

**DOMESTIC VIOLENCE AND GENDER RELATIONS IN
CONTEMPORARY UGANDA - THE LAW
AND PRACTICE IN UGANDA.**

A CASE STUDY OF FIDA (UGANDA)

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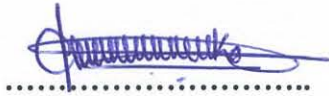
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APPROVAL

This dissertation on, "Domestic Violence and Gender Relations in Contemporary Uganda-The Law and Practice in Uganda: A Case Study of FIDA (U)" has been under my supervision and is due for submission.

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9/7/2010

DECLARATION

I, NAMUTEBI MERCY, declare that this Report on the “Domestic Violence and Gender Relations in Contemporary Uganda” is my original work and has never been submitted to any institution for any form of award.

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DEDICATION

I dedicate this piece of work to my dear parents, Mr. and Mrs Ssemombwe for their parental and financial support in my academic life and for believing me when no one could.

ACKNOWLEDGEMENT

I owe my sincere appreciation to people that financially, psychologically and academically contributed to my academic career particularly in the conducting of this research. Above all I acknowledge my supervisor Madam Annet Aryanyijuka who endlessly corrected and guided me. I appreciate your criticisms for their contribution in the accomplishment of this study. I also wish to acknowledge my lectures especially those from the Faculty of Law for the professionalism they imparted in me, without which, the accomplishment of this study would have not been possible. Thanks a great deal.

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LIST OF STATUTES

Penal Code Act (Cap 120)

HIV/AIDS Prevention and Control Bill Clause 39, Section 1

The Domestic Violence Act 2010 Act 3

Constitution of the Republic of Uganda (1995) Article 21 and 33

Draft Marriage and Divorce Bill

Female Genital Mutilation Bill

LIST OF ABBREVIATIONS

CEDAW:	Committee on the Elimination of Discrimination against Women
FIDA:	Federation of African Lawyers
IPU:	Inter- Parliamentary Union
PEAP:	Poverty Eradication and Action Plan
UNICEF:	United Nations Children Education Fund
UWONET:	Uganda Women’s Organization Network

ABSTRACT

This study “Domestic Violence and Gender Relations in Contemporary Uganda”, was carried out in FIDA (U) Kampala District, with specific aims of examining the circumstances which give rise to domestic violence and gender relations through assessing the legalities considered, establishing loopholes in the laws protection against domestic violence to identify circumstances under which the law can be revised and suggesting possible interventions which can be relied upon in the revision of the law. In comprehension of the study, the researcher reviewed literature from various scholars on the major variables as well as different laws from different countries that control domestic violence and gender related issues.

Domestic violence is very common in families in front and behind the rails, despite the legal measures taken. This brings about a growing recognition that it is not easy to reach full potential if women are denied the chances to fully participate in different spheres in the society and women’s participation has become key in all social development programmes, be they environmental, for poverty alleviation, or for good governance.

The study recommended; advocacy through media, sensitizing men to drop habit of violence, increasing access to justice, empowering women at all levels to strengthen individual capacities and decrease vulnerabilities to violence, changing underlying cultural values of society, statutory life interest to wives, and preparation of bills to enact health and safety standards to protect women.

TABLE OF CONTENTS

APPROVAL	ii
DECLARATION	iii
DEDICATION	iv
LIST OF STATUTES	vi
LIST OF ABBREVIATIONS	vii
ABSTRACT	viii
TABLE OF CONTENTS	ix
 CHAPTER ONE	 1
1.0 INTRODUCTION	1
1.1 Background of The Uganda Association of Women Lawyers (FIDA-U)	1
1.2 Background of the Study	2
1.3 Statement of the Problem	11
1.4 General Objective of the Study	11
1.5 Specific Objectives	12
1.6 Research Questions	12
1.7 Scope of the Study	12
1.8 Definition of Key Terms	13
1.9 Hypothesis	14
1.10 Literature Review	14
1.11 Significance of the Study	22
1.12 Research Methodology	22
 CHAPTER TWO	 25
THE LAW AND DOMESTIC VIOLENCE WITH DISPARITIES IN GENDER RELATIONS	25
2.1 Legal Duty on Gender Disparities and Domestic Violence	25
2.2 The Right to Equality and Non Discrimination	25
2.3 The Right to Property Ownership	29
2.4 Weakness of the Supportive Laws	29
2.4.1 Discrimination and Violence Persist	29
 CHAPTER THREE	 44
PRESENTATION AND DISCUSSION OF THE RESEARCH FINDINGS	44
3.1 Introduction	44
3.2 The Position of the Women in Regard to Domestic Violence and Gender Laws ..	44
 CHAPTER FOUR	 53
CONCLUSION AND RECOMMENDATIONS	53
4.1 Introduction	53
4.2 Conclusion	53
4.3 Recommendations	53
REFERENCES	55

CHAPTER ONE

INTRODUCTION

The research topic is domestic violence and gender relations in contemporary Uganda. In this chapter, we will look at the background of the study, statement of the problem, scope of the study, definition of terms objectives of the study, literature review, hypothesis, research questions, significance of the study, research methodology, anticipated constraints, bibliography/references as well as appendices. The study will be carried out in the Uganda Association of Women Lawyers (FIDA) in Kampala-Uganda.

Background of 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. In 1988, FIDA-(U) established its first legal aid clinic in Kampala to provide legal services to indigent women to enable them access justice by providing them with tentative steps that could be taken towards addressing structural causes of marginalization and abuse. In 2007, FIDA with the support of the Ford Foundation undertook an Organisational Development evaluation to reinvigorate itself, recapture the passion, authority, creativity, commitment, credibility and reputation as a premier women human rights organization.

FIDA (U) provides legal aid to persons affected with HIV/AIDS and has also expanded its programme areas to include research and advocacy, networking and capacity building and information, education and documentation programmes in addition to the access to justice programme.

The researcher carried out this study to identify the loopholes in the issues pertaining to domestic violence with an aim of providing possible amendments that can be fit into the existing laws as a way of uplifting the position of women in the society. The researcher also had an intention of sensitizing women through the study on domestic violence and gender related disparities to enable them exercise more of their rights.

Background of the Study

When most sub-Saharan African countries became independent in the 1960s, the majority of African citizens were resolving their disputes using traditional and informal justice forums. Despite their popularity, these forums 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 disputes have remained as widespread as ever. (Banenya, 2002). Individuals, whether rich or poor, should be able to freely exercise their right to seek redress in a formal court of law. The choice must rest with the parties. The aim in providing assistance to traditional and informal justice systems should be to encourage satisfactory alternatives that offer more appropriate solutions, not to promote a substitute to formal courts for the poor.

According to Baseline Study on Local Council Court (1998) stated that Uganda's view of gender relations and legal rights vary and countrywide women have grown wings and that women's rights have become excessive and thus a need to scale them down. Similarly Banenya (2002 p.17) states that where women are in support of the gender movement, men see it as a threat to their natural position in society and therefore poses a threat to the institution of marriage. According to UPPAP (2002), when women are supported by their husbands to do business and they become successful, they instead end up despising their husbands and undermine them. This paves way for domestic violence when men fight to defend their positions as heads of families.

Domestic violence deprives women of their ability to achieve their full potential by threatening their safety, freedom and autonomy and thus the formulation of laws is an important instrument in countering this threat¹ but it is not enough to eliminate gender-based violence or to ensure its general acceptability, even among women in Uganda. But a multiple strategies and approaches are needed that recognize the differing interests, lived realities and contradictions among women of different class, religious and cultural backgrounds to find ways to express proposed changes in language and practices that better approximate women's lived realities and experiences.

The physical integrity of Ugandan women is poorly protected, violence against women is widespread and women in the country have suffered domestic violence at the hands of their partners. Domestic violence has a wide social acceptance, even by women and rape is also very common in Uganda where in most sexual violence cases, the victim's husband or partner is the perpetrator reflecting a widely held belief that spousal rape is a husband's prerogative. For

¹ Takyiwaa Manuh. African women and domestic violence Third World Resurgence No. 207/208, November/December 2007

example, in a number of countries in Africa and Asia, wife beating is not considered a crime under the formal law.² This is contrary to the Constitution of the Republic of Uganda (1995) which holds that "... Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited"³, and also with the Domestic Violence Act⁴ in regard to the consent of the victim, where it is stipulated that consent of the victim shall not be a defense to a charge of domestic violence. This implies that regardless of whether the victim has consented, the law will still take its course.

