



LEGAL AND POLICY MAPPING FOR PREVENTION AND RESPONSE TO GENDER-BASED VIOLENCE IN UGANDA

“No one should continue to suffer or live with the belief that reaching out for help may not lead to freedom”



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ABBREVIATIONS

ACR	Annual Crime Report
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CRC	The United Nations Convention on the Rights of the Child
CSW	Commission on the Status of Women
DRC	Democratic Republic of Congo
DV	Domestic Violence
DVA	Domestic Violence Act
DVAW	Declaration on Elimination of Violence Against Work
EAC	East African Community
EOC	Equal Opportunity Commission
FGM	Female Genital Mutilation
GBV	Gender-Based Violence
ICC	International Criminal Court
ICESCR	The United Nations International Covenant on Economic, Social, and Cultural Rights
ICGLR	International Conference on the Great Lakes
PCA	Penal Code Act
PFMA	Public Finance Management Act
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UDHS	Uganda Demographic Health Survey
UNFPA	United Nations Population Fund
VAW	Violence Against Women
WHO	World Health Organization

EXECUTIVE SUMMARY

Over the past years, the Ugandan government has worked towards creating a conducive legal and policy environment aimed at ending gender-based violence. These have stemmed from national legislations and international as well as commitments in spaces like the Generation Equality Forum. While these interventions are commendable, Uganda still faces a significant rate of gender-based violence that infringes on the human rights of the people affected and can be life-threatening in its extreme. The question of the comprehensiveness of the said laws, policies, and strategies in addressing systematic issues of gender-based violence and creating just societies cannot go unnoticed. We have thus conducted a legal and policy mapping for prevention and response to Gender-Based Violence (GBV) from international and national legal frameworks on GBV, analysed these frameworks and provided concrete recommendations to various stakeholders if we have to ensure that communities fully enjoy their rights.

INTRODUCTION

This analysis recognises the role the government has played in developing legal and policy frameworks to address GBV in Uganda. It also highlights the status of GBV in Uganda, explaining why it is highly prevalent and the cost this has on the country's citizens and development. The goal of the exercise was to identify and review international and national GBV-related laws, regulations, and policies with the view of improving the availability of information about GBV laws in Uganda, establishing their weakness and accountability platforms available for exploitation. The methodology of the exercise was a desk review of literature, laws and policies on GBV. As part of this process, CEHURD convened a validation meeting with key stakeholders including the police, the Directorate of Public Prosecutions, and Civil Society Organisations, and the feedback was incorporated into the document.

INTERNATIONAL LEGAL AND POLICY FRAMEWORKS ON GBV.

The exercise revealed the Universal Declaration of Human Rights (UDHR); the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Right of the Child; the 1993 UN Declaration on the Elimination of Violence Against Women; the Beijing Declaration and Platform for Action; the United Nations Sustainable Development Goals (SDGs); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), East African Community Gender Policy; and the Declaration of the Heads of State and Government of the Member states of the International Conference on the Great Lakes Region as international legal and policy frameworks with aspects of GBV in them.

NATIONAL LEGAL AND POLICY FRAMEWORKS ON GBV.

At the national level, legal and policy frameworks tackling GBV issues include: the Constitution of the Republic of Uganda, 1995 (as amended); the Domestic Violence Act, 2010; the Penal Code (Amendment)

Act, 2007; the Prohibition of Female Genital Mutilation Act, 2010; Public Finance Management Act, 2015; the Equal Opportunities Commission Act, 2007; the National Equal Opportunities Policy; the Uganda Gender Policy, 2007; the National Policy on The Elimination of Gender-Based Violence in Uganda, 2019; the National Male Involvement Strategy for the Prevention and Response to Gender-Based Violence; and the Uganda Action Plan on UN Council Security Resolution 1325 & 1820 and the Goma Declaration 2008, among others.

ASSESSMENT OF THE LEGAL FRAMEWORK

The existing legal framework on GBV was assessed on different parameters. This included the extent to which existing laws and policies are monitored and evaluated in order to track implementation progress. Secondly, on the extent to which they strengthen the justice system so that combating GBV is institutionalised. Thirdly, the growth of the GBV global frameworks and their effectiveness were also assessed. The last area of assessment was the budget allocation for GBV prevention and response.

CONCLUSION AND RECOMMENDATIONS

In mapping the legal and policy mechanisms that exist to tackle, it is evident that there are several laws and policies at the international and national levels. However, these need to be implemented and monitored right down to the community level, some revised, and funds allocated so that there is effective prevention and response to GBV.

OPERATIONAL DEFINITIONS

Gender-Based Violence (GBV) refers to any harmful act that is directed at a person based on gender. It constitutes a breach of the fundamental right to life, liberty, security, dignity, equality between men and women, non-discrimination, and physical and mental integrity (Council of Europe).

Violence Against Women (VAW) is any act of gender-based violence that results in or is likely to result in physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (UN General Assembly).

Sexual Violence/Sexual Assault is any sexual act or an attempt to obtain a sexual act or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim in any setting (WHO, 2012).

Sexual Exploitation means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another (UN

Secretary-General, 2008).

Female Genital Mutilation (FGM) refers to all procedures that involve partial or total removal of external female genitalia or another injury to the female genital organs for non-medical reasons (WHO, 2013).

1.0 BACKGROUND AND INTRODUCTION

1.1 Introduction

“Gender-based violence includes acts of violence in the form of physical, psychological, or sexual violence against a person specifically because of his or her gender.”¹ It “constitutes one of the most widespread human rights abuses and public health problems in the world today,” with devastating long-term consequences for victims’ physical and mental health. Simultaneously, its broader social effects compromise the social development of children in the household, the unity of the family, the social fabric of affected communities, and the well-being of society as a whole.² Governments

1. Sixteen Days of Action Against Gender Based Violence, <http://www.refugeesinternational.org/content/article/detail/7138> (last visited June 8, 2007)

2. Violence Against Women: The Health Sector Responds (2003), <http://www.paho.org/English/DPM/GPP/GH/VAWhealthsector.htm>

are legally obligated to address the problem of gender-based violence through a range of measures, including legislation.

Gender-based violence is one of the most severe forms of gender inequality and discrimination in Uganda and remains a critical public health global health problem and one of the most pervasive human rights violations of modern times. It is an issue that affects women disproportionately, as it is directly connected with the unequal distribution of power between women and men thus, it has a profound effect on families, communities, and societies as a whole.

To address the high rates of GBV, in the last few years, sector-specific legal reforms have been put in place including the Domestic Violence Act, 2010 and subsequently the 2011 domestic violence regulations; the Prohibition of Female Genital Mutilation Act of 2010; the Prevention of Trafficking in Persons Act of 2009; the Equal Opportunities Commission Act in 2007 and the National Action Plan on Women of 2007. However, there are no financing mechanisms for the implementation of the laws. A number of policies have also been established including; the National Policy on Elimination of Gender-

Based Violence (2016), Uganda Gender Policy (2007), and the Guidelines for the Establishment and Management of Gender-Based Violence Shelters in Uganda. However, despite these efforts, GBV remains persistent and rampant.

1.2 The Status of GBV in Uganda

The lifetime prevalence of GBV in Uganda is estimated at 49.9%, suggesting that violence against women is rampant³. This statistic is way above average in Africa making Uganda one of the most dangerous places for women. The situation was worsened by the COVID pandemic⁴. To address the high rates of GBV, in the last few years, sector-specific legal reforms have been put in place including the 2010 law on Domestic Violence and subsequently the 2011 domestic violence regulations; the Prevention of Female Genital Mutilation Act of 2010; the Prevention of Trafficking in Persons Act of 2009; the Equal Opportunities Commission Act in 2007 and the National Action Plan on Women of 2007. However, there

3. World Economic Forum: Global Gender Gap Report 2020

4. Center for Health Human Rights and Development: COVID-19 and Sexual and Gender Based Violence: An assessment of cases reported during the pandemic in various Districts.

were no financing mechanisms for the implementation of these laws.

There are numerous causes of GBV which include cultural and social norms which show men as aggressive, powerful, unemotional, and controlling and have to be accepted as dominant. The high prevalence of GBV in Uganda is largely a result of myths, practices, and customs. These cultural practices are responsible for some of the worst forms of GBV. The socialisation of both men and women has resulted in unequal power relations between men and women.

GBV is manifested through a multitude of actions, including forced marriages of young girls, trafficking in persons, teenage pregnancies, female genital mutilation, sexual violence, and verbal abuse among others. With the advancement of technology, violence against women has recently taken new, more sophisticated forms (OHCHR, 2019)⁵. An increasing number of women are, for instance, reporting cyberbullying and abuse through social media.

