



# 'I CAN'T AFFORD JUSTICE'

VIOLENCE AGAINST WOMEN  
IN UGANDA CONTINUES  
UNCHECKED AND UNPUNISHED

STOP VIOLENCE  
AGAINST WOMEN

AMNESTY  
INTERNATIONAL



Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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Cover photo: A young girl steps across an open sewer in Kisenyi, a slum in Kampala. Many women and girls who have suffered violence cannot afford to pursue a case against their attacker.

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# GLOSSARY

ANPPCAN	African Network for the Prevention and Protection against Child Abuse and Neglect
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW	Committee on the Elimination of Discrimination against Women
CEDOVIP	Center for Domestic Violence Prevention
CID	Criminal Investigations Department
CRC	Convention on the Rights of the Child
CSOs	Civil society organizations
DEVAW	Declaration on the Elimination of Violence against Women
DNA	Deoxyribonucleic acid
FGM	Female Genital Mutilation
FIDA (U)	Uganda Association of Women Lawyers
FOWODE	Forum for Women in Democracy
GenCap	Gender Capacity Standby Project
ICPD	International Conference on Population and Development
ICRC	International Committee of the Red Cross
IDP	Internally displaced persons
IOM	International Office of Migration
JLOS	Justice Law and Order Sector
LC	Local council
LC	Local councillor

LGBT	Lesbian, Gay, Bisexual and Transgender
MoGLSD	Ministry of Gender, Labour and Social Development
MoH	Ministry of Health
NGO	Non-government organization
PEP	Post Exposure Prophylaxis
STI	Sexually Transmitted Infection
TBA	Traditional Birth Attendant
UNAIDS	The United Nations Joint Programme on HIV/AIDS
UNFPA	United Nations Fund for Population Affairs
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
WHO	World Health Organization

1 USD = Uganda Shillings (UShs) 1,900, as of 23 October 2009.

# PREFACE

When women’s rights activists from around the world claimed the stage at the Vienna World Conference on Human Rights (1993) to demand that the international community address violence against woman as a human rights issue, the issue of violence was shrouded in secrecy, denial, and deemed a “private” matter beyond the reach of the state and therefore not a human rights issue. Even acts of sexual or gender-based violence by state agents, such as rape in custody, were dismissed as acts undertaken “purely for personal gratification” and were not recognized as human rights violations, acts of torture and discrimination.

Since 1993, significant steps have been taken to end the silence surrounding sexual and other gender-based violence. States accepted that women’s rights are human rights at the Vienna Conference and the UN General Assembly adopted the UN Declaration on the Elimination of Violence against Women<sup>1</sup> – the first in a long list of documents, resolutions and laws that have been adopted at the global, regional and domestic level. Over these years, there has been significant recognition, consistent internationally, that violence against women is not only a human rights abuse but an issue of international concern. The Rome Statute of the International Criminal Court confirmed that rape and other forms of violence against women can be prosecuted as war crimes, crimes against humanity and genocide. Regional human rights treaties such as the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa explicitly named women’s rights to life and the security and integrity of the person, free of all forms of exploitation, cruel inhuman and degrading treatment. Successive Security Council Resolutions on women, peace and security identified crimes of sexual violence as threats to international peace and security and confirmed women’s rights to participate in political activities to build peace.<sup>2</sup>

Yet 17 years after the breakthrough of the Vienna Conference and the Declaration on the Elimination of Violence against Women, most human rights activists working on sexual and other gender-based violence are faced with the realization that despite the advances, the situation for women who experience violence remains largely unchanged. So the burning question is: what is necessary to turn progress regarding the illegality and impermissibility of violence against women as set out in treaties, declarations, laws and policies, into positive change in the lives of women and girls?

Three years into its Stop Violence Against Women campaign, Amnesty International asked its members this question. The answer was threefold:

- the adoption of progressive law and policies does not always translate into progressive practice – or to put it more succinctly, the chasm between adoption of laws and implementation is huge;
- working to stop violence against women often leads to an assumption by state and other actors that women are primarily victims – reducing the energy put into the empowerment of women and girls – empowerment that should allow women to demand that laws be

implemented, that justice be accessible and that women drive the changes needed to ensure women's equality and freedom from sexual and other gender-based violence.

- despite all the progress made in terms of legal reform, there may have been a failure to address the larger political environment that shapes women's choices.

In the last three years of the Stop Violence against Women Campaign, Amnesty International has worked to address the obstacles to the implementation of rights-based legislation aimed at addressing sexual and other gender-based violence. Amnesty International has undertaken research to identify key indicators of women's empowerment such as access to education and economic independence. Finally, Amnesty International has tried to understand how laws, policies and practices that may have no apparent link to sexual or gender-based violence nonetheless inhibit women's access to justice and equality before the law.

In this report, Amnesty International has undertaken a case study aimed at identifying the obstacles faced by women who are victims of sexual or other gender-based violence when they seek justice in Uganda. In some cases, the obstacle is clear: police who promote reconciliation rather than criminal justice; lack of qualified forensic medical examiners to treat and assess victims; no provisions for witness protection if a woman does push for prosecution. What is harder to define is how many women – despite wanting justice – believe that it is beyond their reach because they live in an environment in which stereotypes based on the inferiority of women govern public and private life. Countless women are therefore discouraged from claiming their right to equality in law and practice. These include the right to live free from gender-based violence and in full enjoyment of economic, social and cultural rights, as well as civil and political rights.

For example, in September 2009 there was a riot in Kampala related to a political struggle between the government and a traditional king. In the midst of the riot, according to the news media, rioters captured and stripped 20 women bystanders because they were wearing trousers. The message such an attack sends to all women and girls is simple: that men are entitled to control women's bodies and deny women their rights to freedom of expression, association and physical integrity. Undoubtedly that message is amplified for young women and economically and politically marginalized women. Equally, some women who enjoy social and economic privilege may barely hear the message – but gender-based violence and stereotyping is inescapable for all women. The underlying assumption – that men have unchallenged power to strip a woman of the clothes she is wearing because they do not approve of them, subjecting women to humiliation and sexual abuse – can only make some women feel that there is no justice and no equality before the law in a society that tolerates such a blatant display of inequality.

Why are such social assumptions so important? One of the vexing issues Amnesty International and other human rights organizations face is documenting women's silence. Women often do not even attempt to report cases of sexual and other gender-based violence to the police. Women often drop charges after they have made an initial report to the police. Women often accept being steered into a reconciliation proceeding rather than demanding justice through the criminal justice system. Documenting the reasons – some obvious and some subtle – why women do not seek justice or abandon their demand for justice is not an easy task. In this report, Amnesty International documents some significant issues.



Every state needs to adopt a legal framework that anticipates the full range of challenges that a victim of violence faces when seeking justice; states must ensure that they monitor legal frameworks to be aware of the challenges, and adopt changes promptly to ensure that challenges are overcome. Laws must be comprehensive and rigorously enforced. Practices must be constantly scrutinized to ensure that they do not become unintended obstacles to accessing justice. For example, the requirement that all victims of sexual violence must be seen by a forensic medical doctor becomes an obstacle when such doctors are too few in number and not accessible to those living outside the capital. Those charged with upholding and enforcing the law must be trained to identify obstacles to justice, including when their own attitudes or assumptions about certain victims effectively denies them justice, for example, assuming that a sex worker cannot be raped.

Finally, any work to ensure that victims of sexual and other gender-based violence must be undertaken in the context of challenging the subordination of women and girls and the resulting denial of their right to equality and freedom from discrimination. Strong laws are a necessary condition for justice – but a culture of gender equality and commitment to the ending of discrimination in law and in practice is necessary for the laws to be effective.

# 1. INTRODUCTION

**“Official silence from the leaders of this country on the issue of sexual violence against women will encourage impunity”.**

Humanitarian Worker

**“An African woman's no means yes”.**

Government official responding to the low numbers of rape cases reported at police stations.

Violence against women and girls remains widespread in most parts of Uganda. Forms of violence include rape, domestic violence, and forced and early marriages. An estimated two-thirds of Ugandan households have experienced domestic violence,<sup>3</sup> with women being four times more likely than men to be targeted for both physical and sexual violence.<sup>4</sup>

Violence against women is compounded by discrimination on the grounds of ethnicity, sexual orientation, social status, class and age. Such multiple forms of discrimination further restrict women's choices, putting them at increased risk of violence and making it even harder for them to obtain justice.<sup>5</sup> There are no comprehensive statistics on cases of gender-based violence – an indication in itself that this type of human rights violation is not taken seriously. Attitudes that accept and justify violence against women are widely held within Ugandan society.

The government of Uganda has undertaken some steps to address these abuses by drafting laws to prohibit violence against women and girls, including legislation on Domestic Violence, Marriage and Divorce, Sexual Offences and Trafficking in Persons. However, these have yet to be passed into law, despite being submitted to parliament several years ago.

Despite its efforts on the legislative front, the Ugandan state's response to gender-based violence falls short of its international obligation to prevent violence against women and to ensure women's access to justice. Allowing perpetrators to escape prosecution and punishment for their crimes compounds the problem. The path of victims' access to justice is

strewn with obstacles, including inadequate or dismissive responses by police, medical and judicial personnel. The result is that many women are reluctant to report violence to the authorities. Some official responses reflect widely held attitudes that a woman is to blame if she is subjected to violence and that it is more important to preserve the family unit<sup>6</sup> than to protect the safety and the rights of the woman.

***“My husband and I got married in 2008. At first everything was fine, then one day we had a fight and he beat me on the head. Because the injuries were quite serious, I went to hospital and they advised me to go and see the Local Council (LC) chairman to report it. I went to the Local Council office but nothing was done even after I told them what happened to me. I then decided to go to the police station and they asked me for UShs 20,000 for fuel to go and arrest my husband, which I did not have. My husband beat me again but I gave up going to the police because they always ask for money which I don’t have.”***

Margaret

Victims of gender-based violence seeking help find that there are insufficient services to protect and help them. They are turned away from shelters for lack of space<sup>7</sup> and legal aid institutions are overwhelmed with cases of gender-based violence. There is no functioning referral system for survivors of violence between different agencies such as health facilities, crisis and legal aid centres and law enforcement. Therefore many women endure violent situations because they have nowhere else to go.

***“The government representatives in the districts say we are wasting money. Instead they would like this money to be used to build roads, and schools destroyed during the war. What they are telling us is that addressing the specific needs of women and girls who have been victims of sexual violence is not important.”***

Women and Rural Development Network, in the northern Ugandan district of Pader<sup>8</sup>

Amnesty International is calling upon the Ugandan authorities to intensify and improve their efforts to protect and promote the right of women to lead a life free of violence. To fulfil its international obligations, Uganda must prevent, investigate and prosecute violence against women in the family and in the community, whether this violence is committed by agents of the state or by non-state actors such as members of their family.<sup>9</sup> Adequately funded and monitored government programmes are required to strengthen the system to protect women from violence.

There is need for action by the authorities to ensure that:

- Uganda’s laws, policies and regulations address sexual and gender-based violence on an inclusive and non-discriminatory basis;
- all victims of gender-based violence have access to forensic medical examinations and all necessary health care, and that no one is excluded because of inability to pay;
- places of safety are available for all women who need them;
- the police and judiciary handle cases involving violence against women sensitively, professionally, expeditiously and with due seriousness, with the victim’s safety taking priority.

***“I got married when I was very young (15 years), it was 2002 and my boyfriend promised to buy me a house and land in the richest part of Kampala. After a few years he lost his job and he started drinking heavily. We moved to the slums. That is when the beatings began. At first all he did was beat me, and then he began to have sex with me by force as well. When I told him to wear a condom because I suspected he had been sleeping with other women, he would beat me some more. One day I waited in bed with a panga to defend myself, I swore I was going to cut off his ‘manhood’. When he came to bed he saw it, we struggled and he overpowered me – that was the worst night of my life. Nowadays I don’t fight him anymore. He comes back drunk and he still wants to have sex with me by force. When I refuse he says that I am having extramarital affairs. Sometimes I am weak and sickly because of too much work but he doesn’t care. Because of the rapes, I have been in pain for one year but I have not gone to the doctor because I cannot afford it. The little money that I have I keep it for food. I know that even if I go to the Local Council, they won’t do anything, the same thing happens to my friends and nothing is done when they report it.”***

Phoebe

## METHODOLOGY

This report is part of Amnesty International’s global campaign, Stop Violence Against Women, which was launched in March 2004.

The information in this report was gathered through interviews with women, NGOs, governmental officials and international organizations during a fact-finding visit to Kampala, Uganda<sup>10</sup> in September and October 2009. Representatives of Amnesty International talked to 105 survivors of sexual and domestic violence, lawyers, doctors and social workers from women’s crisis centres, government representatives including members of the Uganda Law Reform Commission, Directorate of Public Prosecutions, Uganda Prisons Service and Local Councils, as well as medical practitioners specializing in gender-based violence and local and international organizations involved in promoting women’s rights.

Delegates interviewed staff at the Uganda Police Headquarters, Criminal Investigations Department (CID), Old Kampala and Katwe Police Stations, both in Kampala. They also visited the Luzira Maximum Security Prison in Kampala, women’s section.

Amnesty International is grateful to the engaged and committed women and men who helped compile this report, including those working in NGOs and international organizations, and those within the public sector including the Uganda Police Force, Uganda Prison Service, Uganda Law Reform Commission and Office of the Directorate of Public Prosecutions. Amnesty International believes that the recommendations made to the Uganda government will support them in their work if implemented.

For reasons of personal safety and confidentiality, the names of all women mentioned in this report who have experienced violence have been changed and the names of locations have not been included. Some of the laws mentioned in the report may have been enacted, amended or repealed by the time this report is published.

## 2. VIOLENCE AGAINST WOMEN - THE LEGAL FRAMEWORK

### DEFINITION

The UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation 19<sup>11</sup> defines gender-based violence as: "violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."

The Declaration on the Elimination of Violence against Women (DEVAW) provides a more comprehensive framework on violence against women in terms of definition, scope, obligations of the state, and the role of the UN. It 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." The Declaration covers violence in the family, violence in the community, and violence perpetrated or condoned by the state, wherever it occurs.<sup>12</sup>

### DUE DILIGENCE

Uganda is responsible under international law for human rights violations and acts of violence against women perpetrated by both state and non-state actors. Such responsibility arises not only from state actions, but also from the omissions and failures of the state to take positive measures to protect and promote women's rights.<sup>13</sup> The state also has a duty to prevent human rights violations by non-state actors, as well as to investigate allegations of violations and to provide effective remedies to victims. States are accountable for the actions of non-state actors if they fail to act with due diligence to prevent, investigate or punish such acts and provide an effective remedy.<sup>14</sup>

Due diligence means that states must exercise a certain standard of care and must take appropriate and effective steps in responding to human rights abuses, even where those abuses are perpetrated by private individuals (non-state actors). This is especially important in the case of violence against women, where perpetrators are often husbands, partners or other non-state actors. The concept of due diligence therefore bridges the gap between the public and private spheres: abuses such as domestic violence can no longer be shielded

within the “private domain of the family” but engage the human rights obligations of the state.

