



# Equal Opportunities Commission

**A POSITION PAPER OF THE EQUAL OPPORTUNITIES COMMISSION  
(EOC) ON THE PROPOSED REPEAL OF SECTION 13(15) (g) OF THE  
PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2015  
(PFMA 2015)**

The Equal Opportunities Commission (EOC),  
Plot 7, Luthuli Close, Bugolobi,  
P.O. Box 27672, Kampala.

# THE NEED FOR RETENTION OF GENDER AND EQUITY IN UGANDA'S LEGISLATIVE AND POLICY REGIME

## 1.0 Introduction

The Ministry of Finance, Planning and Economic Development (MoFPED) has proposed amendments to eight sections of the Public Finance Management Act, 2015. These include Sections 9; 13; 17; 20; 22; 25; 36; and 82 of the Principal Act. The Section to which the EOC and other likeminded stakeholders are concerned about in this Bill is section 13 (15) g (i) & (ii) which is reinforcing its mandate of ensuring inclusion of marginalised groups in all development processes and ensuring equitable access to benefits, goods and services of development through taking affirmative action and promoting equal opportunities for all. The Commission reaffirms its commitment to uphold Article 32 of the 1995 Constitution of the Republic of Uganda as amended, which is to redress imbalances and ensure equal opportunities for all. As such the EOC disagrees with object (b) of the bill which proposes, "To repeal the provision on the requirement to represent a certificate certifying that the policy statements of the Votes are gender and equity responsive"<sup>1</sup>.

## 2.0 Background to the Gender and Equity Certificate

In accordance with Article 32(3) of the Constitution of the Republic of Uganda (1995) as amended, Section (14) and (15) of the Equal Opportunities Commission Act, 2007 and Section (9) Clause (I) of the Public Finance Management Act, 2015 (PFMA), the Equal Opportunities Commission (EOC) is mandated to ensure that all policies, plans, programmes, activities and budgets among others are compliant with gender and equity; as such, ensuring equal opportunities for all- (PFMA, 2015, EOC, 2007).

The first initiative of government to take steps towards mainstreaming gender and other cross-cutting issues in the public expenditure framework and planning can be traced to the financial year 2004/05 when the Ministry of Finance Planning and Economic Development in an attempt to make Ministries Departments and Agencies (MDAs) and Local Governments address gender issues included a gender budget directive in the Budget Call Circular (BCC) that directed all the MDAs and LGs to show how they will address gender issues through their budgets and plans.

This initiative was commendable, but it had its own shortcomings when it came to budget appropriation and implementation. With all the well intentioned motive of government, the practice that was adopted by most of the implementers (MDAs and LGs) stopped at merely providing for gender and equity as a cross cutting issue in the narratives of their plans and budgets, with no actual allocation of resources provided for implementation of planned interventions.

The Government of Uganda in a bid to improve Public finance management in Uganda has undertaken several reforms with a view to achieve inclusive development by ensuring budget efficiency, transparency, accountability and value for money in public expenditure management. To this end, several laws and regulations have been enacted. The major laws governing management of public finances in Uganda include; the 1995 Constitution as amended, the Budget Act of 2001, the Public Finance and Accountability Act of 2003 and the Public Procurement and Disposal of Public Assets 2003. However some of these legislations save for the 1995 Constitution were not developed with gender and equity lenses in mind – and were therefore excluding some segments of society from equitably accessing and benefiting from the goods and services that the state was providing. Nonetheless it is sufficing to recognize the significant achievements registered as result of enacting these laws. The GoU recognizing the need for reforms in public finance management came up with a new Bill in April 2012, which, after protracted lobbying by the EOC and CSOs to have clauses on gender and equity provided in it became reality on 23<sup>rd</sup> February, 2015 when His Excellency the President of the Republic of Uganda assented to it - giving birth to the Public Finance Management Act, 2015 with provisions of gender and equity in it. This rare legislation put Uganda in the global limelight as a country committed to promoting gender equality and ensuring all inclusive development that recognizes the marginalised and

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<sup>1</sup> See Annex 1; highlighted, the proposal by the Ministry of Finance to repeal the provision on the requirement to represent a certificate certifying that the policy statements of the Votes are gender and equity responsive

discriminated groups in our society. The need for reforms was coupled with the developments in the East African region, the unprecedented levels of corruption and embezzlement of public funds being witnessed today justified the need to review the existing laws to provide for due diligence in the Public Expenditure Management. To the disappointment of everyone else who was proponent of this law, in hardly 7 months since this law was enacted, the governments' MoFPED is already proposing repeal of some sections - including section 13(15) (g) before the law celebrates its first anniversary. The EOC and other likeminded actors are opposed to any move intended to weaken the spirit and intent gender and equity mainstreaming in development.

