Published by The Judiciary with support from the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and funded by the Embassy of Sweden.
Foreword

Access to justice for women is a critical component of delivery of justice globally and at the national level. In Uganda, the Justice Law and Order Sector (JLOS) conducted an audit in May 2011 which revealed, among other factors, the limited capacity of the judiciary to deliver gender-sensitive justice to the general population of Uganda, and more specifically to women. Although a number of training sessions on gender justice have been conducted for judicial officers, some of the court procedures and judgments clearly demonstrate their inability to translate the gender training into concrete benefits for women. The major reason identified for this gap is the lack of tools for the judiciary to make court processes and judgments more gender-sensitive.

In the JLOS work plan, under the Strategic Investment Plan (SIP) III (2011 - 2016), one of the key strategies identified for addressing this gender capacity gap in the judiciary was the development of gender bench briefs for judicial officers to use and refer to in adjudication of cases. The Gender Bench Book presents judicial officers with local and international best practices, including recommendations from treaty bodies such as the Committee on the Elimination of Discrimination against Women. It offers guidelines for use by court officials when determining cases where women’s rights are involved. It will also assist judicial officers in addressing procedural issues that impede access to justice.

It is against this background that UN Women has supported the research and publication of this Gender Bench Book, to enhance the gender-responsiveness of judicial officers, and ensure that judgments in Uganda are increasingly gender-sensitive. We are grateful to UN Women and the Embassy of Sweden for this valuable support. We hope that this Gender Bench Book will enhance women’s access to justice, and particularly contribute to the effective implementation and enforcement of women’s rights in Uganda.

Hon. Justice Bart M. Katureebe
CHIEF JUSTICE OF UGANDA
Foreword

Rigorous international standards have been developed to ensure that women access substantive justice. One of the core treaties to establish these standards is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW and other treaties, including the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), seek to address pervasive social, cultural and economic discrimination against women and declare that States must act to eliminate violations of women’s rights whether by private persons, groups or organizations. Such treaties map out a broad range of actions that States must take to respect, protect and fulfill those rights.

The CEDAW Committee’s General Recommendation No. 33 on Women’s Access to Justice, adopted in July 2015, stresses the importance of women’s access to justice in diverse legal systems and in all areas of law for all women. It encompasses all justice settings (formal, informal or semi-formal), sources of law (common law, civil law, religious law, customary law or mixed legal systems), and the full range of legal domains (criminal, civil, family, administrative and constitutional). The General Recommendation situates the obligations of States parties to ensure women have access to justice, within the broader context of persistent obstacles and restrictions that prevent women from realizing their right of access to justice on the basis of equality.

One such obstacle, for example, is Violence Against Women, which severely impedes the empowerment of women in Uganda. The Uganda Demographic and Health Survey (UDHS, 2011) shows that 56 per cent of women aged 15 - 49 reported having experienced physical violence at least once since the age of 15. Wife beating is widely accepted with 58 per cent of women and 44 per cent of men believing that it is justified for a man to beat his wife under certain circumstances. Further, it is estimated that only two in ten Ugandan women report violence or seek help. And even when cases are reported, conviction rates for perpetrators stand at an alarming 6.6 per cent of prosecuted cases.

To address gender gaps in access to justice identified in the JLOS SIP III (2011 - 2016), UN Women, with funding from the Embassy of Sweden, supported the judiciary in Uganda to develop the Gender Bench Book on women’s access to justice. This book is intended to serve as a reference guide for judicial officers to ensure that judgments in Uganda are increasingly gender-sensitive, protect women’s and girls’ human rights, and encourage women to seek justice.

It is my hope that all actors across the justice, law and order sector will find this Gender Bench Book useful, and that it will contribute to creating a gender-sensitive justice system that protects the human rights of all women and girls.

Representative, UN Women
Hodan Addou
Acknowledgements

The development of this Gender Bench Book was a participatory process involving national and international Gender and Women’s human rights experts, and judicial actors at various levels of the justice system in Uganda.