According to World Bank (2001), the centrality of addressing gender relations in poverty reduction and development in Africa is being increasingly recognized. According to the World Bank policy research report, it is confirmed that gender-based inequality limits economic growth in Africa, and that it is essential for Africa to unleash the enormous productive potential of its women if it is to make impressive strides toward pro-poor growth.

Roots of domestic violence

Domestic violence is⁵ the physical or mental assault of one member of the family by another member, which encompasses violence against women, child abuse be it physical, psychological or sexual, abuse or neglect of elderly and abuse of parent by children. World Health Organization⁶ defines Domestic Violence as the range of sexually, psychologically and

² *The Guardian*, 14 August 1999, p.17 Beating a woman 'no crime in many countries',".

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

⁴ (2010) Section 5

⁵ Stiftung Nasemann Friedrich (1995), Eliminating Discrimination against Women; Constitutional Rights Project Abuja.

⁶ OMCT Gera Deininger, Klaus (2001), "Household Level Determinants of Change in Welfare and Poverty: The Case of Uganda 1992- 2000, World Bank, January.

physically coercive acts used against adult and adolescent women by current or former male intimate partners.

According to the Domestic Violence Act, domestic violence⁷ constitutes any act or omission of a perpetrator, which may harm, injure or endanger the health, safety, life, limb or well-being be it mental or physical of the victim or includes causing physical, sexual, emotional, verbal, psychological and economic abuses.

Domestic violence or intimate violence is the best manifestation of the imbalances in power between men and women in our society. It is an expression of gender politics and the best illustration of the feminist slogan political. In order to understand the why and how of this phenomenon we must uncover the patriarchal notions that create, propel and perpetuate the power imbalances in Uganda gender relations. Patriarchal ideology is so prevalent that it permits almost every aspect of our lives, the way in which patriarchal infiltrates our lives and not always blatant and obvious but in very subtle and muted ways and it is a characteristic that sustains and perpetuates gender hierarchy in our society. The preamble to Declaration on the Elimination of Violence against Women (DEVAW) identifies the roots of violence against women and satisfies that these are basically true; the historical unequal power relations between men and women which have led to domination over and discrimination against women by men and to the prevention of full advancement of women. It is a crucial social mechanism by which women are forced into a subordinate position compared with men.

⁷ Domestic Violence Act (2010) Section 3

Gender relations

The patriarchal ideological system creates and upholds men's privileges by according them power over women, this is true in the public political arena as well as the private domestic one. Patriarchal in our society means the laws, cultures and norms that govern our lives (all Ugandans) reflect interests of the power holders in our society that is the men. Muscrinity defines the term of political social and economic theory and practice. Patriarchal is therefore a whole culture whose driving ethos is an embodiment of patriarchal ideas and practices even within the family context; the head of the household is the father-man. Thus men rule women in our society and are considered superior to them.

Society supports the low status of women by either not valuing or undermining their work. Most of the tasks that women perform in the context of Uganda as elsewhere in Africa include unremunerated house work, child bearing and rearing, food preparation, small scale farming as well as household level production of both food and goods for the market. It is important therefore to note that the unequal balance of power between men and women that is institutionalized by patriarchal ideologies in our communities lies at the core of domestic violence. Domestic violence is seen in a social context encouraging the subordination of women.

Socialization

This can be defined as a process whereby individuals (we) are indoctrinated into a particular belief system of what is appropriate feminine behaviour for women and appropriate masculine behaviour for men. This medium in turn creates and sustains gender differences. Socialization per se would not be problematic but the problem lies in the fact that one gender is accorded more value and privilege than the other.

Cultural values in our society like anywhere else in Africa emphasize the autonomy of the family, making others to avoid intervening in violent situations. Patriarchal values also support women inferiority within intimate relationships with the male usually being the dominant family member holding the most decision-making power. Domestic violence is tolerated as a male right to control those who are considered inferior.

Structural and institutional factors

Comprehensive studies on gender violence indicate that domestic violence is a structural rather than causal problem. It is the structure of the family that leads to and legitimizes the acts, emotions or phenomenon that are identified as the 'causes' of domestic violence under the causal analysis. The family structure is one that is narrowed and tolerates male violence as one of the instruments in the perpetuation of this power imbalance. The dependant state of a wife legitimizes the husband's assumption of authority and thus leading to the prolonged violence that she faces in her marriage. Men relish such power and women internalize their own inferiority and dependence. Domestic violence is the most efficient way of maintaining the status quo, in other words it is the best tool available to men to keep women in their place and to deny them any means of realizing their power and potential. This serves as power and control wheel that men use to gain power and control over their female victims.

The World Health Organization⁸ defines Domestic Violence as the range of sexually, psychologically and physically coercive acts used against adult and adolescent women by current or former male intimate partners. Similarly, Benninger (2000) refers domestic violence to

⁸ OMCT Gera Deininger, Klaus (2001), "Household Level Determinants of Change in Welfare and Poverty: The Case of Uganda 1992-2000", World Bank, January.

women-battering. FIDA Uganda (1996) relates domestic violence to that act of violence in the home between parties in intimate relationships that results or is likely to result into physical, sexual, psychological harm or suffering to the victim, including threats of such acts, coercion and arbitrary deprivation of liberty to the victim.

According to Stiftung Nasmann Friedrich (1995)⁹, domestic violence is the physical or mental assault of one member of the family by another member which encompasses violence against women, child abuse be it physical, psychological or sexual abuse or neglect of elderly parents or of children against their parents. **Article 1 of the United Nations Declaration on Elimination of Violence against Women**¹⁰ defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, psychological or sexual harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.

This definition identifies three major forms of domestic violence, namely physical, sexual and psychological which may occur to a particular person. It may be done to a mother, father, or even child.

Physical violence

This takes a form of slapping, fist hitting, kicking or assault with a weapon. It also includes refusal to attend to a spouse or child when ill, threats of physical violence and refusal to provide

⁹ Eliminating Discrimination against Women; constitutional Rights Project Abuja

¹⁰ United Nation, resolution 48/104 of 20th December 1993

food and other necessities. Some of the effects are death or maiming of the victim, humiliation, loss of self-esteem and embarrassment.¹¹

Emotional or Psychological violence

This type of domestic violence includes humiliation of the spouse in private or public. It includes preventing the female spouse from being gainfully employed. Some times it takes form of controlling the female spouse's income or even taking away her voter's card after realizing that she is not going to vote for a candidate of her partner's choice in an election. It also includes threats to hurt the female or her children or family. Effects of emotional violence include trauma, anger, anxiety, complicated ailments, shock, self doubt, guilt and retaliation on other members of the family like step children.

Sexual violence

This type of violence includes fits of jealousy; name calling with reference to a woman's sexuality as for instance "Malaya" (prostitute) or "frigid", or withholding of sex and affection and forced sex. Some of the effects of sexual violence are trauma and the risk of exposure to sexually transmitted diseases through refusal to practice safer sex methods. It extends to male's control over female spouse's reproductive capacity, for instance, depriving her of the liberty to determine whether to have children or not and the number.

The modern trend of emancipation of women brought about equality of men and women which equality is unacceptable to the men; given their position in traditional society this normally results into circumstances such as domestic violence and separation of which the resultant effect

¹¹ The National Association of Women Judges (NAWJ) (U), Guide on Domestic Violence in Uganda, 1996, pg.4

rests entirely on the children. In Uganda statutory law is applied alongside customary and religious laws. While the Constitution of the Republic of Uganda 1995 provides for equal rights between men and women¹² and holds laws and customs that violate the constitutional guarantees on equality to be void¹³, discriminatory statutory, customary and religious laws still remain in force paving way for domestic violence. It is upon this background that the study examined the applicability of the laws governing domestic violence and gender relations in Uganda particularly with FIDA Uganda organization.

.3 Statement of the Problem

There has been no specific law in place prohibiting domestic violence in Uganda instead a draft domestic violence bill has been languishing over the years in parliament. Although several laws have been enacted to improve the situation of women, their implementation has been hindered by traditions and deeply entrenched patriarchal attitudes, especially in rural areas, but currently with the Domestic Violence Act in place, it is expected that the problem of domestic violence will be curbed.