### 3.0 Justification for the Commission's Disagreement

In the view of the EOC, Uganda is so far the first country in the region to have such a legislation that recognizes inclusion of gender and equity in the management of public finance expenditure. As such, repealing provisions that are already putting Uganda ahead of the rest as far as implementation of the recently adopted global agenda for sustainable development (the SDGs) which are largely inclusive by nature brings a big contradiction and undermines all Uganda's efforts of ensuring gender equality and ensuring inclusion of all in development. The position of the EOC is that the proposed repeal of (Section 13 (II) e (i) and (ii)) should be stayed because of the reasons outlined below:

#### Part I: Technical Implications:

- i. The repeal of the contested Section 13 (15) g (i) & (ii))<sup>2</sup> undermines the spirit of consistency as such not tenable. Technically speaking the Ministerial Policy Statements (Section 13 (15) g (i) & (ii))<sup>3</sup> are a combines planning and budgeting and as thus matches the Budget Framework Papers (Section 9 (6) (a) and (b))<sup>4</sup> with the sectoral Budgets (Section 13 (II) e (i) and (ii))<sup>5</sup>. In addition, the BFPs and the Budgets are not vote specific like is the case with the Ministerial Policy Statements (MPS). There is therefore a high risk of omitting gender and equity issues if the assessment is only applied to the BFP and the Budgets, moreover it is the MPS that contains details that can be assessed and measured and above all it is the i tool for implementation.
- ii. Gender and equity provisions in the PFMA will help government address the different development concerns of various categories of marginalised groups to wit Youth, Older Persons, Orphans and other vulnerable children, Persons with Disability (PWDs), women, men and other minority groups. The current demographics of some these groups stand as follows: women (17,921,357), Youth (6,437,400), Children (19,874,000), Older Persons (1,481,600), Ethnic Minorities (183,217), persons with disabilities (4,912,000), the rural and urban poor (19.5%) among other marginalised persons (UBOS Census Preliminary Report, 2015).  
These categories of the population constitute over 80 percent of the Country's total population. By repealing the said section of the PFMA, 2015 that recognizes the need to optimally equify benefits of development

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2 (g) a certificate issued by the Minister responsible for Finance in consultation with the Equal Opportunities Commission; (i) certifying that the policy statement is gender and equity responsive; and (ii) specifying measures taken to equalize opportunities for men, women, persons with disabilities and other marginalised groups;

3 (g) a certificate issued by the Minister responsible for Finance in consultation with the Equal Opportunities Commission; (i) certifying that the policy statement is gender and equity responsive; and (ii) specifying measures taken to equalize opportunities for men, women, persons with disabilities and other marginalised groups;

4 (6) The Minister shall, in consultation with the Equal Opportunities Commission, issue a certificate— (a) certifying that the budget framework paper is gender and equity responsive; and (b) specifying measures taken to equalize opportunities for women, men, persons with disabilities and other marginalized groups.

5 (e) a certificate issued by the Minister responsible for Finance in consultation with the Equal Opportunities Commission- (i) certifying that the budget is gender and equity responsive; and (ii) specifying the measures taken to equalize opportunities for men, women, persons with disabilities and other marginalised groups

undermines well-intentioned aspirations of the framers of the 1995 Constitution of the Republic of Uganda which is pro-people Constitution. And above all this move is likely to promote none compliance to providing for gender and equity during; planning, budgeting, implementation, monitoring and evaluation of development activities, programmes or projects within all government Ministries, Departments, Agencies (MDAs) and Local Governments.

**iii. Part 2: Implications on Commitment to International Instruments**

Uganda is party to a number of international and regional instruments relating to elimination of discrimination and marginalization, i.e. (i) Articles 1 and 2 of the Universal Declaration of Human Rights, (ii) Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights, (iii) Article 2 of the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disability (CRPD) among others. By ratifying these Conventions, Uganda has committed itself to eliminate discrimination and marginalization against these groups, observe the principle of equality in treating all its citizens and more specifically implement a policy of affirmative action in favor of women, PWDs, People Living with HIV&AIDS (PLWHAs), ethnic minorities, the unemployed, Internally Displaced Persons (IDPs), Refugees, geographically marginalized, older persons, the culturally discriminated, politically marginalized, as well as the poorest of the poor. Therefore, repealing provisions of a law that is responding to Uganda's quest for equity will undermine the country's commitment to implement international instruments it is party to. It is also important to note that on Friday 25<sup>th</sup> September, 2015, in the United Nations General Assembly, World Leaders formally adopted the 2030 Agenda for Sustainable Development Goals. All the 17 Goals emphasize equity and inclusive growth<sup>6</sup>.

**iv. Part 3: Implications to the Aspirations of the 1995 Constitution of the Republic of Uganda and other Policy frameworks:**

This proposal undermines: Article 32(3)<sup>7</sup> of the 1995 Constitution of the Republic of Uganda; Section (14) and (15) of the Equal Opportunities Commission Act (2007)<sup>8</sup>; the National Policy of Equal Opportunities (2006)<sup>9</sup>; the NDP II under the theme "Strengthening Uganda's Competitiveness for Sustainable Wealth Creation, Employment and Inclusive Growth; The repeal of Gender and Equity requirements undermines the National Objectives and Directive principles of State Policy of our Constitution; in particular, objective VI and XII that uphold gender balance and equitable access to development, and espoused by this Law.