5. OHCHR. (2019) Eliminating Online Violence Against Women and Engendering Digital Equality [Online]. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/GenderDigital/DueDiligenceProject.pdf> (Accessed: 15 Nov. 2022)

Within Uganda's legislative spaces, which are mandated with ensuring that legislation eliminating violence is made, it is reported to manifest differently.

*"I once had my breasts squeezed by a male colleague old enough to be my father. Another one hounded me during a MPs' trip abroad. He kept knocking at my door in the night. I had to lock myself in."*⁶

Addressing all forms of discrimination against women and girls remains a priority in Uganda. This is reflected both in local legal and policy developments as well as international commitments. For instance, the Sustainable Development Goals (SDGs) include a specific target for the elimination of all forms of violence against women and girls on which member states will have to report (UN, 2015)⁷. The UN Declaration on Elimination of Violence Against

Women⁸ defines violence against women as *"any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life"*.

GBV has serious negative effects on the right to health and the right to life because the easiest way of depriving a woman or girl of her right to life is to accentuate violence to her person to the point of abrogation. The Beijing Declaration and Platform for Action elucidates the impact of GBV on women:

*"Violence against women is an obstacle to the achievement of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms"*⁹

6. Stephen Ssenkaaba; Uganda: Violence against women unabated despite laws and policies accessed at <https://www.un.org/africarenewal/news/uganda-violence-against-women-unabated-despite-laws-and-policies#:~:text=The%202016%20Uganda%20Demographic%20and,49%20report%20experiencing%20sexual%20violence.>

7. United Nations. (2015) The 17 Sustainable Development Goals [Online]. Available at <https://sdgs.un.org/goals> (Accessed: 15 Nov. 2022)

8. United Nations. (1994) Declaration on Elimination of Violence Against Women Proclaimed by General Assembly Resolution 48/104 of 20 December 1993 [Online]. Available at <https://digitalibrary.un.org/record/179739?ln=en> (Accessed: 15 Nov. 2022)

9. UN Women. (2015) Beijing Declaration and Platform for Action, Beijing +5 Political Declaration and Outcome [Online]. Available at <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration> (Accessed: 15 Nov. 2022)

1.3 Objectives of the paper

1.3.1 Overall objective

The legal and policy mapping exercise sought to identify and review GBV-related laws, regulations, and policies both at local, regional and global levels with the view of improving the availability of information about GBV laws in Uganda, establishing their weakness and accountability platforms available for use, as well as provide recommendations for Uganda on protection and response to GBV.

1.3.2 Specific Objectives

The specific objectives of this legal analysis are:

1. To analyse existing GBV laws, regulations and policies at the local, regional and global levels which impact GBV prevention and response.
2. Identify approaches communities have used to advance GBV protection and response in Uganda
3. To make recommendations on how the legal and policy frameworks relating to GBV can be improved and actualised

1.4 Methodology

The mapping was done through a

desk review of existing literature and data on the legal and policy environment at national, regional and global levels relating to GBV prevention and response. As part of this process, CEHURD convened a validation meeting with key stakeholders including the Uganda police, the Directorate of Public Prosecutions, Civil Society Organisations who provided feedback that was incorporated into the document.

2.0 MAPPING AND ASSESSMENT OF INTERNATIONAL LEGAL FRAMEWORKS FOR GENDER-BASED VIOLENCE.

2.1 Overview of the legal frameworks on Gender-Based Violence.

Uganda is a signatory to a number of International Legal Instruments that shape other local legal and policy frameworks. These include the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Right of the Child, the United

Nations Declaration on Elimination of Violence Against Women, the Convention on the rights of Person with Disabilities among others. Beyond the Conventions, Uganda also has commitments linked to global legal frameworks and processes including the Sustainable Development Goals, The Beijing Platform of Action to mention but a few.

At the regional level, Uganda is party to the protocol of the African Charter on Human and People's Rights on the rights of women in Africa (Maputo Protocol), African charter on human and people's rights East African Community Gender Policy among others.

At the national level, Uganda has developed an elaborate legal and policy framework to prevent and respond to Gender Based Violence. These laws and policies are molded along the international and regional frameworks to which Uganda is a party. The Constitution of the Republic of Uganda, 1995 (as amended) provides the benchmark of the country's commitment to prevention and response to GBV. Other national legislations include the Domestic Violence Act, the Prohibition of Female Genital Mutilation Act, the Penal

Code Act, the Equal Opportunities Commission Act, and the Public Finance Management Act.

At policy level, Uganda has the National Male Involvement Strategy for prevention and response to Gender Based Violence, 2017; The Uganda Gender Policy, 2007; the National Policy on Elimination of Gender-Based Violence in Uganda, 2016; the National Equal Opportunities Policy, 2006; the Uganda Action Plan on UN Security Council resolution 1325 and 1820.

These instruments create obligations to State parties to protect, respect and fulfill human rights, including the prevention of GBV. Many of these obligations have also been interpreted by courts¹⁰ and other expert bodies as requiring State parties to not only ensure that State officials do not engage themselves in GBV but also take appropriate measures to avoid the infliction of violence by others.

Gender-based violence and the obligations of States under

10. In the Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-fifth session), Communication No. 33/2011, M. N. N. v. Denmark

international law includes taking steps to prevent such violence, punish perpetrators and provide support for survivors have been recognised areas of engagement. International human rights frameworks set out specific obligations on State parties to protect their citizens and uphold their rights. When States become “parties” to international frameworks, they must refrain from interfering with the exercise of the rights outlined in the treaties, take positive steps to protect them, and restore them when they have been violated. States also must ensure that non-state actors do not impede citizens in the realisation of these rights. While states have the primary responsibility to protect their citizens, the international community also has an obligation to step in when states are unwilling or unable to meet their protective duties. These frameworks matter because they hold states and the international community to account for meeting human rights obligations.

At the UN level, the Committee on the Elimination of Discrimination Against Women (CEDAW) has articulated the obligation of State parties to eliminate violence against women. It should be noted that at the time of the elaboration of the CEDAW Convention, violence against women was treated as a matter in the private realm and not that

of international concern or human rights concern. The Convention does not, however, explicitly provide for violence against women.

While there are a number of legal, policy and other measures adopted at the international level and advancements have been made, GBV continues to be widespread globally. Not only have new forms of violence emerged such as cyberviolence, but other previously known forms persist.

In this section, we detail laws and policies that advance GBV protection and response in Uganda and how communities have utilised the same to hold duty-bearers accountable.

2.2 Laws and Policies for protection and response to GBV.

2.2.1 International legislations.

2.2.1.1 Universal Declaration of Human Rights (UDHR)¹¹.

This instrument depicts equality of persons before the law, in rights and dignity. Article 1 thereof, stipulates that all human beings are born free and equal in dignity and human

11. United Nations. (1948) Universal Declaration of Human Rights [Online]. Available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Accessed 15 Nov. 2022)

rights and that they are endowed with reason and conscience and should act towards each other in the spirit of brotherhood.

Under the UDHR everyone is entitled to all rights and freedoms outlined in the declaration without distinction of any kind, such as race, colour, race, sex, language, religion, political or other opinions, national or social origin, or other statuses. The right to life, gender equality, prohibition of discrimination on the grounds of sex, protection of physical integrity, and the right to health are some of the rights impacted by gender-based violence and safeguarded in the Universal Declaration of Human Rights.

2.2.1.2 The United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)¹²

CEDAW, just like the UDHR emphasizes the principle of equality of men and women.¹³ In addition, it refrains State parties from engaging in any act or practice

12. OHCHR. (1981) Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 [Online]. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (Accessed 15 Nov. 2022)

13. Article 2

of discrimination against women and obliges public authorities and institutions to act in conformity with this obligation. The Convention in Article 1 defines discrimination against women to include gender-based violence that is, violence directed towards a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty.

This definition was expounded upon by the committee under its General Recommendation 19¹⁴. It details Gender Based Violence as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms based on equality with men.

The committee in its General Recommendation 12 identified the family, the workplace, and other areas of social life as sites of violence. The Committee built on this in General Recommendation 14 (1990) in which it identified female circumcision as a traditional practice harmful to women's health and made recommendations for its

14. UN Committee on the Elimination of Discrimination Against Women - CEDAW. (1992) CEDAW General Recommendation No. 19: Violence Against Women [Online] Available at: <https://www.refworld.org/docid/52d920c54.html> (Accessed 15 Nov. 2022)

eradication.

Both the convention and general recommendation No. 19 enjoin State parties to take appropriate and effective measures to overcome all forms of gender-based violence, whether public or private. Article 3 of the Convention, extends this obligation to the political, social, economic, and cultural fields. Article 7 enjoins parties, in particular, to ensure that women, on equal terms with men, enjoy the right to vote in all elections and public referenda and be eligible for election to all publicly elected bodies.

