

**AN EXAMINATION OF GENDER LAW AND ITS EFFECTIVENESS ON
DOMESTIC VIOLENCE IN UGANDA**

BY

**ONYOKORI DENIS
DIL/1163-01032-06086**

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DECLARATION

I declare that, this dissertation is from my own findings and has never been produced by anybody else for any award in any institution.

ONYOKORI DENIS

DIL/1163-01032-06086

Signature.....



Date.....



DEDICATION

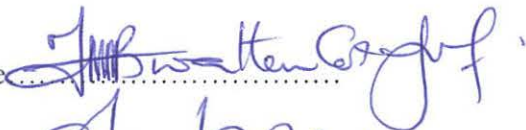
I dedicate this book to my beloved Mother **AMUSUGUT GRACE** who ensured that I got the entire necessary requirements to see to it that I complete my course successfully. I pray to God the almighty to reward her abundantly for her efforts towards my education.

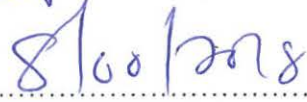
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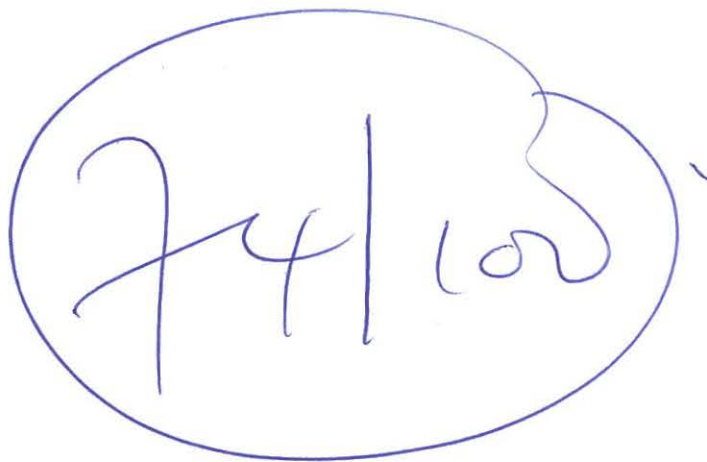
This is to satisfy that this dissertation has been done under my supervision and submitted to the school of Law for examination with my approval.

Mr. BWIRE WALTER

(Supervisor)

Signature.....

Date.....



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Special acknowledgement to all my friends, **Ediga, Gerald, Lucky, Denis** for their spiritual and moral encouragements in times of hardships, thank you for your Love and kindness.

ABSTRACT

The research paper examines the effectiveness of Gender law on domestic Violence in Uganda, highlighting all the legal frame work, loophole, governmental and non-governmental agencies which implement the law and necessary recommendations and conclusions to cover the gap between the law and practice.

LIST OF STATUTES

African Charter on Human and People Rights

Children Act, Cap 59

Divorce Act, Cap 294 laws of Uganda

Domestic Violence Act 2010 and its regulations 2011

Employment (sexual Harassment Regulations 2012)

International Criminal Court act 2010

Justice Centres Uganda

Land Act, Cap 227

Maputo Protocol

Ministry of Gender, Labour and Social Development

National Development Plan (NDP) 2010/11-2014/15

Penal Code Act, Cap 120

Prevention of Trafficking in Persons Act of 2009

Preventions of Trafficking in Persons Act 2009

Prohibition of Female Genital Mutilation 2010 and its regulation 3013

Protection of Women from Domestic Violence Act

Protocol on the Right of Women in Africa

Succession Act, Cap 162 Laws of Uganda

The 1995 Constitution of the Republic of Uganda as amended

Uganda Gender Policy (2007),

The National Action Plan on women (2008);

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was passed in 2000

United Nations Commissions on Human Rights Resolution (2003/23)

United Nations Declaration on Elimination of Violence Against Women

Universal Declaration on Human Rights

Violence Against Women

LIST OF CASES

Law and Advocacy for Women in Uganda and Attorney General⁴⁴ 44 Constitutional Petition
No.13/05 and 05/06

The east African case I v I 1971³⁵ 35 EA 278

FIDA Vs AG Constitutional petition no 2 of 2003

MUFUMI vs AG, 59 Constitutional Appeal No. 02 of 2014) [2015] UGSC 13 (6 August
2015)

LIST OF ACRONYMS

IJM	International Justice Mission
GBV	Gender-Based Violence
RV	Raising Voices
NAWOU	National Association of Women's Organisations in Uganda
URGC	Uganda Gender Resource Centre
FHRI	Foundation for Human Rights Initiative
LAW-U	Law and Advocacy for Women in Uganda
FIDA (U)	Association of Uganda Women Lawyers
DRB	Domestic Relations Bill
MDVIP	MIFUMI Domestic Violence Intervention Pilot Project
UHRC	Uganda Human Rights Commission
JLOS	Justice, Law and Order Sector
CPS	Central Police Station
DEVAW	United Nations Declaration on Elimination of Violence Against Women
PWDVA	Protection of Women from Domestic Violence Act
NDP	National Development Plan
UGP	Uganda Gender Policy
NAPW	National Action Plan on Women

KEY DEFINITIONS

Gender is defined as difference between men and women based on culturally and socially constructed mores, politics, and affairs. Time and location give rise to a variety of local definitions. Contrasts to what is defined as the biological sex of a living creature. (*Black's dictionary*)

Gender inequality is the idea and situation that women and men are not equal. Gender inequality refers to unequal treatment or perception of individuals wholly or partly due to their gender, it rises from differences in gender roles.

(<https://en.m.wikipedia.org/wiki/Gender>)

Domestic violence is defined as a well written and wide-ranging and holistic. It covers, mental as well as physical abuse, and also threats to do the same. Any form of harassment, coercion, and harm to health, safety, limb or well-being is covered. Additionally, there are specific definitions for the following:

Physical abuse: Defined as act or conduct that is of such a nature as to cause bodily pain, harm, or danger to life, limb or health or impair the health or development of the aggrieved person'. Physical abuse also includes assault, criminal intimidation and criminal force.