According to the Declaration on the Elimination of Violence against Women (DEVAW), “States must refrain from engaging in violence against women”, directly or through their agents, and must “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”<sup>15</sup>

The CEDAW calls upon states to take all measures necessary to prevent gender-based violence.<sup>16</sup> Such measures should include not only legal measures such as penal sanctions, civil remedies and avenues for compensation, but also preventive measures such as public information and education programmes, and protective measures, including support services for victims of violence.

International legal texts have been supplemented by rulings by international bodies that have articulated what governments have to do to fulfil their obligations of due diligence. Required measures have included training of police and judiciary, establishment of special police bodies, improvements in the criminal justice system and awareness-raising.<sup>17</sup> Progress in defining the scope and content of due diligence has also been made by international human rights-based organizations, including the Council of Europe, UNIFEM, the UN Division for the Advancement of Women and the European Women’s Lobby. These organizations have undertaken research into the initiatives developed by different nation states in order to determine what works – in areas such as policy, legislation, educational programmes and service provision.<sup>18</sup>

The concept of due diligence is central to the role of government in preventing violence against women. This also extends the concept of rights into public policy-making. Formal provisions, such as legal equality and the criminalization of violence, are only a starting point. It is not enough for a state to condemn violence against women, or even to legislate against it. It must also provide the resources, and implement the systems, to give real protection to a woman’s right to live free from violence.

Uganda is therefore under the obligation to not only protect women, but also to prioritize the eradication of all forms of violence against women. For as long as violence against women remains prevalent, and the state response so measurably inadequate, Uganda will continue to fail its international legal obligations to prevent violations of the right to physical and mental integrity, and women’s equality before the law.<sup>19</sup>

## INTERNATIONAL LEGAL FRAMEWORK

Uganda has ratified several international treaties that are relevant to the rights of women and girls. These include:

African Charter on Human and Peoples’ Rights (ACHPR),

International Covenant on Economic, Social and Cultural Rights (ICESCR),

International Covenant on Civil and Political Rights (ICCPR),

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

Convention Against Torture (CAT),

Convention on the Rights of the Child (CRC).

Uganda has signed, but not yet ratified,<sup>20</sup> the African Charter on Human and Peoples’ Rights Protocol on the Rights of Women in Africa, commonly referred to as the African Protocol on women’s rights or the Maputo Protocol.<sup>21</sup> The Protocol guarantees a wide range of women’s civil and political rights as well as economic, social and cultural rights. These rights include the right to life, integrity and security of person; protection from harmful traditional practices; prohibition of discrimination and protection of women in armed conflict. The Protocol also guarantees the right to health and reproductive rights of women and access to justice, among others.

Uganda submitted its combined fourth, fifth, sixth and seventh periodic report on the implementation of CEDAW in May 2009.<sup>22</sup> In it, they responded to the concerns raised by the CEDAW during consideration of the Uganda’s third period report in 2002. In 2002 the Committee expressed concern at “the high incidence of violence against women, such as domestic violence, rape, including marital rape, incest, sexual harassment in the workplace and other forms of sexual abuse of women.”<sup>23</sup> It called on the Ugandan government to address the “persistent patriarchal patterns of behaviour... and the existence of stereotypes relating to the role of women in the home and society... that perpetuate direct and indirect discrimination against women.”<sup>24</sup>

## DOMESTIC LEGAL FRAMEWORK

### THE CONSTITUTION

Uganda’s Constitution<sup>25</sup> provides that “women shall be accorded full and equal dignity of the person with men” (Article 33(1). Article 33(2) further provides that “the state shall provide the facilities and opportunities necessary to enhance the welfare of the women to enable them to realise their full potential and advancement.” Article 33(6) provides that “laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this constitution.” In 2002, the CEDAW expressed concern at the slowness of the law reform process, given the Constitutional provisions that promote equality between women and men and prohibit discrimination on the grounds of sex.<sup>26</sup>

In 2007, the Constitutional Court struck down some discriminatory laws from the statute book. The court addressed the discriminatory aspects of adultery and divorce where the law<sup>27</sup>

previously (under the Penal Code Act) in effect made it lawful for a married man to have an affair with an unmarried woman but unlawful for a married woman to have an affair with an unmarried man.<sup>28</sup> In addition the divorce law<sup>29</sup> set stricter evidentiary standards for women, when seeking a divorce. Women had to show that their husbands had not only committed adultery, but also provide evidence for additional grounds for divorce such as bigamy, sodomy, rape and desertion. The Court decided therefore, that the grounds for divorce as set out under the Divorce Act, should equally apply to both sexes. Women, like men, should have the right to divorce their husbands for the sole reason of adultery. The compensation for adultery, alimony and settlement related with the divorce should also equally apply to both sexes.

## PENAL CODE ACT

Under the Penal Code, acts of sexual violence against women in Uganda are legally viewed as crimes against morality or honour, not as crimes against the physical and mental integrity of women and girls. The definitions of rape, defilement, prostitution, and other sexual offences fall under the Offences Against Morality section of the Penal Code Act. These definitions obscure the victim's lack of consent to sex and focus instead on notions of "moral versus immoral" sex. In addition, focusing on protecting "the honour of the victim" may also lead to seeing her family and her community as the wronged party instead of the victim herself.

Uganda amended its Penal Code Act in 2007, expanding the definition of defilement (unlawful sexual intercourse with a minor under the age of 18) to include boys as victims.<sup>30</sup> Section 129 provides the death penalty for the offence of aggravated defilement "if the offender is infected with the Human Immunodeficiency Virus (HIV)". An adult suspected of defiling a child is required to be taken for both psychiatric and HIV/AIDS tests. If the suspect is found to be HIV positive then the case becomes one of aggravated defilement, which is punishable by the death penalty, a punishment which Amnesty International opposes under all circumstances. Apart from the organization's opposition to the death penalty, Amnesty International is concerned that securing evidence proving that HIV was transmitted during the alleged defilement is very difficult. Basing a criminal sentence on the medical status of the accused can be legally insufficient as it does not consider minors who may have been infected with HIV in-utero or through other means before the assault. A suspect risks the death penalty if he and the victim both test as HIV positive at the time of investigation if the accused is unable to show that the victim did not contract the virus from him. There is a risk that mandatory testing of people charged with sexual offences could undermine a victim's ability to make informed decisions about their health by providing misleading information about the suspects HIV positive or negative status: a survivor might not obtain HIV post-exposure prophylaxis (PEP) because of a false negative HIV test result from the accused. All victims of rape and other forms of sexual assault should be offered post-exposure prophylaxis, irrespective of the test results of the alleged perpetrator.

The offence of rape is defined as "the unlawful carnal knowledge [by a person] of a woman or girl without her consent or with her consent, if the consent was obtained by force, threats or intimidation." Rape is punishable with the death penalty<sup>31</sup> and attempted rape with life imprisonment with or without corporal punishment.<sup>32</sup>



Amnesty International opposes the death penalty as the ultimate cruel, inhuman and degrading punishment. Amnesty International notes that Ugandan law accords the ultimate punishment to sexual crimes while failing to act effectively to prevent them, and allowing discriminatory attitudes towards women and their sexuality to continue. This discriminatory attitude encourages the persistence of rape and sexual abuse of women and girls. Focusing on providing harsh punishment does not absolve Uganda of its international obligations to protect women from violence. There is additional need to focus on the prevention, investigation and protection elements in cases of gender-based violence.

## RELEVANT ACTS PENDING IN PARLIAMENT

### FEMALE GENITAL MUTILATION ACT

In December 2009, Parliament passed the Female Genital Mutilation Act, which prohibits this practice<sup>33</sup>. This legislation provides a prison term not exceeding 10 years for those who perform it and imprisonment of up to five years for those who participate in or aid the process. However if the victim dies, suffers a disability or is infected with HIV during the procedure, the sentence is increased to life imprisonment. This same prison sentence applies if the person performing the procedure is a person in authority/control over the victim or a medical practitioner.<sup>34</sup> This bill has not been assented to by the President and is therefore not law.<sup>35</sup>

### DOMESTIC VIOLENCE ACT

The Domestic Violence Act criminalizes marital rape and other forms of domestic violence and makes provision for appropriate penalties and civil remedies. It was passed in November 2009, and received Presidential assent in March 2010, which makes it into law.<sup>36</sup> Prior to this change in the law, in the practices identified in this report, acts of physical assault in domestic violence were covered under Chapter 23<sup>37</sup> of the Penal Code Act which provides punishment for common assault and grievous bodily harm as a misdemeanour liable to imprisonment for five years. It is necessary to distinguish domestic violence from the general category of assault, grievous bodily harm and battery under which it is usually charged, to ensure that it is given adequate redress. Not only does the lesser charge of assault in the Penal Code Act carry a lower maximum sentence of up to five years' imprisonment but also it deals only with physical violence, not other forms of violence such as sexual and psychological violence that are often related components of domestic violence.

## RELEVANT BILLS PENDING IN PARLIAMENT

Draft legislation such as the Sexual Offences Bill and the Domestic Relations Bill (split in 2008 into the Marriage and Divorce Bill, and the Administration of Muslim Personal Law) are still pending in parliament. The Domestic Relations Bill sought to address socially sanctioned practices responsible for much violence against women in the home, including by outlawing polygamy and wife inheritance. The bill was withdrawn, mainly after protests from the Muslim community which opposed provisions felt to be contrary to Sharia law.<sup>38</sup> The Bill recognized

polygamous marriages but required the husband to obtain consent from the first wife before marrying a second wife.<sup>39</sup> It outlawed the customary practice of widow inheritance and set the age of consent to marry at 18 years. The Legal and Parliamentary Affairs Committee agreed with some concerns of the Muslim community and "toned down" some sections. The legislation was split into two in 2008, to allow Muslims to be governed by a separate law, and was under review by the Uganda Law Reform Commission at the time of writing.

By creating different laws for different groups (the proposed Marriage and Divorce Bill legislation would govern Christian, Hindu, and traditional marriages but not Muslim marriages) Uganda is contradicting human rights norms and international law. Article 26 of the ICCPR states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The state has an obligation to protect women from discrimination (and violence) irrespective of their religion. The creation of varying levels of protection based on a woman's religion is a form of religious and gender-based discrimination. The principle of non-discrimination<sup>40</sup> provides that where a law or policy was not intended to discriminate against women but it nonetheless still causes a distinction, exclusion or restriction of rights, then it amounts to discrimination.

Amnesty International is concerned that in light of Uganda's obligations under international law, the existing legal framework does not adequately ensure access to justice for victims of violence against women. For instance Uganda does not have a law that recognises marital rape as a crime. The Sexual Offences (Miscellaneous Amendments) Bill 2004, which is pending in parliament, not only recognizes marital rape as a crime but also provides that a person convicted of marital rape shall, in addition to a sentence of imprisonment or a fine, be ordered to compensate a victim. Such amount of compensation shall take into account factors such as medical and other expenses incurred by the victim.<sup>41</sup> Therefore, further delay in passing and assenting to legislation such as Domestic Violence Act (which has recently been passed), the Sexual Offences Bill, the Marriage and Divorce Bill, and the Administration of Muslim Personal Law, that give provisions that protect women, impedes access to justice in a system that does not yet recognize domestic violence and marital rape as criminal offences. In 2002, the CEDAW expressed concern "at the lack of legal and other measures to address violence against women."<sup>42</sup> The Committee recommended the acceleration of the law reform process to bring national legislation in tandem with the constitutional principles of non-discrimination and equality between women and men. In this regard it further recommended that the enactment of the draft Land Act, Domestic Relations Bill (DRB) and the Sexual Offences Bill should be expedited.<sup>43</sup>

## ANTI-HOMOSEXUALITY BILL

The Ugandan Parliament is now considering a law that would institutionalize discrimination against those who are, or who are thought to be, homosexual, lesbian, bisexual or transgender. The Anti-Homosexuality Bill of 2009 Clause 2 defines what the bill terms the "offence of homosexuality". This provision largely replicates the existing prohibition on consensual sex between individuals of the same sex, section 145 of the Penal Code Act (an

offence punishable by life imprisonment). Both the current law and the proposed new law violate a number of human rights including the rights to equality and non-discrimination, privacy, liberty and security of the person, freedom of expression, and freedom of thought, conscience and religion.

Moreover, section 145 of the Penal Code Act has been and continues to be used by the police and other law enforcement officials to subject lesbian, gay, bisexual and transgender (LGBT) people in Uganda to arbitrary arrest and detention often resulting in torture or other cruel, inhuman and degrading treatment. Amnesty International and other groups have also documented instances of violence against LGBT people. Clause 2 of the bill would reinforce such abusive practices. The former UN Special Rapporteur on extrajudicial executions, Asma Jahanghir, noted that: “The criminalization of matters of sexual orientation increases[s] the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity.”

In sum, the bill would violate the principle of non-discrimination and would lead to violations of the human rights to freedom of expression, freedom of thought, conscience and religion, freedom of peaceful assembly, freedom of association, liberty and security of the person, privacy, the right to the highest attainable standard of health, and the right to life. These rights are guaranteed under Uganda’s Constitution and in international and regional treaties to which Uganda is a party, including the ICCPR, the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples’ Rights.<sup>44</sup>

### 3. GOVERNMENT ACTION ON VIOLENCE AGAINST WOMEN

“Our culture promotes the overpowering of women for sex.”

Government official

Uganda, as a state party to the Convention on the Elimination of All Forms of Violence against Women (CEDAW) is bound by its provisions that place obligations on governments to ensure that private citizens and enterprises do not abuse women's rights.

Article 2 of CEDAW sets out these obligations:

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.”

Article 5 of CEDAW requires states to take all appropriate measures: “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

***“During our research we found that women reporting cases to police were sent back to talk to their husbands and re-examine their actions and how they contributed to the domestic violence”.***

Uganda Law Reform Commission

## POLICY AND ADMINISTRATION

The main national government policies related to violence against women are the National Gender Policy (2007); the National Gender Action Plan; The Social Development Plan; the National Equal Opportunities Policy and Action Plan; and the National HIV/AIDS Strategic Plan. The goal of these policies is gender equality and justice, women’s empowerment and the elimination of discrimination.