UN Women acknowledges with gratitude:-

The Judiciary of Uganda
Hon. Justice Bart M. Katureebe: Chief Justice of Uganda
Hon. Lady Justice Stella Arach Amoko: Supreme Court of Uganda
Hon. Justice David K. Wangutusi: High Court of Uganda
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United Nations System and Beyond
We acknowledge and thank colleagues from across the United Nations system and beyond for their comments and contributions to this book:-
Evelyn Kamau: Office of the High Commissioner for Human Rights
Agnes Gillian Ocitti: Royal Danish Embassy in Uganda
Laura Fragiacomo: UNICEF
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Nahla Valji, Francis Onditi, Beatrice Duncan, Janette Amer, Alison Davidian, Adjaratou Fatou Ndiaye, Jebbeh Forster, Marguerite Garling, Norul Rashid, Funmi Balogun, Heran Ayele, Hilina Berhanu Degefa, Carolin Schleker

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Financial Support
UN Women would like to thank the Embassy of Sweden in Uganda for their generous financial support towards this publication.
Table of Contents

Foreword ........................................................................................................................................... iii
Foreword ........................................................................................................................................... iv
Acknowledgements ............................................................................................................................. v
Background and Justification ............................................................................................................. xi
How to use this Gender Bench Book ................................................................................................. xiii
User Feedback .................................................................................................................................... xiv
Acronyms and Abbreviations ............................................................................................................ xv
Key Definitions .................................................................................................................................... xvii
List of Cases Referred to in this Gender Bench Book ...................................................................... xx
Executive Summary .......................................................................................................................... xxv

CHAPTER 1: ......................................................................................................................................... 1
BASICS OF WOMEN'S ACCESS TO JUSTICE ................................................................................. 1

Figure 1: Dimensions Related to Women's Access to Justice ................................................................. 4

1.1 Access to Justice ......................................................................................................................... 6
1.2 Equality and Non-Discrimination ............................................................................................... 10
1.3 Affirmative Action ..................................................................................................................... 13
1.4 Intersectional Approach to Discrimination .............................................................................. 14
1.5 Gender Stereotypes ................................................................................................................... 15

Cases Referred to in Chapter One .................................................................................................... 20

CHAPTER 2: ......................................................................................................................................... 21
FAMILY RELATIONS ......................................................................................................................... 21

2.1 Marriage ....................................................................................................................................... 24
2.2 Separation and Divorce ............................................................................................................... 28
2.3 Cohabitation ............................................................................................................................... 31
2.4 Relations to Children .................................................................................................................. 32

Cases Referred to in Chapter Two .................................................................................................... 42

CHAPTER 3: ......................................................................................................................................... 43
SEXUAL AND GENDER-BASED VIOLENCE ...................................................................................... 43

3.1 Sexual Violence ............................................................................................................................ 48
3.2 Domestic Violence ...................................................................................................................... 56

3.2.1 Marital Rape ........................................................................................................................ 57

3.2.2 Bride Wealth and Domestic Violence .................................................................................. 58
3.2.3 Common Perceptions about Family Relations and Domestic Violence ........................................... 59
3.2.4 Provocation .................................................................................................................................. 59
3.2.5 Mediation .................................................................................................................................... 61
3.3 Conflict-Related Sexual and Gender-Based Violence ........................................................................... 62
3.4 Trafficking ........................................................................................................................................ 64
3.5 Harmful Practices ............................................................................................................................. 65

Cases Referred to in Chapter Three ........................................................................................................ 69

CHAPTER 4: ............................................................................................................................................. 71
EMLOYMENT ........................................................................................................................................... 71
4.1 Equal Pay .......................................................................................................................................... 76
4.2 Pay Equity .......................................................................................................................................... 78
4.3 Sexual Harassment ............................................................................................................................ 78
4.4 Maternity Leave ................................................................................................................................ 82
4.5 Domestic Labour and Unremunerated Housework ........................................................................... 83

4.5.1 Unremunerated Work .................................................................................................................... 84

Table 1: “My wife does not work” .......................................................................................................... 84

Cases Referred to in Chapter Four ......................................................................................................... 86

CHAPTER 5: ............................................................................................................................................. 87
PROPERTY RIGHTS ................................................................................................................................. 87
5.1 Matrimonial Property ......................................................................................................................... 91
5.2 Division of Property at Dissolution of Marriage .............................................................................. 94
5.3 Property Inheritance Rights ............................................................................................................. 96