Sexual abuse: The legislation defines this as conduct of "sexual nature" that 'abuses, humiliates, degrades or otherwise violates the dignity of a woman.'

Verbal and emotional abuse: Insults/ ridicule of any form, including those with regard to inability to have a male child, as well as repeated threats

Economic abuse: Categorized as including deprivation of financial resources required for survival of the victim and her children, the disposing of any assets which the victim has an interest/stake in and prohibition/restriction of financial resources which the victim is used to while in the domestic relationship. (*Adapted from Protection of Women from Domestic Violence Act (PWDVA), instituted in 2005*)

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CHAPTER ONE

1.0 Introduction

This research paper examines the effectiveness of the Gender Law on Domestic Violence in Uganda, the Legal frame work of the Law on Gender, the enforcement of the law by Various Agencies in the country and it provides recommendations at the end.

1.1 Background¹

Gender is defined as difference between men and women based on culturally and socially constructed mores, politics, and affairs. Time and location give rise to a variety of local definitions. Contrasts to what is defined as the biological sex of a living creature.¹

Gender inequality, is the idea and situation that women and men are not equal. Gender inequality refers to unequal treatment or perception of individuals wholly or partly due to their gender, it rises from differences in gender roles.²

Gender inequality continues to be a fundamental issue within numerous communities both in the ‘developed’ and the ‘developing countries.’ It is an issue which impacts life expectancy, living standards, poverty, freedom, economic development and most importantly men, women and children.³ The impacts of gender inequality are universal with both men and women suffering from the effects of unequal gender practices. Whilst this issue struggles to gain formal acknowledgment within various nation states, the importance of gender equality was officially recognised as a central aspect of development work in 1995 at the Fourth World Conference on Women in Beijing. In this conference ‘189 countries adopted a landmark roadmap “The Beijing Platform for Action”, which was considered as a major achievement to advancing women’s rights and to put women’s rights and gender equality on governments agenda.⁴

Thus, whilst feminist movements had already long been active this conference is considered as a fundamental turning point in the fight for gender equality. This conference finally recognised gender equality as a chore political and international motivation since this conference, gender equality movements, policies and development work have taken various

¹ Black’s dictionary

² <https://en.m.wikipedia.org/wiki/Gender>

³ The Uganda Gender Policy (2007)

⁴ Ibid

forms to attempt to tackle the continued issue of gender inequality. One of the most significant concerns within gender inequality is its complex and diverse nature.⁵

²Gender equality, equality between men and women, entails the concept that all human beings, both men and women, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. Gender equality means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equity means fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities.⁶

By early 2000, Uganda had established policies and legislation to advance gender equality. Article 33(6) of the 1995 Constitution "prohibits laws, customs or traditions which are against the dignity, welfare or interest of women." The Constitution states that men and women are equal before and under the law and where gender inequalities exist, the Constitution provides for the implementation of affirmative measures to address these imbalances. In the last few years, sector-specific legal reforms, especially in the context of access to justice and protection of women's and girls' rights have been put in place, namely: the 2010 law on Domestic Violence and the 2011 Domestic Violence regulations; the anti-Female Genital Mutilation Act of 2010; the anti-trafficking in Persons Act of 2009; and the Equal Opportunities Commission Act in 2007. However, the Beijing+20 reviews and the Progress of World's Women Report (2015-2016), acknowledged that gender-sensitive legal reform has not sufficiently made rights and economic transformation real for women and girls.⁷

⁵ The Uganda Gender Policy (2007)

⁶ ABC Of Women Worker's Rights And Gender Equality, ILO, 2000. p 48

⁷ UNDP-Uganda Country Gender Assessment. October, 2015

1.2 Statement of the problem³

The constitution provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.⁸

The constitution also provides that without prejudice 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.⁹

The constitution also describes the word “discriminate” to mean giving different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.¹⁰

Women shall be accorded full and equal dignity of the person with men and the State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.¹¹

The State shall also protect women and their rights, taking into account their unique status and natural maternal functions in society and they shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.¹²

Women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom and Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.¹³

Gender law is well legislated both at National and International Level, but in practice the law has been breached and domestic violence is still prevalent in the country therefore a need for recommendations to ensure that the Gender law is implemented to decrease on the overwhelming domestic Violence in Uganda.

8 Article 21 (1) of the 1995 constitution of the Republic of Uganda

9 Article 21 (2) *ibid*

10 Article 21 (3) *ibid*

11 Article 33 (1) & (2) the 1995 constitution of the Republic of Uganda

12 Article 33 (3) *ibid*

13 Article 33 (4),(5) & (6) *ibid*

1.3 Objectives

1.3.1 General objective

The Researcher examined the Gender law and its effectiveness on domestic violence in Uganda, violation of the law, determined loopholes in legislation and considered options or strategies and recommendations that can be applied to cover loopholes.

1.3.2 Specific objective

- i) To examine the legal frame work of the Gender law.
- ii) To assess the effectiveness of the gender law in protection of domestic violence.
- iii) To examine the role of government stake holders in the implementation of the Gender law.
- iv) The study also intends to put forward the case for the necessity or importance of the recognising and promotion of gender law in protection of domestic violence.

1.3.3 Research questions

- i) What is the legal frame work on gender Law?
- ii) What is the effectiveness of gender law in protection of domestic violence?
- iii) How government stake holders have implemented the law?
- iv) What are possible recommendations between the laws and practice in regards to gender law in Uganda?

CHAPTER TWO

2.1 Scope of the study

This study covered the Geographical area of Kampala – Uganda in the examination of Gender law and its effectiveness in domestic violence, In attempt to answer the previous questions of the study the researcher considered, the 1995 constitution of the Republic of Uganda, Journals ,news papers , web sources texts books, interviews from different respondents and other sources.

2.2 Research Methodology

In an attempt to answer the objectives, the researcher adopted a qualitative mode of Research. And the Researcher used data collected by means of interviews carried out using an interview Guide, interviewing victims at Central Police Station (CPS) in Kampala and other different places around Kampala District and other respondents the researcher thought fit for the purposes of collecting information.

