A CRITICAL EXAMINATION OF DOMESTIC VIOLENCE IN UGANDA: “THE EFFICACY OF THE DOMESTIC VIOLENCE ACT, 2010”.

BY

EGADU NYANGOR JAMES
REG: LLB/10085/81/DU

SUPERVISOR:
MR. CHIMA MAGNUS

A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF KAMPALA INTERNATIONAL UNIVERSITY

SEPTEMBER 2012
TABLE OF CONTENTS

DECLARATION.................................................................................................i
TABLE OF CONTENTS..................................................................................i
DECLARATION.................................................................................................iv
APPROVAL........................................................................................................v
DEDICATION.......................................................................................................vi
ACKNOWLEDGEMENT....................................................................................vii
ABSTRACT.........................................................................................................viii
LIST OF ACRONYMS AND ABBREVIATIONS................................................ ix
LIST OF STATUTES AND CONVENTIONS.......................................................x
LIST OF CASES..............................................................................................xi

CHAPTER ONE.................................................................................................1
GENERAL INTRODUCTION...............................................................................1
1.0 Introduction................................................................................................1
1.1 Background of the Study............................................................................1
1.2 Statement of the Problem..........................................................................6
1.3 Objectives of the Study............................................................................7
1.3.1 General Objective..................................................................................7
1.3.2 Specific Objectives................................................................................7
1.4 Research Hypotheses..............................................................................8
1.5 Research Questions.................................................................................8
1.6 Scope of the Study..................................................................................8
1.7 Significance of the Study........................................................................9
1.8 Synopsis..................................................................................................30
1.9 Literature Review..................................................................................10
1.9.1 Different Forms of Domestic Violence..............................................11
1.9.2 Circumstances Leading to Domestic Violence...............................17
1.9.3 Prevalence of Domestic Violence Despite the Presence of the Law....21
1.9.4 Possible Steps to Assist in the Amendment of the Law of the Domestic Violence ................................................................. 26
1.9 Synopsis ........................................................................................................ 10

CHAPTER TWO ................................................................................................... 29
Research Methodology .................................................................................... 29
2.1 Introduction ................................................................................................... 29
2.2 Research Design ............................................................................................ 29
2.3 Area of Study ................................................................................................ 30
2.4 Study Population .......................................................................................... 30
2.5 Sampling Procedure and Selection ............................................................... 30
2.6 Sample Size ................................................................................................... 31
2.7 Data Collection Instruments ........................................................................ 31
2.7.1 Qualitative Data Collection Instruments .................................................. 31
2.7.2 Quantitative Data Collection Instruments ................................................ 33
2.8 Validity and Reliability of Research Instruments ........................................ 33
2.8.1 Validity ..................................................................................................... 33
2.8.2 Reliability ................................................................................................. 33
2.9 Research Procedure ..................................................................................... 33
2.10 Data Analysis ............................................................................................... 34
2.10.1 Qualitative Data Analysis and Management ........................................... 34
2.10.2 Quantitative Data Analysis ..................................................................... 35
2.10.3 Ethical Considerations ............................................................................. 35

CHAPTER THREE ............................................................................................ 36
A CRITIQUE OF THE AVAILABLE SUPPORTIVE LEGAL INSTRUMENTS ................. 36
3.1 Introduction ................................................................................................... 36
3.2 Applicability of the Domestic Violence Act ................................................ 36
3.3 Efficacy of the Domestic Violence Act ........................................................... 37
3.4 Critique of the National Laws Dealing with Domestic Violence ................. 40
CHAPTER FOUR .......................................................................................... 56
PRESENTATION AND DISCUSSION OF THE RESEARCH FINDINGS... 56
4.1 Introduction...................................................................................... 56
4.2 Circumstances Leading to Domestic Violence...................................... 56
4.3 Persistence of Domestic Violence Despite Presence of Supportive Law.... 59

CHAPTER FIVE .......................................................................................... 68
CONCLUSION AND RECOMMENDATIONS ............................................... 68
5.1 Introduction................................................................................................... 68
5.2 Conclusion .................................................................................................... 68
5.3 Recommendations......................................................................................... 69
5.3.1 Building Capacities of Communities to Fight Violence..................... 69
5.3.2 Capacity Builders Need to Make a Follow-Up................................... 69
5.3.3 Sensitization Campaigns on Domestic Violence............................... 70
5.3.4 Closing the Gap between Law Enforcers and Victims Error! Bookmark not defined.
5.3.5 Closing the Gap between Law Enforcers and Victims........................ 70
5.3.6 There is Need for Local Activisms...................................................... 70
5.3.7 Documenting Statistics ........................................................................ 71
5.3.8 Encourage Prevention of Violence ...................................................... 71
5.3.9 Improving Access to Justice .................................................................. 71

REFERENCES .................................................................................. a
DECLARATION

I, Egadu Nyangor James, declare that this is an original piece of work. Neither the whole nor any part thereof has been submitted to this or other university or institution of higher learning as an academic award.

SGNATURE:

EGADU NYANGOR JAMES

APPROVAL

"I certify that I have supervised and read through this dissertation and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation submitted in partial fulfillment for the award of a degree of Bachelor of Laws of Kampala International University",

SUPERVISOR: Mr. CHIMA MAGNUS.

SIGNATURE: 

Date: 31/10/2015
DEDICATION

This dissertation is dedicated to members of my beloved family, for their unfailing love, support and encouragement.
ABSTRACT

The study is about the efficacy of the Domestic Violence Act in delivering justice to the victims of violence. It was carried out with specific aims of; examining the circumstances that lead to domestic violence in Uganda, examining the persistence of domestic violence in presence of a supportive law and possible considerations to the amendment of the law. A review of related literature was carried out on existing information on the specific variables of this paper to comprehend the problem, enrich and supplement the study findings.

The study established that circumstances which lead to domestic violence include poverty, alcoholism and weakness in the law. However, the persistence of domestic violence was attributed to illiteracy, social differences, lack of ownership of property, forced marriages and the archaic cultural beliefs of and about women which lead to their reluctance to report cases of violence to institutions and people mandated to resolve them.

The study concludes that there is a law governing domestic violence but domestic violence cases are more of gender related issues that take place behind the rails whose statistics not easily acquired thus making it difficult for the law to secure justice for the victims of violence. Besides this, the victims of domestic violence are in most cases those socially and economically marginalized. The study concludes that capacities of the communities need to be built and effective follow up be made to ensure that the law is being implemented. It also requires conducting targeted and effective awareness nurturing campaigns and mass mobilization in order to close the gap between law enforcers and victims as well as local activists of domestic violence.
# LIST OF ACRONYMS AND ABBREVIATIONS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
</tr>
<tr>
<td>ANPPCAN</td>
<td>African Network for Prevention and Protection against Child Abuse and Neglect</td>
</tr>
<tr>
<td>CID</td>
<td>Criminal Investigation Department</td>
</tr>
<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
</tr>
<tr>
<td>DV</td>
<td>Domestic Violence</td>
</tr>
<tr>
<td>FUP</td>
<td>Family Protection Unit</td>
</tr>
<tr>
<td>HAR</td>
<td>Hope after Rape</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immune Virus</td>
</tr>
<tr>
<td>IRIN</td>
<td>Integrated Regional Information Networks</td>
</tr>
<tr>
<td>JLO</td>
<td>Justice, Law and Order</td>
</tr>
<tr>
<td>LC</td>
<td>Local Council</td>
</tr>
<tr>
<td>NGO</td>
<td>Non Government Organisation</td>
</tr>
<tr>
<td>UNICEF:</td>
<td>United Nations Children Education Fund</td>
</tr>
</tbody>
</table>
LIST OF CONVENTIONS AND STATUTES

The Universal Declaration of Human Rights (UDHR) 1948
International Covenant on Civil and Political Rights (ICCPR) 1976
International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976
Convention on the Elimination of all Forms of Discrimination against Women (1979)
The Constitution of the Republic of Uganda, Volume 1, Laws of Uganda
The Domestic Violence Act No. 3 of 2010, Laws of Uganda
The Penal Code Act Cap 120, Laws of Uganda
The Succession Act Cap 62, Laws of Uganda
The Divorce Act Cap 249, Laws of Uganda
The Evidence Act Cap 6, Laws of Uganda
The Children’s Act Cap 59, Laws of Uganda
LIST OF CASES

Uganda Women Lawyers Association and 5 Others v Attorney General, Constitutional

Petition No: 2 of 2003

Uganda v Kato and Others [1976] HCB 204

Uganda v Eduku [1975] HCB 359

Unity Dow v Attorney General of Botswana LRC (Const.) 623
CHAPTER ONE
GENERAL INTRODUCTION

1.0 Introduction

The research discusses “The Efficacy of the Anti-Domestic Violence Act 2010 in Delivering Justice to the Victims of Domestic Violence in Uganda.” This chapter covers the background of the study, statement of the problem, purpose of the study, objectives of the study, hypothesis, research questions, scope, and significance of the study. The study concentrated on desk review of the written materials complemented with some interviews conducted mainly in Makindye Division in Kampala District.

1.1 Background of the Study

The Domestic Violence Act provides a wide definition for the term ‘domestic violence’ to include all forms of physical, psychological, emotional and mental abuse used by a partner against a spouse, or omission to prevent such abuse whether directly or indirectly. Specifically, the section defines domestic violence as:

“...any act or omission of a perpetrator which harms, injures, or endangers the health, safety, life, limb, or well being whether mental or physical of the victim or tends to so and includes causing physical abuse sexual abuse, emotional and psychological abuse; harasses, harms, injures or endangers the victim with the view of coercing him or her or any other person related to him or her to meet any unlawful demand for any property or valuable security; has the effect of threatening the victim or any person related to the victim by any conduct mentioned above; or otherwise injures or causes to harm whether physical or mental to the victim”

1 2010, section 2 thereof
In effect harassment of the spouse may be personal and or direct but it may also include harassment of close members of the family, such as children, with intent of hurting or extorting benefit or restraint from the victim. Thus, this Act covers all forms of violence—physical, economic, emotional, psychological or sexual—and is to the effect that either of these may occur in isolation or in combination. The spirit of the Act is to give relief and protection to the victims from the domestic violence, and to hold perpetrators of the vice accountable.

World Bank defines Domestic Violence as a range of sexual, psychological and physical coercive acts used against adult and adolescent women by current or former male intimate partners. Similarly, Stiftung defines it as the physical or mental assault of one member of the family by another member which encompasses violence against women or men, abuse of children—be it physical, psychological or sexual—or neglect of elderly and abuse of parent by children. These two other definitions give domestic violence a comparative international dimension to buttress the definition given by the Act.

In the media perspective domestic violence is the subjecting of partners to physical and psychological torture as explained by Wamboka. It can be verbal or physical abuse, the latter involving beating, wounding or maiming and in certain cases a combination of one of the above has led to death. The victims of domestic violence in Uganda are predominantly women and children though a few cases have been sighted here and there involving men as victims on rare occasions. The vice can lead to concussions and bruises on the body, broken bones, permanent

---

4 Wamboka Nabusayi L, The Daily Monitor; Violence to Women Worse than War, Monitor Publications 23-3-1999
damage to joints, impairment of hearing and vision, miscarriages, complicated deliveries, still births and rupture of internal organs, among others.

Globally, women and children are the most victims of domestic violence which has caused them to respond by inflicting violence on others. A leaf can be borrowed from the US where domestic violence and women’s pathways to prison are inextricably linked. As reported in the media;

"An estimated 82 percent of incarcerated women in New York are severely, physically or sexually abused as children and 75 percent suffer severe physical violence at the hands of intimate partners during adulthood. The Domestic Violence (DV) Survivors Justice Act expanded judicial discretion and permitted judges to sentence domestic violence culprits convicted of crimes committed as a result of abuse to shorter prison terms and, in some cases, alternative programs to incarceration".

Worldwide, women and children are in a great danger in places where they are expected to be safest within their families although this scenario applies to some men on rare occasions. For many of these victims, home has become a place where a regime of terror and violence is inflicted by those close to them and those that they trust. The victimized suffer physically and psychologically, and in most cases are unable to exercise their free will, protect themselves as well as children, whether theirs’ or not, for fear of further ramifications. Owing to this anticipated wrath, the victims fail to exercise their human rights as the case would be.