In response to increased reports of violence against women and children, the government established Child and Family Protection Units in police stations and posts in Kampala to deal with cases relating to the family and children, including violence against women and girls.<sup>45</sup> A number of these units are now functioning in Kampala, and it is planned to expand this programme throughout the country. These units are however facing financial constraints along with inadequate numbers of specialized police to provide redress to victims of abuse.

Various community education programmes are undertaken by the various ministries and departments dealing with gender issues. At the community level, the Ministry of Gender, Labour and Social Development undertakes the role of sensitizing communities on violence against women. This includes activities such as legal literacy sessions covering women’s political participation, the right to inherit property, girls’ education, gender-based violence, the economic empowerment of women and women’s health and reproductive rights.<sup>46</sup> Community education is also undertaken by the police, as was shown in the police stations that Amnesty International visited,<sup>47</sup> on topics such as domestic violence, child abuse and violence against women.<sup>48</sup> The Ministry of Health has developed a manual on the Clinical management of sexual and gender-based violence survivors.

The government has also put in place a number of measures to promote women’s rights. Sexual and reproductive health issues are being addressed through an elaborate policy framework that includes: the National Health Policy; the Health Sector Strategic Plan (HSSP II); the National Strategic Framework for HIV/AIDS; the Population Policy; and the Universal Primary Education. Sexual and reproductive rights form one of the priority areas under the National Minimum Health Care Package.

## GOVERNMENT FUNDING TO ADDRESS VIOLENCE AGAINST WOMEN

International law requires states to provide adequate financial support for the implementation of national action plans to end violence against women and other relevant activities and to allocate adequate resources to promote the empowerment of women and gender equality and to prevent and redress all forms and manifestations of violence against women.<sup>49</sup>

***“When a woman leaves her husband and comes here, we have nowhere to put her. She will sleep in the police station for a few days and if she decides she wants to go back to her ancestral home, then we (the police officers at the station) all chip in some money for her transport. There is no budget for this and we cannot send her back home because it is not safe”.***

Police officer at a Child Family Protection Unit in Kampala

Over the years the government of Uganda has faced numerous challenges and constraints related to its available budget. In addition other issues such as corruption and failure to prioritize social welfare have limited the government's distribution of resources between its various programmes.

The government in its periodic report to the African Commission on Human and Peoples' Rights<sup>50</sup> highlighted some of the challenges arising from low funding that it faces in responding to high rates of crime, including understaffing and under-funding of the criminal justice system (the police and the judiciary). The problem of understaffing is compounded by the fact that the High Court holds sessions irregularly, which further contributes to delays in the judicial system. Officials interviewed by Amnesty International confirmed that suspects, once charged, are not tried for periods that can range from a few months to many years.

The Declaration on the Elimination of Violence against Women calls on states to “include in government budgets adequate resources for their activities related to the elimination of violence against women.”<sup>51</sup> The Beijing Platform for Action calls on states to “allocate adequate resources within the government budget and mobilise community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all levels.”<sup>52</sup>

The main ministry and departments that implement programmes to address violence against women are the Ministry of Gender, Labour and Social Development (MoGLSD)<sup>53</sup> and the Justice Law and Order Sector (JLOS).

Civil society organizations interviewed by Amnesty International felt that that even if the government passed laws to prohibit violence against women, the current ineffectively resourced political, legal and law enforcement infrastructures would hinder their implementation and enforcement. This is shown by the Peace and Recovery Development Plan (PRDP) launched in October 2007 to improve livelihoods in northern Uganda, where the civil unrest took its heaviest toll. The government pledged funds to address infrastructural inequality between the north and the rest of the country, including enhancing police and

judicial services in northern Uganda over three years. However, the inadequate JLOS recurrent budget has led to delays and possible shortfalls in the required investments to the PRDP.<sup>54</sup> This further impedes access to justice for women victims of violence.

Another project suffering from financial constraints is the state-run Mulago Hospital Gender Clinic, a free clinic for victims of gender-based violence. This clinic, visited by Amnesty International, is one of the few institutions in the country (other than the police force) mandated to document forensic evidence in the Police Form 3 (PF3), a crucial piece of evidence in sexual offence trials. The clinic was opened in 2008 but only received funding from an international donor for one year – 2008/2009. It has failed to secure funding after October 2009 and is therefore no longer seeing any patients.<sup>55</sup>

Lack of resources is however not a sufficient reason for state failure to allocate funds to violence against women programmes. The UN Human Rights Committee has stated that a failure to give effect to the rights recognized in the ICCPR "cannot be justified by reference to social, cultural or economic considerations within a state."<sup>56</sup> The Committee on the Rights of the Child, when also considering the issue of the availability of resources to address rights, said: "states need to be able to demonstrate that they have implemented 'to the maximum extent of their available resources'."<sup>57</sup> As a measure of its commitment to making rights a reality for women and a sign of good faith in implementing its obligations under international human rights law, Uganda needs to show that it has given maximum financial consideration when allocating resources to these programmes in order to ensure an effective criminal justice system infrastructure that provides services and support to survivors. Without adequate funding, plans to address violence against women will not flourish and will not prove effective.<sup>58</sup>

## STATE DUTY TO ADDRESS HARMFUL PRACTICES

"Harmful practices" include all behaviour, attitudes or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.<sup>59</sup> Violations include female genital mutilation or cutting (FGM),<sup>60</sup> early marriage, domestic violence, forced engagements of rape victims and marital rape. They lead to death, disability, physical and psychological harm for countless Ugandan women annually. Widespread traditional and customary harmful practices, justified in terms of protecting "women's modesty", threaten women's safety and security. Documented cases confirm that women are subjected to violence under the guise of tradition, respect for custom, culture and communal identity.

The Declaration on the Elimination of Violence against Women calls on states not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of violence against women.<sup>61</sup>

The CEDAW noted that Article 33 (6) of the Constitution prohibits laws, customs or traditions which are against the dignity, welfare or interest of women, but expressed concern about the continued existence of legislation, customary laws and practices on inheritance, land ownership, widow inheritance, polygamy, forced marriage, bride price, guardianship of children and the definition of adultery that discriminate against women and conflict with the Constitution and CEDAW.<sup>62</sup>

## BRIDE PRICE

***“Women should be subordinate to men, bride price has been paid”.***

Police officer commenting on domestic violence

Payment of Bride Price<sup>63</sup> is recognized under the law of customary marriages known as the Registration Decree.<sup>64</sup> This is a practice prevalent in most districts of Uganda involving payment in cash or property by the groom and his family to the bride's family.<sup>65</sup>

During a male focus group discussion facilitated by Amnesty International, the participants felt that it was “their responsibility to shape their women, otherwise they become difficult to manage”. One participant respondent said that “once bride price has been paid, a woman cannot say no to sex. By paying the bride price, she and her parents have consented to sex anytime her husband wants it. He does not have to ask her, he can take it from her, even if he has to beat her to do so”.

***“Men are superior to the woman because they have paid bride price to bring the woman into the man's household. He can therefore do with her as he pleases.”***

Ali, male respondent during focus group discussion about marital rape and domestic violence

Aside from the basic principle that it is profoundly discriminatory that women should be seen as the “property” of men, examples of the negative aspects are varied and range from the denial of education and promotion of early marriages to young men borrowing money to finance the bride price and thus starting the new family in debt.<sup>66</sup> Women are largely dependent on economic support from men - since the perception is that women are “bought”, the “buyers” control all financial and social resources (including the wife). This reduces the woman's decision-making ability and intensifies gendered power imbalances. Many women fear leaving an abusive relationship as the man may demand repayment of the bride price by her family. These factors contribute to the ideology that domestic violence is permissible in marriage, putting women at risk of increased violence in a system that not only accepts the payment of bride price but fails to address its consequences.

Uganda's failure to address this issue is a contravention of its international obligations under CEDAW which requires states “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and 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.”<sup>67</sup> In addition, the Protocol to the African



Charter on Human and Peoples’ Rights on the Rights of Women in Africa requires states parties to: “commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices 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 women and men.”<sup>68</sup>

## 4. VIOLENCE AGAINST WOMEN IN UGANDA

“Domestic violence is any beating that goes beyond what is reasonable.”

Uganda Law Reform Commission, 21 September 2009

Violence against women and girls in Uganda is a widespread problem. Although comprehensive statistics are unavailable, the Uganda Demographic and Health Survey of 2006<sup>69</sup> provides credible, nationwide data showing that about 60 per cent of women in Uganda have experienced physical violence since age 15. The government does admit that domestic violence rates are high in Uganda but because it is under-reported, and official statistics are largely absent, domestic violence rates are difficult to measure with any accuracy.<sup>70</sup>

According to the Uganda Demographic and Health Survey, the majority of gender-based violence against women in Uganda is committed by an intimate partner. Two thirds of women who have experienced physical violence since the age of 15 say it was perpetrated by an intimate partner.

***“Our culture says that you don’t wash your dirty linen in public. So they (women) would rather keep domestic abuses to themselves. Some working<sup>71</sup> class women also think reporting domestic violence would make them lose respect in the community, especially considering the lavish weddings that they had.”***

Open Society Initiative for East Africa

Several of the respondents interviewed by Amnesty International felt that domestic violence is tolerated and considered a normal part of marriage as long as it does not result in serious injury (meaning that no blood is shed). Some described domestic violence as acceptable or even positive if the wife is lazy, quarrelsome, unclean, a bad cook or disobedient to the husband.

The causes of domestic violence were described to Amnesty International by interviewees including police officers<sup>72</sup> as based on social, emotional, financial and sexual issues. Social issues include the wife’s participation in activities such as overnight prayer sessions or going out with friends, raising her husband’s suspicions that she is having extramarital affairs.

Older women are also vulnerable to domestic violence when their partners take younger women, if they seek to negotiate safe sex, or when their children seek to take their property.

Police said that it was not uncommon that if a woman reported her partner for assault, a few days after his arrest she would beg for his release from police custody. "What good does it do her if he is in jail? The children are hungry and not going to school".

***"We met here in the city and moved in together. It seemed like a good idea at the time, he said he loved me and there was no need to have papers or dowry to prove how much we loved each other. I did not take him home to meet my family nor have I met any of his family so they do not recognize our marriage. Now I wish I had insisted on some kind of traditional recognition of our union but I think it's too late because we already have three children together...And I know that if he kills me, my family will not let him bury me until he pays the dowry".***

Margaret

## SEXUAL VIOLENCE

The Uganda Demographic and Health Survey found that 39 per cent, more than one in three, women and girls aged 15-49 had experienced sexual violence during their lifetime. This includes those whose sexual initiation was against their will.

Almost half, 44 per cent,<sup>73</sup> of women who experienced sexual violence experienced this violence at the hands of a current husband or partner, while 22 per cent<sup>74</sup> experienced sexual violence by a former husband or partner. Other perpetrators of sexual violence reported by women were a current or former boyfriend (10 per cent), a stranger (8 per cent) and a friend or acquaintance (7 per cent).<sup>75</sup> Among women who have never been married, current or former boyfriends and strangers were most commonly reported as perpetrators of sexual violence (27 per cent each).<sup>76</sup>

***"In July 2007, I was raped by three men on my way home from work. I felt very ashamed about what had happened and did not go to the police station or to the hospital. A few months later I began to feel unwell and I went to the hospital for a check up and I was told that I was HIV positive. I told the staff at the hospital that I had been raped and they did nothing. They did not give me a medical check-up or any medicines. They only tested me. I did not want to go to the police. I did not tell anyone else, that is my secret."***

June

Ugandan women who openly say that they have been raped often face rejection by their families and others. This stigmatization may be more pronounced if the victim contracts HIV as a result of the violation. Women who do bring proceedings after a sexual assault may have to bear an unduly heavy burden of proof.

***"When I was raped in 2002, I did not report it because I thought it is a waste of time and money to go to the police and to court. I have heard that police often discourage people from reporting their cases, suspects are released without being charged, evidence goes missing and files get lost".***

Rose, 28-year-old victim of rape.

Sexual violence makes women and girls more susceptible to HIV infection. Women and girls are physiologically two to four times more susceptible to HIV infection than men and boys.<sup>77</sup> The injuries that go with violent and coerced sex increase the risk of HIV transmission.

## SEXUAL ABUSE OF GIRLS

***"Mothers will stop incest defilement cases from proceeding to court where the father of the victim (and the breadwinner) is the accused. The detention of the breadwinner leads to economic hardship and the remaining family members will blame and mistreat the victim/child for reporting the abuse".<sup>78</sup>***

Hope After Rape (a women and children's shelter)

Sexual abuse and exploitation of girls is widespread. According to the Uganda Demographic and Health Survey, almost one in four women aged 15-49 (24 per cent)<sup>79</sup> reported that their first sexual intercourse was forced against their will, and more than half of these (54 per cent) first suffered sexual violence below the age of 18.<sup>80</sup>

Much of this sexual violence and exploitation happens in schools. According to a report published in 2008, eight per cent of 16 and 17 year-olds had had sex with their teachers.<sup>81</sup> Teachers lure girls into sex by promising them gifts and good grades in class. Even without the enticements, girls fear the likely consequences if they refuse to yield to sexual advances by teachers. Pregnancy has a major impact on the numbers of girls who drop out of school. As abortion is illegal in Uganda, many women and girls are forced to carry pregnancies arising from rape to term. There are no provisions to accommodate young mothers in school, and many drop out, with grave consequences for their future. Education of girls is closely related to greater decision-making power over finances and reproductive health issues like condom use or seeking treatment for sexually-transmitted diseases in future life.

Civil society organizations are crucial in supporting children affected by sexual abuse. Such NGOs include Hope After Rape, ANPPCAN and Slum Aid Project. These provide services such as psycho-social counselling, vocational training and financing and other related support services.

## VIOLENCE DURING PREGNANCY

***"Loss of foetus or death of unborn foetus resulting from domestic violence is classified as blunt force trauma (e.g. a kick to the belly). These kinds of emergencies end up in the obstetric emergency unit and are then referred to us. By the time the cases come to the gender clinic the bruising is faded and it is difficult to document domestic violence or assault. Therefore we work closely with the doctors in the emergency units to inform us of such cases."***

Gender clinic, Mulago Hospital

Violence before and during pregnancy has serious health consequences for both mother and child. Violence leads to high-risk pregnancies and a range of pregnancy-related problems including miscarriage, pre-term labour, foetal distress and low birth weight.<sup>82</sup> Such abuse often escalates during pregnancy.<sup>83</sup> The Uganda Demographic and Health Survey found that overall, 16 per cent of women were targeted for physical violence while pregnant. The incidence increased with the number of living children, from 6 per cent of women who have been pregnant and have no living children to 18 per cent among women with five or more children.