The research Methodology of Data collection which the researcher used to collect data was a Non-random sampling technique known as Accident/ convenient sampling.

The researcher also supplemented his research by including a Desk Research method which includes text books, statutes, journals, News papers, and other related legal articles. The researcher adopted this mode of Research because it's appropriate for the Topic; it's easy to use and cheap compared to other modes of research.

2.3 Significance of the study

Domestic violence cases are still prevalent in Uganda despite the legislations on Gender Law, for instance the 1995 Constitution of the Republic of Uganda, the 1998 Land Act Cap 227 and other legislation.

In practice it's evidenced that the law is not efficiently implemented by the many government stake holders and the few local organisations face some opposing ideological circumstance in their work.

This study is therefore relevant to government Law enforcement Agencies and every department therein (stake holders), in that it seeks to highlight the intersection between the practice of the gender law and its effectiveness on domestic violence.

CHAPTER THREE

3.0 Literature Review.

This chapter shows some of the literature which is written on the Topic of the study.⁴

Uganda's national constitution guarantees freedom of expression, provides for gender equality and affirmative action for women and outlaws discrimination based on sex. In spite of this, the enactment of laws to make the 1995 constitution fully operational is moving slowly, especially for gender specific laws. For instance the Domestic Relations Bill whose process started in the 1960s is yet to be enacted by parliament, legislation on violence against women is pending and the Equal Opportunities Commission (EOC) is the only commission that has never been set up since the promulgation of the new constitution over fifteen years ago.¹⁴

While traditional and extended family systems may provide checks and balances that ensure women's security of tenure, customary and cultural practices threaten women's safety and security at the same time. For example the cultural practice of female genital mutilation (FGM) in the highlands of eastern Uganda, early marriage, widow inheritance, forceful property appropriation from widows and orphans and domestic violence (which affects 40-45% of marriages) are common¹⁵ A hospital-based study among expectant mothers put domestic violence prevalence at 57%¹⁶. Some of these violent practices are important issues for women in Uganda who may be both victims and perpetrators such as in FGM and in relations between married women and the mothers of their husbands, or housewives and housemaids.

The Uganda Demographic and Household Survey 2006 report shows that 60% of women in Uganda and 59% of married women have experienced physical violence since age fifteen mostly perpetuated by their husband or partner. Similarly 59% of married women have experienced physical or sexual violence at the hands of their husband or partner.¹⁷ While 61%

14 Violence against Women and Information and Communication Technologies September 2009)

15 Ellis, Amanda; Claire Manuel and C. Mark Blackden Gender and Economic Growth in Uganda: Unleashing the Power of Women Washington: World Bank, 2006 siteresources.worldbank.org/INTAFRREGTOPGENDER/Resources/gender_econ_growth_ug.pdf

16 Izama, Angelo "Godi trial: State lines up ballistics evidence" The Daily Monitor 6 June 2009 Kaye, Dan K., Florence Mirembe, Anna Mia Ekstrom, Grace Bantebya Kyomuhendo, Annika Johansson "Implications of Bride price on Domestic Violence and Reproductive Health in Wakiso District, Uganda". African Health Sciences 5, 4 (2005) www.pubmedcentral.nih.gov/picrender.fcgi?artid=1831942&blobtype=pdf

of the rural women reported instances of Violence against Women (VAW), 54% are located⁵ in the urban areas showing that the phenomenon cuts across the urban-rural divide; the majority of violence against women is committed by an intimate partner. Two thirds of women who have experienced physical violence since age fifteen say that an intimate partner committed violence against them, while 16% of women reported having experienced physical violence during pregnancy with women in rural areas being three times more likely than urban women to experience violence during pregnancy. Sexual violence begins the first time a woman has sexual intercourse and as such 24% of women say their first sexual intercourse was forced against their will¹⁸.

Other forms of VAW in the country include burning, ritual murders, robberies, adultery/extra marital relations and verbal abuse. Cases of sexual violence include rape directed at lesbians or cited as a result of “sexual starvation” implying unreasonable denial of sex to a partner over a long period of time.¹⁹

Domestic violence dis-empowers women and negatively affects women’s health and productivity, sometimes resulting in death. Paying bride price, still a popular practice in Uganda is used to legitimise domestic violence against women.²⁰ Many Ugandans perceive bride price as indicating that a woman has been “bought” into the man’s household, which reduces her household decision-making role, limits independence and perpetuates unequal gender power relations.²¹

Information on the intersection of VAW and ICT is still limited, though there are emerging sources and anecdotes. One source shows that cyber crime is growing in Uganda. A study on myths and realities of cyber crime in Uganda alarmingly concluded that 90% of internet users in Uganda have suffered losses caused by Internet crimes while 25% confessed to having initiated cyber crimes.²²

17 Uganda Bureau Of Statistics and Macro International 2007a

18 Uganda Bureau Of Statistics and Macro International 2007b)

19 *Violence against Women and Information and Communication Technologies September 2009*

20 Ellis et al 2006, Kaye et al 2005

21 Izama, Angelo “Godi trial: State lines up ballistics evidence” The Daily Monitor 6 June 2009 Kaye, Dan K., Florence Mirembe, Anna Mia Ekstrom, Grace Bantebya Kyomuhendo, Annika Johansson “Implications of Bride price on Domestic Violence and Reproductive Health in Wakiso District, Uganda”. African Health Sciences 5, 4 (2005)

www.pubmedcentral.nih.gov/picrender.fcgi?artid=1831942&blobtype=pdf

22 Tushabe, Florence and Venansius Baryamureeba “Cyber Crime in Uganda: Myth or Reality?” Enformatika: Transition on Enformatika Systems Science and Engineering Vol. 8. 2005 www.waset.org/pwaset/v8/v8-12.pdf

A range of women's organisations in Uganda have also used the internet in combination with television, radio, newspapers and other print media to highlight VAW including rape,⁶ victimisation and harassment by security agencies. For example, a website by Makerere University lesbian students proclaims that they are an association of students to fight for rights of lesbians and gays.²³ The internet has also been used by sexual minorities to disseminate information about their work, mission, as well as court victories and rulings.²⁴ an umbrella organisation for lesbian, gay, transgender and bisexual (LGTB) people, also has a presence on the internet through which it articulates concerns of members and raises awareness.