It is imperative to state that, most women are abused in front and behind the rails and do not report such cases of domestic violence to authorities and police rarely intervene or investigate because many law enforcement officials consider spousal battery a husband's prerogative. This brings about women's reluctance to file complaints due to a fear of reprisal, embarrassment, poverty, lack of information on where to report all of which are a result of ignorance of the law, which law is far fetched because it is drawn from various instruments such as Draft Marriage and

¹² Article 33 of the Constitution of the Republic of Uganda (1995)
¹³ (1995) Constitution of the Republic of Uganda - Article 33 (6)

Divorce Bill, Female Genital Mutilation Bill and thus not clear to those that would wish to apply it. This has escalated the problem of domestic violence upon which the researcher intends to carry out the research and to propose ways that can be included in the bill to come up with a comprehensive law on domestic violence and gender relations in contemporary Uganda.

.4 General Objective of the Study

The ultimate objective of the study was to examine domestic violence and gender relations in contemporary Uganda in relation to the existing gender laws.

.5 Specific Objectives

The specific objectives of the study were;

To examine the circumstances which give rise to domestic violence and the direction of gender relations through assessing the legalities considered to resolve issues of domestic violence and gender disparities in FIDA Uganda as supported by the law.

To establish loopholes in the laws protecting against domestic violence and gender disparities in order to identify circumstances under which the law can be revised.

To establish possible interventions which can be relied upon in the revision of the law in order to come up with more comprehensive and specific laws on gender relations and domestic violence.

Research Questions

What are the circumstances that lead to domestic violence and gender disparities and how effective has the law been supportive to the position of the woman?

What are the loopholes in the laws protecting against domestic violence and gender disparities?

What are the possible interventions that can be relied upon in drawing up of more comprehensive laws to solve domestic violence problems and gender disparities issues?

Scope of the Study

The study focused on a period between 1995 to 2009 and it was limited to circumstances that lead to domestic violence and gender related disparities to establish the loopholes embedded in the laws that govern domestic violence and gender issues in order to propose ways that can be fed into the bill to come up with comprehensive laws which can solve domestic violence problems and gender disparities issues. The study was carried out in FIDA, Kampala District.

8 Definition of Key Terms

Gender

This refers to socially and culturally defined roles, attributes, and privileges of females and males. There exist biological differences between women and men but different societies in the world interpret and engineer the innate (God-made) differences into a set of social expectations about behaviors, activities, rights, power, and resources they have. The differences in activities of women and men often change with time, space or technology but there are also interesting similarities for instance caring for the young within a family is almost universally a female role and that of national defense is predominantly for men.

Gender Roles

This involves allocation of certain tasks predominantly to women and others to men, although both may do some. The roles are differently evaluated and rewarded. Gender roles unlike sex roles are not universal but are socially constructed and change with time and situations.

Domestic violence

This is a wide spread practice that goes on in homes and can result into assault, mental torture and even murder and takes the form of physical, sexual and psychological affliction. It involves a violation of trust where by the victims are affected by their most trusted partners in a relationship i.e. spouses or lovers.

Gender Relations

These are the social relations between women and men that depend on the roles ascribed to them by society. These relations are expressed in different ways, places and times. For example, the patriarchal ideological system creates and upholds men's privileges by according them power over women, this is true in the public political arena as well as the private domestic one.

9 Hypothesis

The Constitution of Uganda includes anti-discriminatory provisions and condemns any custom that contradicts human rights and yet discrimination against women is rife and the situation of Ugandan women is also aggravated by deeply rooted patriarchal tradition and years of armed conflict. The government has enacted new laws to improve the situation of women, but their implementation has been obstructed by s reticent communities.

0 Literature Review

The past two decades have witnessed heightened activity by women's organizations and movements in several African countries to promote women's rights by redressing a range of discriminatory practices against women and unequal gender relations in public and domestic life, which work to prevent women from exercising their full rights as citizens. In Africa women activists have been emboldened by these developments to push states as far apart as Mauritania and Rwanda to enact legislation addressing gender-based violence.

Uganda has also attempted to pass domestic-violence laws however, the experience has been disparate. The Domestic Relations Bill was tabled in December 2003, containing a host of provisions to deal with discriminatory laws and practices in marriage, divorce, inheritance, property ownership, and violence and equality within marriage and the family but was shelved in 2005 after it came under attack when it generated massive controversy from both legal and parliamentary affairs committee members as well as the public who describe the Bill as a coup against family decency. In 2006, the bill was declared as not urgently needed by the President and debate was halted only to regain momentum in 2008 through an initiative by the Club of Madrid to support women leaders in four African countries of which Uganda was part. However, the bill was recently passed in April 2010 to form the Domestic Violence Act.

Women and children are often in great danger in the place where they should be safest: within their families. For many, 'home' is where they face a regime of terror and violence at the hands of somebody close to them, somebody they should be able to trust. Those victimized suffer physically and psychologically. They are unable to make their own decisions, voice their own

opinions or protect themselves and their children for fear of further repercussions. Their human rights are denied and their lives are stolen from them by the ever-present threat of violence.¹⁴

Domestic violence is not a strange phenomenon to the society of Uganda, for there are laws dealing with aspects of assault and battery. On the other hand, there are a growing numbers of incidents of domestic violence, the media reports cases of battered wives and slain husbands daily and hospitals receive many wounded spouses who do not wish to return to the domestic arena and the church pastorate finds many cases of marital disputes that require their intervention.

Violence against women and girls continues to be a global epidemic that kills, tortures, and maims physically, psychologically, sexually and economically. It is one of the most pervasive of human rights violations, denying women and girls equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms. Violence against women is present in every country, cutting across boundaries of culture, class, education, income, ethnicity and age. Even though most societies prescribe violence against women, the reality is that violations against women's human rights are often sanctioned under the garb of cultural practices and norms, or through misinterpretation of religious tenets. Moreover, when the violation takes place within the home, as is very often the case, the abuse is effectively condoned by the tacit silence and the passivity displayed by the state and the law-enforcing machinery (UNICEF, 2000).

¹⁴ UNICEF (2000), *Domestic Violence Against Women and Girls*, Readers Digest, Florence Italy.

Violations of women's rights escalate the rate of HIV infections throughout the continent. Sexual oppression combined with a high biological receptiveness of viral transmission, put women at risk contrary to the provision of **Clause 39, Section 1 of the HIV/AIDS Prevention and Control Bill** which states that 'A person who intentionally transmits or attempts to transmit HIV and AIDS to another person commits an offence of intentional transmission of HIV and AIDS and shall be liable, on conviction, to 10 years imprisonment or a fine not exceeding 50 currency points (sh1m) or both'.

The women of the Sabiny tribe are subjected to female genital mutilation although there is no law prohibiting the practice, but the local authorities issued a decree denouncing the custom.¹⁵ Additionally, women's civil liberties are restricted in and their freedom of movement is curtailed by the need to have a written consent of their husbands before obtaining a passport or traveling outside the country contrary to **Article 21 (2)** of the Constitution which stipulates that¹⁶ "... a person shall not be discriminated against on the ground of sex..."

In regard to gender relations, the Constitution of the Republic of Uganda upholds women's rights to have access to property other than land. Theoretically, women are free to administer their property without their husbands' consent. This is another area in which customary laws prevent women from exercising their rights. Access to bank loans is also difficult for women in Uganda. Discriminatory practices that prevent women from accessing land are a major obstacle as most commercial banks will not approve loans unless women hold title deeds as a guarantee and yet

¹⁵ (2004) World Health Organisation: Fighting Female Genital Mutilation in Africa

¹⁶ (1995) Constitution of the Republic of Uganda Article 21 (2)

several Non Government Organisations (NGOs) operate micro-credit programmes that specifically target women.¹⁷

Worth noting is the Ugandan women's ownership rights which has remained extremely limited and access to land is governed by customary laws but in theory, women have access to land and the decision-making powers are typically granted to men and most female landowners have no power to administer their land holdings. Traditional practices persist despite the government's recent adoption of a new land law designed to improve women's access to land and grant them the right to manage their property.¹⁸

In regard to custody of children, although the Status of Children Act 1996 provides that both parents are responsible for supporting children, under customary law men have sole parental authority. A draft marriage and divorce law was presented to Parliament at the end of 2009. The draft law grants women the right to divorce spouses for cruelty, the right to choose their spouse and prohibits the practice of levirate. It also provides for equal division of property and finances in the event of divorce. However, the draft does not prohibit polygamy nor does it prohibit the "bride price" but only provides for it to be non-refundable.