Domestic violence during pregnancy can be missed by medical professionals because it often presents itself in non-specific ways. Medical service providers in Uganda told Amnesty International that it was often difficult to prove that physical violence had caused the death of a foetus, even where there was physical evidence such as cuts, bruises, pain, tenderness and injuries.

At the clinics where victims go for treatment of injuries resulting from violence, health staff may advise the pregnant victim to report it to the police station. The larger hospitals, such as Mulago Hospital in Kampala, also have social workers who can provide counselling to women and children. Most of the rural areas throughout the country have very few health centres, clinics, trained midwives, nurses or doctors.

## WOMEN WITH EVEN LESS PROTECTION

Human rights have long been understood to apply universally to all people, at all times, in all places. However, in the case of women's human rights, this principle continues to be challenged. Some justify violations of women's human rights by placing precedence on cultural values and traditions. This view, however, fails to understand that some practices and beliefs termed "culture" or "tradition" shape women's lives in a way that subordinates them and discriminates against them. By placing limitations of the universality of the human rights of women, cultural values rooted in unequal power relations between women and men become justification for the systematic denial of civil, cultural, economic, political and social rights.

All human rights treaties commit states to implement rights "without distinction of any kind

such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>84</sup>

Measures for the protection and promotion of the rights of specific groups are highlighted in a number of international standards for particular assistance. However, access to fundamental human rights must be available to all, regardless of citizenship or other legal status.

States have concrete and clear obligations to address violence against women, whether committed by state agents or by non-state actors. States are accountable to women themselves, to all their citizens and to the international community. States have a duty to prevent acts of violence against women; to investigate such acts when they occur and prosecute and punish perpetrators; and to provide redress and relief to the victims. While differing circumstances and constraints require different types of action to be taken by the state, they do not excuse state inaction. When the state fails to hold the perpetrators of violence accountable, this not only encourages further abuses, it also gives the message that male violence against women is acceptable or normal. The result of such impunity is not only denial of justice to the individual victims/survivors, but also reinforcement of prevailing inequalities that affect other women and girls as well.

Laws and protection mechanisms afforded to women are often on the basis that women perform in their traditional roles as "good daughters, sisters, mothers and wives". If they are seen to fall into certain "undesirable" roles - sex workers, lesbians, women living with HIV, refugees - then they will generally fail to achieve justice in the criminal justice system. Interviews undertaken with defence lawyers, sex workers, refugees, NGOs and with lesbian, gay, bisexual and transgender groups all recounted a similar story of de facto exclusion from the law.

***"It is easier to win a case if we portray our client as a poor weak woman, rather than one who makes active choices on her own. The court is more sympathetic that way".***

Defence lawyer

Women who seek justice are therefore more likely to obtain it if they conform to the stereotype of women as weak and vulnerable. For example, a woman accused of killing an abusive husband or partner is more likely to get a favourable judgement if she pleads temporary insanity.<sup>85</sup>

## SEX WORKERS

***"In 2007, one of my clients tried to kill me. I met him for the first time that night and he convinced me to go home with him, instead of the lodge where I usually take my other clients. As we were driving he branched off into a bushy road. He then stopped the car and tried to rape me in the car. I fought back and he pushed me out the car. He then put a gun, a knife and a hammer on top of the car and asked me to choose which instrument I wanted to be killed with. He told me that I had failed to have sex with him as agreed when he picked me up. I then decided to have sex with him to save my life, he tried to have sex with me but he couldn't. Then he told me to go while reaching for his gun. I run away naked – I left everything in his car; I thought he was going to shoot me. The next***

***weekend I saw him taking another girl and I told her not to go with him. I told my fellow prostitutes that I should go and report him so that we could save the lives of others as he may have killed other girls before. They told me that he had taken another girl before and wanted to have live sex (without a condom). She refused and he raped her with a stick. She came back bleeding, and told her friends what had happened to her. On the way to hospital she died. I wanted to report him to the police and they told me not to waste my time, because I would be arrested for nothing. He has never been caught and if you go to the club you find him dancing."***

Louisa

In Uganda, sex work is a criminal offence punishable with seven years' imprisonment. The Penal Code Act<sup>86</sup> makes prostitution, living on the earnings of sex work and keeping a house for sex work an offence. However there is no law against procuring the services of sex workers. This provision in effect restricts punishment to the women and not to the persons to whom they provide services, who are predominantly men.

***"The police here are so bad. They mistreat me a lot. Sometimes when go to the streets to look for something to eat for the kids. When we go to the streets, the police find us and beat us."***

24-year-old sex worker

Sex workers are often threatened with arrest for loitering, their premises raided and their earnings seized. Because they face arrest themselves, they are not likely to seek help from the police. Several women told Amnesty International that they had not reported attacks by clients for fear of being arrested; those who reported offences were told that "they are selling sex and so are asking for it" or that "a prostitute can't be raped"; others were themselves charged with minor offences such as petty theft or fighting in public. As a result cases of physical and sexual violence against case workers are not investigated and the perpetrators go unpunished. Out of 36 sex workers interviewed by Amnesty International, none had been arrested for prostitution under the Penal Code Act, but 15 had been arrested for being "idle and disorderly"<sup>87</sup> or for "being a vagabond".<sup>88</sup> They said that the police usually carry out night raids and arrest and charge them with this 'lesser crime' under which the courts do not exact harsh punishment (this can range from a fine, community service to two weeks in prison). However, these lesser crimes are often broadly defined raising serious questions about whether they violate the principle of legality. Regardless, the overall impact is that sex workers are drawn into the criminal justice system through the application of these laws, subjected to abuse and are treated as criminals by the police. Thus they are reluctant to turn to this same criminal justice system for assistance when they are victims of sexual or gender based violence.

***"The cases never get prosecuted as there is often little or no evidence. No witnesses (clients or other persons present during the arrest) are willing to come forward in the light of day to testify about the night raids".***

NGO advocating sex workers' rights

The fact that sex work is unlawful and that women would be arrested for prostitution means that sex workers are left entirely without recourse if they fall victim to violence. In addition, there is no policy to address the health and economic concerns of this group. This is a pressing problem in light of the spread of HIV/AIDS and other sexually transmitted infections. NGOs working in this area fear being accused of breaking the law, while politicians and

religious leaders argue that legalizing sex work would corrupt public morality and fuel the spread of HIV/AIDS.<sup>89</sup> Uganda's government banned a workshop organized by NGOs for sex workers scheduled for March 2008.<sup>90</sup>

***"I am a refugee from Congo. During the fighting in 2008 we escaped with my parents to Uganda, it wasn't safe for my sister and me because the soldiers and rebels were raping and killing women and girls. When we arrived in Uganda we tried to find work to pay for food and rent. After several months of searching, we were still unable to get work. That was when I decided to become a sex worker to get money. There are days when we are raped, beaten and the clients do not pay anything. Even if I go to report it (to the police), they won't do anything if I tell them I am a refugee and a prostitute. We can't go back to Congo because there is fighting and we will die. My older sister and I are both sex workers, that is how we feed our family. My father is very ashamed of what we do, but we do not have a choice."***

Sylvia

## WOMEN FAR FROM HOME

***"There have been reports of women from Karamoja who escaped the fighting there and came to Kampala. They became beggars on the streets, as result of which they have been victim of sexual violence from other beggars. Because they do not speak English and were afraid of being sent back to Karamoja, they did not go to the police"***

Centre for Domestic Violence Prevention

Fighting between various groups and militias in the neighbouring Democratic Republic of the Congo (DRC) has forced tens of thousands of Congolese to flee to Uganda. There are also large numbers of refugees from Sudan, although nearly 30,000 Sudanese returned home in 2009. Uganda also hosts refugees from Burundi, Kenya, Rwanda, Somalia, and other countries who live in the settlements and in urban areas in Kampala.<sup>91</sup> In addition, many Ugandans were forced to flee their homes because of conflict in the north of the country, becoming internally displaced people (IDPs).<sup>92</sup> Many have returned to their places of origin, with more than 70 per cent of all IDPs now back home.

Women and girls who are refugees or who are living in settlements for the internally displaced are at increased risk of violence, especially sexual violence. Many camps have poor site planning and camp management decisions that increase the risks of sexual and other gender-based violence. Along with poor infrastructure and protection risks, there is a lack of legal remedies in cases of sexual and gender-based violence.<sup>93</sup>

Due to the changes in the division of labour within the family following displacement and separation, women and girls are frequently obliged to engage in forced prostitution to supplement the family income.

Unaccompanied refugee females and lone female heads of households face significantly increased risk of being exposed to HIV/AIDS because of the high incidence of rape in refugee settlements. With very few exceptions, only refugees living within designated settlements are officially recognized and offered protection and assistance.<sup>94</sup>



***"I am refugee from Congo, and my parents died in the war. My sister is blind and cannot work; the others are too young to work. I have to work as a prostitute because there is no other means to eat and I want my siblings to go to school. I would leave this work if I found another job; a pastor has offered to help us. When I go out at night I have been raped by layabouts and clients who won't pay. I have done a HIV test and I am not positive."***

Hilda

Women who are refugees or internally displaced also face additional obstacles if they seek justice for gender-based violence. Many are located in government settlements far from the towns and cities where courts sit, and are required to obtain permission to leave the site.<sup>95</sup> The official language in Uganda is English, but the majority of the refugee population only speak and understand French, Swahili and their first language.

***"Sometimes I go to the clinic for medicine and when I tell that I am prostitute they tell me that I went looking for that work, and they hear me speak Swahili they know that I am a refugee they don't even look at me. So we wait for very long and no attend to me. If God has mercy on me then I get assistance."***

Ruth

## WOMEN ASSAULTED FOR WEARING TROUSERS

During riots in Kampala in September 2009, there were media reports<sup>96</sup> that rioters attacked and stripped about 20 women who were wearing trousers. A police officer interviewed by Amnesty International delegates confirmed that the male rioters allowed women wearing skirts to pass, but forcibly removed the clothes of women wearing trousers and made them walk home in their underwear. Amnesty International delegates visited the police stations in the affected area to inquire if any men had been arrested for assaulting the women, and were informed that no arrests had been made for this particular violation (in addition no women had come forward to file a complaint); however several rioters were arrested for participating in the unrest.

Women should be free to wear the clothes of their choice without facing community prohibition or pressure. The ICCPR<sup>97</sup> provides that everyone shall have the right to freedom of expression – this can be interpreted as freedom to dress as one chooses; the UN Special Rapporteur on freedom of religion or belief has stated that the various community traditions and behaviour concerning dress should likewise be respected, but that dress should not be turned into a political instrument and that flexible and tolerant attitudes should be shown.<sup>98</sup>

## 5. WOMEN SEEKING JUSTICE

“When I was raped in 2002, I did not report it because I thought it is a waste of time and money to go to the police and to court. I have heard that police often discourage people from reporting their cases, suspects are released without being charged, evidence goes missing and files get lost”.

Rose, 28-year-old victim of rape.

Effective criminal justice mechanisms are required to deal appropriately with perpetrators of violence. They are also important for a survivor's recovery in showing that society as a whole condemns what has happened to her and will act to ensure that this will not happen in future. The government of Uganda has admitted that one of the challenges in accessing the legal system continues to be the painfully slow process of law reform, especially in relation to gender sensitive legislation.<sup>99</sup> In addition, staffing constraints, logistical challenges, delays in the formal justice system, limited gender capacity across the institutions of the criminal justice sector, high costs of litigation, and the inadequacy of legal aid<sup>100</sup> add to the challenges women face in the pursuit of justice. Therefore, all too often, women are let down by the criminal justice system. In some cases, women see their experience within the criminal justice system as an extension of the initial abuse. This deters other women from seeking a remedy.

***“Some Local Councillors who have been trained on women or human rights are really helping out on domestic violence, however the majority are not informed on human rights/women's rights and sometimes they are biased against the women, they think the women are not being respectful because you find the same Local Councillor is a violent man! How can a violent man handle a case of women reporting violence? Most Local Councillors are men! Some demand for money from the survivors of violence when they report cases.”***

Women and Rural Development Network

65 per cent of the girls and women interviewed by Amnesty International had never

contacted the police or anyone else, (including family members, health services, NGOs, local leaders and religious leaders), after a sexual assault due to the limited availability of formal services and fear of stigma.

Many women in Uganda are afraid to report rape and other forms of violence, not only because of hostility from the community, but also because they fear they being treated dismissively by the police and that no action will be taken to help them. The government admitted in its report to the CEDAW that attitudes of police officers towards violence against women remain a challenge.<sup>101</sup>

Women also spoke of their fears of being unable to convince the police that they had not consented to sex, of being blamed for having contributed to the crime in some way, and of the consequences of family or colleagues finding out. These concerns especially arose where the woman had had a previous negative encounter with the police, if her assailant was a government employee or where alcohol was involved.

Poverty also inhibits women and girls from reporting crimes. In some parts of the country, reporting to a police station involves a long and costly journey. Victims of domestic violence are often economically dependent on their abuser. Other barriers to reporting gender-based violence include where the health workers know the victim or are related to the perpetrator or victim. In addition, all police doctors are male and therefore a female victim has no choice as to the gender of the professional collecting forensic evidence samples from her body. This can be additionally traumatizing to a rape victim if her attacker was male.

Uganda is obligated to take immediate action, through training, professional protocols and promotion of best practices to ensure that women are treated respectfully and professionally by all those dealing with their complaints in the criminal justice system. The CEDAW has said that: “Gender sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.”<sup>102</sup>

Amnesty International has developed a checklist, based on international human rights law and standards, on justice for victims/survivors of violence against women.<sup>103</sup> It is organized according to the steps that victims would need to take in order to report a crime and seek redress for sexual and gender-based violence through the criminal justice system. In each national context, it is important to ask six main questions:

- Are the existing laws adequate?
- Is it safe for a victim to report a crime of sexual or gender-based violence?
- Is collection of forensic evidence and provision of medical care appropriate?
- Are there specific obstacles which prevent a victim from accessing appropriate services in a timely way?
- Is investigation of crimes efficient and thorough?
- Are trials fair, competent and efficient?

The authorities in Uganda are failing to meet their international obligations in virtually all of these areas.

According to the Uganda Bureau of Statistics<sup>104</sup> there were 750 rape cases reported in 2006, 599 in 2007 and 1,536 in 2008. Amnesty International collected gender based crimes statistics (compiled by the Criminal Investigation Department from all police stations in Uganda) for the period between January and June 2009. They recorded 4,192 cases of defilement, 366 of rape, and 34 cases of death resulting from domestic violence.