There are chilling stories in the media and Uganda's entertainment industry detailing such incidents. For instance, in the story *Man Kills Wife Over Love SMS* aired on New Vision, Monday 15 December 2008, Abdulkarim Ssengendo describes a man who smashed the head of his wife causing her death because he had allegedly read a love SMS on her mobile.²⁵

Honourable Godi Akbar, the former Member of Parliament for Arua Municipality in northern Uganda, was on trial in court accused of murdering his wife, Rehema Nasur, on December 3, 2008 on Kayunga Road in Mukono district. He reportedly shot her twice using his pistol. Godi complained of having read text messages in his wife's phone from her lover. The wife had also reported to police that Godi had on many occasions threatened to kill her through SMS messages.²⁶

Women entrepreneurs face particular difficulties with taxes and customs. Recent evidence suggests that businesses headed by women are forced to pay significantly more bribes and are harassed more than businesses headed by men. Because Ugandan women tend to have less education and fewer formal business skills than men, they find it harder to deal with tax issues, and time-poor women find it difficult to comply with complex tax registration requirements. It is recommended that the Uganda Revenue Authority develop policies for assisting women entrepreneurs, through tax clinics and open discussions.²⁷

²³ See: www.geocities.com/muslauganda/muslauganda.html

²⁴ [www.hivos.nl/english/content/download/7637/50427/file/Press%20Release%20Uganda%20Human %20Rights%20Court](http://www.hivos.nl/english/content/download/7637/50427/file/Press%20Release%20Uganda%20Human%20Rights%20Court)) Another organisation, Sexual Minorities Uganda (SMUG), (www.smug.4t.com/)

²⁵ Abdulkarim Ssengendo "Man kills wife over love sms" The New Vision 15 December 2008 www.newvision.co.ug/D/8/12/664815

²⁶ A print media story with a photo from their wedding is available here: www.monitor.co.ug/artman/publish/news/Godi_trial_State_lines_up_ballistics_evidence_86006.shtml

Women are already a powerful force for growth in Africa. They are economic factors:²⁷ workers, property owners, and entrepreneurs. Recognizing this fact is the first step to ensuring that women have fair access to the labour market, enjoy full rights to own property, and do not face even greater barriers to doing business than men do.²⁸

Despite the Literature Review on this topic for instance the legal article, books and reports reviewed above, the issue of domestic Violence is still prevalent and there for this is the basis of this research paper because it seeks to show the intersection between the Gender law and practice and it also goes further to show both governmental and non-governmental stake holders or Agencies which implement and enforce Gender law.

²⁷ Gender and Economic Growth in Uganda Unleashing the Power of Women , 2006

²⁸ Gender and Economic Growth in Uganda Unleashing the Power of Women , 2006

CHAPTER FOUR

4.1 Legal Frame Work

In relation to the Millennium Development Goal Three, to “promote gender equality and empower women,” there are a number of policies and legislation in Uganda to that effect. Uganda’s constitution provides for equality between women and men and for affirmative action. Chapter four of the constitution is devoted to protection of fundamental and other human rights and freedoms and there are specific provisions that relate to gender.

4.1.1 National Level

4.1.1.1 The 1995 constitution of the Republic of Uganda as amended

The Constitution of Uganda is the supreme law where all laws in Uganda derive their⁸ authority.²⁹ Chapter four of The Constitution provides for the individual rights of all citizens in Uganda including the rights on Gender.

The constitution provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.³⁰

The constitution also provides that without prejudice 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.³¹ The constitution also describes the word “discriminate” to mean giving different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Women shall be accorded full and equal dignity of the person with men and the State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.³²

29. Article 2 of the 1995 constitution of the Republic of Uganda

30 Article 21 (1) *ibid*

31 Article 21 (2) *ibid*

32 Article 33 (1) & (2) *ibid*

The State shall also protect women and their rights, taking into account their unique status⁹ and natural maternal functions in society and they shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.³³

Women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom and Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.³⁴

4.1.1.2 The 1998 Land Act.³⁵

The land act provides for land ownership,³⁶ and the rights of women to own property, it states that any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, except that a decision which denies women or children or disabled people access to ownership, occupation or use of any land or imposes conditions which violates Article, 33- 35 of the constitution shall be null and void.³⁷

Further a widow is guaranteed a right to an equitable share in the inheritance of the property of her husband and the right to continue to live in the matrimonial home, even in instance of remarriage if it belongs to her or has inherited it. Moreover there is a right to inherit in equal shares between men and women of their parent properties.³⁸

4.1.1.3 Succession Act³⁹

The right to own property embodies property owned by women prior to marriage, upon marriage and after its dissolution. The succession Act laws of Uganda, provides for the concept of separate property acquired before marriage is recognised.⁴⁰

³³ Article 33 (3) of the 1995 Constitution of the Republic.

³⁴ Article 33 (4),(5) & (6) *ibid*

³⁵ Cap 227 laws of Uganda

³⁶ section 2 land Act cap 227

³⁷ section 27 *ibid*

³⁸ Article 21 *ibid*

³⁹ Cap 162 laws of Uganda

⁴⁰ section 4 of the succession Act

Further it provides that a person shall not by virtual of marriage be incapacitated from doing any act with respect to his/her property which he/she could have done before marriage. In addition to this is the Domestic relations bill of 2003, where by a spouse may acquire his/ her separate property during the substances of marriage.⁴¹

4.1.1.4 Divorce Act⁴²

Where a judicial separation has been decreed, the wife is to be treated as unmarried with¹⁰ respect to property which she may acquire or which may devolve upon her, therefore she is free to deal with such property as if she were unmarried, if she dies intestate, and during the substance of the separation her husband will not be entitled to any portion of that property.⁴³

