly in policy and programs, including in the revision of the medium-Term competiveness strategy aimed at developing entrepreneurship, and in other initiatives aimed at expanding and diversifying trade, such as the strategic exports initiative. Monitor the effective implementation of the NAADS provisions relating to the access by both men and women farmers to agricultural services provided under the PMA. Implement the poverty reduction support credit provisions relating to women’s access to land, including development of a management tool under the land strategic sector plan to provide baseline for determining awareness among stakeholders of women’s land rights, and continuation of information campaigns relating to women’s land rights. Deepen the analysis of cultural dimensions of land rights, and monitor the effective implementation of the “security of occupancy” provisions of the Land Act. Ensure provision of agricultural financing at reasonable interest rates and pay back periods.

The Employment Act 2006 and Succession Act Cap 162 should be amended so as to provide fair laws for women for example the Employment Act, does not allow women to work in the army or do underground jobs, Succession Act gives women less portion of inheritance of their deceased’s husband’s property. These sections should be amended to be both gender sensitive. The Constitution of the Republic of Uganda 1995 should
Finally, the status of women in Apac District as well as the world in general has been to a greater extent lowered by gender discrimination through negative cultural attitude, positive change of cultural beliefs will go a long way in the future improvement of the women's status in life.


9- Goran Hyden, “*The challenge of Constitution making policies in Uganda*”.

**JOURNALS**
- NGO Contribution to women’s recognition in Uganda.
- Gender Audit of Key Laws affecting Women in Uganda.
- Women married in customary law: No longer permanent minors.

**INTERNATIONAL INSTRUMENTS**
- Universal Declaration of Human Rights (1948).
- The European Convention on Human and people’s Rights.

**WEBSITES**
- [http://www.uga.edu](http://www.uga.edu).

**NEWS PAPERS**
- Daily Monitor/ [http://www.monitor.co.ug/news](http://www.monitor.co.ug/news)