CEDAW enjoins countries to take all appropriate measures to modify the social and cultural patterns of conduct of men and women. This is with the view of achieving the elimination of prejudices, customary, and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹⁵

Article 14 provides that state parties are enjoined to take into account the particular problems faced by rural women and the significant roles which rural women play in the economic

15. Article 5 of the Convention provides for the modification of social and cultural practices that perpetuate discrimination against women and recognises the maternal function as a collective responsibility of men and women

survival of their families, including their work in the non-monetised sectors of the economy. They should therefore take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

Article 15 provides that state parties are enjoined to accord women equality with men before the law. Finally, Article 16 provides that state parties are required to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

To ensure that state parties abide by these provisions, the Convention requires State parties to submit periodic reports, on the status of discrimination against women. This, therefore, means that once States submit reports, the committee can review and ensure that GBV within countries is minimised, by providing specific recommendations to States to take forward toward achieving this.

2.2.1.3 Convention on the Rights of the Child.¹⁶

16. OHCHR. (1990) Convention on the Rights of the Child [Online] Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (Accessed 15 Nov. 2022)

The Convention on the Rights of the Child is one of the first international instruments to explicitly highlight the question of abuse that children, including girls, experience. Accordingly, Article 19 was the first human rights treaty to oblige state parties to take all appropriate legislative, administrative, social, and educational measures to protect all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse. Article 2 of the Convention enjoins State parties to take all appropriate measures to ensure that children are protected against all forms of discrimination or punishment on the basis of their status, activities, expressed opinions, or beliefs of the children's parents, legal guardians, or family members. Thus, through the Convention on the Rights of the Child, girls are also protected from all forms of violence, such as sexual abuse and trafficking.

The Committee on the Rights of the Child monitors state parties' compliance with the Convention on the Rights of the Child.

In 2002, the Optional Protocol to The Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child

Pornography¹⁷ came into force. The optional protocol addresses the acts that constitute trafficking in children for purpose of sexual exploitation and calls on State parties to protect the rights and interests of child victims, through prosecution, support services, and educational programmes. State parties to the protocol are also enjoined to submit reports to the Committee on the Rights of the Child outlining the measures taken to implement the protocol.

2.2.1.4 The Convention on the Rights of Persons with Disability (CRPD)

The Convention recognises that women and girls with disabilities are often at greater risk of violence, injury, and abuse and that disability adds another layer of discrimination and deprivation. Disability and gender-based discrimination usually lead to a greater likelihood of poverty, limited access to protective services and resources, and a heightened risk of violence and abuse over a lifetime.

17. OHCHR. (2002) Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution and Child Pornography [Online] Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> (Accessed 15 Nov. 2022)

Article 16 of CRPD enjoins State parties to put in place effective legislation and policies, including gender and child-focused legislation and policies to ensure that instances of violation and exploitation, and abuse against persons with disability are identified, investigated, and prosecuted. Article 25 also emphasises the importance of the provision of comprehensive services to survivors of violence. The Convention also takes cognisance of multiple forms of discrimination faced by women and girls with disabilities. The discrimination against women, including Gender Based Violence, is shaped by intersecting dimensions of inequality, including disability.

2.2.1.5 The 1993 UN Declaration on the Elimination of Violence Against Women¹⁸

This declaration was put in place with the main intention of eliminating all forms of violence against women. The declaration was adopted by the United Nations General Assembly (UNGA) resolution in 1993. While the declaration does not create legally binding obligations for states, it represents a clear consensus that *“violence against women*

18. OHCHR. (1993) Declaration on the Elimination of Violence Against Women [Online] Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women> (Accessed 15 Nov. 2022)

constitutes a violation of the rights and fundamental freedom of women and impairs or nullifies they're of those rights and freedoms”. This declaration defines “violence against women” under Article 1 as any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Significantly, the Declaration’s definition of violence is expansive, including physical, sexual, or psychological harm as well as threats and coercion, occurring in both public and private spheres.

Although the Declaration describes violence as rooted in historical power inequalities between men and women, it still makes it clear that violence against women violates existing universal human rights norms. Finally, the Declaration emphasises the obligation of the State to ensure the prevention, investigation, and punishment of all perpetrators, minimising the distinction between public and private actors.¹⁹

19. Article 4 of the UN Declaration on Elimination of Violence against women provides for all state parties to condemn all forms of violence against women whether cultural religious in both private and public spheres.

2.2.1.6 The Beijing Declaration and Platform for Action

The Beijing Declaration and Platform for Action was adopted by the Fourth World Conference on Women in 1995. The Platform for Action reaffirms the fundamental principle that the rights of women and girls are an “inalienable, integral, and indivisible part of universal human rights.” The Platform for Action also calls upon governments to take action to address several critical areas of concern, among them violence against women.

The Platform for Action states, “Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual, and psychological abuse that cuts across lines of income, class, and culture. The low social and economic status of women can

be both a cause and a consequence of violence against women.”

The definition of violence, contained in the Platform for Action, is broad, including “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

The Beijing Platform for Action also requires all governments to develop strategies or national plans of action to implement the Platform locally. The National Plans of Action for each country outline specific activities that the national governments will undertake to improve the situation of women, including addressing violence against women.

2.2.1.6 The United Nations Sustainable Development Goals (SDGs)⁵

Women and girls everywhere, must have equal rights and opportunities and be able to leave free of violence and discrimination. Gender equality and women and girls’ empowerment is one of the 17 Sustainable Development Goals (SDGs) and is integral to all dimensions of inclusive

and sustainable development. SDG 5 is about achieving gender equality and empowering all women and girls. As part of this, the UN hopes to eliminate all forms of violence against all women and girls including sexual violence. Additionally, the SDG aims to eliminate all harmful cultural practices. The goals recognise the need to take urgent action to eliminate the many root causes of discrimination that limit women's rights in private and public spheres. Eliminating gender-based violence is a priority, given that this is one of the pervasive human rights violations across the world.

The following targets among others have been set under SDG 5;

- End all forms of discrimination against all women and girls everywhere
- Eliminate all forms of violence against all women and girls in private and public spheres including trafficking and sexual and other types of exploitation
- Eliminate all forms of harmful practices, such as child, early, and forced marriages and female genital mutilation (FGM).

Conclusively, the above instruments indicate the need to protect and respond to gender-based violence.

The analysis indicates that each of the instruments agrees with the fact that gender-based within member states and the need to have appropriate measures to curb the vice is high. While these are progressive instruments, as indicated earlier, Uganda still grapples with cases of GBV, and it is time that we embrace provisions of these legislations to curb the same.

2.2.2 Regional legislations

2.2.2.1 The African Charter on Human and People's rights.²⁰

This charter bars all forms of inequality and discrimination based on race, colour, sex, ethnic group, language, and religion among others, as the rights enshrined in the charter, are enjoyed.²¹ The charter further enjoins State parties to ensure that they eliminate discrimination against women and protect their rights.²² The Charter recognises the equality of people before the law and enjoins State parties to ensure equal protection of everyone under Article 3. These provisions of the law hinge on

20. chrome-extension://efaidnbmnnpbpcjpcglclefindmkaj/https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

21. Article 2 of the African charter on human and people's rights

22. Article 18 (3) of the Charter

ensuring that communities are protected against gender-based violence.

2.2.2.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)²³

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides for strong protections against gender-based violence and incorporates its elimination under the scope of women's rights to life, integrity, and security of the person and the right to dignity.

The preamble of the Protocol reaffirms the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union (AU) as well as the New Partnership for Africa's Development, relevant declarations, resolutions, and decisions. These underline the commitment of African States to ensure the full participation of African women as equal partners in Africa's development.

Many countries have ratified and

23. African Union. (2003) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [Online] Available at: <https://www.refworld.org/docid/3f4b139d4.html> (Accessed 15 Nov. 2022)

domesticated issues captured in the Maputo Protocol. However, reporting continues to remain a challenge. This becomes so as there is a lack of effective frameworks and means to measure the performance of member states and hold them accountable in terms of commitment and expectations of the Protocol.

Under the Protocol, State parties are obliged to commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education, and communication strategies. All to achieve the elimination of harmful cultural and traditional practices which are based on the idea of the inferiority or superiority of either sex or stereotyped roles for women. Article 5 of the Protocol prohibits all forms of harmful practices which negatively affects the human right of women and are contrary to recognised international standards. It calls on state parties to take all necessary legislative and other measures including conducting sensitisation, and the provision of necessary support to victims of harmful practices.

In terms of redress mechanisms, the Protocol calls on State parties to ensure that women have effective

access to judicial and legal services, and reform existing discriminatory laws and practices to protect the rights of women.

The Protocol further calls on all member states of the United Nations to take concrete steps to give greater attention to the human rights of women to eliminate all forms of discrimination and gender-based violence against women.

