

Post-Legislative Scrutiny and Its Impact on Legislative Oversight in Uganda Parliament

Experiences from an Emerging Democracy

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Abstract

The Uganda Parliament Department of Research Services has, over the past 4 years, carried out a number of post-legislative scrutiny studies. This article, taking the case of a post-legislative scrutiny done on Uganda's Prohibition of Female Genital Mutilation (FGM) Act 2010, explores the links between pre- and post-legislative scrutiny, and from a practical perspective, argues that although pre-legislative scrutiny can improve the quality of legislation, it is subject to the circumstances and nature of the legislation, and furthermore complexity could increase as legislation is delegated for implementation at local levels. It also argues that both pre- and pro-legislative scrutiny play a complimentary role and should pro-legislative scrutiny alone cannot address the complexity of implementing the law.

Keywords: consultation, deeply rooted traditions and customs, 'Positive Deviant' approach, post-legislative scrutiny.

A Introduction

In 2010, the Parliament of Uganda enacted the Prohibition of Female Genital Mutilation Act, 2010, whose main objective is to prohibit Female Genital Mutilation (FGM), define punitive measures for offences, the prosecution and punishment of offenders, and protection of victims affected by FGM and related offences. The extent to which the law had been implemented had never been evaluated until a post-legislative study by the Parliamentary Department of Research Services was carried out.

The Ministry of Gender, Labour and Social Development, that sponsored the bill, did some pre-legislative consultations at district and sub-county level. However, these consultations were insufficient, as they did not reach the lower grass-root levels.

It was only through a post-legislative scrutiny (PLS) that implementation challenges were seen. The overall objective of the study was to assess the impact

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of the Prohibition of Female Genital Mutilation Act, 2010, since its enactment, and thus, the effects the legislation in terms of whether the intended policy objectives were met by the legislation and, if so, how effectively.

B Key Findings of the Post-Legislative Study on FGM Act in Uganda

The study examined the prevailing status of the practice of FGM in the study districts and found out that overall, on the face of it, the practice appears to have gone down compared to before the enactment of the law because of the punitive nature of the law against persons who engage in the practice, aid or stigmatize those unwilling to undergo FGM.

However, an in-depth analysis found that FGM practice has instead gone underground with those in support devising covert methods of engaging in the practice. These include carrying out FGM in bushes, behind mountains; at night; and parents taking girls into hiding for long periods and crossing over to neighbouring countries.

The PLS carried out on the FGM law also uncovered some peculiar issues such as:

I Preservation of Culture

Respondents in the study districts in Uganda revealed that FGM practice is deeply rooted among the *Sebei* people because it is believed that it was done by their ancestors as a way of appeasing the spirits of the land, hence its continuance throughout the generations. One respondent said,

I am not happy with the law because it has offended our culture. Without circumcision, there is no respect for a woman and, circumcision is a sign to identify Sabiny women from women from other tribes. (FGD respondent, *Kween* District)

In addition to the above, there were a number of complex issues that arose as the legislation was being delegated for implementation at the local levels. These complex issues were majorly ascertained through a post-legislative scrutiny of the law. These included the following.

II Low Level of Awareness of the Law

After passing of the law, it was noted that the level of awareness also varied. While most of the key informants at the district and sub-county level could ably highlight the offences and penalties as stipulated in the law, it was noted that local council representatives at the village and parish levels had limited knowledge of the specific aspects of the law except for the offence of FGM in general.

Therefore, it was apparent that awareness of the law by educated members of the community was high compared to leaders at the lower local government level. This was mainly due to lack of translation of the law to local languages of the communities.

III Resistance from Communities

The PLS further established that because of the secrecy that surrounds the practice of FGM since the law was passed, people were not willing to come out and report cases or provide evidence in court for fear of community reprisal.

C Lessons Learned

The pre-legislative and post-legislative studies done on the FGM Act give us a number of lessons that we can draw that show the need for pre- and post-legislative scrutiny for laws passed by parliament. The lessons include the following.

I Sensitization Campaigns about the Law

The respondents from the study conducted observed that although there has been sporadic sensitization both prior to (pre-legislative) and after the enactment of the law (post-legislative), the sensitization was not deep-rooted. The local leaders were not consulted, even though they are better placed to do much of the implementation of the law.

The PLS done on the FGM law teaches us that there is a need for massive sensitization of the citizens about the law both prior to and after enactment. Pre-legislative scrutiny through sensitization would have enhanced community policing for cases of FGM and, thus, more cases reported. It would have correctly identified the community stakeholders such as elders, a mix of both circumcised and uncircumcised women and girls, and community leaders and former surgeons. This would have helped in fighting FGM on all frontiers since the whole community would have been involved.

II Administrative and Logistical Challenges

The Certificate of Financial Implication accompanying the FGM bill, at the time, stated that no additional funds were needed to cater for the implementation of the FGM bill if it became a law. However, the post-legislative study revealed budgetary provisions and support to the police is limited in this regard, which affected their ability to carry out investigations, constant monitoring of communities, and training personnel on the law and its implementation. In all the study districts, it was established that the police lacked adequate capacity and logistics such as fuel and vehicles.

Therefore, an accurate forensic pre-legislative study or prognosis of the law would have revealed that additional financial support was needed by institutions to effectively implement the law. This post-legislative study shows that in-depth financial analysis through a pre-legislative scrutiny of the effects a law may bring needs to be carried out if effective implementation of the laws is to be done.

III Deeply Rooted Traditions and Customs

The study established that enforcing laws that challenge deeply rooted traditions and customs of a given society is fraught with difficulties. Customs and traditions

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still have a major influence on the continuation of FGM among these communities despite the enactment of the law.

Therefore, sociocultural complexities surrounding laws, especially laws of domestic nature or laws challenging deeply rooted traditions and customs of a given society, require thorough pre-examination and a multi-level approach rather than mere punitive approach.

As observed during the PLS, community members rarely report such cases to the police; this has an impact on the number of cases prosecuted and consequently heard before the court. This is because of the negative attitude the community has towards the ban of FGM and the fear of offending family or community members.

Therefore, the government's approach to addressing certain vices needs to be dynamic. For instance, the government and other stakeholders should use the 'Positive Deviant' approach to address offences such as FGM; persons who have abandoned the practice of FGM can be brought forward as role models and rewarded. Education of the girls also helped to curb the vice in two ways – the would-be victims were protected at school, and also education enlightened the girls giving them bigger aspirations than getting married at a young age, which was cause of self-inflicted FGM.

D Conclusion

Post-legislative scrutiny has a great impact on legislative oversight. It is through it the parliament can measure the progress of the laws it passed as well as find out where it went wrong. It is indeed a tool that parliament can use to monitor and evaluate the level of implementation of the laws it passes.

As the post-legislative study on the FGM Act has shown, post-legislative scrutiny alone cannot address the complexity of implementing the law at the local or the sub-national level. Pre-legislative scrutiny also needs to be done. Pre- and post-legislative studies are largely complementary. Pre-legislative scrutiny can improve the quality of the legislation. A post-enactment problem may be identified that could have been prevented if consultation with a particular group had taken place.

Therefore, pre-legislative and post-legislative scrutiny should entail an accurate prognosis of the effects of laws in different contexts and at different levels.