In addition attempts to protect the wife's proprietary rights where the husband has deserted her, under this provision, a wife in whose property the husband has acquired an interest by virtue of the marriage, may if deserted by him, apply to court for an order to protect any property which she may have obtained or may obtained after desertion. The essence of such an order is to protect the woman's property against the husband and his creditors.⁴⁴

4.1.2 International Level.

4.1.2.1 Universal Declaration on Human Rights

In recognising the principle of equality the Universal Declaration on Human Rights,⁵ recognises that all human beings are born free and equal in dignity and rights. The same goes on and stated that everyone is entitled to the rights and freedoms set forth in the declaration without distinction of any kind such as sex.⁴⁶

From this view it's clear that there is no distinction in relation to sex in property ownership and others values in life, it is also worth to note that these human rights are inherent and not granted by the state.⁴⁷

41 clause 71 ibid

42 Cap 294 laws of Uganda

43 section 15 ibid

44 section 19 ibid

45 Article 1 of Universal Declaration on human rights.

46 Article 2 ibid.

4.1.2.2 Convention on the Elimination of All Forms of Discrimination Against Women

To safeguard and protect the position of women in the society is the convention which¹¹ provides that state parties condemn discrimination against women in all forms and agree to pursue by all means and without delay a policy of eliminating discrimination against women³³

33 Article 2 of Elimination of all form of Discrimination Against Women

,and to this end take all appropriate measures in including legislations to modify or abolishing existing laws, regulations, customs and practices which constitute discrimination against women.⁴⁸

Article 15(4) of CEDAW requires States parties to “accord men and women the same rights with regards to the law relating to the movement of persons and the freedom to choose their residence and domicile”. Article 6 of CEDAW requires that “States parties should take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women”.

4.1.2.3 United Nations commissions on Human Rights Resolution (2003/23)

The east African case *I v I* 1971⁴⁹ establishes the married women property Act (England) and is applicable in Uganda which Act recognises the ability of a woman to own a property on her own. So is the United Nations commission on Human Rights Resolution of 2003/23, which recognises the right of women to own, access and to control land as well as the equal right to property ownership.

4.1.2.4 Convention on the Rights of the Child (CRC)

Article 34 of the Convention on the Rights of the Child (CRC) also provides that “States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.”

4.1.2.4 Maputo Protocol

Article 1(g) of the Maputo Protocol defines “harmful practices” as “all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity”. Article 2(1)(b) of the

⁴⁷ Article 20 of the 1995 constitution

⁴⁸ Article 2(f) *ibid*

⁴⁹ EA 278

Protocol requires States to “enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general wellbeing of women”

4.2 Conclusion.

The above analysis on the Gender legislation from the National to International Level, shows a clear view of harmony in Gender Equality if at all the law was properly enforced by government stake holders such prevalent Domestic violence could be no more or probably less.

CHAPTER FIVE

5.1 The effectiveness of gender law in protection of domestic violence

This chapter shows the effectiveness of Gender Law in the protection of domestic violence, showing the enforcement of the Law by difference agencies in order to protect Domestic Violence.

5.1.1 Marital Relationships

The law in Uganda does not recognize de facto unions as valid marriages, and yet, as society¹² evolves, such unions are on the rise. Given this gap, and the fact that it can result in serious negative consequences for women, there have been increasing calls by Ugandan women to recognize such unions and establish the rights and responsibilities that accrue from them. The need for such is crucial particularly at the time of separation or the death of a partner.⁵⁰

In the absence of any legal framework that recognizes cohabitation, some countries have invoked the English Common Law principle of presumption of marriage to recognize the rights of cohabitantes after a reasonable period of living in a de facto union. By so doing, courts have declared that for all intents and purposes cohabitation is a “marriage”, a decision that enhances women’s access to justice.⁵¹

Women’s access to justice is intrinsically linked to their embodied experiences and daily livelihoods. In patriarchal societies such as Uganda, where descent is also patrilineal, women’s relations to children are often precarious. Traditionally, children belong to their fathers - this has serious implications for mothers’ rights relating to their minor children. In addition, when it comes to sentencing women for criminal offences, it is important to take into account the fact that they are the primary caretakers of children. For this reason, where appropriate, non-custodial punishments should be used for women.⁵²

⁵⁰ General Recommendation No. 21 of the CEDAW

⁵¹ summary of the gender bench book september 2016

⁵² Community Service Act (2000)

5.1.2 Sexual Gender Based Violations (SGBV)

With the 2011 amendments to the Penal Code, one procedural development at least is encouraging - the revised Police Form (PF3A), which is used in investigations of sexual assault cases to obtain medical and forensic evidence. Among the important changes is the fact that the form can now be filled out by others besides police surgeons who are thin on the ground, a requirement that had previously hampered survivors' efforts to access justice. In addition to medical doctors, clinical officers, nurses and midwives can now also examine victims, document evidence and testify in court. The PF3A was also amended to remove the "ideal-victim" gender bias, and introduce new sexual offences.⁵³

The enactment of the Domestic Violence Act in 2010 was a positive step towards meeting Uganda's commitments and obligations under the United Nations Declaration on Elimination of Violence Against Women (DEVAW), the UDHR, CEDAW, and the CEDAW¹³ Committee's General Recommendation No.19 on Violence against Women. The Act also imports into national law international standards set in the provisions of the Convention against Torture.⁵⁴

5.1.3 Human Trafficking

The United Nations Declaration on Elimination of Violence Against Women (DEVAW) recognizes "trafficking in women and forced prostitution" as constituting violence against women. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was passed in 2000.⁵⁵

Article 6 of CEDAW requires that "States parties to take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women". Also the States parties should undertake to protect the child from all forms of sexual exploitation and sexual abuse."⁵⁶ The Government of Uganda took a step towards realizing its obligation under CEDAW to prevent, investigate and punish trafficking and SGBV when it enacted the Prevention of Trafficking in Persons Act of 2009.

⁵³ summary of the gender bench book september 2016

⁵⁴ *ibid*

⁵⁵ Trafficking in Persons Protocol

⁵⁶ Article 34 of the Convention on the Rights of the Child

5.1.4 Laws on Harmful Practices

Article 32(2) of the 1995 Constitution prohibits “Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or which undermine their status.” Uganda has recently enacted various laws to address some harmful practices, among them the Prohibition of Female Genital Mutilation Act (2010), the Anti-Pornography Act (2014) and the Children Act (Cap 59, as amended in 2016).