2.2.2.3 The African Charter on the Rights and Welfare of the Child²⁴

The charter includes protection from sexual abuse under the scope of “torture, inhuman or degrading treatment.”²⁵ The instrument places affirmative duties on the States parties to take affirmative action to eradicate violence, including using legislative, social, and educational measures.

2.2.2.4 East African Community Gender Policy.²⁶

Guiding Principle II of the policy provides for gender inclusiveness.

24. <https://au.int/en/treaties/african-charter-rights-and-welfare-child>

25. African Charter on the Rights and Welfare of the Child art. 16, Nov. 29, 1999, OAU Doc. CAB/LEG/24.9/49.

26. East African Policy. (2018) East African Community Gender Policy [Online] Available at: <http://repository.eac.int/handle/11671/24328> (Accessed 15 Nov. 2022)

Under this, states are enjoined to promote the principle of non-discrimination, based on gender, race/origin, age, ethnicity, creed, political affiliation, or social status including working to eliminate gender discrimination and violence. The policy calls for the elimination of stereotypes, prejudices, and other negative practices against women.

Under Guiding Principle VII, countries are enjoined to eliminate all violence against women, and prohibit and curb all forms of discrimination, particularly those harmful cultural practices, which endanger the health and general well-being of women as in (Article 2 of Maputo Protocol. The East African Community (EAC) state parties are enjoined to commit to undertaking measures that will address discrimination against women and girls and enhance gender equality and equity in elective and appointive positions in both public and private sectors at the regional and national levels.

The Policy also calls on partner states parties to develop, review and implement national gender-responsive policies, affirmative action legislation, and programs aimed at eliminating discrimination against women and girls in

leadership. EAC states are enjoined to commit to increasing access to education and training opportunities for women, men, girls, and boys and ensuring the elimination of all forms of discrimination in the sector to enhance human capital development in the region.

2.2.3 National legislations

To curb gender-based violence, the Uganda government has taken steps to domesticate certain provisions of the above instruments into its national laws. We note that some legislations are yet to be domesticated. In this section, we detail the laws and policies that Uganda has developed in response to gender-based violence.

2.2.3.1 The 1995 Constitution of the Republic of Uganda²⁷ (as amended)

The Constitution of the Republic of Uganda is the supreme law in Uganda and any other law that contradicts its provisions is null and void to the extent of its inconsistency²⁸. Objective XIV of the Constitution mandates the State to fulfill the fundamental rights of all Ugandans to social

27. Uganda. (1995) Constitution of the Republic of Uganda [Online] Available at: https://statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf (Accessed 15 Nov. 2022)

28. Article 2 of the Constitution

justice and economic development and in particular to ensure that all development efforts are directed at guaranteeing maximum social and cultural well-being of the people. The Constitution makes specific provisions for the enjoyment of rights by all. It provides thus, “all persons are equal before and under the law in all spheres of political, economic, social and cultural life and every other respect and shall enjoy well protection of the law”. This means that all acts of segregating a person on grounds of sex, religion, tribe, status, and culture are unconstitutional. The Constitution further enjoins government to formulate policies and enact laws to protect all citizens against human rights abuse. In recognition of the fact that GBV affects women and girls more than men and boys, the government should protect their rights, taking into consideration their unique status and maternal function in society.²⁹

2.2.3.2: The Domestic Violence Act, 2010³⁰

29. Article 33 of the Constitution of Uganda provides for rights of women including the fact that women shall be accorded full and equal rights with men, the obligation of the state to protect women and their rights

30. Uganda. (2010) Domestic Violence Act, 2010 [Online] Available at: <https://ulii.org/akn/ug/act/2010/3/eng%402010-04-09> (Accessed 15 Nov. 2022)

Before the enactment of this Act, Uganda relied on the Penal Code Act (1950) to prosecute perpetrators of domestic violence. The Domestic Violence Act (DVA) provides for prosecution and relief for the survivors of domestic violence. The DVA under Section 2 defines domestic violence for the first time.³¹

This definition was a milestone in keeping with international definitions as it didn't restrict itself to physical violence alone. The Act also provides for the responsibilities of key stakeholders in the prevention and control of domestic violence and provides for the jurisdiction of DV cases. The DVA provides legal redress for women facing violence in their homes (access to justice) and recognises that violence against women in homes is no longer an invisible issue and women can now speak out and not suffer in the silent parameters of their homes.

31. S 2 of DVA defines DV as " Any act or omission of a perpetrator which harms, injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical of a victim or tends to do so and includes physical abuse sexual abuse, emotional, verbal and psychological abuse and economic abuse, harasses, harms, injures or endangers the victim with the view if coercing him or her or any other person related to him or her to meet any unlawful demands for any property of valuable property, has the effect of threatening the victim or any person related to the victim by any conduct mentioned in Par (a) or (b) or otherwise injures or causes harms whether physical, mental to the victim.

The Act provides procedures and guidelines for the protection and relief of victims of domestic violence and the punishment of perpetrators. It provides a fourfold support system to women who have suffered violence in their homes. Intimate partner violence is the most common form of violence in Uganda.³² Social circumstances surrounding intimate relationships are therefore important in shaping the relationship dynamics themselves and the occurrence of violence within.

Under global commitments, the government is under obligation to establish GBV shelters³³. Shelters are a critical part of a holistic approach to violence against women and girls, in providing refuge, and medical, legal, economic, and psycho-social services for victims³⁴. Currently, Uganda has 20 shelters and all of this is under the private

32. Uganda Bureau of Statistics - UBOS. (2020): National Survey of Violence in Uganda: Qualitative Report [Online] Available at: https://www.ubos.org/wp-content/uploads/publications/02_2022VAWG_qualitative_report.pdf (Accessed 15 Nov. 2022)

33. The Declaration on the Elimination of Violence Against Women by General Assembly Resolution 48/104 Article 4 provides for establishment of facilities and programs that offer protection/safety and specialized assistance including rehabilitation.

34. <https://africa.unwomen.org/en/stories/news/2022/08/national-symposium-on-gender-based-violence-shelters-prompts-discussion-on-sustainability-of-lifesaving-services-in-uganda>

sector.³⁵

The shelters provide temporary accommodation as referral linkages are made and ensure the victims or survivors are assisted with emergency care or first aid, counseling, psycho-social support, and legal aid. The shelters also enable the victims and survivors to cope with the after-effects of violence through life skills and capacity-building programmes.

2.2.3.3 The Penal Code (Amendment) Act, 2007.³⁶

The Penal Code Act provides some of the earliest Gender Based Violence offences and has been the most GBV offence have been prosecuted under this law. The law has over time received amendments to bring it up to date with international norms and practices. The Act provides for offences including rape, and defilement and provides for penalties against the same. It further criminalises all attempts to commit Gender Based violence cases provided for under it.

While it is generally recognised

35. *ibid*

36. Uganda. (2007) The Penal Code (Amendment) Act, 2007 [Online] Available at: <https://ulii.org/akn/ug/act/2007/8/eng%402007-08-17> [Accessed 16 Nov. 2022]

that GBV disproportionately affects women, the Penal Code Act recognises that men too face Gender-based Violence. The Act also criminalises the procurement of women for unlawful carnal knowledge of girls under the age of 18 years. Where one conspires with another to fraudulently have carnal knowledge of a female, they commit an offence. The Act further extends protection against psychosocial violence through the fraudulent pretence of marriage. Gender-Based Violence Cases under the Penal Code Act are criminal cases where the burden of proof lies on the prosecution and the standard of proof is "beyond reasonable". Collecting evidence to satisfy this standard of proof is a daunting task for many survivors and victims and many give up before securing justice.

2.2.3.4 The Prohibition of Female Genital Mutilation Act, 2010.³⁷

The Act provides for the prohibition of female genital mutilation, the offences, prosecution, and punishment of offenders, and the protection of victims as well as

37. Uganda. (2010) Prohibition of Female Genital Mutilation Act, 2010 [Online] Available at: <https://www.parliament.go.ug/cmis/views/23497356-2691-44c4-90f9-9bacb7cc8202%253B1.0> (Accessed 16 Nov. 2022)

girls and women under threat of female genital mutilation. It further criminalises genital mutilation creating an avenue for the person who carries out female genital mutilation (FGM) as well as aggravated female genital mutilation or anyone who attempts to carry it out. Such persons are liable to conviction for a specified period.

The Act extends protection to a woman against gender-based violence by criminalising the actions of aiding, abetting, and procuring FGM³⁸. It also criminalises participation in events leading to FGM and where the participant is a parent then the punishment is graver since they are ideally supposed to protect their daughters and not subject them to GBV.