Figure 2: Distribution scheme upon the death of a male intestate .......................................................... 98

Cases Referred to in Chapter Five ......................................................................................................... 100

CHAPTER 6: ............................................................................................................................................. 101
SEXUAL AND REPRODUCTIVE HEALTH RIGHTS ............................................................................... 101

Table 2: Description of Sexual Rights and Reproductive Health Rights ................................................ 103
6.1 Pregnancy and Maternal Health ....................................................................................................... 108
6.2 The Question of Abortion ................................................................................................................ 110

Cases Referred to in Chapter Six ........................................................................................................... 114

CHAPTER 7: ............................................................................................................................................. 115
COURTS OF LAW AND ADMINISTRATION OF JUSTICE IN UGANDA ............................................... 115

Figure 3: Structure of the Courts of Uganda ........................................................................................... 119
7.1 Jurisdiction and Composition of Courts ................................................................. 119
7.2 Special Courts ........................................................................................................... 124
7.3 Other Institutions Promoting Women’s Access to Justice in Uganda .................. 125
    7.3.1 Legal aid ........................................................................................................... 125
    7.3.2 The role of the Justice, Law and Order Sector (JLOS) .................................... 127
7.4 Institutional Barriers to Women’s Access to Justice ............................................. 129
    7.4.1 Administration of Law and Access to Justice ................................................ 129
7.5 Barriers to Women’s Access to Justice ................................................................. 134
    Figure 4: Power and Control Wheel ........................................................................ 136
    Figure 5: Equality Wheel ....................................................................................... 137
7.6 Strategies to Enhance Women’s Access to Justice ................................................ 138
    7.6.1 Legal Education and Training ........................................................................ 138
    7.6.2 Chain-linked Initiative .................................................................................... 138
    7.6.3 Regional Coordination Committees (RCC) .................................................... 138
    7.6.4 District Chain-linked Committee (DCCs) ....................................................... 139
    7.6.5 Small Claims Procedure (SCP) ..................................................................... 139
    7.6.6 Plea Bargaining .............................................................................................. 140
    Table 4: Sentencing in Default of Community Service ........................................ 145
    Cases Referred to in Chapter Seven ....................................................................... 146

CHAPTER 8: ...................................................................................................................... 147
BEST PRACTICES FROM OTHER JURISDICTIONS .................................................. 147
8.1 Examples from Outside Uganda ............................................................................. 149
    Table 3: Best Practices from other Jurisdictions that Enhance Women’s Access to Justice ................................................................. 151
8.2 Bangalore Principles on the Application of International Human Rights Norms .... 153
    8.2.1 Victoria Falls Proclamation on the Human Rights of Women ....................... 155
    8.2.2 Key Issues and Agreements at the 1994 Judicial Colloquium ....................... 155
    8.2.3 Bangalore Principles on Judicial Conduct (2002) ........................................... 157
    Cases Referred to in Chapter Eight ...................................................................... 158

CHAPTER 9: ...................................................................................................................... 159
RECOMMENDATIONS .................................................................................................. 159
9.1 Government ............................................................................................................. 161
9.2 The Judiciary and Judicial Officers ......................................................................... 162
9.3 Development Partners ............................................................................................ 163
CHAPTER 10:........................................................................................................165

Annexes ..................................................................................................................165

Annex 1: MAP OF UGANDA SHOWING THE PHYSICAL LOCATION OF COURTS.................................................168
Annex 2: STATISTICS ON LITERACY LEVELS OF WOMEN IN UGANDA.................................................................169
Annex 3: TABLE SHOWING STATISTICS OF JUDICIAL OFFICERS BY GENDER.........................................................171
Annex 3A: SUMMARY BREAKDOWN OF JUDICIAL OFFICERS AS OF SEPTEMBER 2016........................................171
Annex 4: AMENDED POLICE FORM 3A..................................................................................................................172

Annex 5: Selected International Human Rights Instruments .................................................................176