In Sub Saharan Africa empirical evidence on the prevalence of domestic violence is limited. Some authors have, however, has done some research on this subject. Sarah Banenya confined domestic violence free environment to approximately 14 percent of the population in a majority

---

5 Ibid
6 Stiftung Nasmann Friedrich (1995), Eliminating Discrimination against Women; Constitutional Rights Project Abuja
of communities. She recognizes that domestic violence is further linked to a range of adverse reproductive health abuses including non-use of contraceptives (that results into unintended pregnancies), demographic characteristics, cultural beliefs and economic factors, among others.

In Uganda, the situation is so grave that there is widespread agitation for change in the attitudes, laws and social values that have combined to keep women in perpetual agony. According to Wamboka⁸ “…violence to women is worse than war”. It has progressed into a countrywide epidemic with frequent and regular reports of resultant psychological, physical, economic and sexual tortures of the victims. Accordingly, domestic violence has exposed victims to gross loss of dignity, unprecedented insecurity, unreasonable deprivation and varied injustices. Domestic violence is deeply embedded in culturally rooted ideas that have deeply penetrated the judicial instruments. For example customary marriage essentially requires to be conducted “…according to rights of an African Community…” as was explained by court in the case of Uganda v Kato and Others⁹ that marriage custom of the nation, race or sect to which the parties belong. Accordingly, as was observed in the case of Uganda v Eduku¹⁰ where bride price has to be paid it has to be paid in full the union of spouses may be punctuated by violence. What is worse is that strategies to effectively address these problems have not been fully developed. However, this situation is present in every country, cutting across boundaries of culture, class, education, income, ethnicity and age.¹¹ The wider perspective of domestic violence in the recent years has generated greater understanding of the problem of the vice, its causes and consequences leading to development of international consensus on the need to address the concern.

---

⁸ Wamboka Nabusayi L, The Daily Monitor; Violence to Women Worse than War, Monitor Publications 23- 3 - 1999
⁹ [1976] HCB 204
¹⁰ [1975] HCB 359
¹¹ UNICEF; Domestic Violence Against Women and Girls, Readers Digest, Florence Italy, 2000
The unanimity to realize this consensus is reflected in the adoption of different international instruments such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)\textsuperscript{12}, The Platform for Action Against Domestic Violence\textsuperscript{13} and the Convention on the Rights of Children (CRC)\textsuperscript{14}, among others. All these reflect the efforts in action by the respective member states to search for a lasting solution against the vice. It is true that earlier documents like the Universal Declaration of Human Rights,\textsuperscript{15} and its implementing covenants, the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{16} and the International Covenant on Economic, Social and Cultural Rights (ICESCR)\textsuperscript{17}, 1976 do not explicitly address domestic violence, but, along with the Optional Protocol to the ICCPR\textsuperscript{18}, articulate a state’s duty to protect fundamental human rights that are commonly violated in domestic violence cases.\textsuperscript{19} Those rights include the right to life, the right to physical and mental integrity, the right to equal protection of the laws and the right to be free from discrimination.

The rights against domestic violence have been domesticated within municipal laws of various member states, Uganda inclusive. This accounts for the enactment of the Domestic Violence Act of 2010 to strengthen the operationalisation of the Bill of Rights enshrined in chapter four of the Constitution of the Republic of Uganda\textsuperscript{195}.

\textsuperscript{12} (1979) by the United Nations General Assembly
\textsuperscript{13} Adopted at the Fourth International Conference on Women in Beijing (1995)
\textsuperscript{14} Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; Entry into force 2 September 1990, in accordance with article 49
\textsuperscript{15} Ratified December 10, 1948
\textsuperscript{16} A Multilateral Treaty adopted by the United General Assembly on December 16, 1966 and in force from March 23, 1976
\textsuperscript{17} Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976, in accordance with article 27
\textsuperscript{18} Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976, in accordance with Article 9
\textsuperscript{19} http://www1.umn.edu/humanrts/svaw/domestic/laws/international.htm#treaties: Stop Violence Against Women.
\textsuperscript{2003 Minnesota Advocates for Human Rights

5
In respect of the above there was hope among Ugandans that the international intention would be realized sooner than later. However, it has taken one and a half decades to have the Domestic Violence Bill passed into an Act of Parliament. This could be attributed to male dominance in the August House. Thus, the period between 1995 and 2010 has witnessed grave abuses of women and children rights largely at the hands of male gender. The Domestic Violence Act of 2010 thus, comes as a much awaited messiah to provide everlasting solution and relief in addressing the imbalances occasioned by the vice.

The law governing domestic relations has not effectively secured justice for the victims of domestic violence. The perpetrators of violence in the homes have exploited the loopholes in the law to continue exercising violence on their partners in their homes with good level of confidence that they will go unpunished. It is, therefore, upon this background that the study will seek to understand the efficacy of Domestic Violence Act in securing justice to the victims of domestic violence.

1.2 Statement of the Problem

The law governing domestic violence in Uganda is drawn from and supported by several international, regional and national legal instruments as well as customary law. It is imperative to note, however, that even after the adoption of the Domestic Violence Act, domestic violence is still rife. Persistence of the vice is the best manifestation of the inadequacies reflected by the Domestic Violence Act of 2010. To comprehend the weakness of this law there is a need to unveil the philosophies that generate and impel the injustices suffered by the victims due to the loopholes in the law.
Historically, there has been a registered imbalance in power relations amongst men and women worldwide, Uganda not exceptional. Policies have been laid out to promote equality in gender to reduce on circumstances that lead to compromising of the law but, this has also generated low acceptance by largely the male and to some extent the female gender. Such policies have been viewed as contradictory and conflicting with the set up of culture and thus, a menace to traditionally held views. As a result disagreements have been created amongst both genders resulting into escalation of Domestic Violence. This study, therefore, was an assessment of the adequacy of the law on domestic violence in order to provide possible means through which policy designers, activists, enforcement agencies and courts of judicature can revise some of their decisions and take strategies to secure justice for the victims of the vice.

1.3 Objectives of the Study

1.3.1 General Objective

The overall objective of this study was to examine the efficacy of the Domestic Violence Act in securing justice to the victims of domestic violence in Uganda. The researcher intended to carry out this study with an aim of providing possible solutions to curb injustices that culminate from the loopholes of the law.

1.3.2 Specific Objectives

a. To examine whether the domestic violence Act covers all forms of domestic violence in Uganda.
b. To inquire into whether the enforcement of the Domestic Violence Act has promoted good family relations among Ugandan communities

c. To assess whether the Domestic Violence Act provides deserving redress to victims of domestic violence.

1.4 Research hypothesis

a. The Domestic Violence Act covers all forms of domestic violence in Uganda.
b. The enforcement of the Domestic Violence Act has promoted good family relations among Ugandan communities
c. The Domestic Violence Act 2010 provide deserving redress to victims of domestic violence

1.5 Research Questions

a. Has the Domestic Violence Act 2010 covered all forms of domestic violence in Uganda?
b. Has the enforcement of the Domestic Violence Act 2010 promoted good family relations among Ugandan communities?
c. Does the Domestic Violence Act 2010 provide deserving redress to victims of domestic violence?

1.6 Scope of the Study

8
The study was largely analytical and carried out in Makindye Division in Kampala District because of the prevalence of domestic violence issues in the area. The region has a population of approximately 500,000 people according to the Makindye Sub county report of April 14, 2011. The study focused on the efficacy of the Domestic Violence Act and was restricted to examining the different forms and the causes of domestic violence, the law enforcement mechanism and the justifiability of the Act with a keen interest in establishing the extent to which the Act is both reparational and restorative to both the victims and perpetrators of domestic violence. The researcher limited the study to women and children as the selected victims of domestic violence.

1.7 **Significance of the Study**

It is expected that this study when successfully carried out and accomplished will contribute significantly on concerns of domestic violence by providing useful information to the family court and other actors on the identified loopholes in the Domestic Violence Act.

The study is also expected to act as a database in facilitating future research and thus will be useful in closing the existing gaps on domestic violence.

The study will significantly contribute towards revision of the law of domestic violence to secure considerable justice for the victims of domestic violence and make home a better place for the adults and children.

The study will be of significance to the researcher in fulfillment for the requirements for award of a Bachelor of Laws.
1.8 Synopsis

Chapter one covers the background to the study, statement of the problem, objectives of the study, scope of the study, significance of the study and literature review.

Chapter two covers an overview of the Domestic Violence Act (2010), and its applicability. Whereas chapter three describes the available and supportive instruments both national and international on Domestic violence issues, their weaknesses, and circumstances under which the law can be revised.

Chapter four is a presentation and discussion of the research findings about the law in delivering justice to the victims of domestic violence and how family members, local council leaders as well concerned actors interviewed have interpreted the law of domestic violence. Chapter five covers and draws conclusions and recommendations of the study findings.

1.9 Literature Review

Literature review covered what previous authors and scholars have written about the subject in order to have a handle on the study. This is a secondary examination of the available information that has been previously published. Under this chapter a guided analysis of some of the major issues of the existing literature was made on the different forms of domestic violence, circumstances that lead to domestic violence, the persistence of domestic violence despite the existence of the law and possible to interventions to address the existing gaps in the law of domestic violence as noted from numerous authors.
1.9.1 Different Forms of Domestic Violence

1.9.1.1 Sexual abuse

One of the most common forms of sexual abuse under domestic violence is rape. According to the Penal Code Act Law, section 123 thereof defines rape means any man having sexual intercourse with a woman or girl who is above the age of 18 years, without her consent. The sexual intercourse must be obtained without her consent, or if with her consent, the consent must be obtained through force, means of threats, intimidation, fear of being hurt and by false representation as to the nature of the act to be performed and in the case of a married woman, by pretending to be her husband.

From the foregoing definition, rape is first and foremost about consent thus; the consent being absent or coerced and secondly it is about age being 18 years and above. This implies that where the act involves a woman or girl below 18 years, the act becomes defilement but not rape.

Rape is also a conscious process of intimidation by which all men keep women in a state of fear. The fear of rape is always with women and it affecting their lives in countless ways from fearing to walk the street late at night to all their dealing with men, however superficial the scare might be. Rape is an emotional crime; a crime of insult and revenge. It is much different from other crimes like theft, a usually impersonal crime where the motive is clearly mercenary. But, even when the woman is physically injured or killed in the rape struggle the events are emotional, and the woman's reaction is deeply personal.

21 Ministry of Gender and Community Development
22 Susan Bronoumiller in Rhodes and McNeile
However, why these respectable men decide to rape and not solicit free consent remains a mystery. Attempts to find answers to the causes of rape have led to responses like temptation, false signals, lust, power show-off and might, among others. Whether the very old and sedentary women who are raped are indecently dressed or give off false signals men rapists is a puzzle yet to be proved. Whatever the reasons, the whole blame for the rape is usually placed on the victim and not the perpetrator of the crime but, whatever the reason for or against it, rape is a crime and a rapist a criminal. Therefore, in the name of human rights, justice and fairness the criminal should be punished in order to control rather than abet the crime. Correspondingly society needs to be strongly sensitized to empathize with the women victims and join in not only to condemn the act and the perpetrators but put in place deserving deterrents to the crime.

Another form of sexual abuse common under domestic violence is defilement. Defilement is defined as having sexual intercourse with a girl who is below the age of eighteen years\(^{23}\). Anybody below 18 years is a child under the law and therefore it does not matter whether the girl agreed to have sex or not. Defilement has been a big problem in Uganda and continues to be one of those incessant forms of child abuse. Because of the prevalence of the problem and in conformity with more modern methods of child care and protection, the Ugandan Parliament amended the law relating to defilement in 1990\(^{24}\) that had the effect of uplifting the defilement age from 14 years to 18 years and raising the maximum punishment to death.\(^{25}\)

The amendment to the law came against the background of serious concern for the physiological and emotional health of children who were increasingly falling prey to lustful men especially

---


\(^{24}\) By Statute No. 4A of 1990

\(^{25}\) Joseph Olanyo, New Vision 24-8 – 1997; 78 Year Old Charged for Defiling a Kid, New Vision Printing and Publishing Corporation
because of the AIDs pandemic that was spreading like a bush fire especially in the late eighties. Many men have tended to have sexual intercourse with young girls in the belief that the younger the girl, the less the danger of catching AIDs.  