The law further provides that consent to FGM is not a defence to anyone who carries it out and neither is culture and provides for compensation of the victim of female genital mutilation by the convicted offender. The Act also protects women from gender-based violence by imposing a duty on people to report incidents of FGM, the failure of which such people shall be liable

38. Sections 6,7 and 8 of the Prohibition of Female Genital Mutilation Act criminalizes those who engage or conspire in carrying out FGM including parents

for committing an offence.

2.2.3.5 The Public Finance Management Act, 2015³⁹

The Public Finance Management Act (PFMA) regulates the budget-making processes. Regarding budget preparation, approval, and management, the Act provides for a certificate of gender and equity compliance. Per Section 13 (15) (g) of the Public Finance Management Act, the minister responsible for Finance shall in consultation with the Equal Opportunities Commission (EOC) issue a certificate confirming that ministerial policy statements are gender and equity responsive. The certificate also specifies measures taken to equalise opportunities for men, women, persons with disabilities, and marginalised groups. The PFMA provides for the assessment of votes for gender and equity compliance; it does not look at the overall compliance of the budget to gender equity. While the PFMA does not expressly provide for matters directly related to GBV, it provides for an equitable budget to ensure that budgets address key gender issues during the budgeting process.

39. Uganda. (2015) Public Finance Management Act, 2015 [Online] Available at: <https://www.finance.go.ug/content/public-finance-management-act-2015> (Accessed 16 Nov. 2022)

2.2.3.6 The Equal Opportunities Commission Act, 2007⁴⁰

The Constitution of the Republic of Uganda, 1995 (as amended) requires Parliament to make laws to establish the Equal Opportunities Commission (EOC) and provide for the equal treatment of women and men. The Equal Opportunities Commission Act 2007 establishes the Equal Opportunities Commission (EOC) to promote affirmative action to address discrimination and inequalities against any individual or group, marginalised persons based on gender, age, sex, disability, or any other reason created by history, tradition, or custom to redress imbalances that exist against them; and to provide for other related matters. The Act defines equal opportunities as equal treatment in enjoying rights and freedoms.

2.2.3.7 The National Equal Opportunities Policy⁴¹

Uganda's Constitution recognises that some groups of people are

40. Uganda. (2007) The Equal Opportunities Commission Act, 2007 [Online] Available at: <https://eoc.go.ug/eoc/wp-content/uploads/2020/04/THE-EQUAL-OPPORTUNITIES-COMMISSION-ACT-2007.pdf> (Accessed 16 Nov. 2022)

41. Uganda. (2006) The National Equal Opportunities Policy [Online] Available at <https://eoc.go.ug/eoc/wp-content/uploads/2020/04/THE-NATIONAL-EQUAL-OPPORTUNITIES-POLICY.pdf> (Accessed 16 Nov. 2022)

marginalised and discriminated against based on gender, age, disability, or other reasons created by history, tradition, custom, or any attribute. In response to this, it requires Parliament to make laws to establish the Equal Opportunities Commission (EOC) to address this marginalisation and discrimination.

The National Equal Opportunities Policy (2006) emphasises that gender is one of the priority areas that need addressing. The focus in this instance is on equitable access and control of resources and addressing negative cultural practices that limit opportunities for marginalised men and women. Section 14 of the Act provides for the power of the Commission to investigate or inquire into any act, practice, or omission which seems to constitute discrimination, marginalisation, or otherwise undermine equal opportunities. Similarly, the commission may examine any law, custom, or plan which is likely to have the effect of nullifying or impairing equal opportunity.

2.2.3.8 The Uganda Gender Policy, 2007⁴²

42. Uganda Minister of Gender, Labour and Social Development. (2007) The Uganda Gender Policy 2007 [Online] Available at: <http://www.rodra.co.za/images/countries/uganda/policy/The%20Uganda%20Gender%20Policy%202007.pdf> (Accessed 16 Nov. 2022)

Uganda Gender Policy, 2007 gives a clear mandate to the Ministry of Gender, Labour and Social Development and other line ministries to address gender inequalities within their areas. The policy recognises gender inequalities in Uganda, lays down strategies on how to address and eliminate them, and states the guiding principles in the implementation process. The different stakeholders in the gender mainstreaming process are identified and allocated responsibilities.

The policy recognises the relationships between gender and development showing the usefulness of identifying the social roles and relations of females and males of all ages. As such, the policy majorly provides the framework for gender mainstreaming.

2.2.3.9 The National Policy on The Elimination of Gender-Based Violence in Uganda, 2019⁴³

The Ministry of Gender, Labour and Social Development initiated the development of a national policy to prevent gender-based violence, foster an environment with zero-

43. Uganda Minister of Gender, Labour and Social Development. (2019) The National Policy on The Elimination of Gender-Based Violence in Uganda [Online] Available at: <https://data.unhcr.org/en/documents/download/92617> (Accessed 17 Nov. 2022)

tolerance to violence, provide a comprehensive response, care, and support services to survivors/victims as well as eliminate impunity and end gender-based violence. The policy is in tandem with Uganda Gender Policy (2007) whose goal is gender equality and empowerment of women. It also gives legitimacy to other global commitments such as the National Action Plan on Women (2007), and the Uganda Action Plan on the UN Action Security Council Resolution 1325 and 1820. The policy sets out five key forms of gender-based violence that include;

- Physical violence which includes; battering and beating
- Sexual violence which includes; rape, defilement, child sexual abuse, incest, sexual assaults, sexual harassment, forced prostitution, and trafficking in persons.
- Harmful traditional practices such as FGM, early and forced marriages, and dowry-related violence
- Economic violence.
- Emotional and psychological violence.

The policy emphasizes ending gender-based violence against women elaborating on the forms that such violence takes such as physical, emotional, economical, and harmful

cultural practices. The policy also seeks to address gaps relating to discrimination and inequalities left by earlier policies including the Gender Policy, Equal Opportunities Policy, and National Health Policy, among others.

It establishes appropriate coordination mechanisms for implementation at different levels for networking, sharing of information, and effective synergies. To guide all actors on the provision of services to GBV survivors and action to reduce incidences of GBV at family, community, and institutional levels.

2.2.3.10 The National Male Involvement Strategy for the Prevention and Response to Gender-Based Violence.⁴⁴

The strategy provides a guiding framework to all stakeholders on male involvement in the prevention and response to gender-based violence. It emphasises that while gender-based violence has a greater negative impact on women and girls, men and boys can also be and are sometimes victims of GBV. The prevalence, complexity, and

44 Uganda Minister of Gender, Labour and Social Development. (2017) The National Male Involvement Strategy for the Prevention and Response to Gender-Based Violence [Online] Available at: https://uganda.unfpa.org/sites/default/files/pub-pdf/15_03_18_%20MALE%20INVOLVEMENT%20STRATEGY%2024%20JULY%202017.pdf (Accessed 17 Nov. 2022)

social acceptance of gender-based violence (GBV) have generated the recognition that prevention and response to GBV require broad community participation and particularly of men and boys. The Male Engagement Strategy is in response to the United Nations Commission on the Status of Women (CSW) which was the first United Nations intergovernmental body to address the engagement and responsibility of men and boys comprehensively.⁴⁵ The strategy provides for the integration of male involvement in GBV policies and programmes, provide friendly services to male victims of GBV, and promotes strategic partnerships in engaging men and boys in the prevention and response to GBV. The strategy envisages the integration of male involvement in the prevention and response to GBV within the existing and upcoming government policies and programmes on GBV.

2.2.3.11 The Uganda Action Plan on UN Council Security Resolution 1325 & 1820 and the Goma Declaration 2008.⁴⁶

45. The National Male Involvement strategy for the prevention and response to Gender Based Violence picks up from the CSW which called on states to actively and meaningfully engage men and boys in GBV prevention and response

46. Uganda Ministry of Gender, Labour and Social Development. (2008) The Uganda Action Plan on UN Council Security Resolution 1325 & 1820 and

The action plan which is an adoption of the UN Security Council Resolution 1325 explicitly stresses the role that women play in preventing and resolving conflict and in efforts to build peace. This is by ensuring the increased representation of women at all decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict.

2.3 Other policy guidelines on GBV in Uganda.

Ministry of Gender, Labour and Social Development (MGLSD) developed the referral pathway for response to gender-based violence cases in Uganda (2013). The guidelines facilitate primary duty bearers and actors with information on how to respond to GBV cases and guide the victims/survivors of GBV on where to seek assistance and what services are available at different referral points.

Guidelines for the Establishment and Management of GBV Shelters in Uganda (2013). The guidelines

the Goma Declaration 2008 [Online] Available at https://uganda.unfpa.org/sites/default/files/pub-pdf/15_03_18_%20MALE%20INVOLVEMENT%20STRATEGY%2024%20JULY%202017.pdf (Accessed 17 Nov. 2022)

provide for the establishment and management of GBV shelters for the protection of victims and survivors of violence against women and girls. These have been established in line with Inter-Agency Standing Committee Guidelines on GBV among other international guidelines. The guidelines also provide minimum standards and procedures for public and private actors that intend to establish and manage shelters.