A key constraint on businesses headed by women is the difficulty they face accessing finance. Banks often require land as collateral, but as a result of land allocation practices that favor men, women hold only 7 percent of registered land in Uganda. Non-land securities law and practice is

¹⁷ CEDAW (2000), Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Uganda, Third Periodic Report of States Parties, CEDAW/C/UGA/3, CEDAW, New York, NY

¹⁸

undeveloped in Uganda, particularly for micro and small businesses that are not registered as companies. The lack of credit information (such as that provided by a credit reference bureau) means that the excellent repayment rates by women in the microfinance system are not recognized (Stiftung, 1995).

When it comes to issues pertaining to education in Uganda, girls and boys have equal access to education in law, and they are represented almost equally in lower grades; However according to World Bank (2006), the proportion of girls in higher school grades remains low, partly due to the fact that families traditionally favor boys when financially supporting their education. Parents' inability to afford schooling correlates highly with the occurrence of child labor in rural areas. According to estimates in 2007, only 66 percent of females are literate compared with 82 percent of males. The drop-out rate of girls is higher due to other factors e.g. access to sanitary facilities, school-feeding, etc.

World Bank (2006), further states that, although there are no laws preventing women from owning land in Uganda, the custom of male inheritance has resulted in the vast majority of women being excluded from land ownership. Whilst women do most of the agricultural work, it is estimated that they own only 7 percent of agricultural land. To counter this trend and curb the widespread dispossession of wives and widows, activists have campaigned for reforms to Uganda's property laws to provide for spouses to be deemed co-owners of "family land," ie. Land on which the married couple lives and depends. Obstacles to access to justice Ugandan women do not have adequate access to justice to claim, in particular as a result of inadequate

information on their rights and laws protecting them, social pressure, cost of procedure and lack of training of law enforcement personnel trained on women's rights.

According to Tekle, T. (2002), land is the most important resource in Uganda because people depend on it for cultivation and therefore their livelihoods. In Uganda, as elsewhere in the world, unequal access to land is one of the most important forms of economic inequality between men and women and has consequences for women as social and political actors. This is true because even women who want to get into business need land as collateral to obtain bank loans which makes them completely dependent on men to access land and for the case of those that are childless, single, widowed, disabled, separated/divorced, or with only female children often have little or no recourse because they may have no access to land through a male relative.

Land allocation practices operate as a fundamental constraint to women entrepreneurs, affecting not only their access to credit but also their ability to find business premises. Formal succession laws give women inheritance rights over land, but customary patrilineal practices coupled with the inability of many women to assert their legal rights, mean that formal legal provisions are rarely adhered to. Only about 15 percent of land is actively registered in Uganda, and it is rare for women to be registered as owners or for their rights to be noted on the register.¹⁹

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

¹⁹ Tekle, T. (2002). Women's Access to Land and Property Rights in Eritrea. Towards Good Practice: Women's Land and Property Rights in Situations of Conflict and Reconstruction.

— 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 (Deininger,2001).

Fish processing and textiles and garments are among the sectors selected by the Government of Uganda as strategic exports. More than 30 percent of workers in fish factories are women, and women make up the vast majority of workers in garment factories. Improving working conditions for women would help increase output in these critical sectors. Uganda's labor laws date from colonial times. They fail to address key issues for women workers, including discrimination, sexual harassment, and maternity leave and pay. Standards that are in place are not effectively enforced. Transparent and well-enforced labor standards would benefit both workers and investors (Deininger,2001).

Stiftung (1995) notes that, women lack information about their legal rights and access to mechanisms to enforce them. Reliance on the Local Council Court system to resolve commercial disputes puts women at a particular disadvantage because of traditional attitudes and the application of customary law.

Significance of the Study

It is expected that if the study is carried out, it will contribute considerable awareness on issues of domestic violence and gender disparities to identify the loopholes in the proposed Domestic Bill by providing useful information to the Family Court, Ministry of Gender and to concerned national and International bodies/organizations on issues pertaining to gender.

The study is expected to effectively contribute towards improvement on the law governing domestic violence and gender related issues to attain considerable treatment for women. It will be a way forward to provide appropriate immediate solutions to domestic violence and gender biases in order to put women in a better position to exercise more of their rights.

The study if accomplished will provide a foundation for further research for those who shall so wish, which will help in narrowing down the existing gender gaps.

The study is expected to be of significance to the researcher in fulfillment for the requirements for award of a Bachelors of Laws.

Research Methodology

The study employed a descriptive research design in which both the qualitative and quantitative aspects were observed. In order to achieve the objectives of this study, the researcher administered interviews as her research instruments and both structured and non-structured interviews were relied upon to gather information on topical issues while collecting primary data. Through quantitative design the researcher relied on primary sources through application of interviews, which were administered to a sample of 20 respondents who were purposively selected. The method was purposely relied upon due to its ability to provide a range of data during interactions from which answers could instantly be provided without respondents having to think twice about what giving their opinions although method was disadvantageous because due to generalized deductions.

Qualitative research was relied upon in data collection because it was much more subjective. The method allows for researchers to introduce their own bias to help in forming a complete picture. Its advantage is that in situations where it is unclear what exactly is being looked for in a study, the researcher can determine which data is important and what is not. In qualitative research the focus of the study is more apparent as time progresses than quantitative research, which generally knows exactly what it is looking for before the research begins. However, the method also has its disadvantages of presenting data which is much less concrete than pure numbers as data but instead, may yield stories, or pictures, or descriptions of feelings and emotions. The interpretations given by research subjects are given weight in qualitative research, so there is no seeking to limit their bias. At the same time, researcher tends to become more emotionally attached to qualitative research, and so their own bias may also play heavily into the results.

The researcher also, relied on use of secondary data, which was viewed from various journals, textbooks, statutes, newspapers, internet and other written or relative material for qualification and interpretation of results. These were reviewed from the Law Development Center, Kampala International University Libraries, FIDA, NAWOU, UWONET and also the Police Desk (Family Unit).

However, the tools used were all intended to minimize biases in the findings of the study, so ideally they aided in collection of data.

CHAPTER TWO

THE LAW AND DOMESTIC VIOLENCE WITH DISPARITIES IN GENDER RELATIONS

Legal Duty on Gender Disparities and Domestic Violence

This chapter covers an examination of the laws, instruments as well as regulations of gender related issues and domestic violence in Uganda with intention to analyze the applicability and effectiveness of the laws governing gender related issues and domestic violence to improve the lives of women.

In Practice; Although several laws have recently been enacted to improve the situation of women, their implementation is hindered by traditions and deeply entrenched patriarchal attitudes, especially in rural areas. Years of armed conflict in the northern parts of the country have also contributed to massive violations of women's human rights. Statistics from the Uganda Law and Reform Commission, reports 78 per cent of women to have experienced some form of domestic abuse and that the Domestic Relations Act has been enacted to protect victims in the private sphere through enforcing the punishment of perpetrators of domestic violence and providing guidelines for courts to follow with regards the protection and compensation of victims of domestic violence.²⁰

The Right to Equality and Non Discrimination

The effectiveness of the laws and policies governing gender related issues as well domestic violence are examined below;

²⁰ Carter (2009), Uganda Gender Laws Gain Support, Uganda Law and Reform Commission. Thursday November 2009

~~In the 1995 Constitution of the Republic of Uganda Chapter 4 Article 20 (1) on the~~
fundamental human rights and freedoms it is stipulated that, fundamental rights and freedoms of
the individual are inherent and not granted by the State. And **Section (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 being part of the individuals/ groups are entitled to the enjoyment of these freedoms just
like any other individual or group.

The same constitution grants them the right to equality and freedom of discrimination under
Article 21 Section (1) where it stipulates 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. **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, or social or economic standing, political opinion or disability and **Article**
21 (3) stipulates that for the purposes of this article, "discriminate" means to give different
treatment to different persons attributable only or mainly to their respective descriptions by sex,
race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political
opinion or disability.

The purpose of this law is to protect all persons from segregations that might come up as a result
of differences in political opinions, educational levels, ethnicity, gender, colour or otherwise.
Implying that all persons despite their status are equal before the law and thus none should be
given preferential treatment or benefit upon the other.

Article 26, Section (1) of the Constitution stipulates that, "every person has a right to own property either individually or in association with others and (2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied and **Article 26 Section 2 (a) (i)** accords prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; This law gives each and every person an entitlement to own property either individually or as a group and if deprived of such possession, adequate compensation should be provided.