## 6. POLICE INVESTIGATION OF THE CRIME

“The police want money for everything. They want money to make photocopies of the Police form 3, money to fuel the car to go and arrest the suspect, money for their mobile phone airtime, payment to the police doctor for the medical report and sodas. What is the point; I might as well keep the little money I have for my money for medicine and food.”

Elizabeth

When women and girls go to a police station, information is first taken at the main desk, which is often surrounded by people waiting to see a detainee or to lodge a complaint. There is no privacy for the victim who is required to give her details. Women said: “it is embarrassing to report rape next to a man who has come to report the theft of his cattle.”

Under international law, Uganda must ensure that its state agents do not intimidate, threaten or humiliate women and girls who are filing complaints of sexual or gender-based violence when they report it or during the subsequent investigation. The police should immediately ascertain if the complainant is at risk of further violence and if so, ensure that she receives appropriate protection.

The insensitivity of the police in dealing with gender-based violence is a major factor contributing to the low rates of women reporting crimes to police. Failure to contact the criminal justice system puts the victim at additional risk of re-victimization, and denies her access to justice through the state system where forensic evidence can link the perpetrator to the assault leading to an arrest and possible conviction.

***"In 2007, I was on my way home from a night club at 2.00am. The taxi had dropped me off some distance from my house - I live in the slums and vehicles can not go past a certain point due to the bad roads. The man asked me where I was coming from at that hour 'dressed like that' (I was wearing a miniskirt and tight blouse). He then said he would teach me a lesson for tempting him with my style of dress. He told me not to scream or wake up the neighbours as he had a knife. He then raped me and dared me to go and tell the police and see if they would believe that I had been assaulted. He was right, no was going to believe me – I was dressed 'badly' and had been drinking. I didn't go to the police station, I just went home".***

Stella

## INEFFECTIVE POLICE INVESTIGATIONS

***"Rates on investigation of domestic violence case are very low and the police often talk women out of pursuing their cases further. This even occurs even where women try to report repeated abuse from their spouses."<sup>105</sup>***

Director, Slum Aid Project (Uganda)

Amnesty International is extremely concerned that the low number of women reporting gender-based violence is in part due to inadequate police services and considers that the Ugandan government is failing in its obligation to take all steps possible, in line with the due diligence standard, to ensure that perpetrators of violence against women are brought to justice.

There are numerous obstacles to adequate police investigation of violence against women.

Police stations are under-resourced. Most of the victims interviewed stated that the police officers ask for money to arrest and transport suspects, along with money for photocopies of supporting documents and airtime for their mobile phones. All police officers interviewed stated that although was not police policy, lack of resources has affected the effectiveness of their services and drastically reduced public faith in them.

The police are not fully trained in techniques of handling cases of gender-based violence, for instance appropriate questioning, engaging victims, victim psychology and risk assessment of future violence.

Several of the victims interviewed reported hostility and a discriminatory and biased attitude against women towards them by the police. In addition, several victims told Amnesty International that despite providing statements, evidence and witnesses, they often heard that the perpetrators had been released shortly after arrest without the police informing them. This often led them to believe that the suspects had bribed the police.

Local Council courts do not have a mandate to try any cases relating to sexual abuse and exploitation, but they are often the first and preferred point of help for victims and so have become the primary point of reporting. Women have reported that some Local Councillors,

especially those who are friends of the accused, have shown bias against them.

***“The local councillor is my husband’s former classmate and they often drink together in the evenings. He does not take my case seriously when I report that my husband has beaten me or is neglecting to provide for the children”.***

Pascaline, 23.

There is currently no active legislation governing investigation of certain gender-based violence cases such as domestic violence.

The police cited difficulty in finding witnesses in slum areas due to frequent relocation. Most of the residents in these areas are temporary labourers and often move to where there is work.

Several victims told Amnesty International of situations where the police try to talk them into dropping their complaint and reconcile with the perpetrator in cases of domestic violence.

The government takes on responsibility for protection of state and society which it does by investigation and prosecution by designated state agents when crimes are reported. Domestic violence however is one of the crimes where both the state and society push not for justice but for reconciliation “for the sake of the family” as a substitute for prosecution. While in other crimes there may be a similar push for reconciliation it is not seen as a replacement for prosecution through the criminal justice system. In cases of domestic violence, the victims reported that most police officers regard domestic violence, including marital rape “as a domestic matter”. Such attitudes are discriminatory against women.

There is a strong social stigma attached to rape as well as a general attitude that the woman must have contributed in some way to the violence. This can lead to hostility from the family and the community. Rape victims are often faced with physical and psychological trauma, high risks of unwanted pregnancies, and infections with sexually transmitted diseases including HIV/AIDS. Fear of rejection might explain why the victims are generally wary of lodging a complaint.

There are few state or NGO-provided support or counselling services for victims of sexual offences in Uganda, so that women not only have a difficult time accessing courts, but are also unlikely to find the support they need to cope with the legal system and the psychological trauma resulting from the attack.

There is no government legal aid for women seeking justice for gender-based violence (unless they are the accused of a crime warranting the death penalty) and the civil society organizations that provide legal aid are overwhelmed with cases of gender-based violence.

In some parts of the country, such as northern Uganda, there are hardly any police officers to report cases to, and police stations are few and far between. Child and Family Units have been established in some police stations in Kampala, but not in the rest of Uganda.<sup>106</sup>

Costs associated with police processes can deter survivors from pursuing a case. Victims are often asked to pay for costs associated with their case such as medical expenses and providing transport for police during their investigation. Survivors are also often asked by

police to pay for transportation of the perpetrator, which is often US\$ 20,000 – 30,000.

Forensic medical evidence is admitted only through the Police Form 3 (PF3). This form provides limited medical information and it can be issued only by police stations and only filled out by government approved medical personnel. If a doctor does not determine that a woman has been raped, the case is seen as weak and charges will most likely be dropped. It is the job of a court, and not a medical practitioner, to determine whether sexual assault has occurred.

Research in other parts of the world<sup>107</sup> identifies stereotypical beliefs around the credibility of a rape victim's allegation on the part of staff in the criminal justice system as the main cause of low conviction rates, as such attitudes lead to assumptions about the case which limit investigations. Often investigations are closed without interviewing either the complainant or the suspect, or complainants withdraw their complaint. Amnesty International's studies on rape and sexual violence indicate similar problems across the world.<sup>108</sup>

The Criminal Investigations Department (CID) handles all sexual offences cases and cases resulting in death. Victims are not interviewed at the CID. Instead their statements are taken at the station where the crime is reported and the file forwarded to the CID. Amnesty international is concerned that particularly in sexual violence cases where so much rests on the assessment of credibility of victims, failure of investigators to speak with the victim is significant.

## FAMILY RECONCILIATION VERSUS VICTIM SAFETY

***“Yes he beats me and yes I have reported him to the police several times. But I don't want my husband to be put in jail, because if he is put in, what will I gain?”***

Fatima

***“Our first priority is to keep the family together. If we put the husband in jail and his family sleeps hungry, who have we helped?”***

Policeman

The police in Uganda often encourage victims of domestic violence to reconcile with their partners “for the sake of keeping the family together”.

The Child Family Protection Units that handle cases of domestic violence undertake counselling in cases of domestic violence. In some instances Local Councillors and the immediate and extended families of both parties are invited to the police station to mediate the couple's reconciliation.<sup>109</sup> The Child and Family Protection Units are small with few staff. In addition they do not have shelters to house women, so that they and their children have to sleep in the police station reception. Failure to reach any agreement means that the matter is



referred to the family court.<sup>110</sup>

According to police officers interviewed in Kampala, in practice, if a woman feels that her life is in danger from her husband, the police would arrest the accused. If the woman does not want the accused to be arrested but only wants to be physically separated from the accused, then the accused may be summoned to the police station and served with a restraining order prohibiting him from the matrimonial home. In addition he may be required to write a statement along with a list of items he is required to provide for the maintenance of his wife (and children) in the matrimonial home.<sup>111</sup> This could include payment of rent, money for groceries and upkeep for their children.

***‘The last time I went to the police station to report that my husband had beaten me, they said “It’s you again, what did he do this time? Don’t waste our time reporting him, each time you do so, you change your mind and withdraw the complaint. We don’t have resources to waste.” I have not gone back to report him since then.’***

Lucy

***“The main focus of the police is to reconcile the family – we do not encourage the detention and arrest of husbands. The men are the main bread winners and the rest of the family suffers when he is in jail.”***

Interview Police Officer, Old Kampala Police Station<sup>112</sup>

The police told Amnesty International that where a woman chooses to stay with a violent partner, the police are not under any obligation to forcibly remove him from the home. In this kind of situation, the police advocate a period of separation during which time extended family members are brought in to mediate reconciliation. The option of reconciliation can be dangerous for some women, where the violence continues or can escalate.

## IS THIS REALLY A CHOICE?

While women should have the option to choose mediation in certain situations, it appears to be the only route open to them. Many women feel that they have no choice but to accept mediation and stay in a violent relationship in spite of the danger because they have no viable means of supporting themselves or their children. In these kinds of cases, the victims did not wish for their partners to be arrested but rather, wanted the police to caution him against further violence. This was especially common where the perpetrator was the sole breadwinner and his incarceration was seen to put the family in economic hardship. They felt that by arresting the breadwinner, the families were being deprived of their daily sustenance as well the women risking additional violence once the accused was released from police custody. The failure of a comprehensive law, safe spaces and economic alternatives for women to ensure access to justice left them with no choice but to accept mediation.<sup>113</sup>

***"Sometimes the police are too heavy handed. When our husbands misbehave we report them to the police but not with the intention of having them arrested. We just want the police to summon them and talk to them, tell them to stop beating us."***

Aisha,

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has identified domestic violence as a key cause of women's homelessness, and the threat of homelessness as a reason why women continue to live in violent situations: "In most countries, whether developed or developing, domestic violence is a key cause of women's homelessness and presents a real threat to women's security of person and security of tenure. Many women continue to live in violent situations because they face homelessness if they resist domestic violence."<sup>114</sup>

There is no state-run shelter service for victims of domestic violence in Uganda.<sup>115</sup> The existing women's shelters run by NGOs give psycho-social support and rely on other NGOs providing legal aid to assist survivors with legal guidance through the court system.<sup>116</sup> They however do not have sufficient resources to provide post-violence access to medical, housing and other services, to all the women that need assistance. Victims sometimes have to rely on these organizations for financial assistance to pay for medical care and other costs incurred during the investigation of the case, such as medication, transport to the police station or to court.<sup>117</sup>

Uganda is failing in its obligation to assist victims and witnesses of gender-based violence as there is currently no existing law that provides protection for families and witnesses from intimidation and retaliation in cases of violence against women.<sup>118</sup>

International law provides that victims and witnesses who assist in the investigation and prosecution of acts of violence against women are entitled to protection. According to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:<sup>119</sup>

"The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or

decrees granting awards to victims.”

Furthermore, a UN General Assembly resolution on the elimination of violence against women recommended:

“(h) Measures can be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation;

(i) Safety risks are taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation.”<sup>120</sup>

Amnesty International feels that state reliance on mediation as a form of justice in cases of domestic violence is an abdication of its responsibility. It is the obligation of the Ugandan government to ensure the protection and ensure the safety of women and their families. The police are under an obligation to document each complaint even where a victim has a history of withdrawing her complaints and not pressing charges. Records of individual and repeat allegations of violence may be crucial to pursuing legal charges against the perpetrator at the point when the victim feels enabled (both financially and emotionally) to take this step.

***“We are providing shelter to Amina, who has been a victim of repeated rape by her step father since she was 4 years old. Her case only came to our attention when he tried to rape her aunt as well, when she came to care for the girl. She reported him to the police and he was arrested. Amina is not safe where she is right now. The accused’s brothers have threatened to harm her on her way to school one day to prevent her from testifying in court. The family she is currently living with are worried because they cannot afford to send her to boarding school in the meantime.”***

Case worker for a 13-year-old victim of repeated rape by her stepfather, currently in remand awaiting court hearing.

## 7. FORENSIC EVIDENCE AND MEDICAL CARE

“I was raped in 2008, coming back from a disco in the early morning hours. After they raped me, I did not go to the police station because I thought that they would blame me because I was wearing a short skirt. I bathed and scrubbed and scrubbed my body for days...I could still smell them on me even a week later.”

Fatima, gang-raped by three men.

Although forensic evidence is key in successful conviction in sexual violence cases, there are very few police surgeons and forensic experts in Uganda. This often leads to delays in medical examinations, production of results from criminal laboratories and other expert evidence which may be necessary to charge a suspect.<sup>121</sup>

Once the victims have reported their case to the police, they are then referred to the police doctor to have the Police Form 3 (PF3) form filled out. The PF3 is a document that is used by police doctors to document physical or other injury. The form is divided into two sections - the first part is filled in by the police and includes basic details of the crime. The second part is filled in by the doctor who documents physical injuries observed on the victim during examination. The medical examination is carried out either by police doctors or other authorized medical personnel who note down physical findings and draw conclusions on the type and classification of violence.

Without this form, a victim of gender-based violence has no chance of a successful prosecution against her attacker.<sup>122</sup> Police and survivors spend most of their time trying to get the form filled out: 65 per cent of the victims told us that it took them anywhere from 24 to 72 hours to do this. However, the first 72 hours are crucial for preventing HIV infection and unwanted pregnancy amongst survivors of rape. The process can take anything from two to four days and even longer where the victim has to look for money. This delay in accessing

medical attention denies the victim life-saving medical care.

***“If a victim reports sexual violence after a month and on examination there is no physical evidence of the crime, then it is her problem.”***

Police Officer.

In cases of sexual assault the victims are supposed to report the matter promptly so that a medical examination can be conducted within 24 to 48 hours after the crime.<sup>123</sup> However, many victims are unable to afford this medical examination that costs from about US\$ 10,000 – 20,000. In addition they may be unable to reach a police doctor at a clinic within this period due to the distance they have to travel. Delay in accessing services may result in loss of therapeutic opportunities (such as provision of emergency contraception); changes to the physical evidence (such as healing of injuries) and loss of forensic material (including blood and semen).<sup>124</sup>

Apart from victim and witness testimony, a key piece of evidence in rape cases is usually provided by the PF3. Unfortunately, PF3s are not easily available and victims or their relatives may have to pay the police to make a copy of the form to facilitate the investigation of their case. The police did admit that although this is not policy, due to under-resourcing they are unable to print out sufficient numbers of PF3 forms or pay for the photocopies out of the department budget.