3.0 HOW COMMUNITIES HAVE ADVANCED GBV PROTECTION AND RESPONSE USING THE LEGAL FRAMEWORK AND OTHER APPROACHES.

Several approaches have been used by communities in Uganda to respond to the challenges of Gender Based Violence in Uganda. These have ranged from novel ideas to litigation where the law is specific. We detail this here under.

The Male involvement strategy:

This aims to encourage and support men and boys to take responsibility for their SRHR and to refrain from all forms of discrimination

against women. As a methodology for the prevention of GBV, men in communities are, mobilised, capacity built to become champions for GBV prevention. These groups mentor and counsel men against GBV.

“The potential benefits of men’s involvement include improved family health, better communication between couples, joint and informed decision-making within households, and better sexual and reproductive health”⁴⁷

Identification of GBV champions:

In some communities, champions composed of both men and women (including adolescent girls/ boys and young women/ men) are identified and their capacity built to understand the symptoms of GBV, the most vulnerable groups, the referral pathway and what communities can collectively do to avert GBV. These play a critical role in building the capacity of communities to identify and refer cases of GBV to appropriate authorities. These groups respond to the negative community and cultural perceptions

47. Involving men in tackling gender-based violence in Uganda available at https://reliefweb.int/report/uganda/involving-men-tackling-gender-based-violence-uganda?gclid=CjwK-CAiAr4GgBhBFEiwAgwORrVYRMjPwp2wK-b1oNhFYvoDht1cfWfitEIIvGdC58m6Qs1MIX-5cGpjRoCSN8QAvD_BwE

that perpetuate GBV.

“Being a male champion means reporting forms of abuse, acting as a source of change and inspiration for men, and being a role model for mindset change. It also means advocating for the rights of women and girls, and working to increase their visibility in society”⁴⁸

Establishment of accountability platforms:

To enhance accountability for the implementation of the laws, in several districts, accountability platforms have been established in most cases by CSOS. These platforms are attended by key stakeholders including the judiciary, the police, the Directorate of Public Prosecutions, Prisons, and CSOs. These platforms deal with systemic challenges affecting GBV prevention and response and some cases delve into specific cases. In some cases, the District Coordination Committees, have taken over this mantle.

Litigation: This is another approach that communities have used as a tool for GBV prevention and response.

48. See How male champions are helping to end gender-based violence in Uganda available at <https://www.unwomen.org/en/news-stories/feature-story/2022/11/how-male-champions-are-helping-to-end-gender-based-violence-in-uganda>

Strategic litigation as an approach has led to ground-breaking decisions in courts of law and quasi-judicial tribunals on GBV. These have resulted from petitions/ court cases filed to challenge unconstitutional provisions of the relevant laws in addition to the rampant criminal cases in which strong sentences are given to punish the perpetrators of GBV. The cases demonstrate that the judiciary is alive to the realities of violence in Uganda and is always open to handling cases intended to promote a violence-free society. The following cases are a sample of the groundbreaking decisions that have transformed not only the notorious traditional cultural practices but also the legal landscape on GBV.

i) Law Advocacy for Women in Uganda v Attorney General⁴⁹

This case sought to challenge the harmful cultural practice of Female Genital mutilation (FGM) on the basis that it contravened provisions of the Constitutions of Uganda on account of being cruel, inhuman, and degrading. That the practice endangers the right to life and privacy under the Constitution. The petitioners proved that FGM is crude and is done without some form of anaesthesia which causes

49. (Constitutional Petition 13 of 2005) [2007] UGSC 71 (05 April 2007); [2007] UGSC 71

damage and trauma to the victim and sometimes even leads to death. Court found that whereas the Constitution protects the right to practice one's culture, such freedom should not infringe on human dignity or the right to be free from cruel, inhuman, or degrading treatment. Court consequently held that the FGM custom was void for its inconsistency with the constitution.

ii) Uganda Association of Women Lawyers and 5 Others v. The Attorney General⁵⁰

This case challenged several sections of the Divorce Act on grounds that they were discriminatory based on sex and gender. During the hearing, a witness testified that his marriage had broken down in 1996 and he had to live in misery because he could not divorce his wife due to his inability to prove adultery against her as required by the Divorce Act. Another witness testified that his marriage broke down shortly after the wedding but he felt discriminated against in as far as the Divorce Act imposed on him different ingredients of divorce from those required by his wife. The Constitutional Court agreed and held that sections 4, 5, 21, 22, 23, 24, and 26 of the Divorce Act are

50. Constitutional Petition No.2 of 2002

void in so far as they discriminated based on gender. Court stated that grounds for divorce as listed in the Act are available to both men and women and that the compensation for adultery, costs against a co-respondent, alimony, and settlement apply to both men and women.

iii) Mifumi (U) Ltd. & Another v. Attorney General & Another⁵¹

In this case, petitioners contended that the custom of bride price which is practiced by several ethnic groups in Uganda offends Article 31(3) of the Constitution. The said Article provides that marriage shall be entered into with the free consent of a man and a woman intending to marry. The appellants claimed that the demand for bride price by parents interferes with the free consent of the partners guaranteed by the Constitution. The gist of this decision as stated by the Supreme Court of Uganda is that the practice of asking for a bride price is constitutional but seeking a refund of the bride price as a precondition for the dissolution of a customary marriage is unconstitutional.

iv) Center for Health, Human rights and Development and

51. (Constitutional Appeal 2 of 2014) [2015] UGSC 13 (06 August 2015); [2015] UGSC 13

others V Attorney General (ongoing in court)

Section 8 of the Domestic Violence Act, of 2010 requires that survivors of sexual-based violence are accorded psychosocial support and care by the practitioner. It is however less likely that such services are provided. Rather, once abused and legal proceedings commence, survivors of sexual violence return to the exact communities where they were abused, they get threatened by families of the accused persons and this occasions injustice to many, who end up abandoning the prosecution of sexual violence-related cases.

“The lack of such a shelter comes with violations of several rights. Once the girls are defiled, they go through a lot of psychological torture and necessitate rigorous counseling to ensure their right to health and life is not violated. However, with lack of a shelter, they face numerous discriminations and stigma including community and self-stigma. Some have opted to run away from their communities while others drop out of school for the stigma they face. Homes have become a center of abuse yet communities are not prepared to receive such

*abused girls back. Privacy, non-discrimination, and equality before the law remain in the Constitution as rights but not observed in such scenarios*⁵²

CEHURD instituted a case in court to challenge the country's failure to have a shelter for GBV shelters, equating this to inequality. While the court is still before courts of law awaiting its determination, it shows the extent to which the legislation cited above has been used to advance protection and response to GBV.

The above cases are a few examples of those that have been brought to the attention of the court for strategic direction. However, several other cases of the various forms of violence have been filed as criminal cases in courts, using Uganda's national laws on protection and response to GBV. These range from those filed before Magistrates to high courts in Uganda. These are usually the majority of cases that follow a procedure right from the police through various courts of law. Indeed, in 2021, Uganda police reported 1486 cases of rape,

52. Government's failure to provide shelters for survivors of GBV is a rights violation; available at <https://www.cehurd.org/governments-failure-to-provide-shelters-for-survivors-of-gbv-is-a-rights-violation/>

14,570 of defilement, 17,533 cases of domestic violence, 16,373 sex-related offences⁵³ that had been reported to the police for action.

4.0 IMPLEMENTATION OF GBV LEGISLATIONS: RECOMMENDATIONS FOR UGANDA

It is evident from the above mapping that Uganda has an elaborate legal and policy framework to respond to and prevent GBV both locally and internationally. Indeed, Ugandans have taken different approaches as discussed to respond to GBV, including steps to implement the legislations above. At the same time, some Bills would be useful in this area but have not yet passed for example the Sexual offenses Bill which is still in parliament. Uganda has ratified the international human rights instruments that relate to GBV except for the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The challenge is substantially not about the existence of a legal framework but rather about the quality of legislation and actual implementation. As a result of global awareness of the gravity

53. <https://www.upf.go.ug/annual-crime-report-2021/>

of GBV, governments have adopted several approaches to address the problem. These include the adoption of internal reforms of the different agencies and institutions aimed at creating a systemic response.

Globally, there are examples of some good practices concerning the implementation of gender-based violence legislation and practices that together create a GBV response system. These best practices form the basis against which assessment is made. The good practices can be categorised into five:

1. Monitoring the implementation of legislation and policies on GBV.
2. Survivor-focused.
3. Strengthening the justice system.
4. The growth of the GBV global frameworks and their effectiveness.
5. Budget allocation for GBV prevention and response.