The ANPPCAN Media Analysis also revealed that out of 486 children abused in Kampala, 320 were female. A total of 328 males were also found to have constituted the abusers. These findings strike proof of how defilement is a menace against which the Ugandan society must fight with all the energies that can be mobilized. The other interesting revelation in this media analysis came through the occupations of the abusers. Drivers came top on the list of child-abusers followed by teachers, peasant farmers, housewives and soldiers! Drivers and teachers point to mostly defilement. It should be of further interest to those who take defilement seriously that defilement occurs in many places and is done by all sorts of people; even with supposedly responsible people like teachers, caretakers and parents thereby pointing to the fact that the safety of young girls should never be taken for granted. 

According to the Trainers’ Manual, sexual abuse in homes occurs when a partner is forced or coerced to sexual action or behavior motivated to acquire power and control over the partner. It is not only forced sexual contact but also contact that demeans or humiliates the partner and instigates feelings of shame or vulnerability particularly in regards to the body, sexual performance or sexuality for example berating the partner about his sexual history, minimizing the sexual needs of one’s partner, touching partner without consent, demeaning remarks, forced

26 Ibid, pages 24-8 – 1997; 78  
27 A study Report about Child Abuse, 2003 about child abuse in Kampala. African Network for Prevention and Protection Against Child Abuse and Neglect; a non-Governmental Organization that is involved in child Rights Advocacy. The organization is based in Kamwokya; a Kampala suburb.  
29 Ibid.
sex, violating the agreement of monogamy, exposing partner to sexually transmitted diseases, treating partner as sex object, rape with an object using force or roughness that is not consensual.\textsuperscript{30}

1.9.1.2 Physical Abuse

According to Panda et al\textsuperscript{31}, physical abuse is aimed at enhancing the power and control of the abuser over the victim. It is the threat of harm or any forceful physical behavior that intentionally or accidentally causes bodily harm or property destruction. It covers abuses such as hitting, beating, choking, pushing, slapping, kicking, backhanding, arm twisting, burning, forcefully holding down a partner, forced use of some substances, preventing partner from seeking medical assistance, stalking, denying a partner from accessing physical basic needs such as sleeps or food and throwing objects to partner, among many others. Examination of a series of nationwide studies on child abuse in US showed that it was intensifying and increasing. In Uganda, daily media reports indicate that to date physical abuse of children is growing in magnitude although religion has helped some victims to forgive the perpetrators as reflected by one Birungi:

"Birungi grew up with a violent father in the war-torn country of Uganda in the 1960's. His childhood was scarred by extreme poverty, cruel suffering and unbearable sorrow that few of us can even imagine"\textsuperscript{32}

No day passes in Uganda without reports of horrific abuse of children and women. Unfortunately many of the perpetrators of child abuse are women.

1.9.1.3 Emotional Abuse

\textsuperscript{31} Panda, Pradeep and Bina Agarwal, 2005; "Marital Violence, Human Development and Women’s Property Status in India" World Development 33(5): 823-850.
\textsuperscript{32} D. G. Gil, p 78
The Trainers' Manual explains emotional abuse as that which involves use of words, voice, action or lack of action meant to control, hurt or demean another person. This may range from ridicule, intimidation to coercion. Verbal abuse usually is included in this category. However, this type of abuse is not easy to identify or define, because at any one time the couple may utter offensive words which he or she may later regret. Thus, emotional abuse in this case is the repeated hurtful exchanges with no disregard for the other partner’s feelings and usually aimed at gaining power or exerting control over the partner. Accordingly, emotional abuse has been reflected in all relationships where physical abuse occurs. Emotional abuse injures self-esteem and confidence of the partner and instills feelings of helplessness and hopelessness among the victims.

For one to have emotionally abused one’s partner, one may have uttered verbal threats, demeaned a partner before others, used abusive words, called the other names, caused humiliation, yelling at another, irrationally blamed the partner, exhibited obsessive jealousy and or, labeled accusations of being unfaithful, release intimate knowledge to third parties, abused a partner’s children, withheld affection, approved or appreciated the other as a way to punish, became irresponsible with money, yelled insults at another, exhibited sarcasm or sneering, laughed at or scolded a partner, lied with an intention to confuse partner as well as played mind games on the other.

1.9.1.4 Financial Abuse

According to Trainers’ Manual\textsuperscript{34} domestic violence may also take form of financial abuse. Under this, there is use or misuse of finances without the partner’s free consent of such access. Financial abuse may be by way of preventing the partner to work, refusing to work yet participating in the spending, threatening a partner’s employment by excessively and unnecessarily calling partner while at work or creating conflict with the partner’s co-workers. It may also involve abusing the partner’s supervisor or clients or creating scenes with co-workers; forcing the partner to miss work through threats, injuries or coercion, denying partner access to assets or joint funds as well as controlling shared resources, demanding for expenditure of monies spent, pressurizing husband to meet all expenses and stealing partner’s property in addition to destroying and threatening to destroy partner’s property; confiscating credit cards or pay cheques on top of forging partner’s signature on financial documents. These may be committed by male partners against the female counterparts but in Uganda the reverse is almost the norm.

1.9.1.5 Identity Abuse

This may occur when partner decides to use personal characteristics to destroy a partner’s image, demean, manipulate or control the partner. This may cover such aspects that may be rated under race, sexism, age, beauty as well as homophobia.\textsuperscript{35} Accordingly, these include using racial nicknames or handles, accusing partner of being racist, exploiting partners’ internalized racism, justifying partner’s abuses based on bisexuality and transgender; applying partner’s own homophobia to demean him or make him fearful, referring to partner as ugly and how they cannot be loved by any other and ridiculing partner’s voice.

\textsuperscript{34} Ibid, 30
\textsuperscript{35} Ibid, 30
1.9.2 Circumstances Leading to Domestic Violence

1.9.2.1 Economic Reasons

For so long women have been marginalized and looked only at the husbands as the bread winners. With the global changes women have found themselves in the economic field and in fact some earn better than their husbands/spouses. Since men want to continuously exercise control over the family resource they demand that earnings from the women should be their preserve. This unfortunately is over simplistic and the moment women raise the rationale behind their holding cash or undertaking investments, conflict arises between the duo and in most cases they are subjected to violence by their spouses. In other cases men mistreat women because they know that these women are too poor to resist the cruelty meted to them and so men perpetually batter them. The cause of conflict under this scenario is that the husbands insist that their wives be surrendered money they earn to men since they are regarded part and parcel of the latter’s possession and failure to comply is misinterpreted law enforcers as elopement with other men.\footnote{Tekle, T.; Women’s Access to Land and Property Rights in Eritrea Towards Good Practice: Women’s Land and Property Rights in Situations of Conflict and Reconstruction, 2002.}

1.9.2.2 Payment of Bride Price

The payment of bride price reduces a woman’s status to that of property so that she is not entitled to own anything in the home. If the relationship is violent and she is attempting to leave, culture demands that she returns the bride price paid for her yet she cannot afford the refund since she cannot own any property. Bride price is a critical issue of our time because the majority of poor
people in Africa are subject to customary law whose main tenet is the subordinate position of women and nowhere is this more apparent than in marriage. This subordination is underscored by the practice of bride price and yet marriage is the primary site for women's struggle for self determination and equality.\textsuperscript{37} The case of \textit{Uganda v Eduku}\textsuperscript{38} has both demonstration for women abuse and struggle of women emancipation. In this case a brother in-law of the wife wanted to inherit a widow under the Teso culture and when she chose a man of her choice as the new husband she was labeled adulterous. Court held that since the bride price had not been fully paid there was no subsisting marriage between the complainant and the woman for they were not considered husband and wife since the bride price had not been paid I full. This testifies that bride price is a major precursor for domestic violence against women.

1.9.2.3 Socio-Cultural Beliefs

Society in Uganda has been revolving around cultural traits. Despite global evolution and progress in our cultures, men in Uganda have neglected value beliefs which reduce their power and authority in a household. Social norms have since time memorial branded women as property of men. Hence, men violate rights of women simply because the latter are cultural heads of families.\textsuperscript{39} Such primitive cultural beliefs have enslaved men in these retrogressive and cultural attitudes. A man can marry as many women as he can and society looks at it as a sign of strength. Women have grown to believe in this and can thus, keep quite despite the humiliation

\textsuperscript{38} [1975] HCB 359
\textsuperscript{39} Buddle, Benninger Carin; Violence against Women, OMCT Gera, 2000
they suffer from violence. This is specially so with the peasant women who rely on men for shelter and support.40

There is unconfirmed primitive belief probably held by men to perceive violence on women as a form of expression of the love they have. It is alleged that some women” consider men who don’t beat, abuse or even torture them as being unloving. This is ridiculous and ought never to be tolerated even at the expense of conflicting with social values. The Constitution of Uganda, 199541 states that;

(i) Women shall be allowed full and equal dignity of the person with men.
(ii) The state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement
(iii) The state shall protect women and their rights, taking into account their unique status and natural maternal functions in society.
(iv) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.
(v) Without prejudice to article 32 of this constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or customs.
(vi) Laws, culture, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.

1.9.2.4 Legal Flaws

Whereas the constitution stipulates clearly42 that women must be accorded full and equal dignity with men, the Penal Code makes it difficult for women who are victims of domestic violence to

41 Article 33 thereof
42 Article 33
seek redress. Before the enactment of the Domestic Violence Act, this was considered as assault and men usually got bail and returned home to the woman complainant with no protection against continued, fresh and more serious abuse and no recourse to law enforcement agencies or family members. This usually aggravates the torture suffered by women. In most cases the LCs and Police are the perpetrators of violence themselves. Cases of domestic violence are usually thrown out by laws protection and enforcement agencies as the “usual tear and wear” of marriages. Where this happens, men feel as though a leeway has been provided to torture their partners with impunity.

In the case of the Constitution anybody reported for a civil or criminal case is a “Suspect” until proved guilty. This process of proof against the guilty is a very embarrassing situation in courts of law so women usually prefer to remain silent than report cases to police and courts. When, men realize the stigma associated with court cases they torture their spouses with full conviction that no cases will be brought against them. This specially happens to women who are highly educated with high responsibilities in society such as politicians, civil servants, judges, religious leaders, police officers and prominent business women.

1.9.2.5 Genetic Disorders

Whereas violence could be tied to a number of issues in society, there are some type of men who are involved in violence due to the genetic disorders. In such a case the man will continuously behave and act like his great grandfathers. In such a situation wife battering is as simple as

---

\(^{43}\) 2010

\(^{44}\) Article 28 (3) (a) of the 1995 Constitution

\(^{45}\) Loretta Frederick, Presentation on Theories of Violence at the Domestic Violence Workshop, 1997.
snoring. With such people it is very difficult to control cases of violence behavior since no wrong doing is required to provoke a man into violence. This contributes to over 10 percent of murders committed in households, according to the Senior Police Officer for Crime at CID Headquarters. Such men who suffer psycho-socio disorders are normally showing signs of withdrawal from society.  

1.9.2.6 Educational Level

59.1 percent rural as against 23.7 percent urban women in Uganda are illiterate. Worse still there are very few of those that have legal literacy. Women who are illiterate suffer a lot of violence simply because they are ignorant of their rights and are governed by cultural values. This is so entrenched that men prefer marrying the uneducated because of the ego. On the other hand the educated women suffer because men think education makes women insubordinate. Such educated women know their rights and usually demand that they get fair treatment; something men find too degrading to accept.

