



**DOMESTIC VIOLENCE ACT 2010: EXAMINING THE CHALLENGES IN  
ENFORCEMENT IN KAMPALA DISTRICT**

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## APPROVAL

This dissertation on challenges in enforcement of the Domestic Violence Act has been under my supervision and is due for submission.



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## DECLARATION

I declare that to the best of my knowledge, information and belief, this dissertation has not been presented and is not being presented for the fulfillment of a degree in any other university.

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## **DEDICATION**

I dedicate this piece of work to my uncle Haji Abubaker Senyonga for his parental and financial support in my academic life and for believing in me when no one could.

## **ACKNOWLEDGEMENT**

The compilation of this paper has been a difficult task which could not have been possible through a single handed effort. I would therefore like to acknowledge with thanks the help of those without whom the writing of this paper would have been impossible.

First my sincere thanks go to my Supervisor Mr. Tajudeen Sanni for guiding me to the relevant materials and instructing me on how to write out my work intelligibly.

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Once again thanks a million.

## **LIST OF STATUTES AND CONVENTIONS**

- Constitution of Republic of Uganda 1995.
- Domestic Violence Act 2010.
- Penal Code Act Cap. 120.
- Penal Code Amendment Act 2007.
- The Land Amendment Act 2004.
- Children Act Cap 59.
- Female Genital Mutilation Act (FGM) 2009.
- Civil Procedure Act Statutory Instrument 71-1.
- Civil Procedure Rules.
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- United Nations Convention on the Rights of a Child.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children.

## **SYNOPSIS**

This study on “challenges in enforcement of the Domestic Violence Act 2010” was carried out in Kampala District (Uganda), with the major aim of examining the causes of domestic violence, consequences and the challenges faced in enforcement of the new Domestic Violence Act 2010.

It considers ideas in four major chapters. Chapter one considers the introduction, background, statement of the problem, study objectives, hypothesis, approach to and choice of study, significance of the study, methodology, definition of key terms, literature review and problems encountered.

The second chapter presents types of domestic violence/abuse, different laws on domestic violence, underlying factors causing domestic violence and consequences of domestic violence.

The third chapter discusses the practical analysis of research findings, the role of non-government institutions in preventing domestic violence, role of government institutions in preventing domestic violence and role of medical practitioners in preventing domestic violence.

The fourth chapter presents the conclusion and recommendations and steps that can be taken to prevent this phenomenon.

## TABLE OF CONTENTS

Approval .....	i
Declaration.....	ii
Dedication.....	iii
Acknowledgement.....	iv
List of statutes and Conventions.....	v
List of Abbreviations .....	vi
Synopsis.....	vii
Table of Content .....	viii

## **CHAPTER ONE..... 1**

Introduction .....	1
1.1 Background.....	2
1.2 Statement of the Problem .....	6
1.3 Study Objectives.....	6
1.3.1 General Objectives .....	6
1.3.2 Specific Objectives.....	6
1.4 Hypothesis .....	7
1.5 Approach to and Choice of Study.....	7
1.5.1 Scope of Study.....	7
1.5.2 Area of Study.....	7
1.5.3 Sample Selection and Population .....	8
1.6 Significance of the Study.....	8



1.7 Methodology.....	8
1.8 Definition of Key Terms.....	10
1.9 Literature Review .....	11
1.10 Problems encountered.....	15
 <b>CHAPTER TWO.....</b>	 <b>17</b>
<b>INTRODUCTION .....</b>	<b>17</b>
2.1 Types of Domestic Violence/Abuse .....	18
2.1.1 Emotional Abuse .....	18
2.1.2 Economic Abuse.....	19
2.1.3 Physical Abuse .....	20
2.1.4 Sexual Abuse .....	21
2.2 Laws on Domestic Violence.....	21
2.2.1 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).....	21
2.2.2 United Nations Convention on Rights of a Child.....	23
2.2.3 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children .....	24
2.2.4 Constitution of Republic of Uganda 1995.....	24
2.2.5 The Land (Amendment Act) 2004.....	26
2.2.6 The Penal Code (Amendment Act) 2007 .....	26
2.2.7 Children Act Cap 59.....	27
2.2.8 Female Genital Mutilation Act (FGM) 2009.....	27

2.2.9 Domestic Violence Act 2010.....	27
2.3 Underlying factors causing Domestic Violence .....	28
2.4 Consequences of Domestic Violence .....	33
 <b>CHAPTER THREE: Presentation and Discussion of Research Findings .....</b>	<b>38</b>
3.1 Introduction .....	38
3.2 The Role of Non-Government Organizations (NGOs) in Preventing Domestic Violence .....	45
3.3 The Role of Government Institutions in Preventing Domestic Violence .....	49
3.3.1 Role of Local Council.....	50
3.3.2 The Role of Police .....	52
3.3.3 The Role of Courts of Law .....	53
3.4 Duties of practioner in Preventing Domestic Violence .....	54
 <b>CHAPTER FOUR: Conclusion and Recommendation .....</b>	<b>55</b>
4.1 Introduction .....	55
4.2 Conclusion .....	55
4.3 Recommendations .....	56
References .....	60
 <b>APPENDICE</b>	
Appendix I: Questionnaire.....	62

## CHAPTER ONE

### INTRODUCTION

This chapter presents and discusses the background to the study, statement of the problem, study objectives, research questions, hypothesis, scope of the study, significance of the study, definition of key terms, literature review and research methodology.

Domestic violence also known as domestic abuse, spousal abuse, family violence and intimate partner violence (IPV), has been broadly defined as a pattern of abusive behaviours by one or both partners in an intimate relationship such as marriage, dating, family, friends, employee and cohabitation.<sup>1</sup> Domestic violence so defined, has many forms, including physical aggression (hitting, kicking, biting, shoving, restraining, slapping, throwing objects), sexual abuse, emotional abuse (controlling or domineering intimidation, stalking) and economic abuse. This research focuses on women and children because they are the mostly affected people by domestic violence.

Domestic violence is indeed a global epidemic that requires global strategies for effective prevention. Every day, in countries around the world, women and children are abused by their intimate partners and family members around them.<sup>2</sup> International human rights

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<sup>1</sup> Markowitz, Sara (2000). "The Price of Alcohol, Wife Abuse, Husband Abuse". Southern Economic Journal (Southern Economic Association) 67(2): 279-303. Doi: 10-2307/106147. JSTOR 1061471.

<sup>2</sup> The United Nations Development Fund for women Reports, "At least one out of every three women around the world has been beaten, coerced into sex, or otherwise abused in her life time with the abuser usually someone known to her." UNIFEM, Facts and figures on violence against women, citing to ending violence against. Women, population reports, issues in world health, series L, number 11, xxvii, population information program, the Johns Hopkins School of Public Health, December 1999.

instruments such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)<sup>3</sup> have been created in an effort to address the common global problem of discrimination and violence that often results from gender inequality. Uganda has also enacted laws to address this phenomenon like the constitution<sup>4</sup> under chapter IV, the Children Act<sup>5</sup>, and the recent Domestic Violence Act<sup>6</sup>. While such international and national laws have been put in place and are crucial to creating legal frameworks to prevent violence, their broad sweeping perspective cannot account for the different realities that women and children face in the country. Depending on our culture, the economic situation of the country, laws face particular obstacles that hinder their operation and enforcement.

## **1.1 Background**

After independence in 1960's, the majority of African citizens were resolving their disputes using traditional and informal justice forms. Despite their popularity, these forms were regarded as obstacles to development. It was thought that as Africa modernized they would eventually die out. This did not occur. Informal and traditional modes of settling out disputes have remained as widespread as ever.<sup>7</sup> From a women's rights perspective, the struggle against domestic violence in Africa is part of a much larger struggle for gender inequality.<sup>8</sup>

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<sup>3</sup> United Nations, Convention on the Elimination of All Forms of Discrimination Against Women (1979). Available on line at <http://www.un.org/womenwatch/daw/cedaw/text/>

<sup>4</sup> Constitution of Republic of Uganda 1995

<sup>5</sup> The Children Act Cap 59

<sup>6</sup> Domestic Violence Act 2010

<sup>7</sup> Sarah Banenya, Access to Justice in Sub-Saharan Africa, the Role of Traditional and Formal Justice Systems (Penal Reform International) Astron printers, London, (2002).

<sup>8</sup> Bowman, Cynthia, symposium: Theories of Domestic violence in the African context, 11 am. U.J Gender Soc. Poly & L.847 (2003). South Africa passed the Prevention of Domestic Act in 1993 and Mauritius passed a bill to prevent domestic violence in 1997.

Customary law in Africa which operates largely apart from and sometimes in addition to Western-style legal systems often threatens women as subordinate to men. "For example under most African systems of customary law, women have no right to inherit from their husbands, are not regarded as sharing ownership of marital property, excluded from ownership of land, and are almost without remedy upon divorce and the issue of paying bride price supports the attitude of that woman is the property of her husband and the clan.<sup>9</sup> This deprives women of their ability to achieve their full potential by threatening their safety, freedom and autonomy and thus formulation of laws is important instrument in countering this threat. But multiple strategies and approaches are mandatory that could recognize the differing interests, lived realities and contradictions among women of different class, religious and cultural backgrounds.