4.1 Monitoring the implementation of legislation and policies

Inter-agency periodic monitoring and evaluation are critical for the successful implementation of laws that relate to GBV prevention and response. The law must create a

monitoring framework to ensure that there is periodic monitoring of its implementation. International reporting mechanisms create opportunities for monitoring and reporting but their effectiveness is limited. Under the CEDAW for example, the government is required to submit reports to the Committee on Elimination of Discrimination Against Women based on the parameters set out in the Convention. Under the Universal Periodic Review (UPR), State parties are required to report regularly on actions taken to improve the State of human rights. While the government has actively reported under the CEDAW and the Universal Periodic Review, the actual challenge lies in the implementation of recommendations and concluding observations. Beyond presenting the country report and receiving recommendations, the government does not have a multi-stakeholder implementation framework for the implementation. Because of the absence of a framework, there are no clear actions, points of accountability, and resources allocated for the implementation of the recommendation and concluding observations. Parliament is mandated to exercise the oversight function; no deliberate action has been taken to ensure monitoring of the implementation of concluding

observations and recommendations made to Uganda to improve GBV prevention and response.

At the National level, legislative frameworks have weak or in some cases non-functional monitoring frameworks that involve the participation of stakeholders. The Domestic Violence Act and Female Genital Mutilation Act, among others, do not provide an in-built monitoring framework that enables stakeholders to assess progress in implementation, discuss challenges and make recommendations to improve both law and practice. Key stakeholders ought to evaluate the performance of the implementing agencies in delivering services both at national and local levels. They also ought to examine the responsiveness of the judiciary in handling GBV cases. This initiative would greatly contribute to increased accountability of stakeholders. Local monitoring frameworks are in most cases created by civil society organisations, and only take cognisance of operational matters but rarely deal with strategic actions that can improve the implementation of GBV prevention and response. As part of this process, it is important to have in place a coordination platform comprised of key stakeholders including the police, Directorate of

Public Prosecution (DPP), courts, and civil society to conference on particular cases to discuss the action taken, the problems, measures to be taken to improve safety and access to justice for survivors.

4.2 Survivor-Focused approach

A survivor-centered approach is recognised as the hallmark of quality Gender Based Violence prevention and response programming. It empowers survivors and promotes their dignity and agency. This is reflected in how organisations' policies are structured as well as knowledge, skills, attitudes, and practices. It emphasises the empowerment of survivors by creating a supportive environment for healing⁵⁴. It is informed by the fact that survivors of GBV. The survivor-focused approach is reliant on four guiding principles;

1. Ensuring the safety of survivors, including preventing and mitigating further violence.
2. Protecting the confidentiality of survivors, including their right to information being shared only with their informed consent and their right to choose whether to and whom to tell their

54. USAID's Collective Action to reduce Gender Based Violence (CARE-GBV): How to implement survivor centered approach in GBV programming

experiences.

3. Demonstrate respect for survivors' needs and wishes and their right to make their choices, including those that service providers may find hard.
4. Practice non-discrimination, ensuring that survivors of their discrimination.

While many organisations provide survivor-focused GBV prevention and response, the quality is affected largely by financial constraints and deeply engrained cultural and religious biases. For example, while the safety of survivor safety is key, across the country GBV shelters are limited to protect survivors. The implication is that while many survivors merit the services of a shelter, they are unable to have the same. Most of the shelters are run by Non-Government Organisations. It is also worth noting that in most settings, referral networks and services are limited, ineffective, and may not operate with a survivor-centered lens. Both formal and informal referral actors are often situated within the context of patriarchal norms and practices.

4.3 Strengthening the justice system

Strengthening the justice system is a fundamental goal of any legal

framework meant to prevent and respond to GBV. The justice system must be fast and effective in responding to cases of GBV; should be responsive to the needs of survivors and capable of protecting survivors. The adversarial nature of Uganda's justice system is for the most part counterproductive in promoting access to justice for survivors of Gender-Based Violence. A good practice is the establishment of GBV courts based on the principle of therapeutic jurisprudence.⁵⁵

In 2019/2020 Special court sessions to increase access to justice for SGBV survivors were conducted. This was an initiative of the Judiciary in conjunction with the Justice Law and Order Sector with the support of the United Nations Population Fund. The outcome of the sessions was to inform the need to establish specialized courts for GBV, to strengthen the implementation of Uganda's strong legislative and policy framework⁵⁶. If the country had perhaps zeroed down to concretize

55. In 1990, law professors David Wexler and Bruce Winnick coined the term "therapeutic Jurisprudence" to acknowledge the sociopsychological consequences of any legal action and that these consequences can be impacted by interpretation of Substantive legal rules and procedures.

56. Special court sessions to increase access to survivors of gender-based violence commence available at <https://uganda.unfpa.org/en/news/special-court-sessions-increase-access-survivors-gender-based-violence-commence>

on this process, the country would have a more stringent and focused GBV court.

We also note that while national legal frameworks provide victims of GBV with several avenues to seek redress, they face many obstacles most notably in the form of a lack of financial resources to access these legal procedures. In some cases, survivors of violence are unaware of the options available to them in cases where prosecutors or police have failed to move their complaint forward or those procedures are themselves prohibitively costly. Because of the challenges associated with accessing justice, most survivors get frustrated and abandon cases.

Whereas the law allows for an accused person to have a lawyer watching brief, for most Ugandans, the cost of securing private lawyers is unaffordable. The situation is worsened by the fact that Uganda has no public legal aid fund and law to guarantee poor and vulnerable persons access to free legal services. Whereas the Poor Persons Defence Act Cap 20 provides for the defence of poor persons committed to trial before the high court, it does not cater for survivors of GBV. There is a lot that needs to be done in terms

of ensuring that all cases of GBV are investigated and prosecuted in line with international human rights standards.

Several practical obstacles impede survivors' ability to access justice. These include difficulties faced in filing complaints; a general absence of willingness to prosecution associated with cultural, and religious biases; evidence gathering, including medical reports; lack of protection for survivors and witnesses, social and cultural barriers; and traumatisation and secondary victimisation resulting from proceedings. The absence of witness protection law frustrates the prosecution of witnesses. Witness protection should provide holistic protection to witnesses and the frameworks through which this protection will be provided. The current legislation does not provide for the protection of victims, survivors, and witnesses.⁵⁷

On the evidence, one of the key challenges is the lack of evidence to reach the criminal standard of

57. Section 2 of the Poor Persons Defence Act provides, "Where it appears for any reason that it is desirable, in the interest of justice that a prisoner should have legal aid in the preparation and conduct of his or her defence at his or her trial and that the means of the prisoner are insufficient to enable him or her to obtain such aid.....the prisoner shall be entitled to an advocate

proof required, that it is “beyond reasonable doubt”⁵⁸. Lord Denning in the case of Miller vs Minister of Pensions⁵⁹ stated that:

‘...the degree of beyond reasonable doubt is well settled. It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. If evidence is so strong against a man as to leave only a remote possibility in his favor, which can be dismissed with a sentence ‘of course it is possible but not in the least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice’”

In most cases, the cost of collecting crucial data for example the cost of accessing medical examination to obtain a medical report is high. While it is ideal that the victims should attend a medical facility within 72 hours of the incident, this has not been possible for many because of the distance to health facilities and the associated costs. In terms of competence, some medical officers are incapable of effectively

58. Woolmington Versus DPP (1935) AC 462; and Bigirwa Edward Versus Uganda Cr. Appeal No. 27 of 1992, the second principle is that the standard of proof required is “Proof beyond reasonable doubt”

59. (1947) ALLER 372

documenting cases of rape from a medico-legal perspective. Other medical officers demand payment on the basis that if they complete the form, they will be required to go to court for a day to give evidence.

Section 154 of the Evidence Act allows the defence to impeach the evidence of a survivor and this involves asking an embarrassing question with the potential of subjecting the survivor to secondary trauma. Section 40 of the Trial on Indictments Act provides for conducting Viore dire to establish whether a child understands the oath he/ she is about to take before giving evidence in court⁶⁰. This requirement of the law discriminates against children as witnesses.

The above challenges and more, relating to issues of corroboration, and other requirements within the law make it difficult for survivors of GBV to access justice. Indeed, the Uganda police further reports that while a total of 17,533 cases of domestic violence were reported to police in 2021, only 1,640 cases were processed for court, 464 convictions were secured, 14 were acquitted and 315 were dismissed,

60. Section 101 of the Magistrates Court Act also provides for conducting a trial within a trial to establish the ability of a child to understand the importance of a child speaking the truth before administering the Oath.