5.1.5 Employment Environments

Following the new provisions in the Employment Act, in 2012 the Government established regulations that both define the phenomenon and compel employers to adopt sexual¹⁴ harassment policies. While hailed as a significant step forward, at the same time, criticism has pointed to the fact that they were clearly developed for large companies with more than 25 employees, and that there has been poor publicity about and enforcement of these regulations.⁵⁷

The issue of maternity leave is one of the most important with respect to the situation of women at the workplace. The question of child-bearing and obviously has a much greater impact on women in the workplace than it does on men. Article 11 of CEDAW makes reference to the need to ensure special protection from harmful types of work during pregnancy and the provision of paid maternity leave.

Article 40(4) of the 1995 Constitution provides protection for every woman “during pregnancy and after birth, in accordance with the law”. Women should therefore not suffer because of their role in procreation.

5.1.6 Land ownership Aspects

Section 39 of the Land Act provides for spousal consent. However, the provision does not apply to any transfer of land made by a mortgagee in exercise of powers under the mortgage before the date of the Land Act. As a result, homes that were mortgaged by husbands prior to the enactment of the law in 1998 continue to be sold thereby dispossessing wives and their children. Despite these many constraints, case law has provided several general modifications and clarifications to the status of matrimonial property which has improved the overall situation of women.

⁵⁷ summary of the gender bench book september 2016

5.1.7 Divorce

There is no formula in Uganda setting out how assets are to be split upon divorce.¹⁵ The Divorce Act which governs the dissolution of marriages contracted under the Marriage Act - contains several unfair provisions relating to marital property. For example, section 26 of the Act provides that a wife who has committed adultery is not entitled to any property in the event of dissolution of marriage or separation, whereas this state of affairs does not apply to the husband in similar adulterous circumstances. Furthermore, a woman's property whether acquired before marriage or during its subsistence.⁵⁸

This issue was solved in the Land marker Decision in the case of FIDA vs AG⁵⁹ where the constitutional court ordered for the amendment of some provisions of the Divorce Act since they were discriminatory in nature as well as section 26.

5.1.8 The Judiciary.

Discriminatory laws must be rejected and discarded to the extent that they are inconsistent with the Constitution, where the law is not gender-sensitive or is no longer applicable, the courts must declare it unconstitutional, and therefore null and void.⁶⁰

There are other institutions promoting access to justice for women including the Justice Centres Uganda (JCU) under the Justice, Law and Order Sector (JLOS), augmented by Paralegal Advisory Services. The JCU are one-stop legal aid service centres that seek to bridge the gap between the supply and demand sides of justice.

They provide legal aid services in civil and criminal areas of justice to indigent, marginalized and vulnerable persons, while at the same time conducting community outreaches to raise awareness and empower communities to claim their legal rights. The JCU provide special consideration to children, poor women and men, and other users underserved by JLOS institutions, with particular reference to gender-based crime, violence against children, land and family justice.⁶¹

⁵⁸ summary of the gender bench book september 2016

⁵⁹ constitutional petition no 2 of 2003

⁶⁰ Article 2 of the 1995 constitution

⁶¹ Summary of the Gender Bench Book 201628

5.2 Conclusion

It's clear from the study that Gender law is effective to some extent though there are pending¹⁶ issues which constitute challenges to the enforcement bodies and this hinders the complete implementation that's why Domestic violence is still prevalent.

CHAPTER SIX

6.0 The role of government stake holders and non-governmental organisation in implementing Gender law to stop domestic violence.

6.1 Introduction

This chapter shows the implementation of the gender law by several governmental stake holders and non-governmental agencies like organisations to prevent domestic Violence, most of the information in this chapter was collected by means of interviews from respondents whom I had access too while in the field.

6.1.2 The Ministry of Gender, Labour and Social Development (MGLSD)

The MGLSD is the government ministry charged with the duty of mainstreaming gender in all government programmes and policies in Uganda. The ministry works closely with women's organisations on all issues of gender, including Domestic Violence.

In the Office of the Permanent Secretary Ministry of Gender, Labour and Social Development, P.O. Box 2475 Kampala, Uganda a respondent not the permanent secretary said; "Actions are being taken to prevent domestic violence by the Government and its stake holders which include the operationalization of the 1995 Constitution of the Republic of Uganda provisions and this regard the following specifics Laws have been enacted

- The Domestic Violence Act 2010 and its regulations 2011
- The Prohibition of Female Genital Mutilation 2010 and its regulation 3013
- The Preventions of Trafficking in Persons Act 2009
- The Penal Code Act, Cap 120
- The children Act, cap 59
- The international Criminal Court act 2010
- The land Act, Cap 227
- The Employment (sexual Harassment Regulations 2012)

The Government has Also developed policies and frameworks to prevent and respond to Domestic Violence these include; The Uganda Gender Policy (2007), The National Action Plan on women (2008); The National Development Plan (NDP) 2010/11-2014/15;The National Referral Pathway for Prevention and Response to Gender Based Violence Cases (2013), National Guidelines on establishment and Management of GBV shelters in Uganda

and the National Action Plan on the United Nations Security council Resolution 1325,1820 and the Goma Declaration”

The Respondent also added that “the Ministry of Gender, Labour and Social Development gets support from various development partners to implement the Gender Based Violence programmes which include, The GOU-UNFPA seventh country programmes, one of the outputs under this programmes is aimed at strengthening the country of public and civil society actors to prevent and manage GBV and advancement of reproductive Rights. The Outputs is directly implemented by the department of Gender and women Affairs together with the district community based services in the Districts.”¹⁷

6.1.3 Uganda Police (UP)

The constitution provides for the existence of the Uganda Police Force⁶² and the Force is obliged to protect the Life, property and other rights of the individuals and to prevent and detect crime in the society.⁶³

This makes the Police to be the first place where victims of domestic violence go for immediate help that’s why polices posts are well distributed in most of the country regions for immediate help.