The integrity of Ugandan women and children have been poorly protected, violence against them is widespread in the country at the hands of their partners. Domestic violence has a wide social acceptance even by women who harbor cultural notions that a husband has a right to discipline his wife and children using a corporal punishment.<sup>10</sup> Also in a number of countries in Africa and Asia, wife beating is not considered a crime under the formal law<sup>11</sup>. This is contrary to the domestic violence Act which states that, consent of the victim shall

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<sup>9</sup> Id at 853.

<sup>10</sup> The Haggling over Domestic Violence Continues. Public Agenda, May, 2,2005 (Accra Ghana). Online at [www.peacewomen.org/news/Ghana/May,05/violence.html](http://www.peacewomen.org/news/Ghana/May,05/violence.html); Human Rights watch on 10th July 2011.

<sup>11</sup> The Guardian, 14 August 1999, P.17 Beating a Woman No Crime in Many Countries

not be a defence to domestic violence,<sup>12</sup> so regardless of whether the victim has consented, the law will still take course.

But since the world conference on Human Rights held in Vienna in 1993<sup>13</sup> and the declaration on the elimination of violence against women in the same year, civil society and governments have acknowledged that violence is a public policy and human rights concern. While work in that area has resulted in the establishment of international standards, the task of documenting the magnitude of violence and producing reliable, comparative data to guide policy and monitor implementation has been exceedingly difficult.

The government of Uganda is a signatory to these international instruments that protect women from violence and as a result in its constitution under chapter IV (4), Article 21<sup>14</sup> provides for equal status of all Ugandans before the law in all spheres of economic, political, social and cultural life and confirms equal protection of the law. It prohibits discrimination on several grounds including sex and age. Article 33 holds that "...women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities."<sup>15</sup>

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<sup>12</sup> Domestic Violence Act 2010 Section 5.

<sup>13</sup> Vienna Declaration and Programme of Action, adopted by the world conference on Human Rights, Vienna, 14-25 June 1993, New York, NY, United Nations, 1993 (document A/CONF.157/23).

<sup>14</sup> Constitution of Republic of Uganda 1995

<sup>15</sup> Ibid

Article 34(1) provides for the rights of children who are often victims of domestic violence. It provides that, “children have the right to be cared for by their parents or those entitled to bring them up.

The Domestic Violence Act<sup>16</sup> was also enacted in order to provide relief to victims of domestic violence and to provide for procedures and guidelines to be followed in court while handling domestic violence cases and to provide for the enforcement orders made by court. it defines domestic violence as “any act or omission of a perpetrator which harms, injures or endangers the health, safety, limb, life or well being, whether mental or physical of the victim or tends to do so and includes, causing physical abuse, sexual abuse, emotional, verbal and psychological abuse and economic abuse.” This Act has been looked at as the long waited messiah to save women and children from the hands of their aggressors.

Despite this progress, domestic violence has remained one of the most significant causes of injury to women and children in Uganda. Seba-Collect, A. states that one out of four women is in an abusive relationship, every twenty six seconds a woman is raped and every six hours a woman is murdered by her intimate partner.<sup>17</sup>

This research therefore is carried out to look at how best the Domestic Violence Act can be utilized to save millions of women and children in violent relationships in Uganda Kampala District and the challenges faced in its enforcement.

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<sup>16</sup> Domestic Violence Act 2010 Section 2.

<sup>17</sup> Seba-Collect, A. Help Stop Abuse Against Women and Children. A hand book for everyone 2009.

## **1.2 Statement of the Problem**

In the past few years, protection of women and children against domestic violence has been one of the national objectives. This has been evidenced in the promulgation of laws like the constitution of Republic of Uganda, the Children Act (tabled for amendment) and the Domestic Violence Act 2010. However, it's during the same era that abuse of women and children and violation of their rights is on increase. These violations include; sexual abuse, Female Genital Mutilation (FGM), trafficking, abductions and abandonment and neglect.

The question that comes to one's mind is; "why are there more cases of domestic violence against women and children today and yet there are laws put in place to protect them?" This dissertation will attempt to analyze the challenges faced in implementing the laws put in place to protect women and children against domestic violence.

## **1.3 Study objectives**

### **1.3.1 General objective**

The main aim of the study is to examine the challenges in enforcement of the Domestic Violence Act 2010 in Kampala District Uganda.

### **1.3.2 Specific objectives of the study**

1. To identify causes and effects of domestic violence in Kampala
2. To analyze challenges faced in enforcement of the Domestic Violence Act 2010
3. To assess the role of law enforcement institutions in controlling domestic violence.



4. To propose possible recommendations in an effort to find solutions to the problems discussed.

## **1.4 Hypothesis**

Challenges faced in enforcement of the Domestic Violence Act 2010 affect performance and effectiveness of the Act. Thus protection of women and children against Domestic Violence will remain a myth.

## **1.5 Approach to and Choice of Study**

### **1.5.1 Scope of the study**

This paper covers the period from 2009-to-date, with some references to and comparisons with the past. This is because 2009 marks the milestone in Uganda's legal history when an exclusively and comprehensive Domestic Violence Bill was tabled in parliament and passed into a law in April 2010. This choice of time will be vital in analyzing cases of domestic violence which are on a high increase in this period.

### **1.5.2 Area of study**

The study will mainly focus on women and children in Kampala district, the capital city of Uganda. This is because Kampala harbors people from all parts of the country, with diverging cultures, different economic classes and high levels of poverty therefore, domestic violence is high in this region. Some examples will be drawn from other parts of the country for comparative analysis of the situation.

### **1.5.3 Sample Selection and Population**

The places visited for gathering information include; public offices, judicial offices, remand home, family and children courts, families and probate offices. This was to enable the researcher to come up with analytical information on domestic violence and how it has been addressed.

### **1.6 Significance of the Study**

The study will be of great significance in the following aspects.

- a) The study will be expected to put forward a new frontier of knowledge for further research in the area of challenges faced in enforcement of the Domestic Violence Act.
- b) The study will formulate relevant recommendations on how domestic violence can be controlled.

### **1.7 Methodology**

Here, the research involved library method of research which embodied close analysis of text books, news papers, reports obtained in conferences and seminars, magazines, case law and statutes relevant to women and children in violent relationships and the internet.

Field research was also carried out which involved use of questionnaires, interviews, observations and informal conversations.

**Questionnaires:** This had a set of related questions on the topic of domestic violence against women and it was designed to extract information from relevant respondents like, women,

children, social workers, lawyers, medical personnel and officials of government bodies like police and local councils.

**Oral interviews:** This involved face to face encounters between researcher and respondents. The information was collected and recorded later. This method was considered effective because researcher was in position to get first hand information from respondents.

**Observations:** Here the researcher used the observation techniques during interviews. The researcher was able to observe behaviour of victims of domestic violence, injuries obtained in case of physical violence and challenges faced in enforcement of the domestic violence Act.

**Informal Conversations:** This was used as a way of collecting data much as these conversations were not planned they proved to be very useful. Respondents particularly women and children were free in their answers and did not realize they were giving useful information. As a matter of fact, researcher learned more using this particular method than interviews.

**Data processing:** it is of paramount importance to organize the data acquired into meaningful categories so that it is easy to interpret and be understood.

**Editing** was done immediately after the dialogue when researcher's mind was still fresh.

**Coding** was also done immediately and its importance was brought up in F. Mbaga and Tare F. Mawanda, as "The purpose of coding is to classify answers to question into meaningful categories in order to bring out their essential patterns."<sup>18</sup>

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<sup>18</sup> F. Mbaga Kakinda and Tare F. Mawanda the Topic and Practice of Social Research Department of Sociology Makerere University 1926.

## **1.8 Definition of key terms**

### **Domestic violence**

Domestic violence is defined under the Domestic Violence Act as, “any act or omission of a perpetrator which;

- a) harms, injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the victim or tends to do so and includes causing physical abuse, sexual abuse, emotional, verbal and psychological abuse and economic abuse.
- b) harasses, harms, injures or endangers the victim with a view to coercing him or her or any other person related to him or her to meet any unlawful demand for any property or valuable security.
- c) has the effect of threatening the victim or any person related to the victim by any conduct mentioned in paragraph (a), (b), or
- d) otherwise injures or causes harm, whether physical or mental, to the victim.<sup>19</sup>

**Domestic violence Act:** This is a law that came into force on 9<sup>th</sup> April, 2010 to provide for the protection and relief of victims of domestic violence, to provide for the punishment of perpetrators of domestic violence, to provide for the procedure and guidelines to be followed by the court in relation to the protection and compensation of victims of domestic violence, to provide for the orders made by the court, to empower the family and children court, to handle cases of domestic violence and for related matters.

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<sup>19</sup> Domestic violence Act 2010, Section 2.

**Children:** A child is defined under the United Nations Convention on Rights of the Child as, “Every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>20</sup>

The African charter on the rights and welfare of the child defines a child as, “Every human being below the age of 18 years.”<sup>21</sup>

National laws also define a child, for example under the constitution of Republic of Uganda children shall be persons under the age of sixteen years.<sup>22</sup> This age does not confirm to the age provided under the UN Charter, but it is not contradictory since the UN convention recognizes the limit provided by domestic laws.

## **1.9 Literature Review**

Although much has been written about domestic violence against women and children over the past years, a close analysis of the existing literature reveals that little has been written about challenges in enforcement of the legislated laws. As a result, this area remains rife for more exhaustive study. Most writers over look the problems that hinder the operation of the law, such as the provisions within the law it’s self, hence making it a basis for this research.