1027 cases were still pending in court, while 6,177 cases were still under inquiry⁶¹. The foretasted statistics demonstrate challenges associated with the investigation and prosecution of GBV cases.

A gender-sensitive system is not only critical to protecting survivors but also to holding abusers accountable to prevent them from re-offending or posing further risks. The trust of survivors in the system will encourage many others to speak up and will make potential offenders fearful of criminal prosecution – ultimately flattening the curve of violence in our homes and within the communities.

4.4 The growth of the GBV global frameworks and their effectiveness

At the time of elaboration of the CEDAW in the 1970s, violence against women (VAW) particularly in the private sphere was largely considered a private matter not one of international concern nor a human rights concern. Accordingly, CEDAW does not expressly make a provision on violence against women, other than Article 6 which provides for trafficking and the exploitation of the prostitution of women. While

61. Uganda Police Force: Annual Crime Report, 2021 pg.7

the General Recommendations and other output of the CEDAW Committee do address violence against women, as do the more detailed UN Declaration on the Elimination of Violence against Women and other programmatic and policy documents, none of these are in themselves legally binding as a matter of international law:

“There are many ‘soft law’ documents that address the issue, including the Vienna Declaration and Programme of Action, the Declaration on the Elimination of Violence against Women, the Beijing Declaration and Platform for Action, and general comments and recommendations of treaty bodies. However, although soft laws may be influential in developing norms, their non-binding nature effectively means that States cannot be held responsible for violations”⁶²

It is important to consider the development and adoption of a United Nations-binding international instrument on violence against women and girls, with its own dedicated monitoring body. Such an instrument should ensure that

62. Unpublished discussion paper; Gender-Based Violence Against Women and International Human Rights Law: Options for strengthening the international framework

States are held accountable to legally binding standards. It should provide a clear normative framework for the protection of women and girls globally and should have a specific monitoring body to substantively provide an in-depth analysis of both general and country-level developments. With a legally binding instrument, a protective, preventive, and educative framework could be established to reaffirm the commitment of the international community to its articulation that women's rights are human rights, and that violence against women is a human rights violation, in and of itself.

4.5 Budget allocation for GBV prevention and response.

GBV prevention and response have been negatively affected by limited financing. Under the Domestic Violence Act (DVA) government provided for the establishment of GBV shelters and this is in line with international human rights instruments. While the country has about 20 shelters, these are managed with support from development partners. Of these, three have no funding and are at risk of closure.⁶³ Donor financing is

63. Angella Nakafero the Commissioner of Gender and Women Affairs in the Ministry of Gender Labor and Special Development speaking during

not sustainable given the short-term nature of this financing and the ever-changing global priorities. Since the prevention and control of GBV do not have a specific vote, it is hard to accurately state budget allocation in Uganda for GBV prevention and response. Besides the financing for GBV shelters, the ministry of Gender, Labour and Social Development and Community Development departments at the local government level are some of the least funded sectors in Uganda. As a result, several global commitments for the provision of survivor-centered services are underfunded.

Accountability mechanisms and tracking of national expenditure on preventing and responding to GBV are generally lacking. The reality of the current funding for GBV is in stark contrast with the strong commitment to investing in gender equality and elimination of GBV articulated in the Addis Ababa Agenda for Action which provides thus;⁶⁴

“We will work for a significant

a national symposium on sustainability and impact of GBV shelters

64. United Nations. (2015) Addis Ababa Action Agenda of the Third International Conference on Financing for Development [Online] Available at: <https://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=2051&menu=35> (Accessed Nov. 16, 2022)

increase in investment to close the gender gap and strengthen support for institutions about gender equality and the empowerment of women at the global, regional, and national levels. All forms of discrimination and violence against women and girls will be eliminated, including through the engagement of men and boys”

The Community-based Services Department (CBSD) at the district level is mandated to mobilise and empower citizens for GBV prevention and response. At the district level, CBSD is headed by the District Community Development Officer (DCDO) and supported by Senior Community Development Officers responsible for various functions critical to GBV prevention and response. Part of the key deliverable of the office of the DCDO is to;

- Monitor and evaluate the effective implementation of national laws and policies including the GBV policy
- Coordination of the collection, analysis, and dissemination of GBV information
- Liaise with non-state actors dealing with GBV

5.0 CONCLUSION AND RECOMMENDATIONS.

The legal and mapping exercise found that, while a lot of work has gone into having a comprehensive legal and policy framework to protect who against GBV, more measures need to be undertaken to ensure that women and girls are protected from GBV. These include increasing investment of local resources for the implementation of the laws, and the need to strengthen the implementation of international obligations and local legislation.

The following recommendations are accordingly made to enhance the rights of all in the realm of GBV:

1. Implementation of GBV laws and policies:

Through the Ministry of Gender Labour and Social Development, Uganda can improve its GBV statistics by ensuring full implementation of the GBV laws and policies and by adopting a GBV indicator in government performance contracting. This is to ensure that we can track the duty bearer's accountability for the implementation and enforcement of GBV laws and policies.

2. Creating a Special Department for sexual-based violence cases at the Civil and Criminal Departments of the High Court:

Owing to the discussions above, its time special Courts were created to handle sexual-violence-related cases in the Civil and Criminal Divisions of the High Court. The Criminal Division ought to set up a sexual offences department with at least two resident Judges and four Magistrates together with a Registrar to expedite sexual-based violence cases. The Civil Division ought to appoint at least one judge and Registrar to determine civil and human rights enforcement matters whose cause of action stems from acts of sexual-based violence.

3. Facilitating the engagement of the private sector in investing in GBV prevention.

The Ministry of Gender, Labour, and Social Development should consider appealing to the private sector and interest them in GBV protection and response. This may lead to stretching into resources of the private sector for GBV prevention goals, by making the business case for investing in GBV in the workplace, as well as in surrounding communities. Another entry point is to demonstrate that GBV may be a social cost, or negative externality,

of certain private investments that need to be factored in and mitigated.

4. Increase local investment in GBV prevention and response and establish accountability frameworks for tracking expenditure.

The investment in GBV prevention and response should enable the sector to fulfill its obligations under the various international and regional frameworks and must be targeted towards the provision of comprehensive GBV prevention and response. The Ministry of Finance in collaboration with the Ministry of Gender may consider having this recommendation actualised.

5. Fast-tracking the enactment and implementation of other legislations. These include the witness protection Bill and the legal aid Bill:

These two bills are under the mandate of Parliament. We recommend that the Witness Protection Bill adopts a legal definition of protected and vulnerable persons within the local context and set up a mechanism and operating procedures for legal representation and reparation of victims. In addition, the country should establish a witness protection agency and create a one-stop center to streamline services. The Legal

Aid Bill on the other hand will ensure the provision of legal aid to survivors of violence while at the same time creating a legal aid fund that will provide legal support to indigent persons. The Bill should consider the categorization of indigent persons should be survivors of GBV

6. Ratification of the Optional Protocol to the Convention on Elimination of All forms of Discrimination Against Women.

The government of Uganda should consider ratifying the protocol. This will allow communications to be submitted by or on behalf of individuals.

7. Implementation of recommendations from various committees on the state of human rights in Uganda:

The Human Rights Committee of Parliament in the exercise of its accountability function should review recommendations received by Uganda under various regional and international human rights mechanisms to have the same implemented by various entities.

8. Review and amendments of GBV legislations:

Parliament may consider amending section 40 of the Evidence Act to address the challenges of

impeaching the credibility of a GBV witness. Attempts to impeach the credibility of a survivor of GBV are not in line with the current best practice of handling situations where a survivor is a witness; Section 154 of the Evidence Act and Section 40 of the Trial on Indictments Act which provides for conducting Voir dire.

9. Proper and extensive training of institutions that handle sexual-based violence complaints;

Institutions like the Uganda Police Force should invest in thorough training of their investigative officers. Criminal investigative officers of the police should be trained and skilled in virtues; like quick response to suspected cases of sexual violence from even the most remote places of the country, conducting timely investigations, and learning how to interview survivors without hurting their emotions and causing further psychological harm. State Attorneys serving with the Director of Public Prosecutions (DPP) need to be trained on how to get survivors to testify without causing psychological comfort to them. State Attorneys should apply to Courts to hear testimonies of survivors via audio-visual link⁶⁵ and not in open court to prevent ill memories that haunt

65. Rules 5 (b) and 6 of The Judicature (Visual-Audio Link) Rules, 2016

them at seeing their perpetrators in open court.

10. Provision of gazetted protection shelters by the State:

Government should act through MoGLSD by providing a special budget for setting up and operating regional protection shelters for survivors of sexual-based violence. The shelters should be easily accessible by all male and female survivors, young and old. The shelters should have staff like professional counsellors and psychologists to attend to the survivors' overwhelming psychological and emotional burdens among others.

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