Convention on the Elimination of All Forms of Discrimination against Women 1985 (CEDAW)

CEDAW 1985 Article 18 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 the reproductive rights of women are affirmed.

In 1992, the **Committee on the 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

*"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."*²¹

The Committee made recommendations on measures states should take to provide effective protection of women against violence, including:

²¹ World Health Organization (1996) 'Violence Against Women'. Consultation, Geneva: WHO.

- (1) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- (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.

The purpose of this law is to put a legal force on countries to ensure that countries pursue legal measures to protect women against violence. The convention further acknowledges culture as an influential aspect in shaping gender roles and family relations and thus countries that have signed or ratified the convention are legally bounded. The convention defines what constitutes discrimination against women and sets up an agenda for national action to end it. Under this stipulation the convention provides the basis for realization of equality between women and men through ensuring women's equal access to and equal opportunities in political and public, education, health and employment.

The Right to Property Ownership

The Land Act gives some protection to spouses, requiring their consent before family land can be sold or mortgaged. Whether the act is enforced is in some doubt. Formal succession laws give women inheritance rights over land, but customary patrilineal practices (and the inability of many women to assert their legal rights) mean that formal legal provisions are rarely adhered to. However, land allocation practices operate as a fundamental constraint to women entrepreneurs, affecting not only their access to credit but also their ability to find business premises. Only

about 15 percent of land is actively registered in Uganda, and it is rare for women to be registered as owners or for their rights to be noted on the register.

Weakness of the Supportive Laws

1 Discrimination and Violence Persist

In Uganda statutory law is applied alongside customary and religious laws. While the **Constitution of 1995** provides for equal rights between men and women²² and holds laws and customs that violate the constitutional guarantees on equality to be void²³ discriminatory statutory, customary and religious laws remain in force.

Article 21 (3)²⁴ stipulates that for the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.

The purpose of this law is to accord equal or same treatment to all despite ones status or beliefs, and thus all people should be treated the same way. But despite the provisions of this law, discriminatory practices still prevail in Uganda as assessed from the legal forces governing gender related issues.

In Uganda discriminatory statutory laws include that of:

Property: According to the Succession Act, property is apportioned among the deceased's family members according to fixed proportions and widows stand to inherit 15%. If there is more than

²² Article 33

²³ Article 33 Section 6

²⁴ (1995) The Constitution of the Republic of Uganda.

one wife, the property is shared. Under **Section 27 of the Succession Act**, girls cannot inherit their father's property. FIDA-U and other women's rights organizations successfully petitioned the Constitutional Court to declare this provision unconstitutional, however, the Attorney General has yet to reform the Succession Act to address this issue.²⁵

Marriage and divorce: Although under statutory law, the minimum legal age of marriage is 18 years for both men and women, according to customary law marriages are frequently arranged for minors, especially in rural areas. In 2004, it was estimated that 32% of girls between 15 and 19 years of age were married, divorced or widowed. Polygamy is authorized under customary and Islamic law and women in polygamous relationships have no protection in the event of dissolution of the union. In some ethnic groups, custom also provides for men to "inherit" the widows of their deceased brothers (levirat).

This shows the inconsistencies and contradictions in the existing laws. Grounds of discrimination are seen to prevail, when girls are married off at an early age as below as 15 years, and also when men are seen as customary heirs, such disparities breed conflicts and use of violence.

Custody of children: Although the **Status of Children Act 1996** provides that both parents are responsible for supporting children, under customary law men have sole parental authority. A draft marriage and divorce law was presented to Parliament at the end of 2009. The draft law grants women the right to divorce spouses for cruelty, the right to choose their spouse and prohibits the practice of levirat. It also provides for equal division of property and finances in the event of divorce.

²⁵ AFROL, Gender profile. www.afrol.com

However, the draft does not prohibit polygamy nor does it prohibit the “bride price” but only provides for it to be non-refundable. The proposed law would govern Christian, Hindu, and traditional marriages but not Muslim marriages.

Thus many women in Uganda where an estimated 12% of the population are Muslims would be excluded from its application. Property: According to customary law, women do not have the right to own or inherit property.²⁶ This is lack of uniformity in the laws which implies that, equal justice cannot be given to women in the same situation who are not muslims.

Female Genital Mutilation; (FGM) As a “traditional practice prejudicial to the health of children”, governments now have to take measures to abolish FGM in accordance with their obligations under the Convention on the **Rights of the Child Article 24 Section 3**. While legislation to address FGM is important, cooperation at the community level is essential to the process of FGM eradication. The most successful campaigns of recent years have had their roots very firmly in the villages and communities where FGM is traditionally practiced.

FGM is recognized internationally as a violation of the human rights of girls and women. It reflects deep –rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children. The practice also violates a person’s rights to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death.²⁷

²⁶ Wikigender, www.wikigender.org.

²⁷ WHO, Fact Sheet No 241, February 2010, WHO Media Center, MediaInquiries@WHO.Int

In Uganda practices of discrimination and violence on the women are widely being practiced. This doctrine is related to the concept of equality and equal protection. If it can be shown that law enforcement discriminates against the victims in cases involving violence against women, then the State may be held liable for violating international human rights standards of equality. **The Convention on the Elimination of All Forms of Discrimination Against Women, in Article 2,** requires State parties to “pursue by all appropriate means and without delay a policy of eliminating discrimination against women”, which includes the duty to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation” and “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.

Despite the constitutional demands on cruelty, where in respect for human dignity and protection from inhuman treatment, Chapter 4 Article 24, demands that, “No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment” There is widespread violence against women in Uganda and perpetrators benefit from generalized impunity, in part due to widespread social attitudes condoning such violence.

However the recently enacted law²⁸ has provided for control of cruelty, by prohibiting domestic violence under Section 4 and providing for penalties and compensatory damages as shall be guided by the principles in the Second Schedule of the same Act.

²⁸ Domestic Violence Act (2010) Part II Section 4 (1) (2) (3) (4)

According to **Article 30** of the Constitution of the Republic of Uganda, girls and boys have equal access to education in law. It stipulates that, "All persons have a right to education." The purpose of this law is to accord equal education opportunities to all children with disregard to gender.

In Uganda, the girls and boys are given equal opportunity through Universal Education and they are represented almost equally in lower grades; however, the proportion of girls in higher school grades remains low, partly due to the fact that families traditionally favor boys when financially supporting their education. Parents' inability to afford schooling correlates highly with the occurrence of child labor in rural areas. According to estimates in 2007, only 66 percent of females are literate compared with 82 percent of males. The drop-out rate of girls is higher due to other factors for instance access to sanitary facilities, school-feeding, among others.²⁹

However, according to customary law, when a family's resources become limited, first priority is given to the boys to go to school and girls are withdrawn. This preference is derived from the fact that, when a girl grows up she marries and joins another clan or family, unlike the boys who extend the family lineage. This preferential treatment also contradicts with Article 21 of the Constitution of Uganda.

Article 33 Clause (1) of the Constitution of Uganda states that, "women shall be accorded full and equal dignity of the person with men"

This law accords equal treatment and dignity to both men and women, and thus gives equal opportunities to all.

²⁹ UNICEF, *Domestic Violence Against Women and Girls*, Readers Digest, Florence Italy, 2000.

Customarily there are obstacles to access to property; although there are no laws preventing women from owning land in Uganda, the custom of male inheritance has resulted in the vast majority of women being excluded from land ownership. Whilst women do most of the agricultural work, it is estimated that they own only 7% of agricultural land. To counter this trend and curb the widespread dispossession of wives and widows, activists have campaigned for reforms to Uganda's property laws to provide for spouses to be deemed co-owners of "family land," that is to say land on which the married couple lives and depends.

It was noted that there are obstacles to accessing justice by the women. According to FIDA staff member, she emphasized that Ugandan women do not have adequate access to justice to claim, in particular as a result of inadequate information on their rights and laws protecting them, social pressure, cost of procedure and lack of training of law enforcement personnel trained on women's rights. This is contrary to the provision of the Constitution of the Republic of Uganda (1995)³⁰

The law perpetuates the inferior status of women as seen in **Uganda Women Lawyers Association and 5 others v Attorney General**³¹ and in **Unity Dow v Attorney General of Botswana**³² in equal protection to all persons irrespective of sex.

Section 154 of the Penal Code Act is discriminatory against women on grounds of sex and it is inconsistent with articles 21(1) (2) and 31(1)(b) of the Constitution. Therefore court in making the declarations should modify the impugned provisions by providing the same punishment for married men and married women instead of striking it out.