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<sup>20</sup> Article 1, United Nations convention on the Rights of the Child. 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.

<sup>21</sup> Article 2, African charter on the Rights and Welfare of the child. OAU/DOC CAB/LEG/249. 9/49(1990), entered into force Nov.29, 1999.

<sup>22</sup> Article 34(5) Constitution of Republic of Uganda.

**Miranda Davies in Women and Violence, Realities and Responses World Wide, Zed books Ltd, London and New Jersey 1994,** gives a detailed explanation on domestic violence as a term used to describe a variety of actions and omissions that occur in different relationships. It is used to cover incidents of physical attack when it may take the form of physical and sexual violations such as punching, choking, stabbing, throwing boiling water or acid and setting on fire, the result of which can range from bruising to killing, what may often start out as apparently minor attacks can escalate both intensity and frequency. Domestic violence is a hidden problem and women are the usual victims of violence in the home and men are the perpetrators.

Statistics gathered from police records and other official sources show that wife abuse does exist but they are notorious for under representing the problem. Victims are often reluctant to report that they have been violated, some fail to report abuse because they feel ashamed of being assaulted by their husbands and they have a sense of a family. This leads to the continued existence of the problem world wide. The author, failed to bring out the reasons why police is reluctant in handling domestic violence cases, and these are some of the challenges, I am looking at in the study.

**A Report by Amnesty International, It's in our Hands: Stop Violence against Women, Irene Khan, Secretary General,** discusses wide spread existence of domestic violence, countries that criminalize violence Uganda inclusive, tolerance of this phenomenon is found at all levels of society. The lack of political will to eradicate it, fore example the failure to establish and fund programs to educate the population, train government employees and to

support laws, family and customary laws may condemn violence, which give a husband an implicit right to discipline his wife. These are hinderances for effective operation of laws formulated to stop domestic violence.

**World Report on Violence Against children by Paul Sergio Pinheiro Independent Expert for the UN Secretary General study on Violence Against Children**, in every region, in stark contradiction to state's human rights obligations and children's developmental needs remains legal, state authorized and socially approved. Laws on violence against children are not effectively implemented because of the strength of traditional attitudes and in some cases because of the existence of religious or customary practices. Domestic violence against children takes the form of child labour, rape and defilement, child trafficking and corporal punishments at school. Thus implementation of laws protecting children from domestic violence face a number of challenges.

**Kariuki, P.W.** <sup>23</sup>: In this research on the effects of abuse among domestic children workers in Kenya, found out that such children show withdrawal, repressive behaviour, premature aging, depression and inferiority control.

Uganda is a signatory to a number of international instruments like the United Nations Convention on the Rights of a Child, African Charter on the rights of a Child, United Nations convention on the Elimination of All Forms of Discrimination Against Women (1979) among others. It has formulated national laws, according to these instruments, including

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<sup>23</sup> Kariuki, P.W, Children as Domestic Workers. A Clandestine Form of Child Abuse. Teaching and Psychological Research Proceedings of the Seminars sponsored by IDRC, Nairobi, 1989.

articles that protect children and women against violence. For example, the Constitution of Republic of Uganda, under chapter IV (4), women and children are protected from domestic violence. But, the constitution does not provide mechanism for enforcement of these articles and the likely challenges to be faced, thus, this leaves the law with gaps.

**Report on the situation of children and women in the Republic of Uganda. UNICEF 2005 by Martin Mogwanja. UNICEF Representative, Uganda country office.**

The author of this book pointed out causes of Domestic Violence against children. The fundamental unifying factor in child vulnerability for violence, exploitation and abuse is lack of power and economic power. This manifests in limited choice and limited capacity to control social and economic pressures and the impact of contingent events. Also the relationships around children mediate their experience, contributing to vulnerability. The family in Uganda is looked at as the most protective setting for children. However, this is not unambiguous because the family is also the context in which Ugandan children report most violence against them due to weakening of family structures.

However, the author did not suggest ways in which domestic violence against children can be controlled, laws applicable and challenges faced in enforcement of these laws. The researcher is going to look at them.



**Amnesty International Report 2011**, the state of the world's Human Rights, by Amnesty International Secretariat Peter Benenson.

Violence against women and girls continue to face economic and social obstacles to justice including the costs of criminal investigations and discrimination by government officials. Although the bill was passed in 2010, violence remained rampant and perpetrators are rarely brought to justice.

#### **1.10 Problems Encountered**

There was a problem of frequent get backs that had to be made to the respondents, especially those in government offices, of not finding them in office and the researcher had to make fresh appointments.

Another problem is that most institutions I visited did not have compiled data about domestic violence, for example, the Family and Children Court had no case on domestic violence,<sup>24</sup> so gathering information was difficult.

Domestic Violence Act being a new law, most people had no knowledge about it, it took me a lot of time explaining to them, what the law constitutes.

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<sup>24</sup> Told by Mr. Mulabi Sam, office supervisor, Family and Children Court, Kampala Uganda at crusade house on 8 July 2011.

Sometimes the researcher had to rely on memory, for example as with the use of informal conversations.

## **Conclusion**

Although studies reviewed above reveal the causes, types, effects and laws on domestic violence, there are gaps such as, who should be blamed for this phenomenon, and the challenges faced in implementing laws on domestic violence against women and children. Therefore it is based on these gaps that the researcher chose this problem.

## **CHAPTER TWO**

### **INTRODUCTION**

This chapter deals with the following matters:

- i. Types of domestic violence
- ii. Laws on domestic violence
- iii. Causes of domestic violence
- iv. Effects of domestic violence

#### **Domestic violence and the law**

When we talk about domestic violence and the law, we must concern ourselves first and foremost with what constitutes domestic violence laws.” These are laws put in place to combat domestic violence. Because it manifests itself in different forms, different laws were legislated. For example, the Penal Code Act Cap 120, the Land (Amendment Act) 2004, the Children Act Cap 59 and Constitution of Republic of Uganda. Later, in 2010, the Domestic Violence Act was passed into a law to help punish perpetrators of domestic violence.

Since domestic violence manifests itself in different forms, the researcher had to look first at the types of domestic violence.

## **2.1 Types of Domestic Violence/Abuse**

### **2.1.1 Emotional Abuse**

This is defined as any behaviour that threatens, intimidates, under mines the victims self worth or controls the victim's freedom<sup>25</sup>. Under the D.V.A<sup>26</sup>, it is termed as

“any verbal and psychological abuse, a pattern of degrading or humiliating conduct towards a victim including:-

- a) Repeated insults, ridicule or name calling,
- b) Repeated threats to cause emotional pain,
- c) The repeated exhibition of possessiveness or jealousy which constitute a serious invasion of the victim's privacy, liberty, integrity or security
- d) Any act or behaviour constituting domestic violence within the meaning of this Act where it is committed in the presence of a minor member of the family and which is considered as abuse against the minor member and likely to cause him or her injury.

Often perpetrators will use children to engage in emotional abuse by teaching them to harshly criticize the victim as well.<sup>27</sup> This type of violence also includes conflicting actions which are designed to confuse and create insecurity in the victim and they cause the victim to question themselves, causing them to believe that they are making up the abuse or that the abuse is their fault.

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<sup>25</sup> Folling Stand, D, Deltart “Defining Psychological Abuse of Husbands Towards wives: Contexts, Behaviour and Typologies” Journal of interpersonal violence 15:720-745, 2000.

<sup>26</sup> Domestic Violence Act, section 2.

<sup>27</sup> “National Coalition Against Domestic Violence” 2010.  
<http://www.NCadv.org>.retrieved 19<sup>th</sup> July, 2011.

Isolation is the major weapon used in this type of violence. It is used to eliminate those who might try to help the victim leave the relationship and to create lack of resources for them to rely on if they were to leave. Isolation results in damaging the victim's sense of internal strength, leaving them feeling helpless and unable to escape from the situation<sup>28</sup>.

People who are being emotionally abused feel as if they do not own themselves rather they feel that their significant other has nearly total control over them. Women and children in emotional abuse often suffer from depression which puts them at increase risk of drug and alcohol abuse<sup>29</sup>.

### **2.1.2 Economic Abuse**

Defined under the Domestic Violence Act<sup>30</sup> as:-

- a) Deprivation of all or any economic or financial resources to which the victim is entitled under any law or custom, whether payable under an order any law or custom, whether payable under an order of a court or otherwise or which the victim requires out of necessity including, but not limited to:-
  - i. Household necessities for the victim and his or her children, if any;
  - ii. Property, jointly or separately owned by the victim; or
  - iii. Payment of rent related to the shared household and maintenance;

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<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Domestic Violence Act 2010, section 2



- b) Disposal of household effects, alienation of assets whether movable or immovable, shares, securities, bonds or similar assets or property in which the victim has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or his or her children or any other property jointly owned or separately held by the victim; and
- c) Prohibiting or restricting access to resources or facilities which the victim is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household.

It also includes preventing the victim from finishing education, obtaining employment or misusing communal resources with a view of controlling them<sup>31</sup>.

### **2.1.3 Physical Abuse**

It means any act or conduct which is of such a nature as to cause bodily pain, harm or endanger life, limb or health or which impairs the health or development of the victim and includes assault, criminal intimidation and criminal offence<sup>32</sup>. This involves, pushing, hitting, slapping, grabbing and kicking. It results in bruises, broken bones and in acute conditions, medical attention and hospitalization is required.