1.9.3 Prevalence of Domestic Violence despite the Presence of the Law

Educated women command enormous respect in society and hence majority find it hard to go to LC courts and police to declare that they are victims of violence. This is usually a known fact to men and they will violate rights of women with full knowledge that women fear to report to police or LCs or as a way of testing women’s level of subordination, education notwithstanding. This is incredible since there are not many reported cases of women ever mistreating their husbands because of their achievements. Rather than celebrate achievements of a lady/women,

46 Buddle, Benninger Carin; Violence against Women, OMCT Gera, 2000
men tend to negatively accept such achievements. The majority of men wish to see their wives either retrogressing or constantly placed at a certain level of success to prove superiority. Most women feel that education and success lead to insubordination because it drives men violent but others view it as the greatest tragedy in society. This is widely supported by all gender sensitive people. Women should not be punished because of the perception that education leads to insubordination. However, educated women fear to report instances of domestic violence for fear of appearing in Newspapers and loss of extended family ties if husbands are taken to courts.

According to Loretta\textsuperscript{48} rape is highly prevalent as the cases and acts of rape seem to be on a steep increase. This may be attributed to the increased reporting or media coverage of rape cases. Whatever the case, the reported cases seem to be only a tip of the iceberg; at least in every week, there is a rape case reported in the local media in a country where the majority of the populace has no access to the media.\textsuperscript{49} The severity of the problem has even prompted the formation of organizations like Hope After Rape (HAR)\textsuperscript{50} found in Ntinda, and has even alarmed some personalities in leadership, such as politicians and social workers. What is interesting to note is that the victim of rape suffer much more than the perpetrator of the crime. In most cases, rapists are left to go scot-free, whereas the victim is left unattended to, to sort things out on her own.\textsuperscript{51}

Whereas some headway has been achieved in criminalizing rape, marital rape still remains an area of controversy. Whereas those who say rape is about consent believe a man can rape his wife, majority in Uganda belief a man cannot rape his wife. Such men and women think once a

\textsuperscript{48} Loretta Frederick, Presentation on Theories of Violence at Domestic Violence Workshop, UNICEF, 1997, P. 28
\textsuperscript{49} Ibid.
\textsuperscript{50} A Non-Governmental Organization found in Ntinda; a suburb of Kampala. The organization is involved in rehabilitation and reparation of victims of rape
\textsuperscript{51} Ibid
man marries a woman, he owns her and is entitled to all services, including sexual services. As such that woman has no business turning down a husband's sexual advances. Instead women who have tried to criminalize marital rape have been rebuked for denying their husband's their rights.\(^{52}\)

The ideology here is that it is the man's right to have sex with his wife, and not the wife's right. If a woman demanded sex when the man is not interested she would be ridiculed for being oversexed. This implies that in matters pertaining to sex, the man plays the active role of suggesting whereas the woman plays the passive role of recipient. Thus, to avoid public ridicule, women who cannot put up with marital rape would prefer desertion or divorce to public embarrassment during court hearings.\(^{53}\) All said and done marital rape occurs, because rape is about consent, and not ownership of women's bodies.

The law against crime does not consider rape to be a serious crime. As such, other crimes may be dealt with seriously whereas rape is even abated by those supposed to punish it (law enforcers). Women (victims) have to protect themselves against rape, however, futile their attempts can be, because it is women who are vulnerable and most affected by rape and thus, the onus is on them to prevent it. Men constantly deny responsibility for raping, blaming it on women and perverted men. As such they are not willing to do anything about it, but the women should do something to stop it. Therefore, when raped, a victim has to go to great lengths in explaining in the open, the whole details of how rape happened in a bit to convince the law enforcers\(^{54}\), something that hardly satisfies the latter but leaves the woman morally devastated and her image greatly


\(^{53}\) Ibid

\(^{54}\) Loretta Frederick, *Presentation on Theories of Violence at the Domestic Violence Workshop*, 1997.
shattered. This deters many victims from coming up to report rape. Therefore to avoid being
raped and the trauma of the court process, girls and the women as victims have to do all it takes
to prevent rape.

Mwenda postulates\(^{55}\) that, when rape victims report to the necessary authorities, hardly are their
cases handled urgently. According to Mwenda, instead time is spent prying into their past sexual
histories, which leaves the victim more traumatized than helped by the existing institutions.
Mwenda further contends that, even the law enforcers and the judicial system take up rape cases
with a lot of caution. Victims are asked unnecessary questions, which jeopardize their interest in
pursuing the justice for sexual crimes against them. There is need for the law to change this view
that women are prone to faking rape. Otherwise victims feel condemned even before seeking
justice.

In Uganda, the LC courts, who are not supposed to handle rape crimes insist on handling them,
thereby passing judgment in the interest of the community and not the victim. The major issue in
LC courts is harmony in the community. As such sentences passed are so minimal such as caning
the culprit, fining the culprit, some brew for the LC Committee, a hen or goat to cleanse the
people concerned and many more. Sometimes the culprits are fined an amount of money. Either
way, the sentences passed are a scorn to the victim and the victim's family, which leaves them
dissatisfied and demoralized from seeking lawful justice.\(^{56}\)

\(^{55}\) Mwenda Andrew, Rape case hearing moves to varsity hall, Monitor 19-22 July 1996.
\(^{56}\) David Musengeri, The Daily Monitor: Matembe Renewss Calls to Have Rapists Castrated, Monitor Publications,
24- February 1995.
Whatever remedies are in place, there is need to take the victims' emotions as paramount. The victims need to be helped to heal from the ordeal, more than anything else. Otherwise even if the current laws are enforced, without considering, the victims' emotions, they will never heal from the ordeal.

Olanya Joseph reports that, women legislators including Mrs. Maria Matembe, pressurized parliament to pass the law that has raised nearly equal measures of praise and condemnation.57

But what exactly is the seriousness of defilement in Ugandan society is a concern to be addressed. ANPPCAN revealed that out of 486 cases of child abuse as reported in the three English daily newspapers in Uganda in the period quoted, defilement featured in 214 cases - nearly half of all cases of child abuse. A survey carried out by the same NGO in Rakai in 1994 about child abuse and neglect had also placed defilement at the top of the most serious forms of abuse and neglect - followed in that order by denial of education, overworking children and child labor, among others.58

According to Koluo59, it is reported that suspected defilers taken to law courts in several cases, walk away to freedom because of insufficient evidence to convict them. The process of the law places the burden of proof on the state to prove her cases against suspected criminal defilers and the standard is that of beyond reasonable which is often difficult to meet. In other cases, the girls, especially those who are close to 18 years are uncooperative to the prosecution side which leaves them at a loss, as some of the media reports show. In such circumstances, the Director of Public Prosecutions (DPP) seems to be left with no option but to drop the charges. It must be stated that

57 Joseph Olanyo, New Vision 24-8 – 1997; 78 Year Old Charged for defiling Kid, New Vision Printing and Publishing Corporation
the year 1997 recorded twelve death sentences against defilers. This perhaps denotes a changing judicial mood in favor of victims of the evil of defilement. Formerly it looked like judges were hesitant to sentence people to death for defilement, but probably social pressure is beginning to bear on the learned judges.

1.9.4 Possible Steps to Assist in the Amendment of the Law of the Domestic Violence

Domestic violence strategies need to be based on clearly articulated theory about the cause of domestic violence. The theory of domestic violence should dictate the response to the problem. To the extent possible all parts of the community must share the same understanding of domestic violence to effectively coordinate their responses. Thus, if community members understand domestic violence different from law enforcement agencies, their responses may be inconsistent and even harmful to victims. 60

Women liberation movements are addressing the problem of domestic violence with a view to advocate for changes in the complex legalities involved in seeking redress before and after being victimized. Secondly, there is a growing need to sensitize women of all categories about their rights with a view to empowering them with knowledge good enough to guard against domestic violence. The impact of the various forms of violence in the family is very serious both in terms of immediate and visible effects on the victims as well as long term effects which sometimes are less. This is true not only for the victim but all other members of the family as whole, community and society at large. So much has been written on domestic violence in the print media and publications from women organizations. In the Audio and visual media there are numerous

---

60 Caroline Sweetman (2002), Gender Development and Diversity, UPPAP Report
reports on violence. Position papers, workshops and seminars have all tried to highlight the growing incidents of domestic violence.\(^{61}\)

Women groups have continuously presented papers and talk shows to highlight the intensity of the issue, but unfortunately the majority of women and children who are victims do not have access to such information. Therefore, there is a collective responsibility for all to invest time and resources to lobby policy makers to address this growing problem.\(^{62}\) Women should stop their naivety of dreading to appear in papers when they report cases of domestic violence but should start using counseling centers and paralegal clinics where their problems are handed and privacy assured.\(^{63}\)

Bundle et al (2000) encourage construction of crisis centers to handle victims of domestic violence. They emphasize that crisis centers should be intensified to reach the rural women so as to provide counseling services on how best to guard against violence in homes.\(^{64}\)

Banenya also suggests that, for domestic violence to be curbed, it is necessary to mobilize society to change socio-cultural values which perpetuate violent culture and consider women as men's project.\(^{65}\) Banenya further contends that, the media should accelerate the fight against

\(^{61}\) Stiftung Nasmann Friedrich; Eliminating Discrimination against Women; Constitutional Rights Project Abuja, 1995  
\(^{62}\) Buddle, Benninger Carin; Violence against Women, OMCT Gera, 2000  
\(^{63}\) Stiftung Nasmann Friedrich; Eliminating Discrimination against Women; Constitutional Rights Project Abuja, 1995  
\(^{64}\) Buddle, Benninger Carin; Violence against Women, OMCT Gera, 2000  
domestic violence, by emphasizing its ills to societal development rather than finalizing women's cases and stereo type reporting.  

According to Ethel et al, it is postulated that if the Family Protection Units of the Police is strengthened and incorporated into the whole police network domestic violence cases can be dealt with more effectively. There are still cases where the police in rural areas have not heard of the FPU and even where it is known it usually takes the intervention of police headquarters to get suspects arrested and prosecuted.  

Women organizations, if well organized can help in establishing wide links with rural women so that emerging problems are quickly highlighted at the centre for Quicker Preventive actions. In Uganda MIFUMI is forming a growing community of grassroots women and human rights defenders with the principles of a woman centered approach to ending violence and abuse, empowering survivors to resist violence and demand their rights, ensuring effective action for the individual survivor, empowering communities to bear the burden of violence against women and hold perpetrators accountable for their behavior and working with law enforcement officers to protect women. 

CHAPTER TWO
RESEARCH METHODOLOGY

2.1 Introduction
This chapter describes the techniques of research which were used in collecting data during the study, Research design, area of the study, study population. It also indicates the sampling procedure and selection, sample size, data collection instruments, validity and reliability of research instruments. Lastly it describes data analysis, ethical considerations and limitations of the study.

2.2 Research Design
The study used an exploratory and descriptive study design. Mainly qualitative design was used supplemented by a few quantitative research methods. The aim was to enable the study offer and stimulate explanations about the reasons for a high prevalence of domestic violence in Police Barracks in Uganda.

The qualitative method was of particular importance to this research because of their ability to penetrate into the different expressions and experiences of respondents to the subject matter. The study used qualitative method because of the experiences of key respondents like NGO officials, Police officers at all levels and LC’s who handle domestic violence cases. The quantitative method was used due to the desire of establishing the magnitude of the problems using statistical data and evidence. This led to measure variables in numbers of cases, percentages and frequencies.

2.3 Area of Study
The study was carried out in regard to the effectiveness of the law governing domestic violence in Uganda by examining the different forms of domestic violence and circumstances that lead to domestic violence, establishing why domestic violence is still persistent despite the existence of the law and possible interventions to the existing gaps in the law of Domestic Violence. The study was based on information acquired from various textbooks, journals, newspapers, statutes and any other form of written relevant material like seminar papers, conferences papers and internet to give quality to research findings. These however, were accessed and reviewed from the libraries of Kampala International University, Makerere, University, and the Police Family Desk.

2.4 Study Population

In this study, the target population was the victims of domestic violence who were children below 18 years of age as well as married women and men. The study also included local council members, Police Family Protection Units and other key people for more information that were vital to the study. The population of key informants was made up of NGO officials with 75 percent and they included program information officers, programme child healthy officers, social workers, counselors, lawyers, directors, volunteers.

However, it should be noted that apart from the police officers and LC officers, all the other categories of key informant were from NGOs hence had the largest population in the study. All these informants had knowledge about domestic violence and therefore in better positions to give appropriate information. The number of female key informants was higher than that of their male
countparts or respondents in the study because it is women who are the biggest victims of domestic violence.