In addition, it undermines the related Articles of this Constitution, which specifically target marginalised groups and address their plight, namely: Article 33 that provides for the rights of Women; Article 34 the Rights of Children; Article 35 Rights of persons with Disability; and Article 36 the Rights of minorities.

**v. V. Part 4: Implications to the Principles of Democracy:**

Inclusion of Gender & Equity Certificate in the PFMA,2015 promotes popular democracy through equal participation of women, men and other marginalized groups in getting involved in taking charge of their destiny through their involvement in designing inclusive and sustainable plans and strategies as well as monitoring and evaluation of sector performance and determining the location of activities and projects.

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<sup>6</sup> The Goals are summarized in Annex 2

<sup>7</sup> 32. (1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them. (2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article.

<sup>8</sup> The functions of the Commission are to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usage and customs of: organs of state at all levels, statutory bodies and agencies, public bodies and authorities, private businesses and enterprises, non-governmental organizations, and social and cultural communities, are compliant with equal opportunities and affirmative action in favor of groups marginalised.

<sup>9</sup> Equitable development for sustainable creation of wealth

## **Part 6: Implications to the EOC**

The GoU established the EOC to effectuate Article 32. The EOC Act 2007 under section 14 reinforces the implementation of affirmative action. The PFMA under section 11 gives the EOC mandate to ensure BFPs and MPS are compliant with Gender and Equity requirements. To repeal the provisions of gender and equity will undermine the role of the EOC as a state institution established to redress imbalances while ensuring equal opportunities for all.

- vi. The Commission has built Capacity of 19 technical staff to handle all matters relating to gender and equity. The trained staff have since assessed the 10 ministerial policy statements of 10 MDAs for the FY 2015/2016. The EOC in consultation with the Ministry of Public Service is in the process of establishing Compliance and Reporting Department whose main responsibility shall among others be to handle issues of G&E within the EOC.
- vii. The Commission has developed tools and training materials to implement the gender and equity certificate. Among the tools include; the Management and implementation schedule, assessment tools and monitoring tools.
- viii. EOC also initiated collaboration arrangements with development partners (DGF, and UN Human Rights) towards strengthening its institutional capacity in the area of G&E assessments among others.
- ix. Training Materials have been developed. Since the PFMA 2015 came in to force, EOC has been raising awareness on G&E at both national and local government levels.

### **Recommendations:**

In case MoFPED finds difficulties with the responsibility of issuance of the said certificate of gender and equity as provided under the law, the EOC recommends such a mandate to be relegated to it.

The 10 billion IPF that the EOC had provided in the budget for FY 2015/16 should be considered for funding.

The MoFPED should fully involve the EOC in all aspects that concern the implementation of this law, for example EOC is informed that the Regulations and the guidelines that are to implement this law are being developed but its input has not been sought.

## **Conclusion**

Gender and Equity responsiveness is under-pinned by a premise that recognizes the gender imbalances exist in all spheres of life and can be changed by government through policy interventions. There are three Sections on gender and equity in the Public Finance Management Act, 2015. These are: Section 9 (6) (a) and (b)<sup>10</sup>; Section 13 (11) e (i) and (ii)<sup>11</sup>; and Section 13 (15) g (i) & (ii)<sup>12</sup>. The Ministerial Policy Statement is the final implementation tool.

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10 (6) The Minister shall, in consultation with the Equal Opportunities Commission, issue a certificate— (a) certifying that the budget framework paper is gender and equity responsive; and (b) specifying measures taken to equalize opportunities for women, men, persons with disabilities and other marginalized groups.

11 (e) a certificate issued by the Minister responsible for Finance in consultation with the Equal Opportunities Commission- (i) certifying that the budget is gender and equity responsive; and (ii) specifying the measures taken to equalize opportunities for men, women, persons with disabilities and other marginalised groups

12 (g) a certificate issued by the Minister responsible for Finance in consultation with the Equal Opportunities Commission; (i) certifying that the policy statement is gender and equity responsive; and (ii) specifying measures taken to equalize opportunities for men, women, persons with disabilities and other marginalised groups;

In this regard, there must be consistency to avoid cases of contradiction between the three tools i.e. the Budget Framework Papers, the Budgets and the Ministerial Policy Statements.

Also important to note, is that ever since the law was passed, the Commission is yet to be given funding to implement Gender and Equity. The Commission presented a budget of 12 billion for this FY 2015/2016 which was not granted. The Committee presented to the plenary a budget of 10 billion which was approved for FY 2016/2017. In this regard, the Commission is soliciting for partnership with development partners to quick start the implementation of the Gender and Equity Certificate.



## Annex 2: Sustainable Development Goals

1. End poverty in all its forms everywhere
2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
3. Ensure healthy lives and promote well-being for all at all ages
4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
5. Achieve gender equality and empower all women and girls
6. Ensure availability and sustainable management of water and sanitation for all
7. Ensure access to affordable, reliable, sustainable and modern energy for all
8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
10. Reduce inequality within and among countries
11. Make cities and human settlements inclusive, safe, resilient and sustainable
12. Ensure sustainable consumption and production patterns
13. Take urgent action to combat climate change and its impacts
14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
17. Strengthen the means of implementation and revitalize the global partnership for sustainable development