Annex 5A: UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR).................................................................176
Annex 5B: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)..............................181
Annex 5C: INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)..............197
Annex 5D: CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)..................................................................................................................206
Annex 5E: DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN (DEVAW)....220
Annex 5F: UNITED NATIONS S/RES/1325(2000)...........................................................................................................225
Annex 5G: UNITED NATIONS S/RES/1820(2008)...........................................................................................................228
Annex 5H: PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME .........................................................232
Annex 5I: CEDAW GENERAL RECOMMENDATION NO. 19 ...................................................................................241
Annex 5J: GENERAL RECOMMENDATION NO. 21.................................................................................................246
Annex 5K: GENERAL RECOMMENDATION NO. 33.................................................................................................255

Annex 6: Selected Regional Human Rights Instruments .............................................................................276

Annex 6A: AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (THE BANJUL CHARTER)........................276
Annex 6B: THE GOMA DECLARATION ON ERADICATING SEXUAL VIOLENCE AND ENDING IMPURITY IN THE GREAT LAKES REGION ............................................................289
Annex 6C: SOLEMN DECLARATION ON GENDER EQUALITY IN AFRICA .............................................................295
Annex 6D: PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (MAPUTO PROTOCOL) .........................................................298

Annex 7: Selected National Gender Sensitive Legislations .............................................................................312

Annex 7A: THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT, 2010 .....................................................312
Annex 7B: THE PROHIBITION OF FEMALE GENITAL MUTILATION REGULATIONS, 2013 ..................................316
Annex 7C: THE DOMESTIC VIOLENCE ACT, 2010 ......................................................................................................323
Annex 7D: STATUTORY INSTRUMENTS 2011 NO. 59 .................................................................................................337
Annex 7E: ACTS ......................................................................................................................................................359
Annex 7F: STATUTORY INSTRUMENTS ..................................................................................................................369

References .......................................................................................................................................................371

Index ..........................................................................................................................................................375
Background and Justification

International human rights standards are set within the provisions of international treaties, supplemented by the jurisprudence found in the general recommendations and concluding observations provided by the treaty bodies responsible for monitoring the implementation of those treaties. In its 2010 Concluding Observations, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) noted with concern that the mechanisms to enforce Article 32(2) of the Ugandan Constitution which prohibits “laws, cultures, customs and traditions which are against the dignity, welfare or interest of women,” were not widely known and were inaccessible to the majority of women in Uganda. It urged the Government of Uganda to “strengthen its complaints system to ensure that women have effective access to justice” and “to put in place without delay a comprehensive strategy... to modify or eliminate traditional practices and stereotypes that discriminate against women, in conformity with Articles 2(f) and 5(a) of the Convention”.1

The 2015 National Service Delivery Survey Report indicated that approximately three out of four households that used the various Justice Law and Order Sector (JLOS) institutions for redress were satisfied with the services received (Uganda Bureau of Statistics (UBOS), 2016b). Unfortunately, the data in the report was not segregated by sex, making it difficult to gauge gender-related inequalities. However, indicators of gender disparities in access to justice can be gleaned from other official reports such as the National Population and Housing Census Report of 2014, which revealed for instance, that literacy among Ugandan women is 68 per cent compared to 77 per cent for men (UBOS 2016a, p.26). Furthermore, less women (68 per cent) are engaged in work outside the home than men (74 per cent) (UBOS 2016a, p.27). When considered in the context of unequal gendered power relations, these factors indicate that women are less likely than men to have knowledge of their rights, or to have the financial means to seek enforcement of these rights.

In May 2011, the Justice Law and Order Sector (JLOS) conducted a gender audit that revealed the limited capacity of the judiciary to deliver gender-sensitive justice to the general population, and more specifically to women.

The Gender Bench Book (GBB) has been developed for judges, magistrates, and all other judicial office holders to use and refer to in the adjudication of cases. It is not meant to lecture or criticize; but rather to influence the exercise of proper judicial discretion and decision-making, using local and international “best practices”, in the interest of enhancing the gender-responsiveness of the judiciary to improve access to justice for women. It aims to increase the procedural and substantive knowledge of judicial officers about existing laws, the national constitution, regional treaties and international human rights standards, pointing out gender-biased and gender-neutral laws, and how these have been applied and interpreted by courts and administrative bodies from various jurisdictions.