2.5 **Sampling Procedure and Selection**

Multi/cluster sampling procedure was used to select the sample of the study area. The study used simple sampling to choose respondents. Women victims in their household were selected and those ones found on spot at the police station and NGOs with fresh cases. Key informants based on their knowledge were purposively selected in different study area like administrators/members from the NGOs studied, LC 1 officials, opinion leaders, police officers and parents were selected.

2.6 **Sample size**

The sample size of 100 respondents was selected. And this represented the population of domestic violence. The sample size consisted of 15 victims of domestic violence, 55 selected key informants from the two organizations dealing with domestic violence, police officers, and local council one officer. The researcher chose different numbers for interview due to the sensitivity of the research problem and the availability of the respondents. Respondents were selected on the basis of geographical dispersion and location.

2.7 **Data Collection Instruments**

The following research instruments were used for carrying out the study:

2.7.1 **Qualitative Data Collection Instruments**
A number of instruments were used to collect qualitative data as indicated below;

2.7.1.1 Interview Guide

This was used to gather information using face-to-face conversation between the researchers and purposely-selected key-informants involved in issues to do with domestic violence. The use of this instrument was to get data from key informants that helped in carrying out in-depth interviews on the key information relating to experiences with domestic violence. The key informants were administrators from NGOs, police officers, local council officials working on women and children's rights and domestic violence.

2.7.1.2 Published/Unpublished Materials

These were used to help in the collection of qualitative information that can be used to validate data collected from other desk review of legal instruments methods. Such information was used to get an insight into how views and opinions about domestic violence have influenced the efforts for improvement in the existing control measures to prevent the phenomenon. The materials helped in drawing appropriate conclusions about the collected information from the respondents. Materials such as academic research reports from civil society organizations dealing with child sexual abuse will be reviewed and police reports about the problem of domestic violence.

2.7.1.3 Observations
This method was used in the study to help and capture hidden behavior of women, girls, parents and other respondents by watching how victims reacted when asked some of the questions. And also people’s attitudes were observed to fill the gap of the data collected.

2.7.2 Data Collection Instruments

Different quantitative instruments were used in collecting data among which include;

2.7.2.1 Questionnaires

These were employed to help collect the view of domestic violence victims, NGO officials, police officers and LC officials. The questionnaires were semi-structured and self administered questionnaires to which the respondents were required to select from options given. The questionnaires for the key informants had a free response choice to try and balance up the data to give their free opinion without being influenced by the study.

2.7.2.2 Rapport

Rapport was created with respondents which created a good study environment and for more detailed information.

2.8 Validity and Reliability of Research Instruments

2.8.1 Validity

This refers to the extent to which the measurement techniques or instruments actually measures the attributes that were intended in the research. The study used constructed instruments that
were used to solicit data from the sample of respondents. The instruments were then validated through content validity index.

2.8.2 Reliability

Reliability refers to the level of dependability of the questions in the research instrument. To ensure this, the inter-rater reliability was used to measure the consistency of the research instruments through the use of two experts to gauge the extent to which each instrument was measuring what it is expected to measure.

2.9 Research Procedure

The researcher asked for a letter of introduction from the Dean, Faculty of Law, Kampala International University, seeking for permission to carry out research. After the permission was granted, the researcher proceeded to the selected organizations to identify and select respondents who participated in the study. While at Police, the researcher first obtained permission from the Officer in charge of Station at Nsambya Police Station. This was granted and the researcher embarked on data collection with confidence that his actions were authorized and duly sanctioned.

2.10 Data Analysis

The study used both qualitative and quantitative data, and they were analyzed as below;
2.10.1 Qualitative Data Analysis and Management

The first step in analyzing the qualitative data collected was to get familiar with the data collected through reading and re-reading the text of the collected data. Key themes and patterns that address the research questions were then identified and organized into coherent categories to help in summarizing and bringing meaning to the data collected. The outcome was presented in form of content analysis after comparing and crosschecking of the collected data for accuracy and correctness using triangulation and holistic view of the research.

2.10 Ethical Considerations

The researcher got a letter of introduction from the Dean of Faculty of Law, Kampala International University and then sought permission which was granted to enable him conduct the research without impediment or suspicion of motive. Also consent was sought from the victims of domestic violence and these were treated with sensitivity and confidentiality.
CHAPTER THREE
CRITIQUE OF THE LAW

3.1 Introduction
This chapter covers an overview of the available legislation, instruments and policies on domestic violence in Uganda to measure the effectiveness of the Domestic Violence Act (2010) in securing justice for the victims of domestic violence. The chapter thus examines the applicability of the law of Domestic Violence and a comparison is drawn with related international legislation. It also describes a critique of the available and supportive instruments both national and international on Domestic violence issues, their weaknesses, and circumstances necessitating revision.

In Uganda statutory law is applied alongside customary and religious laws. The Domestic Violence Act\textsuperscript{69} thus derives its powers and support from various legal instruments and policies both national and international as expressed;

3.2 Applicability of the Domestic Violence Act
The passing of the Domestic Violence Act\textsuperscript{70} is a major landmark. However the necessary regulations should be put in place for it to be operational, because without them it will remain on paper like others. The institutions supposed to enforce it must have the capacity and adequate resources both human and financial, for example if the police or the local councils are

\textsuperscript{69} Domestic Violence Act (2010) \\
\textsuperscript{70} 2010
handicapped, who will benefit from it? The uniqueness about the DV Act is that domestic violence for the first time has been defined in totality and has been smuggled out of the home to the public. Besides, the civil society and women organizations need to monitor the implementation of this law. It is very important to identify the gaps, what is working and also continuously work to bring out the options Government can have to deal with those gaps.

But there is a lot more that needs to be done. Issues of domestic violence are diverse and complex, changing attitudes call for sensitization. Dealing with patriarchal dominance takes a lot more than having the law in place. So the law is just one step forward. In achieving the objective of this law, we cannot leave it to Government alone. Civil society and other stakeholders including traditional, religious leaders, and communities in general need to work together. As women activists and indeed women in general, we need to first educate ourselves about the law, understand its implications, and take it as a matter of priority because whatever you do, whether in the media or whether you are in the legal fraternity or whether you are a social development worker, domestic violence will definitely affect your work.

All stakeholders working on development programmes need to look at domestic violence as a priority because the results affect the delivery of their service

3.3  **Efficacy of the Domestic Violence Act (2010)**

The effectiveness of the Domestic Violence Act (2010) in bringing justice to victims of domestic violence is examined below;
Section 2 (a) defines violence to constitute of any act or omission of a perpetrator which harms, injures or endangers the health, safety, life, limb or wellbeing of another be it a mental or physical injury. Thus under Section 4 (1) of the same Act, any person is a domestic relationship is prohibited from engaging in a domestic violence, yet Section 4(2) such persons that engage in domestic violence commit an offence and are liable to not exceeding forty eight currency points or imprisonment not exceeding two years.

However, although the law has provided for this, acts of violence are still being tolerated and victims of violence are still unwilling to appeal for justice. This is due to the customary law that is left to work alongside the statutory law, and yet violence mainly occurs within the marginalized sections of women, who find it easy to succumb to customary law than to statutory law, thus rendering the effectiveness of the Act powerless in securing justice.

In reflection of Paragraph a (i) (ii) and (iii) on economic abuse in a home, the law provides that the victim and his or her children if any should not be deprived of household necessities; no deprivations should prevail on property jointly or separately owned by the victim or; no deprivation is expected on payment of rent related to the shared households and maintenance.

This law entitles victim of violence to access what belongs to him or her, whether she/he singly or jointly owns the property under question. Thus under Paragraph C no prohibitions or restrictions to access of such properties is expected on property that the victim is entitled to use or enjoy.
However, under the succession laws in customary law the woman has no right to inherit property and under circumstances of divorce, she is literary kicked out of the house without sharing the physical of financial resources available in the family.

Under Section 2 on emotional, verbal and psychological abuse, no partner is expected to humiliate, degrade another, and the law prohibits a partner from repeated insults, ridicule or name calling under paragraph a yet paragraph b is to the effect of prohibitions on repeated threats to cause emotional pain.

This law is for purposes of ensuring that no partner may injure the integrity of another through psychologically breaking down their partner through humiliations and degradations. However, it is not easy to tell of what happens psychologically in absence of a witness because there are chances that the perpetrators may deny or even accuse their partners of having done the same. Thus conviction of such offences necessitates a witness, and besides, victims may be intimidated through the torture that they suffer and thus may be unwilling to consult with law enforcers for fear of experiencing worse situations.

Under Part II Section 4(1), the Act prohibits a person in a domestic relationship to engage in domestic violence. This implies that once in a domestic relationship as mentioned in Section 3(1) (a) (b) (c) (d) (e) and (f) parties thereof are barred from engaging in act of violence against one another. However despite this legal prohibition cases of violence still persist among the named categories of relationships and once forwarded to police officers as mandated to execute the role
of advisor and giving assistance\textsuperscript{71} who yet undertake to advise victims to seek consent with their partners contrary to the stipulation of the same Act provided in Section 5 which holds that consent is not a defense in domestic violence.

The reaction of police in settling matters of domestic violence outside the family court has led to increased use of violence. Thus police needs to be sensitized more on handling matters of domestic violence in accordance with the expectations of the law, not as mere interveners.

Under \textbf{Section 6 Part II} the proceedings in case victim consults with the local council courts, are in such a way that local court under subsection (1) should be found where the perpetrator resides (2) upon receipt of the complaint court is expected to make a record of the complaints. However, the local council courts have handled domestic violence issues in a manner that is unprofessional because some of them are not educated thus find difficulties in taking records on details of the victims and their perpetrators thus the database of domestic violence remains unfilled making research difficult.

Indeed, it is welcome news that President Museveni assented to the Domestic Violence Act that aims to punish perpetrators of domestic violence. Welcome and timely as this gesture might be, it is itself insufficient to bring an end to domestic violence, and other forms of Violence Against Women (VAW). There are many aspects of the new law that will strengthen the fight against domestic violence. For instance, local \textit{councils}\textsuperscript{72} are given a mandate to try cases of domestic violence; fines are set for perpetrators of domestic violence;\textsuperscript{73} the law penalizes a partner in a

\textsuperscript{71} (1978) HCB 107
\textsuperscript{72} This is provided for under section 6 of the Act.
\textsuperscript{73} Section 6 (5) (e)
domestic relationship who injures or endangers the health of the other;\(^{74}\) and it is illegal to deny a partner the economic or financial resources to which they are entitled. This is a great step in the fight against domestic violence in Uganda, but this research contends that the law alone may not make much impact in the fight against domestic violence if it is not complemented by attitude and behavior change.

At the moment, there are many areas in Uganda where violence against women is justified, even found acceptable. Worryingly as many as 77 per cent of women in Uganda believe that their husbands beating them is acceptable behavior. Such attitudes and practices will not change by the enactment of a law but also through individuals and communities realizing that there is no justification for VAW and that all men, women and children need to rise up and oppose it. But a change in attitudes, behaviors, customs and traditions that discriminate against women and perpetuate violence against women will provide a long lasting solution and ensure that all men and women enjoy their full rights. Such cultures and traditions that discriminate against women have long passed their expiry dates, and need to be buried forthwith. Across the country, the magnitude of VAW is well appreciated. Its causes and manifestations appear to be equally well understood, as are the negative consequences on individuals, families and communities. Why then do we continue to have high levels of domestic violence?

This study established that an unacceptably high number of Ugandan women (more than 78 per cent) continue to experience domestic violence, mostly at the hands of men. It is telling that although the vast majority of cases go unreported, the Police Crime Report for 2009 shows a climb in reported cases of death resulting from domestic violence, from 137 in 2008 to 165 in 2009. Change makers who are the champions of the campaign are men and women that undertake a personal change of attitude and behavior. The change is self-propelled and voluntary.

\(^{74}\) Ibid
The Domestic Violence Act, 2010 provides opportunity to expand the typology of gender-based violence in Uganda to include domestic violence as an added typology in police records, across the nation.