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<sup>31</sup> Economic abuse. "BSAFE-Sept 6.2009

<sup>32</sup> Domestic violence Act, Section2.

#### **2.1.4 Sexual Abuse**

It includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of another<sup>33</sup>. Sexual harassments mean unwanted sexual attention. It can take the form of directive verbal propositioning like grapping, touching of hair and slapping buttocks. It can take an indirect form, like rude language about women's anatomy, backbiting with intent to deform and direct verbal abuse<sup>34</sup>. It is usually in the workplace or other setting where raising objections or refusing may have a detrimental effect on one's performance<sup>35</sup>.

#### **2.2 Laws and Conventions on Domestic Violence**

Laws and policies governing domestic violence are examined below;

##### **2.2.1 Convention on the Elimination of All Forms of Discrimination against Women 1985 (CEDAW).**

**Article 18 (CEDAW)**, states that, "the full and complete development of the country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields." Under this Article, rights of women to be equal to men are affirmed.

In 1992, the Committee on Elimination of Discrimination against women (CEDAW) adopted General Recommendation 19, in which it confirmed that violence against women constitutes a violation of human rights and emphasized that,

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<sup>33</sup> Human Rights of Women, International Instruments and African experiences by Wolfgang Benedek, Esther M. Kisakye and Gerd Oberleither page 184.

<sup>34</sup> Human Rights of Women, International Instruments and African experiences by Wolfgang Benedek, Esther M. Kisakye and Gerd Oberleither page 184.

<sup>35</sup> World vision, a handbook on sexual violence page 14.

"states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."<sup>36</sup>

The committee made recommendations on measures states should take to provide effective protection of women against violence;

1. Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the work place.
2. Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women.
3. Protective measures, including refuges, counseling, rehabilitation action and support services for women who are experiencing violence or who are at risk of violence.

Therefore, the convention provides the basis for realization of equality between men which is the leading cause of domestic violence through ensuring women's equal access to and equal opportunities in political and public education, health and employment.

However, the convention is condemned in some quarters for being largely a reflection of Western conception of women rights.

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<sup>36</sup> World Health Organization (1996) "Violence against women." Consultation, Geneva: WHO.



**2.2.2 United Nations Convention on the Rights of a Child<sup>37</sup>** Article 2 stipulates a duty on all state parties to respect and ensure the rights set forth in the convention to each child with in their jurisdiction without discrimination of any kind irrespective of race, culture and political opinions of parents or guardians.

Article 19(1) stipulates that, “states parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.”

Article 34, urges state parties to protect children from all forms of sexual exploitation and sexual abuse state parties shall take all appropriate national, bilateral and multilateral measures to prevent:

- a) Coercion of a child to engage in any unlawful sexual activity.
- b) Exploitative use of children in prostitution or other unlawful sexual practices.
- c) Exploitative use of children in pornographic performance and materials.

For purposes of this convention, state parties are urged to adopt protective measures in promoting children rights and in elimination of domestic violence.

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<sup>37</sup> Supra page 11

### **2.2.3 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Supplementing the United Nations Convention against Transnational Organized Crime.<sup>38</sup>**

This protocol defines trafficking under Article 3, as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion of abduction, fraud, deception of the giving, receiving of payments, benefits to achieve consent of a person having control over another person for the purpose of exploitation. This protocol makes trafficking a crime and if its adopted by the government of Uganda, trafficking in persons (women and children) in Kampala will stop. It is one of the forms of domestic violence practiced in Kampala, where a large number of Karamajong women and children are brought in the city centre with the aim of obtaining money from them.

### **2.2.4 Constitution of the Republic of Uganda 1995**

Chapter 4 is on fundamental human rights and Article 20(1) stipulates that fundamental rights and freedoms of the individual are inherent and not granted by the state. Sub Article (2) holds that, the rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons. Women and children are among persons entitled to enjoy these rights and domestic violence being a violation of their rights, is prohibited.

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<sup>38</sup> Adopted and Opened for Signature, Ratification and Accession, by General Assembly Resolution 55/25 of 15/November, 2000.

Article 21, provides for equality and freedom from discrimination. Article 21(1) stipulates that, "All persons are equal before and under the law in all spheres of political, economic, social and culture life and in every other respect and shall enjoy equal protection of the law." Article 21(2), without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic, origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

The purpose of this article is to protect women and children who are discriminated basing on their sex (considered to be weak) and social-economic standing (do not own property) which escalate domestic violence in Kampala.

Article 33, accords women full an equal dignity of the person with men. Clause (4) states that, "women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

Article 34, provides for children rights and clause (4) from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or be harmful to their health or physical, mental, spiritual, moral or social development.

The constitution is the supreme law in Uganda and its purpose is to protect and uphold people's rights, women and children are inclusive and therefore protected from violence.

### **2.2.5 The Land (Amendment Act 2004)**

Section 38A (1) of this Act provides for security of occupancy. “Every spouse shall enjoy security of occupancy on family land. Security of occupancy means a right to have access to and live on family land.”<sup>39</sup>

The spouse shall in every case have a right to use the family land and give or withhold her consent to any transaction referred to in 39, which affect her rights.<sup>40</sup>

Section 39 of this Act, provides for restriction on transfer, pledge, mortgage or lease any family land, enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease any family land, give away any family land except with the prior consent of her spouse. This Act gives women some protection in cases of selling or mortgaging family land. It breaks men’s dominance over land, since women are believed not to own land in Uganda due to customary practices. Here domestic violence sparked off by sell of family land is controlled.

### **2.2.6 The Penal Code (Amendment) Act, 2007**

All sections referring to corporal punishment in the principal Act (Penal Code Act Cap 120) are amended and corporal punishment is abolished.

Section 129, provides for defilement of persons under eighteen years and punishments are recommended according to the gravity of the offence and age bracket of the victim.

Under the principal Act, Penal Act Cap 120, Section 123 defines rape as having carnal knowledge of a girl or woman without her consent and the victim is liable to suffer death.

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<sup>39</sup> The Land (Amendment Act) 2004, Section 38A (2).

<sup>40</sup> Land Amendment Act 2004, section 38A (1) (3)

Section 128, provides for indecent assaults towards a woman or a girl and the offender is liable to imprisonment for fourteen years.

### **2.2.7 Children Act Cap 59**

Parents and guardians are under a legal duty to maintain a child and protect him or her from discrimination, violence, abuse and neglect.<sup>41</sup>

Section 7, prohibits customary practices that are harmful to the child's health. These include female genital mutilation among others.

### **2.2.8 The Female Genital Mutilation (FGM) Act 2009**

It is intended to prohibit female genital mutilation (cutting). It provides for legislation necessary for criminalizing FGM and provide for prosecution of offenders and protection of victims of FGM.

### **2.2.9 The Domestic Violence Act 2010**

This Act was enacted specifically to deal with domestic violence in Uganda. It provides protection and relief to victims of domestic violence, to provide for punishment of perpetrators and to provide for the procedure and guidance to be followed by court in relation to the protection and compensation of victims of domestic violence.

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<sup>41</sup> Children Act Cap 59, Section 5(2)

### 2.3 UNDERLYING FACTORS CAUSING DOMESTIC VIOLENCE

Causes of domestic violence are invariable many. They encompass the individual psychology of perpetrators as well as the cultural, socio-economic, political and environmental situation.

According to the book, *women and the Family*, "... violence against wives is an outcome of the belief, fastened in all cultures, that men are superior and that the women with whom they live with are their possessions to be treated as they consider appropriate."<sup>42</sup> This means that, Uganda is not an exception, violence against women and children is caused by a belief that men are superior and that the women they live with are their possessions, though the researcher may not agree with the author, that it is incended in all cultures.

According to the Uganda demographic and health survey 2006, more than two thirds of Uganda women experience violence from their partners and the survey also shows that seven in 10 women agreed that it was justified for women to be beaten.<sup>43</sup> This indicates that women in Uganda generally accept violence as part of male-female relationship, which is not surprising, traditional norms teach women to accept, tolerate and even rationalize battery.

Practice of harmful traditional cultures. In all cultures at some stage, women and children in Uganda have been subjected to practices that derive from traditional custom or religious belief that are violent and can result into death, thus causing domestic violence. Although the constitution upholds all cultures and customs that are harmful to one's health to be illegal, communities in Uganda have continued to profess and practice such cultures. Violence is

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<sup>42</sup> *Women and the Family* by Hellen O' Connell, Women and World Development Series page 80.

<sup>43</sup> Online <http://www.wuntn.com>. Retrieved on 14<sup>th</sup> July, 2011

entrenched in cultural traditions, for example that do not allow the concept of a woman's lack of consent to sexual intercourse, in Karamoja region for instance, there is a marital custom called "akika muni or atokore," if a woman rejects a man, he is free to wrestle her and force her into sexual intercourse from any where, even in a public place.

Another cultural practice that triggers domestic violence is the Female Genital Mutilation (FGM). This is the cutting of some parts in a woman's private parts and reasons advanced are; maintenance of cleanliness, prevention of still birth in primigravidas, prevention of promiscuity, preservation of virginity and enhancement of fertility. But this practice has deadly side effects like haematocolpos, which is the closure of the vaginal opening by the scar tissue, prolonged and obstructed labour and haemorrhage leading to shock and death.<sup>44</sup> All these side effects amount to domestic violence.