In the rural areas, there are very few police doctors and they are often called away to testify in courts in the area. In these situations, clinical officers (who have a three-year medical training, also known as medical assistants) are tasked with the collection of forensic evidence. The Uganda Bureau of Statistics estimated the population of Kampala at 1.53 million in 2008.<sup>125</sup> This entire population is served by three to four police doctors.<sup>126</sup>

In an interview with a prosecutor, Amnesty International delegates were informed that documented evidence of sexual assault and physical violence is crucial for the successful prosecution of sexual offences. The prosecution’s case becomes more difficult to prove in the absence of such evidence. A delay in conducting the forensic medical exam is not only traumatizing for victims but also allows for the deterioration and loss of crucial evidence.

Due to the nature of the crime, victims may have traces of blood and semen on or inside their bodies. As the days pass, they find themselves forced to choose between preserving forensic evidence and maintaining their personal hygiene, which is particularly upsetting when the victim’s distress is exacerbated because she feels traces of the attacker(s) still on her.

Ideally forensic medical examinations should be geographically accessible to all survivors.<sup>127</sup> Financial assistance for travel costs should also be available and examinations should be free of charge. In no case should a women’s inability to pay preclude her from getting an examination and being examined and securing appropriate medical services.

If a country chooses to make collection of forensic evidence mandatory, then it should adopt the World Health Organization guidelines for care of victims of sexual violence.<sup>128</sup> These aim to improve professional health services for all individuals (women, men and children) who have been victims of sexual violence by providing:

- health care workers with the knowledge and skills that are necessary for the management of victims of sexual violence;
- standards for the provision of both health care and forensic services to victims of sexual violence;
- guidance on the establishment of health and forensic services for victims of sexual violence.

However the absence of any forensic evidence should not preclude a through investigation into the complaint.

The questions and language in the PF3 are unethical and out of line with internationally recognized standards for the treatment of survivors. For example, the form asks if the victim was strong enough to resist the attacker. The forms also do not provide for a comprehensive collection of history or the documentation of a previous history of assault. For example, in cases of sexual offences the police doctor looks for signs of penetration and signs of a struggle are seen to signify lack of consent. However if the victim did not struggle (for examples if she had been threatened with death) and the perpetrator wore a condom, then there may be no signs of attack, or trace of the perpetrator's DNA (Deoxyribonucleic acid).

Furthermore, the victims are required to pay for a service that should be free. In late October 2009, the average fee requested from victims by the police doctor, to obtain PF3 forms was US\$ 10,000.<sup>129</sup> However, victims told Amnesty International that this fee ranged anywhere from US\$ 10,000 to US\$ 20,000.

## CHALLENGES IN GATHERING FORENSIC EVIDENCE

As in many developing countries, Uganda has only one DNA testing facility in Kampala that serves the entire country.<sup>130</sup> A police forensic laboratory is under construction in Naguru, Kampala,<sup>131</sup> which should significantly increase capacity.

Victims of sexual assault have in the past been able to obtain free clinical forensic services from Mulago Hospital.<sup>132</sup> However, funding is no longer available, and in any event this hospital is only accessible to women within a radius of 20-30 km.<sup>133</sup> Generally, the medical personnel from this clinic are not keen on taking cases from further away (outside of Kampala) as they may be compelled to travel to these areas to testify, and will have to pay the costs associated with testifying, including transportation and accommodation out of their own pocket.

Police doctors handle all crime related cases,<sup>134</sup> including assault, arson, poisoning and accidents, with limited resources.

***"The police forms currently being used for collection of medical evidence are archaic and stereotyped when it comes to gender-based violence cases. There are cases of assault that are covered by the Police Form 3 (PF3). Sexual assault is considered such a minimal crime that a form is attached with 10-12 standard questions called the 3A form providing for yes or no answers. This is not sufficient for the collection of the evidence required. We are currently working on developing new forms."***

Interview, Gender Based Violence Clinic, Mulago General Hospital

***"A woman was sent to me for medical examination by the police after she reported being raped. On examination I found that she had been sodomized. The forms that we use to document sexual assault are outdated. They ask questions like, 'is the hymen ruptured', 'when was the hymen ruptured'. Had I focused strictly on the questions in the form and failed to take proper medical history, I would have missed the correct diagnosis. The forms do not cover for this kind of assault and I would have spent ages looking at the state of her hymen without knowing that this was not the area of assault."***

Medical Practitioner, Gender Based Violence, Mulago Hospital

## ACCESS TO HEALTH CARE

Violence against women has extensive physical health consequences. These include physical injuries, such as fractures and abdominal/thoracic injuries, and chronic health conditions, including chronic pain and gastrointestinal disorders. Reproductive health consequences include gynaecological disorders, pelvic inflammatory disease, sexually transmitted infections, including HIV, unwanted pregnancies and poor obstetric outcomes. Other gynaecological consequences include vaginal bleeding or infection, chronic pelvic pain and urinary tract infections.<sup>135</sup>

Victims of sexual assault require comprehensive, gender-sensitive health services in order to cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event. The types of services that are needed include pregnancy testing, pregnancy prevention (emergency contraception), abortion services (where legal), testing or prophylaxis for sexually transmitted infections, treatment of injuries and psycho-social counselling. In addition to providing immediate health care, the health sector can act as an important referral point for other services that the victim may later need.<sup>136</sup>

For many women worldwide, the threat of violence exacerbates their risk of contracting HIV. Forced or coercive sexual intercourse with an HIV infected partner is one of the routes of transmission for HIV and sexually transmitted infections (STI) to women. Studies show the increasing links between violence against women and HIV and demonstrate that HIV-infected women are more likely to have experienced violence and those women who have experienced violence are at higher risk for HIV.<sup>137</sup>

Violence or fear of further violence<sup>138</sup> from their abusive partners prevents women from accessing HIV/AIDS information, being able to negotiate condom use with their abusive partners, being tested, disclosing their HIV status, accessing services for the prevention of

HIV transmission to infants and receiving treatment and counselling, even when they know they have been infected. A UNAIDS and WHO study found that women who had physically abusive partners were four times more likely to be verbally abused and nine times more likely to be threatened with physical abuse when they asked their primary partner to use condoms compared to those who did not have abusive partners.<sup>139</sup>

***"When in I was raped in 2004, I did not go to the police or to the doctor. I knew the man who raped me and I did not think anyone would believe me. I began to feel weak and feverish after two months and went for an AIDS test. I found out I was HIV positive as a result of the rape. I was pregnant at the time of the rape and my baby died soon after she was born. The doctor said that she became HIV positive too."***

Cristina, rape victim

As well as the general principles of availability, accessibility, acceptability and appropriate quality, there are specific requirements for services to victims and witnesses of criminal offences. General Recommendation 19 of the CEDAW states that: "Appropriate protective and support services should be provided for victims." It spells out the need for: "Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence."<sup>140</sup>

The Declaration on the Elimination of Violence against Women calls on states to:

"Work to ensure, to the maximum extent feasible in the light of their available resources and where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children, have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structure, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation".<sup>141</sup>

Ideally services for victims of gender-based violence should be available in health facilities. However, in Uganda victims often have to visit two or more different clinics to receive comprehensive care. According to interviews undertaken with sexual violence survivors and medical personnel, victims who report to a hospital are treated for their physical injuries, psychological aspects, emergency contraception or disease screening in three different departments.<sup>142</sup> However if the victim wishes to file a complaint with the police, she must see a state mandated police doctor. He does not provide any medical treatment and only documents the physical injuries in the PF3 resulting from the crime. Once this is done he then makes referral to another clinic where the victim can receive care for her physical injuries. The medical fees paid to the police doctor do not include the cost of clinic treatment and medication.

***"What discourages me from going to the police and Local Council is because they all want money. The higher you go up the chain of justice, the more money they want and yet I don't have the money. I don't even have money for medicines, where will I get the money for justice?"***

Asha

Overall, 74 per cent of the women interviewed by Amnesty International said that getting



money to pay for treatment is the biggest constraint to accessing health care after violence. This was followed by distance to the health facility. Women living in rural areas are more likely than urban women to report problems in accessing health care.<sup>143</sup> They are especially more likely to report that distance to a health facility and having to find transport are serious problems.<sup>144</sup>

Sexual violence limits women’s ability to practice safer sex and to protect themselves from sexually transmitted infections and unwanted pregnancies. Because of their vulnerable position, women may be unable to negotiate the conditions under which they have sex with their husbands or partners. Male partners may become violent if women refuse their sexual advances. Women who openly say that they have been raped often face rejection by their families and others. This stigmatization may be more pronounced if the victim contracts HIV/AIDS as a result of the violation.

## 8. TRIALS

“My daughter was raped on her way home from school in 2008. She said her attacker was a local man and she could identify him. We went to the police station and after a lot of follow-up, her rapist was arrested. At first the police did not believe her because the man was thought to be a well respected businessman. We have been to court several times and each time we are given excuses. I think his lawyer paid the officers in the court registry to ‘misplace’ or lose the file.”

Ekila, Mother of a 12-year-old rape victim.

By the government's own admission to the African Commission on Human and Peoples' Rights, the administration of justice in Uganda is “painfully slow”. The judiciary is understaffed and under-funded. It cannot effectively respond to the level of crime, particularly in the lower courts.<sup>145</sup>

Amnesty International's research revealed a number of obstacles for women trying to access justice through the court system.

Only a small proportion of reported cases go to court, and many of these fail to reach a conclusion. As reported above, between January and June 2009, there was 1.83 per cent conviction rate for rape and a 5.89 per cent conviction rate for defilement cases.

According to CID records documenting sexual violence cases in the three Kampala police stations visited by Amnesty International between January and June 2009, of 366 rapes reported, 109 were taken to court resulting in 2 convictions, 11 dismissals and a balance of 96 pending in court. The reasons why cases were still pending included:

- backlog of cases
- no High Court hearing done in the area during this period
- judicial officers not turning up for hearings
- victims deciding not to prosecute the matter and therefore failing to attend court sessions
- out of court settlements being reached between the victim and the perpetrator
- inability to find witnesses to testify in court for reasons including fear of being stigmatized and the inability to pay for transportation to court
- death of witnesses.

The government has taken certain steps to address bottlenecks in the criminal justice system by building additional courts and recruiting and deploying judicial officers.<sup>146</sup> The appointment of more judges has allowed High Court judges to be deployed in more regions throughout the country. The Directorate of Public Prosecutions (DPP) was strengthened by the recruitment of more State Attorneys and prosecutors.<sup>147</sup>

Francine, a rape victim, described her frustration in following her case through the criminal justice system. She told us that because the witnesses to her rape could not afford the transportation fare to go to court to testify, she had to pay the fare for them. After a while she ran out of money and stopped going to court herself

Both DPP personnel and police officers told Amnesty International of their frustration in trying to investigate cases that were impeded by out of court settlements. The victim's family is compensated with money or with livestock for the crime by the accused or his family. The victim and witnesses then fail to turn up in court to testify. The matter is then withdrawn as the police cannot investigate the crime if there is no complainant.

***"A 15 year old girl sought assistance from us after she alleged that she was raped by a member of parliament. Later we found out that she was offered money (to drop the charges) which she took and failed to turn up in court for subsequent hearings against him. The matter has since been dropped due to lack of evidence".***

Legal aid NGO

There are no state-funded legal aid facilities for victims of sexual offences. Victims appear as witnesses for the prosecution and help to build the prosecution's case but they are not represented as victims in their own right and therefore do not have any counsel to guide them through the court processes.

***“Defence lawyers ask victims embarrassing and intimidating questions to scare and confuse the victim. If the case is adjourned before she has finished giving her testimony, she probably will not come back to finish it when court resumes.”***

National Association of Women Judges-Uganda

When cases do go to trial, victims of sexual violence are often subjected to unfair discriminatory and irrelevant lines of questioning about their private lives, in particular prior sexual conduct. Courts also sometimes display bias against certain groups of women based on their sexual history, such as lesbians and sex workers, making it very difficult for them ever to win a case.

***“Open court systems allow for offenders and their families to intimidate victims as they wait for their case to be heard. Repeat offenders know how the system works whereas the victims may have never been to court and therefore are unsure of the procedures and language used.”***

National Association of Women Judges-Uganda

For expert witnesses, such as the doctors at Mulago Hospital, there is no reimbursement for travel and other costs incurred, even if the victim's case is not heard, for example if the magistrate does not appear.<sup>148</sup>

***“Many people simply do not understand how the police and judiciary work. The suspect has a constitutional right to get police bond or court bail. When such a person goes back to the community, then they say the victim and the rest of the community do not believe that the police are doing their job and have been compromised. This has led to an increase of mob justice cases. Mob justice has persisted because most people do not know the law.”***

General Commissioner of Prisons, Uganda.<sup>149</sup>

In a case with wide potential implications, a judge found that the existence of a valid marriage or honest belief of a valid marriage was no longer a valid defence to rape in light of the Ugandan Constitution.<sup>150</sup>

## 9. INITIATIVES FOR WOMEN’S ACCESS TO JUSTICE

### KAWEMPE DOMESTIC VIOLENCE BY-LAW

The Centre for Domestic Violence Prevention (CEDOVIP), in partnership with Raising Voices and a team of community volunteers, members and leaders engaged the community of Kawempe, located in North West Kampala, and its Local Councils to create a domestic violence by-law to outlaw domestic violence within Kawempe in the absence of any national domestic violence legislation. Passed in 2007, this was the first domestic violence by-law adopted by a Local Council in Uganda.<sup>151</sup> It aims to protect individuals within households against domestic violence by holding the perpetrators responsible for their actions.

It is hoped that this by-law will enable many women and their families to live free of violence as well as help in the prevention of HIV/AIDS. It gives guidelines on how to summon suspects, conduct trials, the number of people that form a quorum for a court sitting and how to issue judgments. The by-law maintains that all domestic violence criminal cases must be referred to Child Family Protection Units. It further assures protection for the survivor of domestic violence and those who intervene in domestic violence. In general terms women are assured of legal protection against domestic violence.

This legislation is limited in that it is subordinate to national legislation and applies only to acts of domestic violence committed in the Kawempe jurisdiction. In addition, article 6 of the by-law gives the Local Council Court discretion to allow for reconciliation, compensation, restitution, costs and apology as forms of relief “where the act of Domestic Violence constitutes assault, battery or damage to property”.<sup>152</sup> By allowing for monetary compensation in cases of intimate partner violence, the by-law does not treat domestic violence as equivalent to other forms of physical assault, but rather as a less serious offence.