³⁰ Article 21 (3)

³¹ Constitutional Petition No.2/03

³² [1991] 1 L.L.R.(Constitutional) 623&[1992] Appeal 574

Article 2 of the Constitution governs the supremacy of the Constitution. It provides as follows:

“(1) This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that law or custom shall, to the extent of the inconsistency, be void”.

The provisions of this article are clear. Any law or custom that is inconsistent with any of the provisions of the Constitution is void to the extent of the inconsistency.

The Children Act

In regard to custody of children, although the Status of Children Act 1996 provides that both parents are responsible for supporting children, under customary law men have sole parental authority.

Domestic violence being a gender sensitive issue has always been ignored, the definition of rape under **S.123 of Penal code Act³³**, is male construed and centered on the issue of lack of consent and penile/ virginal penetration. In examining the presence or absence of consent, the court appears to pay more attention not to whether the victim had consented but rather whether the perpetrator thought the victim had consented. This slants the course of the process distinctly in favour of the accused the defense of mistaken belief that is available to the accused also favours men.

Whether an act is considered to be rape often varies according to the nature of relationship, for example rape is legal when it comes to husband and wife. In addition to this, it is generally much

³³ Cap 120 laws of Uganda

harder to prove that the act was non consensual when the person accused of rape was known to the victim. This finding is ironic in light of the fact that men who are known to the victims perpetrate most acts of non-consensual sexual violence.

The Evidence Act S.52³⁴ allows a man accused of rape to put up a defense of general immoral character on the part of women in order to impeach her credibility. This is unfair to the rape victim, the woman's past behavior should have no bearing on the conduct of a rape case making such evidence relevant to the case is tantamount to condemning the rape victim of being guilty until she proves her innocence.

The law on Marital rape is silent in that it exempt husbands from the offence of raping his wife this because of the express consent given during marriage yet in reality sex was meant for enjoyment by the spouses to which they must all agree to it, at times a woman might not be ready for sex due to reasons best known for her and yet the husband doesn't understand. The fact that marital rape is hard to prove makes it easier for the violence in such instances to continue. Further police form No.3 has got statutory question that are unfairly asked for example is your hymen ruptured, how long?

However, in view of the Domestic Violence Act, marital rape is covered under sexual abuse, which is provided for under Section 2 to include any conduct of sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of another person.

³⁴ Cap 6 laws of Uganda

Domestic violence as a ground for divorce, the divorce act³⁵ does not provide the definition of cruelty as a ground available to a petition seeking divorce. However case law has established a yardstick to what amounts to cruelty in domestic violence.

The law relating to prostitution has got its own weakness, which contributes to domestic violence. S 138 of the Penal Code Act makes prostitution an illegal practice and yet when it comes to its enforcement its discriminatory in that females are arrested and the male are let to go free. This in a way promoted domestic violence in some instance where you find after engaging in sex the man refuses to pay the woman her dues thereby prompting physical confrontation and on arrest the man bribes his way out leaving the victim condemned because of being a prostitute.

Family law cases in general are no more welcomed by state Judges than they are by the Judiciary. In hierarchy of legal tasks, the nature of the judicial work in domestic violence cases is assigned a lesser status. It is considered less important work, less prestigious often trivial in nature³⁶. However, not weak laws contribute to domestic violence but limitedness to other factors also contributes to the prevalence of this neglected issue, which includes the following.

Marginalization. Women all over the world regardless of their status are marginalized and oppressed. This discrimination and mistreatment is rooted in the historical rating of women as being lower than men in social status. It is aggravated by gender under which women are assigned roles in society, which tend to constrain their participation in public life and hence deprives them of the ability to develop confidence in them. Society as a whole sex tends to domesticate women's lives.

³⁵ Cap 249 laws of Uganda

³⁶ Deborah M Weiss man, Gender Base Violence as Judicial anomaly between" the truly National and the truly local" Para 168

Socialization of Sex roles. Human socialization of the sex roles of men and women enhances the practice of physical violence. Boys grow up seeing their father's batter their mothers and the girls grow up seeing their mothers being battered. Women are expected to be submissive to sexual demands even when unreasonably made. They are expected to tolerate physical abuse within marriage because it is believed to be part of marriage life.

Alcohol consumption; alcohol consumption sometimes results in physical violence against female partners and other women generally. Most men, being physically stronger than women, use this might to batter the women. Drunkenness by itself does not make a man violent. In fact many men become more affectionate when drunk. A man beats his wife when drunk will do it for some reasons mentioned above. When he is sober, he is able to control his anger and frustration, but when he is drunk the real feelings express themselves. This may lead to a child being beaten for minor offences like stealing some money from his father's drawer.

Frustration and anger are also causes of domestic violence. This usually arises due to a feeling of inferiority due to unemployment, being humiliated or badly treated at work and a non successful life. This makes the man feel that he is not strong or competent enough to control the family as he thinks he should be. Most women are economically dependant on their husbands and men take advantage of their control of the women's lack of access to economic resources to inflict emotional violence on them.

Poor communication skills cause domestic violence. Some men have not learnt how to discuss their feelings with their wives. They find it very embarrassing to explain what really happens at work, so they pretend that all is well when it isn't.

Lack of respect for others is also a factor in domestic violence. It is very difficult for anyone to hit someone whom she/he respects. A man who hits his wife often does not hold any basic respect for her as a human being. He treats her simply as a person who will satisfy his needs for a home, children and so on.

Difficulties in adjustment, some men find it difficult to adjust to the changes in society, which gives women the same rights as men; they want to show that they are still more powerful, and so they use physical violence. For example in the job market you find both are equally employed but the woman earns more than the man thereby making the man uncomfortable and for that he then resorts to suppressing the women with violence.

Control of household income, finding has shown that control of household income has triggered domestic violence, this is evident in areas that does well in agricultural produce, mainly crops such as maize, beans, potatoes and cassava, are often grown in excess of the household food consumption requirements and can then be sold, becoming a major source of household income³⁷

Cultural attitudes, in some parts of the country, the violence appears to be entrenched in cultural traditions that do not allow for the concept of a woman's lack of consent to sexual intercourse.

The report noted that under 'akikamuni' or 'atokore', a marital custom in the Karamoja region, if a woman rejects a man, "when you find her you wrestle her and force her into sexual intercourse.

This can happen anywhere, even in a public place. The purpose of the act is to extract consent³⁸."

"The culture here connotes that a woman is there to be ruled and not a partner in marriage," an attorney in Kabale district in southwestern Uganda said.

³⁷ Domestic Violence and gender relation, cap 13 pg.111, Women's property rights, HIV and AIDS, and Domestic Violence

³⁸ Integrated Regional Information Networks (IRIN), 15 July 2008, Poverty, wars and alcohol perpetuate domestic violence

Acute poverty is forcing girls as young as 14 into early marriage and sex work in parts of northern Uganda affected by the war. Contrary to international legal standards that set adulthood at the age of 18, in many areas of northern Uganda girls are considered adult at the age of 16. "Girls are forced into marriage by their families between the ages of 15 and 18 for economic gain, i.e. the bride price," the report said. "Beyond 18, they are in some communities referred to as "oruta" ['used' in the local Acholi language] or "ogek" [wasted]³⁹."

Problem with prosecuting cases of domestic violence was the intimate relationship between the accused and the victims. "*Victims are competent but not compellable witnesses, victims do not want their abusers jailed or to suffer too much,*" one report quotes an ordeal of a police officer who was found in Gulu and narrated to the researchers an incident while he was still working in Moroto. A woman who had been severely beaten by her husband and had sustained serious injuries that rendered her unconscious was admitted in Mataany Hospital. However, as soon as she regained consciousness, she marched straight to the police station and accused the police officers of trying to break up her marriage by locking up her husband.

"She went on to say that she found nothing wrong with her husband having beaten her especially since he was her husband after all! She left the police officers perplexed because at the end of the day she was the would-be principal witness in the case," the report states, adding that the imprisonment or fine does not only affect the abuser -who is usually the breadwinner - but the rest of the family as well⁴⁰

³⁹ Integrated Regional Information Networks (IRIN), 21 July 2008, Poverty driving child sex abuse in the north

⁴⁰ Supra 11

Religiously in the Old Testament book of Judges Chapter 19 a man sacrificing his concubine to be sexually abuse for honor and dignity this was done to avoid being dishonored by homosexual's acts which was an evil and immoral. The fact that Peter in his book said that women are to be submissive to their husband therefore, made man feel superior to women. This meant the Men abused⁴¹ their God given strength to protect women hence the violence. For example the Catholic Church has refused to recognize former Vice Presidents Specioza Kazibwe's divorce.