The tradition of paying bride price in Uganda also cause domestic violence. It supports the attitude that a woman is the property of her husband and her husband's family clan.<sup>45</sup> Among the Banyankore, A woman is not allowed to divorce his husband when bride price was paid. If she does, the man is supposed to get back his cows from the parents of the woman. It is also taken to be a shame to the family and the parents cannot allow her to come back, she would rather die from the hands of her husband than return to her parents.

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<sup>44</sup> The circumcision of women. A strategy for eradication by Olyanyika Koso- Thomas Zed Book Ltd. London and New Jersey page 5-121.

<sup>45</sup> Human Rights watch, Policy Paralysis: A Call for Action on HIV/AIDs -- Related Human Rights Abuses against Women and Girls in Africa, 32 (December 2003).

However, researcher does not condemn the practice in totality, it is a sign of respect to the woman by her husband and appreciation to the woman's parents for the great work done of bringing her up.

Experiences during childhood, such as witnessing domestic violence and experiencing physical and sexual abuse, have been identified as factors that put children at risk. Violence may be learnt as a means of resolving conflict and asserting manhood by children who have witnessed such patterns of conflict resolution.

Excessive consumption of alcohol and other drugs has also been noted as a factor in provoking aggressive and violent male behaviour towards women and children. According to Angello Izama,<sup>46</sup> most Ugandan's say domestic violence is mainly caused by alcoholism. According to a new poll, police records show that 137 cases of domestic violence were reported and were a result of alcohol.

Our cultures harbor a notion of polygamy. A man is justified to have more than one woman. Domestic violence may be triggered off where household resources have to be inequitably divided among more than one wife, continued accusations of witchcraft among co-wives and denial of basic necessities of life to one wife especially the first wife. This leads to constant quarrels in a home and eventually fights which result into death.

Control of household income is also another cause of domestic violence. This happens in areas where agriculture is the major source of income, crops grown are sold. Any produce

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<sup>46</sup> The Daily Monitor 27/November/2009. Online at <http://allafrica.com/stories/20090719006.html>.



that a woman sells is subjected to their intimate partners income, income earned by men, however is disposed off on personal matters without discussion.<sup>47</sup>

Suspicious, accusations and counter accusations of infidelity. In all interviews made with male partners revealed that their suspicions would be based on acquiring new items by their partners, and their reasoning is based on the belief that women engage in extra-marital affairs for purposes of material gain. Disagreements around infidelity take place in a social context in which women are expected to be faithful to their partners, although the same rule does not generally apply to men.

Acute poverty is also another trigger of domestic violence. This leads to frustrations and anger which makes a man feel that he is not competent enough to control the family and in the end, they resort to alcoholism which contributes immensely to this problem. Poverty has also increased low-levels of education among girls go to school. According to Dr. Lydia Mungherera, the founder of Mama's Club, "as long as women are uneducated and poor, it will be hard for them to resist domestic violence.

Lack of economic resources underpins women's vulnerability to violence and their difficulty in extricating themselves from a violent relationship. The link between violence and lack of economic resources and dependence is circular. On one hand the threat and fear of violence keeps women from seeking employment, at best, compels them to accept low-paid, home-based exploitative labour. And on the other, to escape from an abusive relationship.

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<sup>47</sup> Domestic Violence and Gender Relation, Cap 13 page 111, women's property rights, HIV and AIDs, and domestic.

The reverse of this argument is true; women's increasing economic activity and independence is viewed as a threat which leads to increased male violence. This is particularly true when the male partner is unemployed and feels his power undermined in the household.

**Early marriages:** Early marriage with or without the consent of the girl may constitutes a form of violence as it undermines her health and autonomy. It may lead to early childhood pregnancies that may be harmful to her health for example damaging the bladder during child birth. It may also have adverse effect on the education and employment opportunities of girls particularly if such girls fall into wrong hands and unfavourable circumstances.

**Lack of legal protection,** particularly with in the sanctity of the home, is a strong factor in perpetuating violence against women Investigations by Human Rights Watch have found that in cases of domestic violence, law enforcement officials frequently reinforce the batterers attempts to control and demean their victims. In many places, those who commit domestic violence are prosecuted less vigorously and punished more leniently than perpetrators of similarly violent crimes against strangers.<sup>48</sup>

However, although this research is on Domestic Violence Against Women and Children, the researcher would also like to consider briefly the possibility of violence against men by strong women. Women are as aggressive as men in intimate partnerships and therefore a

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<sup>48</sup> The Human Rights Watch Global Report on women's Human Rights, Newyork, 1995.

focus on intimate-partner violence against women is misplaced. Men fear stigma and humiliation, thus under report cases of violence against them.<sup>49</sup> An example of major General James Kazini who was killed by his girl friend Draru Lydia using an iron bar during a domestic fight.

In conclusion, there is no single factor to account for violence perpetrated against women. Increasingly research has focused on the inter-relatedness of various factors that should improve our understanding of the problem within different areas as discussed above.

## **2.4 CONSEQUENCES OF DOMESTIC VIOLENCE**

Domestic violence has had far reaching effects on women and children, ranging from Health consequences, undermining developmental goals and denial of fundamental human rights as discussed below;

In regard to spread of HIV/AIDs exposure, nearly 14 million women today are infected with HIV and the rate of female infection is rising. A study from World Health Organization (WHO) finds that the greatest risk of HIV infection for many women comes from a regular partner and is heightened by an unequal relationship that makes it difficult, if not impossible, to negotiate safe sex. Sex is not a matter of choice for them.<sup>50</sup> Even when a woman is aware that her partner has other sexual partners or is infected, she may not be in a position to insist

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<sup>49</sup> WHO multi-country study on women's Health and Domestic Violence Against Women. Initial results on prevalence, Health outcomes and women's responses by Claudia Garcia-Moreno, Henrica A.F.M Jansen, Marry Ellsberg, Lori Heise and Charlotte Watts, printed in Switzerland, page 37.

<sup>50</sup> Garcia-Moreno C, and Watts C, Violence Against Women its, importance for HIV/AIDs Prevention; WHO March 2000.

on condom use. Many women would feel that any attempt to discuss such measures would provoke yet more violence.<sup>51</sup>

However, the risk of HIV/AIDS infection does not come from her husband alone, some women conduct extra-marital sex and expose themselves to HIV.

According to Uganda Women's Network (UWONET). Policy advocate, it was noted that the isolation of women in their families and communities is known to contribute to increased violence especially rape which exposes them to HIV/AIDS risk. Domestic violence deprives women of bodily integrity by eliminating their ability to consent to sex, negotiate safer sex and determine the number and spacing of their children. In many cases, the threat of abandonment or eviction constrains economically dependent women to remain in abusive relationships, thereby exacerbating their vulnerability to HIV infection.

According to the Human Rights Dialogue, the words of one victim explain it best;

"After testing he would force me to have sex without a condom. I don't know why he was opposed to condoms after testing and yet we had used them for birth control (before testing). He said, "why bother, we are already victims"..."<sup>52</sup>

Assaults result in injuries ranging from bruises and fractures to chronic disabilities such as partial or total loss of hearing, vision and burns may lead to disfigurement. The medical

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<sup>51</sup> Ibid

<sup>52</sup> Lisa W. Karanja Domestic Violence and HIV infection in Uganda: Violence Against women, Human Rights Dialogue 2003.

complications resulting from female Genital mutilation can range from haemorrhage and sterility to severe psychological trauma. A study in Uganda has shown that high levels of violence during pregnancy result in risk to the health of both the mother and unborn foetus. In worst cases, all of these examples of health effect of domestic violence can result into death.<sup>53</sup> According to Daily Monitor article by Angello Izama, police records showed that 136 cases of domestic violence were reported of which 156 people lost their lives.<sup>54</sup>

Sexual assault and rape leads to unwanted pregnancies, and the dangerous complications that follow from resorting to illegal abortions. Abortion is a crime in Uganda according to the Penal Code Act Cap 120, which stipulates that,

“any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing or uses any forces of any kind or uses any other means or permits any such things or means to be administered to or used on her, commits a felony and is liable to imprisonment for seven years.”<sup>55</sup> Also when abortion is not administered properly, it leads to death.

Girls who have been sexually abused in their childhood are more likely to engage in risky behaviour such as early sexual intercourse and eventually prostitution. Therefore it undermines moral values of society. The future generation depends on young children, if they are abused, the nation and future generations will suffer.

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<sup>53</sup> “Violence against women”, WHO Constitution, 1996

<sup>54</sup> The daily monitor 27 November 2009. online at <http://allafrica.com/stories/20090719006.html>.retrievedon19/July/2011

<sup>55</sup> Penal Code Act Cap 120, Section 142

Domestic violence hampers development of the country. There is a growing recognition that countries cannot reach their full potential as long as women's potential to participate fully in their society is denied. By hampering the full involvement and participation of women, countries are eroding the human capital of half their populations. It has been found that women who suffer domestic violence are less productive which undermines economic development and social stability at house hold.<sup>56</sup>

Children who have witnessed domestic violence or come from violent homes do not enjoy their right to education, clothing, shelter and immunization, as provided for under the constitution of Republic of Uganda Chapter IV.