### GENDER TRAINING FOR JUDGES AND MAGISTRATES

The National Association of Women Judges (NAWJ) has been engaged in building the capacity of judicial officers to use international instruments when deciding cases involving

54 "I can't afford justice"  
Violence against women in Uganda unchecked and unpunished

discrimination or violence against women. Judicial officers who have attended the training have observed that it has improved their ability to detect gender bias and deliver gender sensitive judgments. Unfortunately, financial constraints have limited the Association's capacity to provide training across the justice sector. Nevertheless, this initiative has potential for increasing women's access to justice.<sup>153</sup>

# 10. CONCLUSION AND RECOMMENDATIONS

The Ugandan government has an obligation to do more to protect women and girls from gender-based violence and to ensure that survivors of such violence gain access to justice. The government should take immediate action to provide survivors of gender-based violence with legal support and to meet their health, safety, and shelter requirements. It should also take steps to prevent violence against women by addressing its root causes.

## GOVERNMENT

- The government of Uganda should allocate secure, long-term government funding, or actively seek donor funding, to ensure that appropriate shelters are set up across the country in sufficient numbers, in collaboration with NGOs experienced in working to protect women from violence.
- The government should allocate secure, long-term government funding, or actively seek donor funding, to provide financial compensation to victims, allowing victims to access medical and legal resources in pursuit of justice as well as recompense for loss of wages as a result of the crime and the costs of transport to the police station, medical institution and court.
- The government should set up a functioning cross-referral system with regards to gender-based violence cases, involving key players such as medical institutions, legal aid providers, shelters and police.
- The government should set up a panel to identify obstacles to the effective investigation and prosecution of crimes of sexual and gender-based violence. The investigation panel should include members of the police force and delegates from other relevant government entities as well as delegates from NGOs that work with victims of sexual and gender-based violence. The investigation panel should give particular attention to the situation of poor women and women living in rural areas.

## PARLIAMENT

- Parliament should prioritize the passing and adoption of pending legislation that addresses sexual and gender-based violence.
- Parliament should draft new legislation which prohibits all acts of violence against women, whether committed by state officials or private individuals.
- Parliament should review and abolish legislation (both existing and pending) that criminalizes same sex consensual relationships.

## **POLICE, CRIMINAL INVESTIGATION DEPARTMENT**

- The police should explain to women who are reporting sexual or other gender-based violence their rights to file a complaint, seek protection, obtain medical attention, and be kept apprised of the progress of the investigation.
- The Criminal Investigation Department should interview all victims of sexual and other gender-based violence and keep them updated of the progress of investigations of their case.
- The paramount priority of the police when investigating domestic violence should be the safety and security of the victim and any children who are at risk, not reconciliation. In all cases where police receive a report of sexual or other gender-based violence, they should assess the risk of further violence to the victim and take appropriate measures to ensure her security.
- The police unit and office of the prosecutor should regularly publish statistics on the resolution of investigations and provide information on the cases disaggregated by factors including sex and age.
- The police, medical personnel, investigators within the Directorate of Public Prosecutions and judges should be trained in working with women and girls making complaints of rape or other forms of sexual violence. Training should include the appropriate use of medical evidence, and use of expert evidence, such as psychological or psychiatric reports.
- Survivors should be informed of release dates of their attackers who have been imprisoned; and updated safety assessments should be carried out.

## **MINISTRY OF HEALTH**

- Forensic medical examinations should be available to all victims of gender-based violence without charge, and should conform to the World Health Organization Protocols.
- The Police Form 3 should be amended and updated to take into consideration various forms of violence against women.
- The Ministry of Health should ensure that health services are physically and geographically available and accessible to all women and girls who have experienced sexual or other gender-based violence. The patient should be reimbursed for travel costs if she cannot afford them.
- Health services should provide women and girls who have been raped with immediate emergency contraception; HIV post-exposure prophylaxis; gynaecological care for injuries sustained in the assault, as well as general medical care for other injuries, and initial psychological support.
- Victims should be able to receive health care and forensic examinations in one clinic or health service location.

## **MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS**

- Police, prosecutors and judges should be trained to investigate claims of self-defence made by women who are accused of murdering their husbands or intimate partners. Where the law or rules of procedure or evidence are inadequate to allow a full hearing of this defence – the laws and rules should be amended appropriately.



- Lawyers and advocates providing legal aid to women accused of murdering their husbands or intimate partner should be trained to evaluate and use self-defence claims.
- The Ministry of Justice should define clear jurisdictional parameters for parallel legal or conciliation systems to ensure that they do not claim jurisdiction over these cases and that cases involving violence are dealt with within the formal justice sector.

## JUDICIARY

- The judiciary should ensure that victims and witnesses in cases of sexual violence are shielded from having their “moral character” put on trial. Testimony regarding a victim’s sexual history should be precluded from the court room. Judges should be held responsible for maintaining the privacy of the victim’s identity if she so chooses. The judge should ensure that witnesses are not subjected to intimidation by the defendant or others in the court room.
- All judges, magistrates and lawyers should receive training on the international human rights law relating to violence against women to enhance knowledge and ensure the effectiveness and sensitivity of the judicial officers in the prosecution of acts of violence against women.
- Legal aid and paralegal services should be provided to victims of sexual and other gender-based violence.

## PRISONS

- Perpetrators convicted of crimes of sexual violence should be given access to appropriate rehabilitation programs.

## THE INTERNATIONAL COMMUNITY

The international community, including the UN, key donors and the Justice Law and Order Sector (JLOS) donor group should support the government of Uganda in its efforts to address violence against women and ensure that victims of gender-based violence have access to justice.

## ENDNOTES

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<sup>1</sup> General Assembly resolution 48/104 of 20 December 1993, UN Doc A/RES/48/104 of 23 February 1994.

<sup>2</sup> Security Council Resolutions 1325, 1820, 1888, 1889.

<sup>3</sup> Uganda Demographic and Health Survey, 2006.

<sup>4</sup> Ibid, 2006, p293.

<sup>5</sup> Violence Against Women – A Fact Sheet, Amnesty International USA  
<http://www.amnestyusa.org/violence-against-women/violence-against-women---a-fact-sheet/page.do?id=1108440>

<sup>6</sup> As per interviews with police officials.

<sup>7</sup> These are run by non-governmental organizations which work with virtually no funding from the government and rely on international donor organizations for funding.

<sup>8</sup> Interview, 7 December 2009, reflects the situation in northern Uganda where District Commissioners have not only dismissed sexual and gender-based violence but are also asking that donor funds for psychosocial support for survivors of gender-based violence be redirected to other sectors.

<sup>9</sup> Uganda has ratified several international treaties that are relevant to the rights of women and girls. These include: African Charter on Human and Peoples' Rights (ACHPR), International Convention on Economic, Social and Cultural Rights (ICESCR), International Convention on Civil and Political Rights (ICCPR), Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture, Convention on the Rights of the Child.

<sup>10</sup> Although the bulk of the research was undertaken in Kampala, several references are made to Uganda as a whole.

<sup>11</sup> UN. Doc. A/47/38 at 1 (1993), Paras 6-7.

<sup>12</sup> 15 Years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009)—A Critical Review, p4

[www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf](http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf)

<sup>13</sup> CEDAW Article 2 (e)

<sup>14</sup> Committee on the Elimination of Discrimination against Women General Recommendation 19, Article 24 (i); note 15, article 4 (d).

<sup>15</sup> DEVAW (A/RES/48/104), Article 4 (b) and (c).

<sup>16</sup> General Recommendation 19 of the Committee on the Elimination of Discrimination against Women, UN. Doc. A/47/38 (1993), Para 24.

<sup>17</sup> For example, the Inter-American Commission on Human Rights, in the case of Maria da Penha Maia Fernandes (Brazil) recommended:

- a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence.
- b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process.
- c. The establishment of mechanisms that serve as alternatives to judicial mechanisms, which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences.
- d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports.
- e. The inclusion in teaching curricula of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.

Maria da Penha Maia Fernandes (Brazil) (2001) 12.051 Inter-Amer Comm HR, 54/01, VII (4).

<sup>18</sup> See Amnesty International, *Making Rights a reality – the duty of states to address violence against women*, (Index: ACT 77/049/2004) p 19. Also Amnesty International Australia, *Setting the Standard -- International Good Practice To Inform An Australian National Plan Of Action To Eliminate Violence Against Women*, 2008, ABN: 64 002 806 233, p11.

<sup>19</sup> See Amnesty international, *Making Rights a Reality: The Duty of States to Address Violence against Women*, (Index: ACT 77/049/2004).

<sup>20</sup> Ratification makes Uganda party to the Protocol and therefore obligated to enact national laws that incorporate the rights in the Protocol into domestic law.

<sup>21</sup> This Protocol was premised on the international and regional human rights framework and was adopted by the African Union (AU) in 2003.

<sup>22</sup> CEDAW/C/UGA/7

<http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-UGA-7.pdf>

<sup>23</sup> Ibid, Para. 132, which refers to the CEDAW Concluding Observations on Uganda's third period report, Para 135.

<sup>24</sup> Report of the Committee on the Elimination of Discrimination against Women, Exceptional session, 5-23 August 2002 (UN Doc. A/57/380): Consideration of reports of States parties Uganda Third periodic report, Paras 133 & 134. See also Amnesty International, *Doubly Traumatized -lack of access to justice for female victims of sexual and gender-based violence in Northern Uganda*, (Index: AFR 59/005/2007).

<sup>25</sup> Article 21(1), 33 (1), 33 (2), 33(6), Constitution of the Republic of Uganda

<sup>26</sup> Report of the Committee on the Elimination of Discrimination against Women, Exceptional session, 5-23 August 2002 (UN Doc. A/57/38),: Consideration of reports of States parties Uganda Third periodic report, Para 129

<sup>27</sup> Law & Advocacy For Women In Uganda vs Attorney General Of Uganda, Constitutional Court Of Uganda at Kampala Constitutional Petitions Nos. 13 /05 /& 05 /06. The legal challenge was filed against the Attorney General by a group of women lawyers.

<sup>28</sup> Section 154 of the Penal Code Act.

<sup>29</sup> Cap 249 Divorce Act, Sections 4(1) &(2), 5, 21-24 and 26

<sup>30</sup> The Penal Code Act (Amendment) Act 2007 replaced section 129 and Section 319, it also amended Section 286.

<sup>31</sup> Penal Code Act Chapter 120, Chapter XIV Offences Against Morality, Section 124.

<sup>32</sup> Ibid, Section 125.

<sup>33</sup> Defined, Section 1 (c)

<sup>34</sup> Prohibition of Female Genital Mutilation Act, 2009, Articles 2 and 3.

<sup>35</sup> Interview CEDOVIP, 17 March 2010

<sup>36</sup> The Domestic Violence Act coalition of NGOs is set to follow through implementation of the Domestic Violence Act. Its advocacy focuses on: gaining the President's assent to the legislation, which has recently happened; the government allocation of funds for implementation; raising public awareness of the Act; building capacity within the criminal justice system on the use of the legislation; work with the Ministry of Gender Labour and Social Development to draft the required policies to implement the Act.

<sup>37</sup> Penal Code Act, Chapter 120, Chapter 23 – Assaults.

<sup>38</sup> Sharia law allows for polygamy (a man can marry up to four wives) and defines the age of consent to marriage as when a girl reaches the age of puberty.

<sup>39</sup> All of the Muslim women interviewed by Amnesty International concurred with the Muslim community’s rejection of the Bill, saying that although there was a widely held sentiment that they had not read the Bill and therefore did not understand its provisions, this was untrue. They felt that the Bill would in effect render many women without husbands, first because no woman is likely to give consent to her husband marrying a second wife and secondly because (population wise)there are more women than men: “It makes sense to share”.

<sup>40</sup> CEDAW Article 1, defines the term “discrimination against women” to “mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” See also the Committee on the Elimination of Discrimination against Women, General Comment 25, on Article 4(1) of CEDAW, Temporary Special Measures, 2004.

<sup>41</sup> CEDAW/C/UGA/7 Para. 20

<sup>42</sup> Ibid, Para. 132, which refers to the CEDAW Concluding Observations on Uganda’s third period report, Para 135.

<sup>43</sup> Ibid, Para. 14

<sup>44</sup> For more information see Amnesty International, *Uganda: Anti-Homosexuality Bill is Inherently Discriminatory and Threatens Broader Human Rights* (Index: AFR 59/003/2010).

<sup>45</sup> The Criminal Investigations Department (CID) is the only unit mandated to investigate sexual violence cases.

<sup>46</sup> CEDAW/C/UGA/7, Para. 31.

<sup>47</sup> Old Kampala Police Division and Katwe Police station.

<sup>48</sup> Civil society organizations are also involved in initiatives to raise awareness on gender issues. The Centre for Domestic Violence Prevention (CEDOVIP), Hope After Rape(HAR), Slum Aid Project (SAP), Action for Development, the Uganda Women’s Network (UWONET), Uganda Federation of Women Lawyers (FIDA-U), Women’s Organisation and Network for Human Rights Advocacy (WONETHA), Little Mermaid, and the Isis Women’s International Cross Cultural Exchange continue to play a key role in providing literacy programmes in different parts of the country. The main challenge facing a number of these organizations is the lack of consistent donor funding for violence against women programmes.

<sup>49</sup> Resolution adopted by the General Assembly [on the report of the Third Committee (A/63/425)] on the Intensification of efforts to eliminate all forms of violence against women, A/RES/63/155, 30 January 2009, Paras g and h.

<sup>50</sup> Uganda Periodic Report To The African Commission On Human And Peoples' Rights Presented At The 44th Ordinary Session Of The Commission On Human And Peoples' Rights Abuja, Nigeria November 2008  
[http://www.achpr.org/english/state\\_reports/Uganda/Ugandareport\\_2008.pdf](http://www.achpr.org/english/state_reports/Uganda/Ugandareport_2008.pdf) , pp 33 and 56.

<sup>51</sup> Article 4 (h).

<sup>52</sup> Para. 124 (p).

<sup>53</sup> The MoGLSD is responsible for issues related to women, children, persons with disabilities and labour.

<sup>54</sup> Uganda Periodic Report To The African Commission On Human And Peoples' Rights Presented At The 44th Ordinary Session Of The Commission On Human And Peoples' Rights Abuja, Nigeria November 2008  
[http://www.achpr.org/english/state\\_reports/Uganda/Ugandareport\\_2008.pdf](http://www.achpr.org/english/state_reports/Uganda/Ugandareport_2008.pdf) , p 56.

<sup>55</sup> Interview, Gender Based Violence Clinic, Mulago General Hospital 22 February 2010

<sup>56</sup> Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

<sup>57</sup> General Comment. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, CRC/GC/2003/5 Para. 7)

<sup>58</sup> Amnesty International, *Making rights a reality – The duty of states to address violence against women*, p 42.

<sup>59</sup> The Protocol on the Rights of Women in Africa, (Article 1[g])

<sup>60</sup> *New Vision* ,16 September 2009, by Joyce Namutebi  
<http://www.newvision.co.ug/D/8/13/694840>. Launching a campaign against the practice in Nakapiripirit district recently, President Yoweri Museveni described the practice as brutal and backward. "God knew what he was doing when he created us. Do you think you are more intelligent than God?"