The Domestic Violence Act 2010 needs to be implemented expeditiously. Section 6 of the Act amplifies the proceedings in local council courts to control domestic violence and therefore protocols and guidelines have to be developed for all Local Council Courts in the country. Section 7(a) of the Domestic Violence Act expounds the duties of the police in the control of domestic violence and therefore police officers deployed to the Child and Family Protection Unit need policy guidelines and protocols as well as capacity to enable them handle the protocols.

The Act provides for a very thorough definition of domestic violence that includes not only physical and sexual assault, but also emotional, verbal, psychological, and economic abuse, as well as various forms of harassment. By recognizing the detrimental effects of psychological abuse, the bill would open the door for women who are enslaved by the threat of violence. When a firearm is kept in the home, this fear is especially acute and may paralyze the victim from seeking assistance.

The introduction of protection orders is another welcome measure. A protection order works like a restraining order to prevent the perpetrator from having contact with the victim. It also may include provisions regarding temporary child custody and maintenance payments to the victim. Moreover, the courts would be required hear a case within 48 hours of an application being filed, even on holidays and weekends. Such an expedient response could prevent a violent situation from becoming a deadly one.

Also impressive are its attempts to address the economic factors that lead to power imbalances between men and women. Many victims of violence in Uganda are forced to choose between a life with an abusive partner or one of complete destitution. Others fear that they will not receive custody of their children-the courts presently favor paternal custody—or that they will
be unable to provide for dependents without spousal support. The bill astutely recognizes that facing such a so-called ‘choice’ is indicative of systemic abuse against women.

3.3.1 Loopholes, ambiguities, and weak spots in the Act:

There are several substantial gaps in the legislation: among these that were widely identified during this research were three.

First, the sentence for first offenders is fairly light. Considering the entrenchment of the phenomenon of domestic violence, it would have been more prudent to set up a law with very punitive measures that dissuade those who dare engage in domestic violence. While this Act is a welcome step towards this, its punitive provisions are not harsh enough for the realization of this goal. First-time offenders face a maximum prison sentence of only two years, and, if history is any precedent, the average sentence would be significantly shorter. Others may be let off by simply paying a fine. Because victims of intimate partner violence are more likely than other categories of victims to face retribution, they need to be assured that the prescribed punishment is an adequate deterrent against recidivism.

Secondly, the section on protection orders does not mention holding an alleged perpetrator in custody, and it fails to provide a safe space or shelter for the victim pending trial. In effect, this leaves the offenders with too much room for maneuver and threatens the privacy of the victims.

Furthermore, victims need greater protection during the pre-trial phase. If abuse is suspected, the offender should be detained to ensure the victim’s safety, yet protection orders do not offer such a safeguard. Nor do they provide a respite for victims seeking shelter. Earlier this year, Nathan Awoloi made headlines for beating his wife and forcing her to breastfeed his

75 Section 10
puppies. After being detained for a short time, he was released, only to nearly beat his wife to death.\textsuperscript{76}

This case and all too many more like it reveal why gun laws and domestic violence laws must be harmonized. The court needs to disarm and suspend gun licenses for alleged perpetrators once a protection order is issued. If convicted, an offender needs to be barred from accessing a firearm by illegalizing possession and restricting the individual from being able to obtain a gun license.

In addition, the Act does not make any mention of firearms regulations yet this is a very common form of domestic violence that women have been victim to. Uganda needs to re-evaluate its policy on firearms held by police, local defense forces, and private security companies. In two separate incidents this year, police officers have used official guns to shoot their wives.\textsuperscript{77}

The above notwithstanding, it is also a weakness of this Act not to have recognized some notable abuses as constituting domestic violence. Early marriages and forced marriages should also be reflected because these are also forms of GBV that negatively impact the victims. A regular and systemized production of such data will facilitate proper monitoring and evaluation of trends in SGBV in the country, as a whole as well as proper programming. Marital rape also needs to be recognized as it dehumanizes women in such relationships.

Finally, it is my view that the passage of the domestic violence law would finally recognize the value of women in the home and in society at large, but this law’s efficacy will be undermined if it ignores the cultural phenomenon predominant in Uganda. This should be critical if its implementation is to achieve success.

\textsuperscript{76} \textit{New Vision}, June 1, 2009
\textsuperscript{77} \textit{New Vision}, June 3, 2009
3.4 Critique of the National laws dealing with Domestic Violence

The Constitution provides for equal rights between men and women and the same constitution prohibits all the laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status. However, despite this legal provision to nullify such policies statutory, customary and religious laws that are discriminatory in nature have remained in practice.

The Constitution of the Republic of Uganda (1995) is the supreme law governing all other laws in the country and thus under of the Constitution all the binding forces on all the authorities in Uganda are conferred and for any other law consistent with the provisions of the Constitution, the Constitution shall prevail and to those that are inconsistent are considered void. This implies that all laws and customs that contradict with the powers of the constitution are void.

On issues reflecting on children in case of divorce of partners, the law gives both parents the right and a duty to support the children, yet customarily, men assume the overall responsibility and authority over the children. A draft marriage and divorce law was presented to Parliament at the end of 2009. The draft law grants women the right to divorce spouses for cruelty, the right to choose their spouse and prohibits the practice of levirate. It also provides for equal division of property and finances in the event of divorce. However, the draft neither prohibits polygamy nor "bride price" but only provides for it to be non-refundable. The proposed law would govern Christian, Hindu, and Traditional Marriages but not Muslim Marriages. Thus, many women in

---

78 Article 33
80 Article 33 Section 6
81 The Children Act 1996
considered a family issue, thus the victims go unassisted by the police officers. This implies that the authority defies the law and should under normal circumstances be held accountable for failing to assist the victims of violence, by assuming the role of interveners rather than prosecutors of the perpetrators of violence. This is a weakness on the side of the state and it promotes use of violence of in homes yet, no legal steps in most cases are taken to address the vice to fulfill constitutional demand\textsuperscript{87} that prohibits subjecting persons to any form of torture, cruelty, inhumane treatment or punishment. Section 4 of the Domestic Violence Act provides for penalties and compensatory damages as guided by the Second Schedule of the Act, but still victims of domestic violence go uncompensated because the implementation of law has not been an effective instrument in pursuing the perpetrators of violence. This exposure of the low status of women can be traced in the case of \textit{Unity Dow v Attorney General of Botswana}\textsuperscript{88} in that the petitioner sought to challenge the unequal protection to all persons irrespective of sex. In that case, the facts were that a Botswana woman could not pass over citizenship to her husband a non-national, according to the constitutional court of Botswana, it was held that a Botswana woman married to a non-citizen could lawfully convey a domicile by marriage to such a husband of hers and pass over Botswana citizenship to the children born out of the relationship.

Under \textbf{Article 30}\textsuperscript{89} the law gives both girls and boys equal access to education in law the intention of which is to, wipe out gender differences an accord equal opportunities to all children in accessing education. This was for purposes of equal improvement of talents and skills to create citizens who are self reliant in future. With reduced dependency levels, violence in the

\textsuperscript{87} The Constitution of the Republic of Uganda Chapter 4 Article 24
\textsuperscript{88} \cite{19911L.L.R(Constitutional)623&1992Appeal574}
\textsuperscript{89} The Constitution of the Republic of Uganda (1995)
homes reduces because this leaves no point of minimization of others, (as incapable of surviving on their own) but respect.

However, for the case of Uganda the law entitles all girls and boys to equal opportunities. Thus the country has through adopting the system of Universal Education at both primary and secondary levels, provided a way forward to the achievement of universal education. However, a UNICEF report holds that only 66 percent females were found literate compared with 82 percent of males by the year 2007. According to UNICEF this has only been possible at lower levels where opportunities and enrolment is almost equal but with higher levels the proportion of girls in the education system begins to fall due to early marriages for girls, pregnancies, limitedness of finances in homes along parental preferences of who should remain in school and who should join the labor force. The presence of unequal relations can still be traced within the customary law which gives boys prior consideration on pretext that boys extend the lineage of the family unlike the girls who shall leave the family to become part of her husband’s family. This is discriminatory of the law and yet the constitution as the supreme law, guarantees equality for all in the political, economic and social spheres irrespective of gender, color, race or else.

The Penal Code Act is gender discriminative and contradicts with the provisions of the Constitution. When justice is being exercised, courts should adjust their assertions on the discriminative penal provisions to accord equal punishment for all as a way of enhancing equal

---

91 UNICEF; Domestic Violence Against Women and Girls, Readers Digest, Florence Italy, 2000
92 UNICEF; Domestic Violence Against Women and Girls, Readers Digest, Florence Italy, 2000
93 Article 21(1) (2)
94 Section 154
95 Articles 21(1) (2) and 31(1)(b)
treatment for all provided in Article 33 of the Constitution. This law accords equal treatment and dignity to both men and women, and thus gives equal opportunities to all.

Despite the provisions of Article 33 there is an inability of women to freely access possession of property as compared to the men. For instance whereas boys are made heirs, girls are not entitled to inherit property customarily, but are merely allowed to use the property. This has kept women in a marginalized and poor state, and thus of an undermined status in society, yet there is no law in Uganda that prevents women from owning property, but the law fights for their dignity. However, the Land Act provides some protection to spouses, when it demands for their consent before sale or mortgaging of any family land although no enforcement may be taking place. Succession law allows women to have inherent rights on land contrary to the customary patrilineal arrangements. This leads to weaknesses in the legal measures taken on claiming property.

According to Constitution, Article 21 (3) is to effect of protecting against discrimination in order to accord equal treatment to all persons regardless of their sex, race, color, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability. Although this law is for purposes of securing all persons regardless of the mentioned aspects, discriminatory practices are still persistent in Uganda.

In reflection of the provisions of the Succession Act\(^9^9\) on property, the deceased property should be apportioned between the deceased’s family and widows are only accorded a 15 percent of the property and yet the girls don’t inherit their father’s property. According to AFROL report, women rights organizations petitioned for reviewing of the Succession Act.\(^1^0^0\) The law is discriminative in nature, when it provides for boys to be heirs; these circumstances may lead to endless wrangles and use of violence in any family setting.

In relation to the above, in case of separation, matters pertaining to who holds custody may result to further violence in the home, the Children Act\(^1^0^1\) provides that both parents are responsible for supporting children and yet when it comes to customary law the men receive all entitlements to control the child. In criticism of this law, the father may not be suitable to take over control in case he is a drunken; drug abuser among others thus may not serve the best interests of the child as upheld in the Children Act.

In regard to matters pertaining to divorce as a result of domestic violence, the Divorce Act\(^1^0^2\) the Act does not explain what constitutes of cruelty for victims seeking a petition. However, acts of cruelty have been explained in the Domestic Violence Act.\(^1^0^3\) However, although the same Act\(^1^0^4\) upholds that consent is not a defense, actions of cruelty still occur in homes and once forwarded the police officers,\(^1^0^5\) still victims are sent back to settle issues domestically,

\(^9^9\) Section 27 of the Succession Act  
\(^1^0^0\) AFROL, Gender profile www.afrol.com  
\(^1^0^1\) The Children Act 1996  
\(^1^0^2\) Cap 249 laws of Uganda  
\(^1^0^3\) Part I (2) (a).  
\(^1^0^4\) Domestic Violence Act (2010)  
\(^1^0^5\) The Domestic Violence Act Part II (7) (2)
considering them as family issues. Thus contradicting with the provisions of the law where consent cannot be the answer to domestic violence.

In reflection to gender violence, domestic violence can be explained to constitute of mainly gender sensitive issues and thus is most of the times overlooked. Under the Penal Code Act\textsuperscript{106} rape is meant to apply to males and focuses on the consent and penetration level. However, for the law to attain justice for the victim of rape becomes technical when court inquires into details that demean the status of the victim, who end up unwilling to reveal in public what exactly may have transpired. This creates an opportunity for setting free of the perpetrator. The court in most cases concentrates on investigating on the presence of the consent. It however, does not seek to find out on the consent of the victim but focuses on the perception of the perpetrator on the victim's consent.