Victims of domestic violence often face financial difficulties due to isolation and lack of specialized skills in education and training necessary to find gainful employment. This has resulted into increased crime rate in Kampala; women who have been in violent relationships have left, and found find themselves with no option but to trade in sex though unjustifiably.. This is contrary to section 139 of the Penal Code Act Cap 120 that makes prostitution a crime in the country.

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<sup>56</sup> "A force for freedom" policy brief on violence against women, by Akina Mama Wa Afrika for the Uganda National Task Force on the African Women's protocol.

Domestic violence has catalyzed the problem of street children in Uganda. It is estimated that thousands of children are on streets, may have escaped from violence to seek refuge on street. Here, they are involved in all illegal activities like stealing, pick-pocketing and prostitution in order to earn a living. In an interview with Namazzi Sarah a street child at Clock Tower, she revealed that, her step-father used to abuse her sexually when her mother had gone to sell waragi (local brew) in a near by trading centre in Mubende district, she run away from home and now lives on streets of Kampala for survival.<sup>57</sup> This has denied these children right to health standards of living as provided for under the United Nations convention on the rights of the child Article 24.

It has also increased the problem of drug abuse among young children. This is contrary to the United Nations Convention on the rights of the child, which states that, “state parties shall take all appropriate measures, legislative administrative, social and educational measures to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production and trafficking of such substances.” Many children especially street children in Kampala use drugs which force them to do things they should not have done. Ochan from Karamoja (street child) was quoted saying that “Marijuana is my saviour, without it I cannot earn a living here.”<sup>58</sup> When he takes it, he can get involved in any organized crime.

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<sup>57</sup> Interviewed her on 6th July 2011, at the Clock Tower Kampala Uganda.

<sup>58</sup> I interviewed him on 6th July 2011 near shoprite super market Kampala City.

## CHAPTER THREE

### PRESENTATION AND DISCUSSION OF RESEARCH FINDINGS.

#### 3.1 Introduction

This chapter presents actual findings of the study that is challenges faced in enforcement of the Domestic Violence Act 2010 in Kampala District. It also presents the role played by Non-Government organizations in preventing domestic violence, the role played by Government institutions like Police, Local councils and the judiciary in preventing Domestic Violence.

The law on Domestic Violence was passed in April 2010 to provide for protection and relief to victims of domestic violence. It prohibits domestic violence and makes it a crime according to section 4(1),<sup>59</sup> a person in domestic relationship shall not engage in domestic violence. A person in a domestic relationship who engages in domestic violence commits an offence and is liable on a conviction to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or both.<sup>60</sup>

But since its enactment, implementation has been a problem due to a number of reasons. The aim of this study was to find out these challenges and they are presented below;

Enforcement of Domestic Violence Act faces a challenge of inadequate infrastructure and resources. Institutions like police, courts of law, Ministry of Gender, Labour and Social

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<sup>59</sup> Domestic Violence Act 2010.

<sup>60</sup> Section 4(2) Domestic Violence Act 2010.



Development are understaffed, under resourced and overworked, therefore enforcement of the act becomes hard.

Currently, the Uganda Police force has only 4 surgeons in the entire country and yet it is they who bare the responsibility to collect forensic evidence in cases of sexual assault. This leads to delay and loss of evidence, and according to Uganda's situation, a case cannot proceed in court without evidence.<sup>61</sup> Under the constitution, Article 28 (3) (a), it is stipulated that "every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty."<sup>62</sup> So in cases where there is no evidence to prove that the perpetrator committed a crime, he is considered innocent and the victim cannot succeed against him/her.

The constitution is the supreme law of the country, it cannot be challenged. Even if the Act prohibits domestic violence and makes it crime, a perpetrator cannot be punished following the constitution provisions. Thus hindering enforcement of the Act.

Enforcement of the Act is also hindered by the existence of complicated nature of other existing procedural laws. In all civil matters, civil procedure rules apply but these limit victims of domestic violence to especially children to file cases in court or police. The procedural requirement for a minor/child who is abused to file a case is long which results into loss of evidence and others are simply discouraged to report. Civil procedure rules, order

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<sup>61</sup>

<sup>62</sup> Constitution of the Republic of Uganda 1995.

32, rule 1 states that, "Every suit by a minor shall be instituted in his / her name by a person who in the suit shall be called the next friend of a minor." Where a suit is instituted by or on behalf of a minor without a next friend the defendant may apply to have the plaint taken off the file, with costs to be paid by the advocate or other person by whom it was presented.<sup>63</sup> When a domestic violence act is committed against a child, without parents or next friend he/she cannot file a suit in court. Children like street children, orphans deprived off their property by relatives are not protected by the Act they cannot sue their abusers due to the limitation in other laws. This affects enforcement of the Domestic Violence Act 2010 in Kampala District.

The complicated nature of our judicial system also poses a problem to enforcement of the Act. Before one files a case in court there is a prescribed amount of fees that is supposed to be paid as was held in the case of Christopher Katuramu V Mallya and 2 others<sup>64</sup> by Mukanza J., that, "no action is filled until the requisite fees of court are paid." Therefore women and children who cannot afford paying this fee cannot be helped by the Act thus limiting its applicability.

Medical practitioners are provided under the domestic violence act 2010<sup>65</sup> from the research, carried out in Kampala District, they require money to carry out medical examinations in

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<sup>63</sup> Civil procedure rules, order 32, rule 2.

<sup>64</sup> 1991-93 HCB 61.

<sup>65</sup> Section 2 and 8.

cases of physical and sexual abuse. Medical forms relating to sexual offences are usually purchased at police leaving many women with no option but to remain silent and try to go with their lives albeit the trauma that emanates from being a victim of sexual offences.

From the study, it was found out that, the language used in courts in Kampala is English. This creates a problem of language barrier. Most people affected by domestic violence are uneducated women and children living in suburbs of Kampala and slums like Katanga and Bwaise. They cannot represent themselves in court without the assistance of an interpreter or advocate which makes the whole process expensive. Women decide to keep silent making enforcement of the Act hard.

The language used in the Act is also a challenge to its enforcement. It is in English, therefore a limited class of people understands its contents. From the research some local council chairpersons especially local council I where cases of domestic violence are reported first do not understand English, therefore, they cannot interpret contents of the Act to victims of domestic violence and their right to proceed to police and courts of law.<sup>66</sup>

Police corruption, also impedes attempts to assist domestic violence survivors and prosecute abusers. Police officers are known to accept bribes from abusive husbands and employers in exchange for agreeing not to send their flies to court. Therefore victims of domestic violence do not get orders like compensation, attachment and sale and others provided under the

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<sup>66</sup> Interview with Male a Local Council I Chairperson Namungoona West I zone, Lubyia Parish, Rubaga Division Kampala District.

Domestic Violence Act. This discourages victims from reporting thus hindering enforcement of the Act.

Many religious leaders in Kampala District are opposed to the Act. Christian leaders have expressed concern that the law disregards the Christian principle of reconciliation especially when its between husband and wife. Some Moslems fear that the act allows women to threaten and dominate their husbands and will lead to disintegration of marriages. They also feel the Act threatens family, claiming that it could prevent parents' ability to effectively discipline their children.

Traditionally, domestic violence in Uganda has been dealt with by family tribunals consisting of parents of the woman and man in cases of intimate-partner violence and old people in the area. This has not died out, victims prefer such ways of handling conflict because they are private and a family is considered a "private entity".

Enforcement of the Act is also hindered by lack of adequate publication. According to the research findings, copies of the act were found in limited places like police stations and at the Human Rights commission. Very few people know about the existence of this Act, victims of domestic violence do not know that they have a legal right to report atrocities committed against them. In an interview with Sam Mulabi, office supervisor, Family and Children

Court, he said that, “this is a new Act and very few people know about its existence, ever since it was enacted, we have never received a case. A lot needs to be done by government to create awareness among people.” This Act cannot be enforced when victims of domestic violence do not know about its existence.

Kampala is faced with a problem of cultural diversity. It is inhabited by people from different parts of the country, with different traditions and cultural beliefs. Cultures that consider a woman a property of her husband, that do not allow the concept of a woman’s lack of consent to sexual intercourse and female genital mutilation. People professing such cultures are against the enforcement of the Act.

Women lack of education about their rights is also a challenge to enforcement of the Act. Domestic violence is generally lower among women with higher or secondary education.<sup>67</sup> Although Kampala District has many learning institutions like universities, tertiary institutions, secondary and primary schools, women still lack enough education about their rights. The National plan for action 2007 which maintains the Girl child education as a priority lacks proper implementation and has not achieved its goals.

The Act will not be enforced when victims of domestic violence lack education about their rights, they will not utilize the Act thus hindering its enforcement.

From the research findings, women victims of Domestic Violence, want police officers to arrest suspects, but they do not want the police to proceed and prosecute. So arrests do not

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<sup>67</sup> <http://www.wunrn.com>. retrieved on 3rd August 2011.

result in charge being laid because in many cases the victim withdrew support for a prosecution. Most women and children do not want to break-up the relationship with their families. Another reason given is that they choose to stay with their partners so as to avoid the retaliatory violence which frequently result from attempts to leave or to support a prosecution. In an interview, with Bukirwa, she said, “when you report your husband to police, the society considers you an immoral person. A woman is supposed to be strong and keep family secrets. Wife beating is normal, infact it’s assign of love.”<sup>68</sup>. Such beliefs and attitudes of women are a challenge to the enforcement of the Act.