<sup>61</sup> Declaration on the Elimination of Violence against Women, Article 4.

<sup>62</sup> Report of the Committee on the Elimination of Discrimination against Women, Exceptional session, 5-23 August 2002 (UN Doc. A/57/38),: Consideration of reports of States parties Uganda Third periodic report, Para 153.

<sup>63</sup> Although there are various forms of harmful practices that violate the rights of women, this report looks at bride price and how it contributes to the violation of a number of women's rights along with its impact on women's status in marriage.

<sup>64</sup> Customary Marriage Registration Decree, 1973, Laws of Uganda

<sup>65</sup> Uganda state report to the Commission on Human and Peoples' Rights 39th ordinary session of the Commission on Human and Peoples' Rights Banjul, the Gambia May 2006 Art. 88,  
[http://www.achpr.org/english/Archives/State%20reports/eng/Uganda/UGANDA%20report\\_2\\_eng.pdf](http://www.achpr.org/english/Archives/State%20reports/eng/Uganda/UGANDA%20report_2_eng.pdf)

<sup>66</sup> The Republic Of Uganda 2<sup>nd</sup> Periodic Report To The Commission On Human And Peoples' Rights Presented At The 39th Ordinary Session Of The Commission on Human and Peoples' Rights Banjul, The Gambia May 2006, para 88-89.

<sup>67</sup> Article 5a.

<sup>68</sup> Article 2(2).

<sup>69</sup> The 2006 Uganda Demographic and Health Survey (2006 UDHS) was implemented by the Uganda Bureau of Statistics. It is the first to cover the entire nation since insecurity restricted data collection activities in each of the previous three surveys.

<sup>70</sup> Ministry of Finance, Planning and Economic Development, *Gender Inequality in Uganda: The status, causes and effects*, August 2006, p34.

<sup>71</sup> Same meaning as middle or upper class

<sup>72</sup> Interview, Assistant Inspector of Police, Old Kampala Police Station, 7 October 2009.

<sup>73</sup> Uganda Demographic and Health Survey, 2006.

<sup>74</sup> Ibid, 2006, p292.

<sup>75</sup> Ibid, 2006, p292.

<sup>76</sup> Ibid, 2006, p292.

<sup>77</sup> Pan-American Health Organization, "*Gender and HIV/AIDS*," Women, Health and Development Programme, Fact Sheet, June 2007.

<sup>78</sup> Interview Hope After Rape (Women and children shelter), 10 September 2009

<sup>79</sup> Uganda Demographic and Health Survey, 2006 p290

<sup>80</sup> Ibid, 2006, p291.

<sup>81</sup> Plan International, *Learn Without Fear*, 2008.

<sup>82</sup> United Nations Division for the Advancement of Women, *The Secretary-General's in-depth study on all forms of violence against women* 2006, p49.

<sup>83</sup> There is no specific data in Uganda to show this, but NGOs assert that this is the pattern in Uganda.

<sup>84</sup> Article 2.2 of the International Covenant on Economic, Social and Cultural Rights, Article 2.1 of the International Covenant on Civil and Political Rights.

<sup>85</sup> Interview with defence lawyers and NGOs, 15 October 2009.

<sup>86</sup> Sections 136 – 139.

<sup>87</sup> Section 167. Idle and disorderly persons. Any person who— (a) being a prostitute, behaves in a disorderly or indecent manner in any public place.... shall be deemed an idle and disorderly person, and is liable on conviction to imprisonment for three months or to a fine not exceeding three thousand shillings or to both such fine and imprisonment, but in the case of an offence contrary to paragraph (a) ... that person is liable to imprisonment for seven years.

<sup>88</sup> Section 168. Rogues and vagabonds (1) Every— (a) person convicted of an offence under section 167 after having been previously convicted as an idle and disorderly person... (d) person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose, shall be deemed to be a rogue and vagabond, and commits a misdemeanour and is liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for one year.

<sup>89</sup> Shadow Report of Uganda's 1<sup>st</sup> Periodic State Report to the African Commission on Human and Peoples Rights – presented to the 40<sup>th</sup> ordinary session of the African Commission on Human and Peoples Rights, Banjul, Gambia, November 2006, p32.

<sup>90</sup> *BBC News* 25 March 2008 <http://news.bbc.co.uk/1/hi/world/africa/7313310.stm>

<sup>91</sup> UNHCR Refugee Agency <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483c06>

<sup>92</sup> The obligations of states to protect internally displaced people are set out in the Guiding Principles on Internal Displacement adopted by the UN Commission on Human Rights in 1988 and the African Union Convention for the Protection of Internally Displaced Persons in Africa (Kampala Convention) adopted in 2009.



<sup>93</sup> UNHCR Refugee Agency <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483c06>

<sup>94</sup> Uganda Demographic and Health Survey, 2006 p293

<sup>95</sup> United States Committee for Refugees and Immigrants, World Refugee Survey 2009 - Uganda, 17 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a40d2b5c.html> [accessed 18 November 2009].

<sup>96</sup> The Independent “Policewoman carries scar of ‘Kabaka riots’ by Jocelyn Edwards, 03 November 2009. This was also confirmed by police interviews , 5th - 8th October 2009.

<sup>97</sup> International Covenant on Civil and Political Rights, Art 19 (2)

<sup>98</sup> Implementation of the Declaration On The Elimination Of All Forms Of Intolerance And Of Discrimination Based On Religion Or Belief, Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1995/23 Addendum Visit by the Special Rapporteur to the Islamic Republic of Iran.

<sup>99</sup> CEDAW/C/UGA/7, Para 169.

<sup>100</sup> Ibid, Para 209.

<sup>101</sup> Ibid, Para 173.

<sup>102</sup> General Recommendation 19, Para 24b).

<sup>103</sup> Amnesty International, *Six-point checklist on justice for violence against women* (Index: ACT 77/012/2009).

<sup>104</sup> Uganda Bureau of Statistics, 2009 Statistical Abstract pg 32 – 33(Sourced from the Uganda Police Force).

<sup>105</sup> Slum Aid Project’s goal is to address problems faced by women and children in seven slum areas in Kampala.

<sup>106</sup> Interview UNIFEM 3 October 2009.

<sup>107</sup> Jo Lovett and Liz Kelly, *Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe* , Child and Woman Abuse Studies Unit, London Metropolitan University, 2009.

<sup>108</sup> See, for example, Amnesty International, *Case Closed: rape and human rights in the Nordic Countries* (Index; ACT 77/001/2010).

<sup>109</sup> Interview CFPU, IP Katwe Police Station, Kampala, 7 October 2009.

<sup>110</sup> Interview CFPU, IP Katwe Police Station, Kampala, 7 October 2009.

<sup>111</sup> Interview CFPU, Katwe Police Station, Kampala, 7 October 2009.

<sup>112</sup> Interview Old Kampala Police Station, 6 October 2009.

<sup>113</sup> CEDAW/C/UGA/7 Para 177 - Poverty in UGANDA has a predominantly female face.

<sup>114</sup> Economic, Social and Cultural Rights - Women and adequate housing , Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non- discrimination, Miloon Kothari, in accordance with Commission resolution 2002/49, Para 27 March 2003 E/CN.4/2003/55.

<sup>115</sup> There is a psychiatric unit at the Mulago hospital where patients can be referred to for counselling. However the services are not free and it is not designated to violence against women cases only.

<sup>116</sup> Interview CECORE-IANSA Researcher on Violence Against Women and Small Arms, 10 September 2009.

<sup>117</sup> Interview Hope After Rape (Women and children shelter), 10 September 2009.

<sup>118</sup> The Domestic Violence Act provides for protection orders that work like a restraining order to prevent the perpetrator from having contact with the victim during a stipulated period. However this legislation has just recently received Presidential assent and is therefore not an active piece of legislation at the time of writing of this report.

<sup>119</sup> Annex, Article 6.

<sup>120</sup> UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, Annex, Article 7.

<sup>121</sup> The Republic Of Uganda 2<sup>nd</sup> Periodic Report To The Commission On Human And Peoples' Rights Presented At The 39th Ordinary Session Of The Commission on Human and Peoples' Rights Banjul, The Gambia May 2006, para 44.3.

<sup>122</sup> Interview Police Doctor 6 October 2009.

<sup>123</sup> Interview with CID Katwe Police Station, Kampala, 7 October 2009. Although this is not a legal requirement, this is the time frame recommended by the police to report a sexual crime.

<sup>124</sup> Interview Police Doctor 6 October 2009. Also refer to World Health Organization *Guidelines for medico-legal care for victims of sexual violence* 2003, p18.

<sup>125</sup> Uganda Bureau of Statistics website,  
<http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/general%20information%20on%20uganda.pdf>

<sup>126</sup> Interview Police Doctor 6 October 2009, CID Katwe Police Station, Kampala, 7 October 2009. Some of the police doctors are not available full time as they also undertake trainings, are in private practice or attending/giving lectures.

<sup>127</sup> World Health Organization *Guidelines for medico-legal care for victims of sexual violence* 2003, p17 - 22

<sup>128</sup> World Health Organization *Guidelines for medico-legal care for victims of sexual violence*, 2003.

<sup>129</sup> Interview Police Doctor, 6 October 2009

<sup>130</sup> Interview Police Doctor and Gender Based Violence Clinic, Mulago General Hospital, 6 October 2009.

<sup>131</sup> Interview Police Doctor, 6 October 2009.

<sup>132</sup> Interview Gender Based Violence Clinic, Mulago General Hospital, 6 October 2009.

<sup>133</sup> Interview Gender Based Violence Clinic, Mulago General Hospital, 6 October 2009.

<sup>134</sup> Interview CP/Police Medical Services, Police Doctor, 5 October 2009.

<sup>135</sup> United Nations Division for the Advancement of Women, *The Secretary-General's in-depth study on all forms of violence against women* 2006, p48. Supported by interview with Gender Violence Based Clinic, Mulago General Hospital, 6 October 2009.

<sup>136</sup> World Health Organization *Guidelines For Medico-Legal Care For Victims Of Sexual Violence* 2003, p2.

<sup>137</sup> United Nations Division for the Advancement of Women, *The Secretary-General's in-depth study on all forms of violence against women* 2006, p49.

<sup>138</sup> The UNAIDS and World Health Organization Information Bulletin Series, Number 1 Violence Against Women and HIV/AIDS - Critical Intersections Intimate Partner Violence and HIV/AIDS P 3-4: found that violence or fear of violence has been implicated as a barrier to women seeking HIV testing. In Uganda, research indicates that women were afraid to ask for money or permission from their husbands to attend HIV/AIDS facilities or seek information and in some cases explicitly forbidden from taking HIV tests. Violence or fear of violence has also been implicated as a barrier to disclosure of HIV status among those women who do seek testing. Between 16 - 86 % of women in developing countries choose not to disclose their HIV status to their partners. On the other hand, disclosure of HIV status is considered to be

important

<sup>139</sup> The UNAIDS and World Health Organization Information Bulletin Series, Number 1 on Violence Against Women and HIV/AIDS - Critical Intersections Intimate Partner Violence and HIV/AIDS P 3: In a study from South Africa, women who experienced forced sex were found to be nearly six times more likely to use condoms inconsistently than those who did not experience coercion and, in turn, women with inconsistent condom use were 1.6 times more likely to be HIV infected than those who used condoms consistently.

<sup>140</sup> Para 24.

<sup>141</sup> Article 4(g).

<sup>142</sup> Interview Gender Based Violence Clinic, Mulago General Hospital, 6 October 2009.

<sup>143</sup> Uganda Demographic and Health Survey, 2006, p133.

<sup>144</sup> Ibid, p133.

<sup>145</sup> The Republic Of Uganda 2<sup>nd</sup> Periodic Report To The Commission On Human And Peoples' Rights Presented At The 39th Ordinary Session Of The Commission on Human and Peoples' Rights Banjul, The Gambia May 2006, Para 48.3.

<sup>146</sup> Uganda Periodic Report To The African Commission On Human And Peoples' Rights Presented At The 44th Ordinary Session Of The Commission On Human And Peoples' Rights Abuja, Nigeria November 2008  
[http://www.achpr.org/english/state\\_reports/Uganda/Ugandareport\\_2008.pdf](http://www.achpr.org/english/state_reports/Uganda/Ugandareport_2008.pdf), pp33-35.

<sup>147</sup> In practice, once the police have completed their investigations, the file is sent to the Directorate of Public Prosecutions (DPP) for approval. The powers of the Directorate of Public Prosecutions are of a general nature applying to all criminal proceedings and include investigation, and the institution of criminal proceedings under a competent jurisdiction.

<sup>148</sup> Interview police doctors, 6 October 2009.

<sup>149</sup> Interview Commissioner General of Prisons Uganda Prisons Service, 16 September 2009.

<sup>150</sup> Uganda v. Yiga Hamidu, Criminal Session Case of 2002 (High Court of Uganda at Musaka), 2004. The accused argued that he honestly believed the complainant was his wife because he had paid a dowry to her parents and a customary marriage had been sealed and under Ugandan laws. He was indicted on charges that he had hired two men to abduct a woman in his village and had then raped her. He denied the charges, raising the defence of mistake of fact. The Judge found the defendant guilty of rape and that no marriage had taken place in accordance with the parties' Islamic faith but further stipulated that even if the couple had been customarily married, the provision of the Penal Code Act does not make an exception for married persons.

<sup>151</sup> Interview Centre for Domestic Violence Prevention (CEDOVIP), 21 September 2009.

<sup>152</sup> Kawempe Division (Domestic Violence) Bylaw of 2007, Number 001 of 2007, Article 6b.

<sup>153</sup> Interview National Association of Women Judges. See also CEDAW/C/UGA/7, para 212.





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## **‘I CAN’T AFFORD JUSTICE’**

### **VIOLENCE AGAINST WOMEN IN UGANDA CONTINUES UNCHECKED AND UNPUNISHED**

Violence against women is pervasive in most parts of Uganda and is widely accepted as justified by “traditional values”. The government has taken some steps to address gender-based violence but is still falling short of its international obligation to prevent violence against women and to ensure that women have access to justice.

Women who have been subjected to violence face numerous obstacles if they seek justice. This report highlights the reasons why women are reluctant to report violence to the authorities, failures in the collection of forensic evidence, police investigations and trials, and the inadequacy of existing laws.

Amnesty International calls on the government of Uganda and its state agencies to prioritize support for women seeking justice for sexual and domestic violence. It also calls on them to challenge and transform discriminatory attitudes and to remove the obstacles impeding women’s access to justice.

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