Dowry issue also perpetrate domestic violence in that whenever disagreement arose in that marriage and the women decides to leave the home where she is being abused, she is forced to refund the bride price which is unrealistic in nature and degrading the status of a woman hence domestic violence.

Practices like FGM which is in human and degrading to women's health are used, this in turn affect the lives of those who undergo through the ordeal thereby violating the rights of women yet every one deserves a decent live without force in to activity that is so degrading. The attitude of judges and judicial officers and their response to domestic violence often frustrates battered women, as the perpetrators are treated leniently.

The state has also failed to take part in the struggle; this explains why domestic violence is still prevalent in our society.

⁴¹ Jacqueline Dorr MM Women seeking Justice cap 17

CHAPTER THREE

PRESENTATION AND DISCUSSION OF THE RESEARCH FINDINGS

.1 Introduction

This chapter describes certain assumptions that have been made about the general nature of domestic violence and gender relations and the fundamental principles that should govern the domestic violence, should there be a review in Uganda. These assumptions were obtained from dialog with advocate officers from different women organizations as well as police in Uganda.

Domestic violence is the physical or mental assault of one member of the family by another member which encompasses violence against women, child abuse be it physical psychological, sexual or neglect of elderly and abuse of parents by children. It is also a range of sexually psychologically, and physically coercive acts used against adults and adolescent women by current or former male intimate partners.

2 The Position of the Women in Regard to Domestic Violence and Gender Laws

According to the legal advocate of FIDA, it is explained that, in Uganda gender disparities and domestic violence have taken place at the workplace and in the domestic arena. This is usually perpetrated by males who are, or who have been, in positions of trust and intimacy and power- husbands, boyfriends, fathers, fathers-in-law, stepfathers, brothers, uncles, sons, or other relatives. However, women can also be violent but their actions account for a small percentage. This is often a cycle of abuse that manifests itself in many forms throughout their lives as a result of differences in gender that render the women powerless and submissive, compared to their

male counterparts. Even at the very beginning of her life, a girl may be the target of sex-selective abortion or female infanticide in cultures where son preference is prevalent. During childhood, violence against girls may include enforced malnutrition, lack of access to medical care and education, incest, female genital mutilation, early marriage, and forced prostitution or bonded labour. Some go on to suffer throughout their adult lives battered, raped and even murdered at the hands of intimate partners due to their vulnerable position.

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 forthcoming study from World Health Organisation (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. For these women, sex is not a matter of choice.⁴² It is widely acknowledged that, even when a woman is aware that her partner has other sexual partners, or is HIV infected, she may not be in a position to insist on condom use or monogamy. Most HIV/AIDS prevention programmes, however, advocate both methods. Many women would feel that any attempt to discuss such measures would provoke yet more violence.⁴³

This implies that while customary law still reigns as the primary determinant of gender related and domestic issues, the effort to curb HIV risk exposure and gender related issues to protect women from violence will still remain fruitless.

⁴² García-Moreno C., and Watts C., Violence against Women its importance for HIV/AIDS prevention. WHO, March 2000

⁴³ García-Moreno C., and Watts C., Violence against Women: its importance for HIV/AIDS prevention. WHO, March 2000

It was further noted from the UWONET advocate that, women in Uganda, especially widows, disproportionately suffer the impacts of AIDS because of their disadvantaged position due to social, cultural factors. Some of the key factors impacted by the disease are food security, self-esteem, income, and assets, like landholdings. Land is mainly lost in land grabbing by relatives of the deceased husband, although other factors, such as distress sale, often come into play. The situation is aggravated by the weak policies and implementation framework for protecting the property rights of women and children. The Ugandan Land Act of 2000, the Succession Act, and the constitution attempt to protect these rights but are inadequate, and are often over-powered by cultural and traditional practices. For example, Article 21 of the Constitution of Republic of Uganda (1995) provides for equality, meaning that all persons are equal before the law. Therefore in cases of inheritance women are also supposed to become heirs to their parents. In practice, this is not done, as women according to culture cannot become heirs to their parent. This implies that with customary law at times is left to serve above the powers of the constitutional provision which should be the sole regulator of laws in Uganda. This is contrary to **Article 2 clause 1.**⁴⁴

FIDA (U) employee commented that, the correlation between domestic violence and women's vulnerability to HIV infection adds considerable impetus to the need for all governments to address seriously and meaningfully domestic violence against women.

To the researcher this implies that, in a country like Uganda devastated by HIV/AIDS, any strategy to combat the pandemic will be compromised. This is true particularly because, programs that attempt to prevent the spread of HIV/AIDS by encouraging abstinence from sex, fidelity, and consistent condom use are a start, but they do not address women's unequal

⁴⁴ (1995) Constitution of the Republic of Uganda.

decision-making power and status within their intimate relationships. Human rights law, which clearly establishes state responsibility to protect women from battery, is a useful tool for holding governments accountable.

According to 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 he had used them for birth control [before testing]. He said, ‘Why bother, we’re already victims.’ . . . There should be a law to stop husbands forcing wives to have sex. I would use the law.”

45

In Uganda the practice of polygamy has exposed women to HIV/AIDS risk and yet on the other hand they cannot say no to unprotected sex. This is common especially with Moslem women in polygamous marriages when coerced into unprotected sex they are exposed to a higher risk of HIV transmission as a result of the man having unprotected sex with multiple partners.

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, this is true particularly if those women have little access to family or local organizations. On the other hand, women’s participation in social networks has been noted as a critical factor in lessening their vulnerability to violence and in their ability to resolve domestic violence. These networks could be informal (family and neighbours) or formal (community organizations, women’s self-help groups, or affiliated to political parties).

This is envisaged by World Bank (2006), on how women’s forms of discrimination compound their vulnerability to HIV, domestic violence, already a leading cause of female injury, deprives

⁴⁵ Lisa W Karanja (2003) Domestic Violence and HIV Infection in Uganda: Violence Against Women, Human Rights Dialogue.

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. This can be traced from a situation in which an HIV- Positive woman said that,

“He used to force me to have sex with him. He would beat and slap me when I refused... The very first time I asked my husband to use a condom because I didn’t want to give birth he said no. He raped me and I got pregnant. I’m still with him because I don’t have a cent. He at least pays the rent” (World Bank, 2006).

Cases of domestic violence are often handled within the community rather than by the police. In most cases this means women are returned home to their partners. Often parish leaders are initially brought in to settle disputes between couples. More serious cases are passed on to sub-county leaders or the district gender officer, who may encourage police involvement.⁴⁶ In view of Malinga observation this implies that women are treated like property, that even when they appeal for help to local leaders they are sent back to their husband’s courts.

According to the 2006 Uganda Law Reform Commission study, domestic violence is most common in northern Uganda, where it was reported to have occurred in 78% of homes. Most women do not report cases of domestic violence to authorities and police rarely intervene or investigate. Often women are reluctant to file a complaint for fear of reprisal, embarrassment, poverty, ignorance of the law or not knowing where to report abuse.

⁴⁶ Joseph Malinga and Liz Ford (2010), Uganda Domestic Violence Bill Stalls, guardian.co.uk Thursday 18th March.

This situation is not different from the investigations carried out by Human Rights Watch, on how in cases of domestic violence, law enforcement officials frequently reinforce the batterers' attempts to control and demean their victims. Even though several countries now have laws that condemn domestic violence, "when committed against a woman in an intimate relationship, these attacks are more often tolerated as the norm than prosecuted as laws...In many places, those who commit domestic violence are prosecuted less vigorously and punished more leniently than perpetrators of similarly violent crimes. Broad concept of human rights that stretches beyond civil and political rights to the core issues of economic survival, health, and education that affect the quality of daily life for most women and children.

It was established that, in Uganda the concept of ownership, in turn, legitimizes control over women's sexuality, which in many law codes has been deemed essential to ensure patrilineal inheritance.