In case of rape cases under sexual violence, marital rape remains silent, yet when husbands force their wives into sex; this is a demeaning act which brings about humiliation on the side of the woman. The wife is psychologically abused and yet the law remains silent. Thus, because the woman is not protected fully and besides this customary law creates circumstances of ownership when a woman is exchanged for bride price. Thus the freedom of consent is bought off at the time of exchange of bride price and yet in the actual sense sex should be enjoyed and thus should be a pleasurable moment for partners. The law needs to come out clearly on issue of marital rape to penalize this sexual abuse, although under normal circumstances this may not be a difficult

\textsuperscript{106} Penal code Act Section 123
case to prove. However Marital Rape is covered under the sexual abuse in the Domestic Violence Act.107

Under Section 52108 provides for protection against rape to prove the innocence of the man, this gives advantage of the man to accuse and discredit the victim which impinges on the reliability of the status of the woman, who in the end may pull out of the case to avoid further embarrassments. This is because for such a case, the victim will need to come up to protect her historical behavior to remove the element of doubt in order to justify her innocence. However, in reality such bearings need not be imposed as sureties for enticing rape. In Uganda, however, under customary law and statutory law rape is significant of the nature of relationship and circumstances that surround the rape. For the case of married people rape is legal under customary law because a woman is treated as a man's belonging.

Additionally, Section 138109 encourages domestic violence, this is because according to this law prostitution is penalized moreover while legal enforcements are undertaken it is the females who are convicted and the males (who are the buyers) are not affected. This should affect both buyers and sellers if equality is to be practiced is upheld by the powers of the constitution which is the supreme law. Whereas the women are convicted of being prostitutes, the law remains silent about their buyers (males) and thus under normal circumstances they are released because there is no charge to be placed against them. This is unrealistic of the law, because women would not continue to dwell in prostitution if there were no potential buyers, thus the law should convict both parties if the act is maintained as illegal.

107 The Domestic Violence Act (2010), Section 2
108 The Evidence Act Cap 6 laws of Uganda
109 Penal Code Act
The Constitution\textsuperscript{110} provides that no person shall be deprived of the right to own property whether on individual or joint basis and that no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied. The Constitution\textsuperscript{111} further demands for a prompt as well as a fair and adequate compensation, before taking possession or acquisition of property from another. The purpose of this law is to approve of ownership of property by individuals irrespective of their sex and color among others of which such individuals are entitled to compensation in case their property is taken over. However, possession or control of the property of the women is taken over by their husbands, without due compensation in Uganda.

The law upon which the Domestic Violence Act is founded encourages equality for all in order to attain equitable justice and treatment of all persons. However, along with the customary law at hand and the inequities that it promotes, the powers of the Constitution are on most occasions undermined, yet being the supreme law. This seems to be a result of ignorance of the law with an inability to fight for one’s rights.

3.5 \textbf{International Instruments}

Uganda is party and signatory to the CEDAW which implies that, it supports to uplift the status of women to a level equal to their male counterparts in all spheres as upheld by the Constitution.\textsuperscript{112} The convention provides the basis for realization of equality between women and men through allowing for equal access to and equal opportunities in political and public,

\begin{itemize}
  \item \textsuperscript{110} \textit{Article 26, Section (1)}
  \item \textsuperscript{111} \textit{Article 26 Section 2 (a) (i)}
  \item \textsuperscript{112} \textit{The Constitution of the Republic of Uganda Article 21(1)}
\end{itemize}
education, health and employment. Reflecting on the effort of CEDAW in 1985, this law was devised as a way of ensuring that states take legal steps to protect women against violence. Under the committee of CEDAW it was recommended that states to protect women from human rights violation through; creating education programmes that can change attitudes concerning roles and status of women and giving women access to public information; taking effective legal steps including sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence in the homes and at the workplace; and devising measures that protective for refugees, counseling, rehabilitation action and support services for women who are experiencing violence or who are at risk of violence.

The convention also recognizes the role played by culture in enhancing violence when it shapes gender roles and regulates family relations. The convention also defines the composition of discrimination thereby pressing a legal force on nations to prevent it.

It is provided under CEDAW\(^{113}\) that for country to attain full development there should be maximum participation of the women at an equal status with the men in all aspects. This article further emphasizes the reproductive rights of women, but women in Uganda don’t have an upper hand in their reproductive health. It is the duty of the man under customary law to determine how many children are to be born in the family. On top of this if woman appears barren, the will man decide to take a second wife if he may so wish.

\(^{113}\) CEDAW 1985 Article 18
CEDAW\textsuperscript{114} also empowers state parties to, without delay and through appropriate measures eliminate discrimination against women, implying that women are entitled to participate in all activities ranging from political, social, religious and economic activities without any prohibitions. However much Uganda is party to this convention, it has not taken steps to abolish laws that promote discrimination between genders, yet under the constitution the same rights are advocated for. This shows that the laws are not applied in unison and thus are in conflict. For example, when customary law grants male gender an opportunity to take on two wives or more, it does not equally extend similar right to the wife but condemns her for engaging in any extra marital affairs.

\textsuperscript{114} (1985) Article 2
CHAPTER FOUR

PRESENTATION AND DISCUSSION OF THE RESEARCH FINDINGS

4.1 Introduction

This chapter presents and discusses the postulations on the overall nature of the Domestic Violence Act in securing justice to the victims of domestic violence as acquired through dialogue from the respondents. This was done following a thematic order of the circumstances leading to domestic violence; persistence of domestic violence despite the presence of a supportive law and possible ways through which the law can be revised to cover the existing gaps.

This implies that domestic violence occurs when partner injures the integrity of another either physically or psychologically.

4.2 Circumstances Leading to Domestic Violence

The study revealed that circumstances leading to use of violence include gender impoverishments. The respondents emphasized that women in their marital homes are experiencing gender violence because of their overdependence on their husband's wealth. This is the reason as to why IRIN\textsuperscript{115} realizes that to be safe, battered women need to be free from the violence and control of their partners and must be able to meet their family's basic human needs. For many battered women, economic advocacy is critical to the success of their safety planning.

\textsuperscript{115} Integrated Regional Information Networks (IRIN), 15 July 2008, Poverty, wars and alcohol perpetuate domestic violence
Otherwise without it then women are likely to suffer from physical abuse\textsuperscript{116} of denied access to basic needs and food among others. This implies that women, particularly those that are housewives should economically be empowered and equipped with skills necessary for them to carry out enterprising work to be able to reduce the tendencies of over-reliance which make their husbands weary of having to finance each and every need in the house.

According to a male respondent from Makindye,\textsuperscript{117} it was emphasized that lack of access to justice as a result of poverty is promoting domestic violence. Nuwagaba points out that

"It is financially stressful to access justice right from the Local Council Leader to the police who keep on requesting for money at every other level."

This finding therefore suggests that those without money cannot access justice and thus suffer and strive out on their own. Thus according to the Human Rights Watch, it is postulated that a well functioning justice system is a precondition to spur economic growth and that a people with effective access to justice are indeed empowered.\textsuperscript{118} The report notes that;

"Wife battery which does not result in serious injury is tolerated and considered a normal part of marriage."

This is seen in interviews held with some community members who emphasized that, "it is ok for a husband to hit his wife under certain circumstances;" on the reverse one male respondent pointed out that’

\textsuperscript{117} Nuwagaba Andrew, teacher and resident Makindye, Lukuli.
\textsuperscript{118} Human Rights Watch 2003, Just Die Quietly: Domestic Violence and Women's Vulnerability to HIV in Uganda.
"There might be homes where men believe it is ok for wives to hit them; here my wife is liberated and she can avoid conflict to maintain peace."

This report also cites UN data suggesting that more than 40 percent of Ugandan women have suffered domestic violence and that in a study of domestic violence among women attending the pre-natal clinic in Mulago hospital statistics also reflect that 40.7 percent women have suffered from physical assault before conceiving and that this same report further reflects that complaints of domestic violence rose from 495 in 2001 to 1,009 in 2002, and that this increase is attributable in part to training on women’s rights but also to increased levels of community participation about the evils of domestic violence.

In the researcher’s analysis therefore, this implies that the level of domestic violence in Uganda given the nature of statistical reports and yet part of this violence occurs behind the rails and statistical evidence is largely unreported and absent. However unreported incidences promote the use of violence in homes when perpetrators realize that the victims have nowhere to run to. It can therefore be suggested that, domestic violence in Uganda needs to be checked by introducing policies that have a wider outreach to the grassroots.

Additionally it was mentioned by community members that the existence of weak laws is partly to blame for the rising cases of domestic violence in the community of Makindye. It was further postulated that, while domestic violence is on the increase, the available legislation is not flexible for the victims on top of this access justice will take a century. As one of the respondents commented that “Some of us have broken down along the road on the search for justice”, this

119 Human Rights Watch, 2010
appears that the pursuance of justice has been characterized by unprecedented delays that result into frustrations and abandonment of the cases on the side of victims.

In addition alcohol was also attributed to causes of domestic violence in homes, according to one of the councilors, it was envisaged that the pervasive abuse of alcohol contributes to the tension caused by scarce resources. According to another respondent, it was emphasized that alcohol is a cause of conflict between family members. This can also be seen from a statement made by one of the respondents that;

"The way my husband treats me. He drinks a lot. He argues all the time...... he tells me he wants to sell the plot where we stay and he buys cheaper land with a small house. When I hid the Land Title, he beat me up but I denied having come across it, but whenever he is annoyed, he will beat me up over very minor issues and he keeps asking for the land title but I cannot let him have it at his place of drinking because if we are evicted from the house, where will my children be raised up from?"

This implies that in case of scarcity of resources in a home in conjunction with alcoholism, lead to endless condemnations and the level of disagreement is also escalated which may eventually culminate in use of violence.

4.3 Persistence of Domestic Violence Despite Presence of Supportive Law

Another female respondent in Makindye said that unequal relationships in homes have exposed women into frequent sexual violence in homes in this community. According to this respondent, this has increased the level and spread of HIV/AIDS in homes. Similarly another female respondent also retorts that, women lack the strengths to deny their husbands sex even

---

120 Nakiberu a resident of Kulekana Zone Makindye.
121 Nakibala Julian resident of Mukudde Zone, Makindye Division
when aware that the husband is having several relationships because they are entirely dependent on their husbands. She was thus quoted;

“My neighbor is leading a hard and threatened sexual life, but she does not really have any option to get through with this. Her husband George is commonly known to have several relationships with any woman that he can manage to lure into sex, whether young or elderly. Besides this her husband is a sex maniac who cannot accept to use a condom and has already infected her, yet blaming her for having infected him”

According to the postulations of the Ministry of Gender and Community Development, this is by law considered as marital rape and is punishable. From the fact that Joan is forced into having unprotected sex with George without her consent, besides the so many relationships that George is involved in, puts Joan’s life at risk of sexually transmitted diseases like syphilis, gonorrhea, Candida and above all the killer disease HIV/AIDS.

George’s action as defined by the Domestic Violence Act is both a mental and physical abuse to Joan, thus constitutes of domestic violence. This action however signifies inequalities in the home, contrary to the provision of the Constitution, which provides for equality of all. This equality is regardless of gender, thus all persons are equal before the law.

This however, reflects a gap in the existing law, when victims of domestic violence like Joan cannot apply the law to secure justice even when their health is at stake, simply because they are dependent on the men. Thus if women are to remain silent on occurrences of violence in their homes then the law may not help much in securing justice for such a category of people. This is purposely because it is the victims to seek for the law since the law cannot seek for them. This

---

122 Ministry of Gender and Community Development
123 Domestic Violence Act (2010) Part 2 (a)
calls for opportunities to sensitize the women particularly the illiterates and unemployed on the significance of the law in fighting against violence in the homes as well as measures to empower women to become self sustainable at all levels whether learned or not.