During the research interviews with some two women, I met at the Central Police Station (CPS). One of the ladies said; “it was night when my husband came back at around 11:00 pm, he demanded for food for which he had not left money for, when I said there is no food he started beating me, he often comes back when he is drunk but this time round he was so rude and rough , I closed my self in the bed room with my child and praying only for the morning to come so that I go and report him to police, because I had warned him for the last five times when he assaulted me.”

The other had come to report to police alleging that she was sexually assaulted; she was in tears saying that yes I was rapped but I cannot tell who of the two guys (friends) did it since at the time I was drunk, I did not get much conversation with her since she was not open enough to narrate to me the all story.

⁶² Article 211(1) of the 1995 constitution of the republic of Uganda

⁶³ section 4 of the police Act Cap 303.

6.1.4 Uganda Human Rights Commission (UHRC)

The UHRC is an independent constitutional body established to promote and protect human rights. It is established under article 51 (1) of the Constitution of the Republic of Uganda (1995) and by the Uganda Human Rights Commission Act No. 4 of 1997. The function of UHRC is to empower the public by giving them basic knowledge about their rights. It is also responsible for investigating violations of human rights, it is located at Plot 20/22/24 Buganda Road (opposite African Crafts Village) Kampala,

The Uganda Human Rights investigates at its own initiative or on a complaint made by any¹⁸ person or group of persons against the violation of any right, also must establish a continuing programme of research, education and information to enhance respect of human rights.⁶⁴

In its performance in implementing the gender Law, the commission conduct researches the make recommendation to the Governmental stake holders like the parliament to set up effective measures to promote human rights.⁶⁵

The commission found that the Benet people have had their entire way of life and right to practice their culture grossly interfered with by numerous evictions that they have faced and apparently continue to face. It is very difficult for them to practice, let alone promote or preserve , their culture when they lack security and stability in their home area the was for the Batwa also too seemed to be very vulnerable especially considering their small population in Bundibugyo district and their languages appeared to be fading away as a result of ethnic discrimination.⁶⁶

The commission notes that the government has so far successfully managed the IDP return, resettlement and reintegration process. The prevailing peace in the return areas and the remaining IDP camps should be maintained. Government should pay special attention to the plight of EVIs who are still staying in camps.⁶⁷

⁶⁴ Article 52 (a) & (e) of the constitution of the republic of Uganda

⁶⁵ Article 52 (d) (ibid)

⁶⁶ UHRC annual report 2008

6.1.5 MUFUMI

MIFUMI is an NGO working to end violence against women and children in eastern Uganda. Its niche has been on issues of domestic violence and abuse around bride price violations. MIFUMI has undertaken a number of projects aimed at fighting domestic violence since 1990 which include: MIFUMI Domestic Violence Intervention Pilot Project (MDVIP) established as a pilot with the aim of promoting protection for women and children; Community Advocacy Against Violence which strengthened the capacity of women and children's organisations to deliver domestic violence services across five districts in Uganda; and legal aid clinics providing legal services through lawyers, paralegals and women¹⁹ advocacy workers. Over 13,000 women and children have been supported through the advice centres. MIFUMI also contributes research on domestic violence, health, and how to help women disclosing abuse; training police, judiciary and health professionals, lobbying for improved legislation for women and children including the Domestic Relations Bill (DRB).⁶⁸ MIFUMI Uganda is located in Tororo, Uganda

Cases of girls being sold by the parents are frequent. If a woman under a customary marriage wants divorce, she will need to pay back the dowry but this was overturned in the case of **MUFUMI vs AG**,⁶⁹ where the court held that the paying of bride price is not mandatory and that the pay back of the same was unconstitutional.

6.1.6 The Association of Uganda Women Lawyers - FIDA (U)

FIDA (U) is a civil society organization of Ugandan women lawyers aimed to achieving observance of the law, human rights, gender equality and equity. FIDA (U) assists women, children and other destitute groups in attaining effective legal protection. It has a national coverage and issue areas of operation include legal aid, legal education, human rights, gender, publicity, research and advocacy. Activities undertaken by FIDA (U) include litigation, mediation, arbitration, counseling, legal awareness, training, research and advocacy for women and children related cases. FIDA International and its various chapters scattered in over 80 countries in the world have initiated programmes to contribute to the realization of the objectives of CEDAW. All this information was given by a respondent from FIDA (U).

⁶⁷ UHRC annual report 2008

⁶⁸ www.mifumi.org/index.php?prgm=brief-history

⁶⁹ Constitutional Appeal No. 02 of 2014) [2015] UGSC 13 (6 August 2015)

The Association of Uganda Women Lawyers Street is located at Plot 54 Bukoto Street Kampala, Uganda

Currently men and women can apply for divorce under same grounds following the judgment⁷⁰ from the constitutional court of **FIDA Vs AG** ⁷⁰ were the court held that some of the Divorce Act section were discriminatory and inconsistent with the 1995 constitution and so were amended accordingly. In marriage, during its substance and upon dissolution the man and woman have equal rights.⁷¹

6.1.7 Law and Advocacy for Women in Uganda (LAW-U)

LAW-U's mission is to work for reform of laws and practices that discriminate against women. Issue areas include domestic violence; female genital mutilation; Islamic Sharia law and activities of the Khadi courts; strategic litigation; polygamy and women's land rights; reproductive rights; women's/girl's child education; women's economic empowerment; and general women's human rights. LAW-U is involved in media campaigns in support of candidates that advocate for women's human rights by educating the women who form the majority of the voters about their voting rights and how their vote can determine the next parliamentarian and president.

Other activities include research on domestic violence, property inheritance, polygamy and bridal wealth as well as advocacy for the enactment of laws and/or revision of discriminatory laws. This information was given by Ms Dora Kanabahita Byamukama from Law and Advocacy for Women in Uganda in an Interview which is located at Raja Chambers, Plot No. 3, Parliament Avenue (Opposite the British High Commission) Kampala, Uganda

In the case of **Law and Advocacy for Women in Uganda and Attorney General**⁷² the Constitutional Court declared as null and void sections: 2(n)(i), (ii), 14, 15, 26, 27, 29, 43 and 44 and Rules 1, 7, 8, 9 of the 2nd Schedule of the Succession Act. Constitutional court decisions rendered some provisions of the⁷³

⁷⁰ constitutional petition no 2 of 2003

⁷¹ Article 31 of the 1995 constitution.