Non-Government organizations that would help in the enforcement of the Act are not well funded. Mrs. Tina Musuya, Director, Centre for Domestic Violence Prevention, noted that, the organization lacks adequate resources to effectively enforce the Act. They need a lot of money to publicize the Act and to create awareness among women and children that they have a legal right to report all acts of domestic violence committed against them.

In conclusion, although the Act was enacted to provide a solution to the problem of domestic violence in Kampala District, its enforcement remains a big a challenge. From the research findings, people are not aware of its existence and the ones aware are not willing to put it in practice, because they think it’s largely a reflection of Western conception of women rights.

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<sup>68</sup> Bukirwa Rose, a house wife at Namungoona 1, Lubya Parish, Rubaga Division Kampala District.

### **3.2 THE ROLE OF NON-GOVERNMENT ORGANIZATIONS (NGOS) IN FIGHTING DOMESTIC VIOLENCE.**

Non –Government organizations have tried their best to deal with the problem of domestic violence and their efforts should not be underrated. Emphasis in this research paper has been put on the following case studies; Centre for Domestic Violence Prevention (CEDOVIP), The National Association of Women Organizations in Uganda (NAWOU), World Vision Uganda, Uganda Association of Women Lawyers (FIDA-U), The Uganda Association (FOCA) and Uganda Women’s Organization Network (UWONET).

Though not all these organizations were reached, but the one’s reached revealed that they work hand in hand with them.

#### **CENTRE FOR DOMESTIC VIOLENCE PREVENTION (CEDOVIP)**

Our research with CEDOVIP<sup>69</sup> showed that they do participate in a number of programmes regarding fighting domestic violence against women and children.

It is a registered Non-Government Organization. It started as a partnership between NAWOU, Action Aid Uganda and Raising voices and later developed into an independent organization in 2003. Its programme is based on an award winning programme tool, mobilizing communities to prevent domestic violence.

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<sup>69</sup> Kamwokya, Plot 16 Tufnell Drive, Kamwokya P.O Bo 6770, Kampala (Uganda).

DEVOVIP in partnership with Raising voices have scaled up domestic violence prevention through the National Domestic Violence Prevention/initiative programme by directly working with 10 organizations from 9 districts of Uganda. It engages the media to raise awareness about domestic violence issues, formulation and lobbying processes of policies that uphold women's rights particularly their safety<sup>70</sup>.

Since 2003, DEVOVIP has catalyzed communities and civil society organizations to prevent domestic violence. It worked with Kawempe Division Council III and formerly outlawed Domestic Violence by passing the first Domestic law in Kampala 2007. It worked with 95 volunteers (half men, half women) to engage community members and local leaders to prevent Domestic Violence at the grassroots.

It works with local authorities in Rubaga and Makidye Divisions series of consultative meetings with local councils and parish chiefs are held to gather information about domestic violence particularly in intimate relationships, to foster more equitable and safe relationships.

DEVOVIP created and institutionalized the first ever national guidelines for the Uganda Police Force in responding to domestic violence. In a close partnership with UPDF and Raising Voices, developed and launched the police tool to be used by officers when handling domestic violence cases.<sup>71</sup>

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<sup>70</sup> Interview with Ms. Tina Musuya, Director CEDOVIP.

<sup>71</sup> Ibid



It influenced members of the public, leaders and policy makers such as women members of parliament to take a public stand against domestic violence and to advocate for support among members of parliament to pass the domestic violence Bill into law. This was achieved in 2010 when the Domestic Violence Act was passed into law.

In conclusion, DEVOVIP works tirelessly in co-ordination with other NGO's, International Agencies and ministries concerned to solve the problem of domestic violence.

## **THE NATIONAL ASSOCIATION OF WOMEN ORGANIZATIONS IN UGANDA (NAWOU)**

It was formed in 1992 as an umbrella body of Non-Government Organizations and Community Based Organizations (CBOs). Its mission was to promote a coordinated network of member organizations for efficient use of resources in order to improve the status and living conditions of women in Uganda.

In its effort to end domestic violence, NAWOU in partnership with Action Aid Uganda in December 2001 started on a domestic Relation Bill Campaign to lay strategies to mobilize support for the bill from the grassroots and to build consensus on the issue of the bill. Through their effort, the bill was tabled in parliament in 2008 and later in April 2010 passed into law. It prohibits domestic violence in all relationships and their contribution is of great importance.

NAWOU also in its campaign to end domestic violence, it participated in the global campaign under the theme “Together we can prevent Domestic Violence.” A ribbon campaign was launched. 150,000 purple ribbons with a message “Prevent Domestic Violence” were printed and worn by a variety of people in government, parliament, local leaders, and media personnel to express solidarity with those affected by domestic violence.

All these activities point towards the end of domestic violence in Kampala.

## **WORLD VISION UGANDA**

World Vision Uganda<sup>72</sup>, is a Non-Government Organization working with communities and families for the well being of the child. They do participate in a number of programmes regarding Domestic Violence and Gender Based Violence against children. World Vision partnership emphasizes the importance of gender mainstreaming and since it is a complex problem, it requires a multi-sectoral approach.

It has financed research on violence against children especially sexual violence<sup>73</sup>. A book on sexual violence has been published, showing different forms of sexual violence, places where it takes place. It points out the role different institutions like local councils, police and courts should do to prevent domestic violence.<sup>74</sup>

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<sup>72</sup> World Vision Uganda, Plot 15B Nakasero Road, P.O Box 5319, Kampala, Uganda.

<sup>73</sup> Interview with Doreen Komuhangi, Gender and Advocacy specialist at World Vision Uganda.

<sup>74</sup> A handbook on sexual violence by World Vision Uganda.

## **THE UGANDA ASSOCIATION OF WOMEN LAWYERS (FIDA-U)**

The Uganda Association of Women lawyers (FIDA) is an affiliate of the International Federation of Women lawyers established in 1974 by a group of women lawyers with the primary objective of promoting professional and intellectual growth among women. In 1988, FIDA-U established its first legal aid clinic in Kampala to provide legal services to indigent and battered women in domestic relationships. FIDA has used the media to educate people about domestic violence and women and children involved in domestic violence are provided legal aid and sometimes temporary shelter.

### **3.3 THE ROLE OF GOVERNMENT INSTITUTIONS IN PREVENTING DOMESTIC VIOLENCE**

Government is under an obligation to protect all its citizens irrespective of colour, race, sex and religious affiliation. Notwithstanding anything in the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.<sup>75</sup> For this reason therefore under the Domestic Violence Act 2010, three government institutions were pointed out and their roles spelt out. These are; local council police and courts of law (Magistrate court and children and family court).

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<sup>75</sup> Section 6(2) Domestic Violence Act 2010.

### 3.3.1 Role of Local Council

Local councils have courts where complaints of Domestic Violence may be made. These local council courts are under a duty to receive a complaint, make a record of the complaint and proceed to hear the matter in the manner prescribed under the local council courts Act 2006.<sup>76</sup>

Under section 6 (3) (a), a local council court is under a duty to record the name, sex, age, tribe, religion and disability, if any and the occupation and marital status of both the victim and perpetrator. It shall record the name, sex, age, tribe, religion and disability if any and occupation of the victims representative if any, and the capacity in which the complaint is made.<sup>77</sup> The usual place of residence of the victim and the perpetrator, the names, sex and ages of the children of the victim and the perpetrator, the nature of the alleged domestic violence, date of the alleged domestic violence,

A local council court also plays a role of granting orders in the exercise of its jurisdiction for the victim like; caution, apology to the victim, counseling, community service, a fine not exceeding twenty five currency points, compensation, reconciliation declaration, restitution, attachment and sale.<sup>78</sup>

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<sup>76</sup> Section 6(3) (b) Domestic Violence Act 2010.

<sup>77</sup> Section 6(3) c, d, e, f, g, and h.

<sup>78</sup> Section 6(5)

The local council court shall make a written referral to the police and magistrates court where in the opinion of the court, the degree and nature of the violence warrants the involvement of the police and the court.

Where a member of the local council court has reason to believe that there is an act of domestic violence within his or her jurisdiction and a complaint has not been lodged by any person, the member shall notify the probation and social welfare officer, requesting him or her to make inquiries and take further action.<sup>79</sup>

In the process of executing their duties, shall treat all cases of domestic violence as matters of urgency and shall hear the cases as soon as possible, not later than forty eight hours after the filling of the complaint. They may also hear cases on days which are not ordinary working days.

In an interview with Waswa John,<sup>80</sup> he told me that they provide temporary shelter to battered women and children especially girls who work as housemaids, Orders like caution and apology are granted to victims. In his concluding remarks, he said that, most women do not want their cases to be referred to police or courts of law even when they have suffered grievous bodily injury, they want their husbands to be cautioned and go back home.”

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<sup>79</sup> Section 6(9).

<sup>80</sup>Defence Secretary at Namungoona I Local Council I, Lubya Parish, Rubaga Division Kampala District.

### **3.3.2 The Role of Police**

Police's role is central in the fight against domestic violence. Under the Domestic Violence Act 2010, section 7(2), it is stated that, "a police officer to whom a complaint of domestic violence is made shall assist the victim in obtaining shelter.