Additionally it was emphasized by some respondents that some women are unwilling to declare the suffering and physical abuses that they undergo in their marital homes for fear of further embarrassments as well as to keep up appearance in their homes. This is envisaged from some comments as put across by these housewives;

Thus according to another female respondent,125

“The most disappointing bit is that when neighbors see you coming driving out of the gates, or shopping for household equipments, they believe all is well in the home, but behind those high perimeter walls is a secret of violence, that you cannot dare mention such, or else neighbors may begin to despise you highly”

Yet according to Juliet the situation is of keeping family secrets she thus retorts that;

“In my tradition, in case of any misunderstandings between husband and wife, it is the role of the elders to resolve such matters. You are not expected to involve police, simply because you engaged in a fight with your husband, moreover for mistakes committed by you that may arouse jealousy or anger. In case you resort to the law, you are disregarded and condemned highly for not consulting with the elders because that is viewed as a sign of disrespect for elders”.

This implies that women need to be sensitized on assuming a responsibility to exercise their rights about unlawful customary provisions. This particularly true in situations where due to ignorance of the law, women are oppressed, when customary law supersedes the powers conferred by the Constitution, thus acting contrary to the provisions of Article 2 of the

125 Jessica Babirye, Business woman – Salaama Zone
Constitution when women dominate an inferior position in society as seen in the Constitutional Petition Uganda Women Lawyers Association and 5 others v Attorney General.

The gaps in the supportive laws of domestic violence were yet another challenge leading to persistence of domestic violence as mentioned by Muntuyera. According to Muntuyera, women lack access to land and have limited labor resources yet the two are a key factor in the production process. However, he contends that the distribution and utilization of these resources is a matter that has assumed policy and strategic importance and yet the political devotion necessary for implementation of such reforms is absent especially on changes that directly touch productive resources’ use and ownership. The nature of land distribution constrains women economic, political and social empowerment when it directly affects their access to credit and limits their ability to self sustenance.

According to Menninger, only about 15 percent of land is actively registered in Uganda, and it is rare for women to be registered as owners or for their rights to be noted on the register. This however is contrary to the law of gender equity which is proving to be the most difficult frontier to confront, as it requires a direct and immediate change in power relations.

---

127 Constitutional Petition No.2/03
128 Muntuyera Charles Resident Makindye Division.
Like proposed by Asiimwe, Uganda is adopting various diverse and scattered enabling policies and laws which are specifically geared towards promoting women's empowerment as well as active role in the development of their families and communities with remarkable progress in registered law and policy reforms. These views are in consonance with my research findings as well as the opinion held by another celebrated scholar Weiss. From these studies, it is established that in most situations, family law cases are not welcomed by state Judges than does the Judiciary, thus in most cases domestic violence is viewed as of a lesser status and thus subjected to judicial handling.

According to the provisions of the Constitution all fundamental rights and freedoms of a person are inherent and are not granted by the state. Thus such rights ought to be respected, upheld and promoted by all organs and agencies of the state as held by the constitution. In the same manner all individual women and men, whether at home or at their places of work should enjoy these freedoms as guaranteed by the Constitution. However, to throw more light on this, Rugadya and Kamusiime contend that notwithstanding the reforms, such progress is hampered by consistent failure and delays in moving legislation from “Bills” to “Acts” or “Statutes” and that often times, policy makers and law makers have hanged excuses for not taking effective action for securing property rights for women on the absence of sufficient

---

133 Deborah M Weiss, Gender Base Violence as Judicial anomaly between the truly National and the truly local” Para 168
134 1995 Constitution of the Republic of Uganda Chapter 4 Article 20 (1)
135 Ibid Section (2)
evidence and the lack of sufficient consultation with the beneficiary populace. They further attribute it to the sensitive nature of the subjects being handled and the legislation’s inherent ability to rearrange the power-gender and property relations at households and in communities, which has met stiff resistance from different sections of society in Uganda contrary to the provision of the Constitution on equal treatment. This same situation is envisaged in the World Bank report on delayed legislations in trying to criminalize some acts.

In reflection of this finding it can therefore be submitted that, women’s input in the production process is not matched by equal benefits and control over the economic, social and political processes.

It was also emphasized by the study respondents, that domestic violence is persistent in homes as a result of poverty. One of the respondents in an interview was quoted thus;

"Whenever my husband is short of finances and cannot afford the basics at home, he really becomes too rude. By merely requesting for money to buy a missing basic requirement, you may at times win yourself a slap over something so minor that you may mention. When he is broke children may even take tea without sugar, but you cannot even dare remind him of missing items"

---

This according to Panda et al.\textsuperscript{140} is physical abuse when the family cannot access physical basic needs, and food. It can therefore be submitted that, women tend to conceal their pain even when they are physically abused with their children to avoid being beaten by their husbands.

Further still the study findings further revealed that the prevalence of domestic violence is a result of structural forces where some victims of violence are encouraged by their neighbors not to report the violence claiming that those are family issues which instead will worsen matters if police is involved. The social pressure not to report abuse at times is on grounds that such violence happens everywhere in every home. One of the respondent victims had this to say;

\begin{quote}
"The neighbors are good to me and they also give me advice on how I should stay. They have encouraged me to be strong hearted and that even my husband is not helping, I should always bear in mind that it is hard to change men that the situation may even be worse where I might end up, like so I have managed to stay."
\end{quote}

Such kind of advice turns away victims from pursuing legal steps, thus remain unassisted and prone to more violence.

More still the study findings revealed that domestic violence at times is a result of forced marriages. According to some of the respondents it was emphasized that some parents force their daughters into marriage on discovering that they are pregnant and yet the men responsible for the pregnancies are not ready to take them up for marriage. This kind of relationship normally ends up with frequent quarrels and use of violence.

\textsuperscript{140} "Marital Violence, Human Development and Women's Property Status in India" World Development 33(5): 823-850.
This implies that if a man is imposed upon to take up a woman in marriage without his consent, but because, he has impregnated the woman, such marriages may not last long and the man will always find excuses to accuse the woman of imposing a marriage on to him and thus keeps beating the woman as a way to send her out of the home.

The traditional and irrational belief held by women that when a man beats his wife it is due to love and that those who are not beaten are not loved is as sense of lack of ingenuity of how to exercise one’s rights as per the freedoms guaranteed by the Constitution. According to some respondents, particularly the women, it was claimed that, they are beaten because their husbands love them and thus feel insecure that they might be grabbed away from them. Beating according to Panda et al\(^{141}\), is viewed as a physical abuse in the home and is not acceptable by the law. This implies that women have gone as far as substituting their rights for beatings and abuses in the guise of love, thus making it hard for the law enforcers to secure justice when the victims of violence continue to remain silent and justify actions of injustices that they face in the homes. Yet according to the law\(^{142}\) all such laws, cultures, customs or traditions which promote actions that demean and undermine the status of women are prohibited.

Additionally, it was noted from the respondents that, women don’t report cases of violence in the homes because the law enforcers have also remained adamant on cases of violence that have been forwarded to them for help, particularly the police. Yet on the other hand,\(^{143}\) women are reluctant to file complaints for fear of embarrassments and by the fact that pursuing cases

---

\(^{141}\) “Marital Violence, Human Development and Women’s Property Status in India” World Development 33(5): 823-850.


\(^{143}\) Namuddu Betty, a resident of Makindye, Nanganda Lukuli
requires them to have money and yet most of them are unemployed and unable to pursue the enforcement. In this regard it can be submitted that, however much women may have wanted to pursue the cases of violence, they are limited financially and by the fact that they are unemployed means that they are dependent on their husbands, thus cannot afford to be kicked out of their marital homes with no one to lean on financially. Denial of physical basic needs according to Panda et al\textsuperscript{144} is a physical abuse and is punishable by law.

Problems are still encountered in securing justice and equal treatment for all particularly by women. This is because women have not had an opportunity to be exposed to the laws that govern their rights in homes and thus live in the dark under the marriages.\textsuperscript{145} This implies that the women do not have adequate information on the way forward to the freedoms that the state grants them, thus continue to be exposed to violence in homes. This is contrary to the provision of the Constitution of the Republic of Uganda.\textsuperscript{146}

Although there is a specific law to address domestic violence in Uganda, domestic violence continues to happen with impunity. This particularly affects the women and efforts to limit violence in homes are still deliberately limited, due to high illiteracy rates and dependency rates of the women. Domestic violence increases women's risk to HIV/AIDS infections, psychologically tortures women, deprives them of their right to property possession among others.


\textsuperscript{145} Kibirige Faridah Resident Kuleekana Zone Makindye Division.

\textsuperscript{146} Article 21 (3)
CHAPTER FIVE
CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

The chapter presents the summary conclusions and recommendations of the study carried on the efficacy of the Domestic Violence Act in securing justice to the victims of violence.

5.2 Conclusion

The government is playing an active role to control Domestic Violence but despite all the positive steps taken, domestic violence is still persistent. For violence to be curbed in homes, the issue of equality needs to be addressed and practices leading to imbalances in gender be minimized. This is because domestic violence is mainly surrounded by gender related issues, which develop in misunderstandings and later on erupt into use of violence a sign of winning one’s position as head of the family.

The study concludes that the socio-economically downtrodden class are the most victims of domestic violence because they lack an anchor on which they can rely, thus due to dependency, women tend to tolerate all sorts of nuisance behavior of their husbands simply because they lack a plausible alternative. Thus the socio-economically empowered need to take a step with hitherto strong opinions against violence to those who face and still put up with such violence since they have no reasonable alternative.
5.3 Recommendations

In respect to the findings and conclusion drawn for this study, there is need to adopt the following:

5.3.1 Building capacities of communities to fight violence

There is a need for actors like organization responsible for domestic violence, the police family unit among others to work towards building the capacities of the community and strategically identifying different categories of people in their respective professionals to participate in fighting against violence. This can be through a multi-sectoral approach to the training of resourceful members of the community right from leaders of community based organizations, Faith Based Organizations, Local Government as well as Welfare Officers to deepen conceptual understanding of domestic violence and the rights-based approach. This will help in strengthening the practical skills to apply these concepts while at home and at the workplace, to give the law a stronghold.

5.3.2 Capacity builders need to make a follow-up

The capacity builders should not only build the capacities of the community but also monitor and make a follow-up on the progress of their trained teams and the communication and responses that they obtain from the communities that they lead on issues of domestic violence in order to make necessary revisions and adjustments where necessary as well as identify which measures are practical in preventing violence.
5.3.3 Sensitization campaigns on domestic violence

There is need to hold sensitization campaigns by Police and Actors on Domestic Violence issues through, workshops and seminars, hosting talk shows on radios and Television to attract individual contributions, to participate in order to come up with streamlined procedures on dealing with reports of domestic violence. These campaigns need to be facilitated regularly and should at times include community presence in the physical to build relationships with the community to seek for law enforcers rather than refraining.

5.3.4 Closing the gap between law enforcers and victims

There is need for change in the cultural set up to streamline the institutional set ups which promote the actions of injustices in society. This should be done by creating direct linkages with institutions like schools, prisons, churches and clans because such institutions may have an upper hand because they directly deal with community members.

5.3.5 There is need for local activisms

There is need for the struggle against domestic violence to be introduced at the grassroots levels. Community members should also be called upon to participate and contribute to forwarding cases of violence that may be known to them but yet are silent in the face of the law enforcers. Door-to-door visits should be facilitated and community dialogue held in busy places as way of research to improve on the reliability of statistics to be community based than abstract.
BIBLIOGRAPHY


Deborah M. Weissman *Gender Based Violence as Judicial Anormally Between the True National and the Truly Local*


Buddle, Benninger Cavin *Violence Against Women*, OMCT Geva, 2000


The Domestic Violence Act, 2010.


The Penal Code Act (Cap 120).
G) None of these

Experience (Period in Marriage)
A) 1 9
B) 10 19
C) 20 29
D) 30 years and above

What is Your Religion?
a) Catholic
b) Protestant
c) Born Again
d) Muslim
e) Traditional African Religion
f) None of these

SECTION B TRAINING AND DEVELOPMENT

1. What is your highest educational attainment? (Please tick as appropriate)
a. Ordinary level
b. Advanced level
c. Diploma level
d. Degree
e. Post Graduate and above
f. None of these

Family Life
Who is the head of your household?
Who makes decisions in your family?
How are problems resolved in your family?
How relevant are government institutions in resolving your family disputes
What suggestions do you offer to reduce domestic violence in your area?

Thank you very much for your time and in valuable information provided above