⁷² 44 Constitutional Petition No. 13/05 and 05/06

⁷³ Article 2 (2) of the 1995 constitution of the republic of Uganda

Succession Act null and void for non conformity with the Constitution, some of the provisions where discriminatory in nature and hence inconsistent to the constitution.⁷³

6.1.8 Foundation for Human Rights Initiative (FHRI)

FHRI is a non-governmental, non-partisan, and independent non-for-profit organisation committed to the protection and promotion of human rights and democracy in Uganda. Since its inception in December 1991, FHRI has developed and implemented human rights advocacy strategies and programmes. It has also spearheaded efforts to promote and protect internationally recognised human rights norms and standards in Uganda and has been able to successfully implement a number of relevant programmes.

Information was given by a respondent from Foundation for Human Rights Initiative located at Human Rights House Plot 1853, Block 15, Lulume Road, Nsambya Kampala, Uganda

6.1.9 Uganda Gender Resource Centre – (URGC)

UGRC was started in 1991 to articulate the relevance of the principles of gender equality and equity to the development process through training, research, documentation and information dissemination. It was established out of a need to advance women's rights and empowerment. The centre's aim is to make gender and women related information available. In addition, the centre runs legal aid centres and micro-credit projects. Among its core activities are networking and training decisions makers. Some of the issues of concern at URGc include: Human Rights, Policy/Government, Political Participation, Violence Against Women, Research Training, Promotion of women's rights, Information and documentation, Advocacy and lobbying.

The above information was given by a respondent from Uganda Gender Resource Centre which is located at National Theatre 2nd Floor, Room 2 Kampala, Uganda

6.1.10 National Association of Women's Organisation s in Uganda (NAWOU)

Members of non-governmental and community-based organisations formed NAWOU in 1992 with a network of grassroots women's organisations spread across the country. NAWOU works to raise awareness of the needs, rights and responsibilities of women and monitoring the status of women with special focus on legislation, implementation, conventions and human rights, and sustainable development (social, economic and political)

NAWOU is working in partnership with Action AID Uganda and Raising Voices to prevent domestic violence and promote safety within homes.

The information above was given by a respondent from National Association of Women's Organisations in Uganda located at Plot 1, Perryman Gardens (Off Hoima Road) Bakuli, Old Kampala, Uganda.

6.1.11 Media Houses, including the Monitor, New Vision, WBS TV and NTV

Media houses have been key in raising public awareness on issues of Domestic violation. There are numerous media organisations in Uganda but key amongst them are: The Monitor Newspaper, New Vision Printing and Publishing Company, WBS Television and NTV. The Monitor was established in 1992 as an independent not for government newspaper. The Monitor has published various stories on Domestic violence in Uganda.

The New Vision Printing and Publishing Company is a government owned newspaper which started in March 1986. The paper has published stories exposing Domestic Violence in Uganda WBS TV station is a privately owned commercial TV station incorporated in October 1997. WBS TV has been critical in airing stories on violence against women in various parts of Uganda. A recent addition in Uganda is NTV which has been instrumental in broadcasting abuses including Domestic violence stories.

It should be note that though important print and TV reach is mostly to the elite sections of society as compared to other mediums especially radio that has more coverage

Monitor Publications LTD P.O. Box 12141 Kampala, Uganda Street Address: Plot 29-35, 8th Street Industrial Area Kampala, Uganda, Email: info@monitor.co.ug

New Vision Printing and Publishing Company Industrial P.O. Box 5914 Kampala, Uganda Area Plot 19/21, 1st Street Kampala, Uganda Email: news@newvison.co.ug WBS Television

6.1.12 Raising Voices (RV)

Raising Voices (RV) works to prevent violence against women by focusing on primary prevention approaches that attempt to change attitudes and behaviours that perpetuate Domestic violence. The organisation publishes communication materials to assist in developing effective domestic violence prevention programmes. RV has a training video and

also has a learning centre for organisations and individuals interested in building skills. RV has established a Gender-Based Violence (GBV) prevention network with a membership of over 130 organisations and individuals from more than eighteen countries, this was information in an interview with a respondent from Raising Voices located at Plot 16 Tufnell Drive, Kamwokya P.O. Box 6770 Kampala, Uganda.

6.1.13 International Justice Mission (IJM)

Since 2004, IJM has been working from the Kampala office to serve widows and orphans in nearby Mukono County, where more than a third of widows reported experiencing attempts to take their land. A poor woman in Uganda not only has to contend against the challenges of eking out a living in harsh conditions, but also with a culture that routinely denies her rights.⁷² Widows in particular are seen as an easy target for abuse. When a man dies, it is common for neighbours, relatives and other community members to steal the home and property from his widow and children. Local authorities lack training or simply does not view land theft as a crime. Land records are not readily available, making it nearly impossible for a woman to prove her rightful ownership (and making it easy for perpetrators to forge documents).⁷⁴

We rescue widows and orphans from violence and help Local Council leaders (the community-level representative of the justice system), police and courts restore the vulnerable families to the property stolen from them. This can mean moving women and children into safe houses while we work to stop the threats and we restore survivors by providing counselling, ensuring that children can go to school, and helping women begin income-generating projects. Once families are safe on their land, we empower them through training and by providing resources to rebuild their lives.⁷⁵

We strengthen justice systems by working with police, courts, land authorities and other local⁷³ leaders to dramatically improve the justice system response to land theft so women and children are safe. IJM has helped establish and train specialized land theft prevention officers in local police stations and we raise awareness through media and radio campaigns.⁷⁶

⁷⁴ IJM_Factsheet_Africa_Kampala.pdf

⁷⁵ *ibid*

⁷⁶ IJM_Factsheet_Africa_Kampala.pdf