This is in contention with Inter Parliamentary Union Statement on how women's sexuality is tied to the concept of family honour in many societies. Traditional norms in these societies allow the killing of 'errant' daughters, sisters and wives suspected of defiling the honour of the family by indulging in forbidden sex, or marrying and divorcing without the consent of the family. By the same logic, the honour of a rival ethnic group or society can be defiled by acts of sexual violence against its women. Experiences during childhood, such as witnessing domestic violence and experiencing physical and sexual abuse, have been identified as factors that put children at risk. Children who have witnessed such patterns of conflict resolution may learn violence as a means of resolving conflict and asserting manhood. 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.⁴⁷

Lack of effective legal protection, particularly within the sanctity of the home, is a strong factor in perpetuating violence against women reported the legal advocate of UWONET.

Further emphasis on this is drawn from Inter Parliamentary Union, on how increasingly States are seen as responsible for protecting the rights of women even in connection with offences committed within the home. Although violence against women is exacerbated by legislation, law enforcement and judicial systems that do not recognize domestic violence as a crime. The challenge is to end impunity for the perpetrators as one means of preventing future abuse.⁴⁸

It was further established from one employee of UWONET that in any agrarian societies, land is not only the main means for generating a livelihood. It is also a means to accumulate wealth and transfer it between generations. However, in Uganda, it is a basic source of food, employment, a key agricultural input and a major determinant of a farmer's access to other productive resources and for this reason land needs to be made more accessible for women to own if they are to be empowered.

This implies that women especially the rural (Ugandan) can be empowered through securing land for agricultural practices and economic development through the functioning of a land market and ensuring sustainable utilisation of land in order to bring about development.

According to a review made on Poverty Eradication Action Plan (PEAP) report (2000),

⁴⁷ Inter Parliamentary Union, www.ipu.org

⁴⁸ Inter Parliamentary Union, www.ipu.org

powerlessness is explained as one of the dimensions of the poverty which gives rise to gender related issues and exposes women to domestic violence. The plan outlines the various forms in which powerlessness exhibits itself that include:

- Weak property rights. For example wives being unable to stop their husbands from encroaching if not confiscating their land.
- Lack of access to social services because of isolation. Gender-related norms such as a girl who wants education but cannot persuade her family to keep her in school.
- Lack of choices. Widows in some districts cannot defy wife inheritance by her late husband's brother.
- Inability to enforce legal rights. For example, in Kalangala some women had been abused by men, but cannot access the police station because of collusion among men to deny them access to boats.
- Inability to stop the prevailing insecurity that leads to psychological impairment such as the problem of alcoholism.
- Having to pay bribes to get services, (The National Integrity Survey) found that 40% of the users of public services had to pay bribes. Having little influence on the kind of services delivered and having no platform to channel a complaint, if services delivered or the delivery is poor. This is demoralizing and aggravates poverty.

The report outlines the causes of powerlessness as:

- ❖ Institutions or social norms that discriminate along gender or other lines.
- ❖ Low incomes and/or lack of property rights, which make it harder not only to have purchasing power, but also retain personal independence (especially for single women), and to retain social networks by participating in social activity.

❖ Lack of information about legal rights and other decisions of public institutions, which affect their lives.

The domestic relations review report says that men dominate women and are regarded by society as heads of households, decision-makers and resource owners. This dominance is found in both the public arena and private sphere (UWONET 2001, PMA, 2000). The Plan for Modernisation of Agriculture (PMA) points out that women face barriers to participation in community activities that include refusal by husbands, discrimination, subordinate roles, weak leaders, lack of mobilization, lack of time and failure to see the benefit of their participation.

The applicability of the laws governing gender related issues and domestic violence in Uganda are weakened by such aspects as women's rights to property in marriage which are problematic in cases of divorce, and upon the death of a spouse in which both state-made (statutory) and non-state-made (customary and religious) contradict. With the exception of the 1995 Constitution, the subordinate laws that regulate the distribution, management, and ownership of property during marriage, upon divorce, and death of a spouse are discriminatory of women which weakens their position further. It is shown that even where the relevant statutory laws are protective of women's rights to property, their implementation is hindered by customary law practices, socialization, and the generally weak economic capacity of many women in the country. Further this was attributed to the even weaker position of women's rights to matrimonial property at customary and religious laws. In many homes, wives provide labor to support their husbands without having a stake in the use or monetary benefit from it. Under Islamic law regulating intestate succession to property, the entitlements for widows fall short of the constitutional standards on equality and non-discrimination. Polygamy is widely practiced by Muslims

implying that the widows share the one eighth whenever there are children or one fourth in cases when there are no children. Radical reforms such as adopting an immediate community property regime instead of the present separate property regime are inevitable if women's rights to property are to advance.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

Introduction

The chapter presents the summary conclusions and recommendations of the study carried out on the laws governing issues of domestic violence and gender relations in Contemporary Uganda.

Conclusion

Despite the role played by government in curbing gender related issues to reduce violence in the homes by empowering the women at their different levels, gender issues and domestic violence still prevail.

There is a growing recognition that Uganda just like any other country cannot reach its full potential as long as women's potential to participate fully in their society is denied. Data on the social, economic and health costs of violence leave no doubt that violence against women undermines progress towards human and economic development. Women's participation has become key in all social development programmes, be they environmental, for poverty alleviation, or for good governance. By hampering the full involvement and participation of women, countries are eroding the human capital of half their populations and thus true indicators of women empowerment should lie in the country's commitment to gender equality to eliminate violence against women.

Recommendations

In regard to the above conclusion drawn, the study signifies a concern for more integrated approaches to be sought and a realistic investment to directly be made in support of the existing strategies, which seem to be lacking financial support although they would have been good policies. This is an indicator that for the success of policy advocacy, the way women are viewed and their position have to be changed from through increased investments in the empowerment policies to effect policy reviews in regard to the existing supportive laws. Alternative measures should be explored to empower women at all level.

Focus should be put on the victim in order to strengthen individual capacities and decrease vulnerabilities to violence. The strategy is to work towards environmental change, through eradicating the structural force supporting domestic violence. In particular there is a need to target the following;

The laws and law enforcement agencies criminalizing battery should make it a civil matter, which is easy to prosecute. It is crucial to involve summons of domestic violence in discussing legal changes as much as possible.

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, schools, churches and mosques. Which institutions have the obligation of moral building and shaping society.

In regard to property ownership; it is recommended that more emphasis needs to be directed towards enabling women to assert their existing land rights when land is registered for the first time for example under the Ministry of Water, Land and Environment's Systematic Demarcation Project.

The Registration of Titles Act should be reformed to create new modes of registration that protect a spouse's interest in the matrimonial home. This is to mean that the subsistence of a caveat lodged by a wife should last for more than two months and have duration similar to that of a beneficiary. Regulations should be developed to give more specificity to the duties of lenders and purchasers to obtain the consent of spouses to dispositions of family land.

Concerned actors need to lobby government support in streamlining tax administration and customs for the Uganda Revenue Authority to develop policies for assisting women entrepreneurs, through tax clinics and open discussions, for example, reforming labor laws to address key issues of women workers including discrimination, sexual harassment, and maternity leave and pay. Standards that are in place are not effectively enforced. Transparent and well-enforced labor standards would benefit both women and their employers.

Bills should be prepared to enact health and safety standards to protect women in regard to affordable standards. Provisions that have proved controversial such as maternity pay, which has been criticized as being unaffordable and potentially resulting in decreased employment opportunities for women should be put off until a later stage and realistic enforcement mechanisms should be put in place.

Increasing access to justice is another way to help curb gender related issues and domestic violence. In this way; women should be represented on the Commercial Court Users' Committee. The Justice, Law and Order Sector Gender Working Group should take an active role in developing the government's commercial justice reform agenda.

Building on the 1998 Baseline Survey of Local Council Courts, follow-up monitoring and evaluation should be undertaken, in particular in relation to the effectiveness of new policy guidelines and reviews in gender related issues. In this manner, legal aid and paralegal projects should be enhanced to provide accessible advice for women operating businesses.

Building on the civic education reform measures should be taken on policy advocacy to further efforts in giving women practical guidance about their rights and how to enforce them.

The Center for Arbitration and Dispute Resolution's work should be expanded to take on an outreach role, working with Local Council Courts to train their members in mediation techniques for commercial dispute resolution.

Advocacy through media, seminars and regional monthly conferences to influence public dialogue regarding women's status and rights within their families and the community in conjunction with Non Government Organizations, local leaders, and organized bodies such as journalists to influence practice within civil society around women's rights and domestic violence.

There is a need to sensitize the men so that they may challenge other men to stop abusing women, and to change the norms that encourage this violence. This requires support for men to act as healthy role models to younger men, and the raising of boys in a non-violent climate to respect women.

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