Where signs of physical or sexual abuse are evident, police officers have a duty to ensure that the victim undergoes a medical examination and receives medical treatment.<sup>81</sup>

It is the role of police to advise the victim of the right to apply for relief and the right to lodge a criminal complaint and offer procedural guidance and any assistance as may be necessary to ensure the well being of the victim, the victims representative and other witnesses.<sup>82</sup>

Police officers record statements on the nature of domestic violence, collect evidence of the crime, keep exhibits in cases of sexual violence and arrest the suspect.

Generally, police plays a major role to prevent domestic violence and if it is done properly this problem will be minimized.

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<sup>81</sup> Section 7(2) (b) Domestic Violence Act 2010..

<sup>82</sup> Section 7(2) (c ) (d).

### 3.3.3 The Role of Courts of Law

With regard to domestic violence, there are only two courts responsible that is the magistrate courts and family and children court.

Every magistrate court may hear and determine a matter of domestic violence and may in exercise of its jurisdiction issue a protection order.<sup>83</sup>

A magistrate court is under a duty to issue a protection order where it is satisfied, that prima-facie, the perpetrator has committed, is committing or threatening to commit an act of domestic violence and it is desirable to issue an immediate order to protect the victim from harm as a result of such domestic violence.<sup>84</sup> Under subsection (2), the interim protection order shall specify a hearing date and an application for a protection order shall not in anyway bar criminal proceedings against the perpetrator. This is done to protect the victim of domestic violence.

Section 11(7) provides that, “the court may order that the victim and the perpetrator and any other affected member of the family be subjected to counseling, mediation or any other intervention that the court deems fit. This is done, to prevent consequences of domestic violence like suicide in cases of sexual abuse.

When an interim protection order is breached, the court shall to order the perpetrator to comply with terms and conditions of the order. The perpetrator is liable to a fine not exceeding forty eight currency points or imprisonment not exceeding two years.

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<sup>83</sup> Section 9(1) and (2).

<sup>84</sup> Section 11(1) (9) and (b).

## **CHAPTER FOUR**

### **CONCLUSION AND RECOMMENDATION**

#### **4.1 INTRODUCTION**

This chapter presents the summary conclusions and recommendations of the study carried out on the challenges faced in the enforcement of the Domestic Violence Act 2010 in Kampala District.

#### **4.2 Conclusion**

Despite the role played by Government, Non-Government Organizations and International Agencies in curbing Domestic Violence in Kampala, it is still prevalent.

Fighting violence against women and children requires more than laws and policies. It needs adequate resources and services for victims, abusers and society in general that addresses social, economic and political causes and effects of violence.

The Domestic Violence Act 2010 has been enacted mainly to consolidate the law on Domestic Violence. It is meant to provide for the protection and relief of victims of domestic violence and to provide for the punishment of perpetrators. But its enforcement faces a number of challenges which make it hard to control domestic violence in totality. If adequate results are to be realized, it should be the hand book of social workers, the state should take its duties to establish a viable local council (LC) system, judiciary and educate the police



about it. The community should also be educated to understand the plight of women and children and their important role in society.

### **4.3 Recommendations**

Having ascertained the factors leading to Domestic Violence, the role played by Police, Local Councils and the judiciary in ensuring the fair treatment of women and children, the legislature having enacted the Domestic Violence Act, the government should continue as a matter of priority to ensure that the Act is enforced.

With the above in mind, I think the following recommendations which arise out of the study are worthy of consideration.

Institutions mandated to address aspects of violence against women and children like police, judiciary and Ministry of Gender, Labour and Social Development should prioritize resource allocation to departments directly responsible for it like the Family Protection Unit (FPU) and Community Liason Department (CLD) of police and the Family and Children Court (FCC). Once these institutions are funded well, enforcement of the Act is simple thus fighting domestic violence against women and children.

The Law Reform Commission should continue to review law as for further gaps in fighting violence against women and children. Laws like the customary marriage Registration Act Cap 248, succession Act Cap 162 and Marriage and Divorce act of Mohammedans Act Cap

252 need to be amended in order to accord women with same dignity with men. It should also pressurize parliament to pass new laws to replace the old one's that were declared unconstitutional like the Divorce Act Cap 249. Marriage Act 251 and the mortgage Act. Women and children cannot be helped by the domestic Violence Act 2010 because old laws governing such areas are still in operation.

Strengthen formal and informal support systems for women and children living with violence. In the study, many victims of violence had little confidence that existing services and authorities would listen with sensitivity. This highlights the need for better and more accessible support services where victims can go safely and disclose their experiences of violence. Sensitizing religious leaders and other respected local persons and encouraging them to become involved in providing support and even temporary refuge for abused women and children.

Government should enhance capacity for data collection to monitor violence against women and children and the attitudes and beliefs that perpetuate it. It is of prime importance for national statistics offices, Non-Government Organizations and relevant institutions like Ministry of Gender, Labour and Social Development Ministry of Health, to take this issue on board. Organizations like FIDA, National Association of Women Organizations in Uganda should also increase their capacity for routine data collection and surveillance of violence against women and for monitoring the beliefs and attitudes that perpetuate the practice.

Priority must be given to building capacity and to ensure that data collected in away that respects confidentiality and does not jeopardize women's safety.

Advocacy through media, seminars and region

- a) Monthly conferences to influence public dialogue regarding enforcement of the Domestic Violence Act.

Government should put forward strategies to eradicate poverty among people. A cute poverty among women and children is one of the hindrances in the enforcement of the Act. Women cannot report cases of violence due to lack of money to pay police fees and medical examination fees.

Training and sensitization of police at all levels must be instituted, and guidelines must be developed to monitor police response. Police must be held accountable for their own behaviour towards victim survivors in order to prevent secondary victimization of women and children at their hands.

Religious leaders and scholars need to re-examine interpretations of religious texts and doctrines from the perspective of promoting equality and dignity for women. Most men justify their abuses on a religious basis that women are supposed to be submissive to their

husbands. Religious leaders should ensure that Biblical and Quaran texts are meant to promote love between husband and wife.

There is need to change the underlying cultural values of society and structures supporting violence against women and children, this may be done by targeting the public and institutions like family and schools which institutions have the obligation of moral building and shaping society.

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## APPENDIX: 1

### QUESTIONNAIRE

Dear respondent, I am a student from Kampala International University Kampala, conducting a research on “Examining the Challenges in Enforcement of the Domestic Violence Act 2010 in Kampala District” as a partial requirement for the award of Bachelor’s Degree in Law. I am requesting you to fill for me this questionnaire. The information provided will be treated with high level of confidentiality. The study is purely for academic purposes and not for any other purpose beyond the boundaries of academics. Therefore, your contribution is highly appreciated. Thank you in advance for your time and contribution.

#### PART A: Demographical information

Qn. No	Question & Filter	Response & Codes
1.	Sex of respondent	1. Male 2. Female
2.	Age bracket	1. 10-18yrs 2. 19-29yrs 3. 30-49yrs 4. 50+
3.	Education level attained	1. Degree and above 2. Diploma 3. Secondary

		4. Primary 5. Not gone to school
4.	Which of the following best describes your present employment status	1. Employed –Full time 2. Employed –Part time 3. Self employed 4. Retired 5. Contract 6. Unemployed/jobless

## **PART B. Challenges in enforcement of Domestic Violence Act 2010**

5a. Are you aware of Domestic violence?

1. Yes                      2. No

5b. If yes, what does it mean?

.....

.....

.....

6. How did you come to know about domestic violence?

1. Radio
2. Television                      6. News paper
3. School                          7. Home
4. Internet/Website              8. Work place
5. Conference                  9. Personal experience



10. Others (specify).....

7. What are some of the causes of domestic violence?

.....  
.....

8. i) Are you aware of the existence of the Domestic Violence Act 2010?

Yes

b) No

9. What are some of the challenges faced in enforcement of the Domestic Violence Act 2010?

.....  
.....

10. What strategies do you think should be put forward to enforce this law? (Domestic violence Act 2010), that you are aware of?

.....  
.....

11. What do you think should be done to ensure effective enforcement of the Domestic Violence Act 2010?

.....  
.....

**PART C:** Identify and assess the role of institutions in preventing Domestic Violence.

12. What role should the following institutions play in preventing Domestic Violence.

No.	Institution	Role
1.	Uganda Police	
2.	Courts of Law	
3.	Local Councils	
4.	Ministry of Gender, Labour and Social Development	
5.	Ministry of Justice & constitution Affairs	
6.	Uganda Law Reform Commission	
7.	Uganda Law Society	

13. Do think the above categories of institutions have played their roles in preventing Domestic Violence in Kampala.

a) Yes..... b) No.....

14. If not, why do you think so?

.....  
 .....

15. What should the above institutions do to prevent Domestic Violence in Kampala.....

.....

**PART D:** Assess the effectiveness of the Domestic Violence Act 2010 in combating Domestic Violence.

What are some of the consequence of domestic violence?

Do you think the punishment given to the culprit of domestic violence is adequate?

1. Yes..... 2. No.....

If not, what kind of punishment should be given to the culprit?

.....  
.....

16. Do you think Domestic Violence Act 2010, has reduced on domestic violence in Uganda?

1. Yes..... 2. No.....

17. a) If yes, how?

.....  
.....

a) If not, why?

.....  
.....