The GBB provides judicial officers with skills to interpret the existing laws, traditions, cultural and religious practices that are discriminatory with a view to taking affirmative action to promote gender equality. It is hoped that the GBB, will shape and nurture a positive gender attitude and influence judicial officers to deliver justice based on gender equality in line with the national constitution, regional treaties and international human rights laws. The GBB also aims to help ensure that Uganda’s

---

1 See CEDAW Committee Concluding Observations of 2010 (CEDAW/C/UGA/CO/7 4-22 October, 2010 Para 17-20), available at http://www.bayefsky.com/pdf/uganda_t4_cedaw_47.pdf
Justice, JLOS institutions are increasingly gender-responsive, by promoting more gender-sensitive judicial procedures, systems and decisions.

It is hoped that the GBB will be used as a learning tool by judges, magistrates, lawyers, and other legal professionals in dispensing their duties to ensure gender equality and justice, particularly in the context of addressing Violence Against Women. The GBB provides guidance on how Uganda can work towards creating a sound legal system that guarantees a better understanding of gender-based violence, prevents all forms of Violence Against Women, and provides complete protection of their rights.

The adoption and dissemination of the GBB signifies a step forward by the Government of Uganda towards implementing the CEDAW Committee’s General Recommendation No.33 which encourages States parties to “take measures, including awareness-raising and capacity-building for all actors of justice systems and for law students to eliminate gender stereotyping and incorporate a gender perspective in all aspects of the justice system”.

---

2 See CEDAW/C/GC/33, para 29(a).
How to use this Gender Bench Book

1. **This Gender Bench Book maybe referred to as “The GBB”**.
   
   It goes beyond the conventional Bench Books in that it holds additional relevant material for ease of reference by judicial officers and other interested parties.

2. **The GBB** is written and laid out in a unique style. Users will notice the innovative methodologies of presentation via colours, tables, figures, case studies and bubbles to simplify understanding and attract the reader’s interest. The style of presentation deliberately moves away from the known conservative legal writing style.

3. The terminologies “sexual and gender-based violence”, “gender-based violence” and “violence against women” are used interchangeably, depending on the legal document referenced.

4. The GBB is an excellent resource on procedural and gender-responsive guidelines when adjudicating cases and drafting judgments. To this end, the book has been designed and structured for optimal usability and accessibility. **The GBB** or any section of it can be read in its entirety or consulted as necessary, say, when in court or during a break in court proceedings.

5. Each theme and sub-theme has been written as a stand-alone chapter with numbered paragraphs for ease of reference.

6. Footnotes provide further specifics of cases, laws and other materials referred to.

7. An index at the back of the book lists key words and phrases used.

8. To enable speedy access, there is a list of cases referred to at the end of each chapter.

9. Chapter highlights are provided in point form, tables, shaded boxes or bubbles.

10. Annexes 5 - 7 include the full text of selected key international, regional and national human rights instruments including declarations, conventions, protocols and gender-responsive Acts of Parliament.

11. **This Gender Bench Book** should be used in close reference to other Bench Books, training manuals and guidelines published by the Judiciary of Uganda including but not limited to: the Gender Bench book on Sexual and Gender-based Violence in East Africa; the Gender-based Violence Training Manual; and, the Training Manual on Gender, the Law and Practice in Uganda.
User Feedback

We welcome your feedback on how to improve this Gender Bench Book for future editions.

The Judiciary is particularly interested in receiving relevant best practices and examples (including any relevant model directions) that you would like to share with other judicial officers.

In addition, you may wish to correct errors or add further references to legislation, case law, specific themes and sub-themes from other Gender Bench Books, discussions or research materials.

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<table>
<thead>
<tr>
<th>Acronyms and Abbreviations</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights (Banjul Charter)</td>
</tr>
<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
</tr>
<tr>
<td>AU</td>
<td>African Union</td>
</tr>
<tr>
<td>BPFA</td>
<td>Beijing Declaration and Platform for Action</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CEHURD</td>
<td>Centre for Health, Human Rights and Development</td>
</tr>
<tr>
<td>COMESA</td>
<td>Common Market of Eastern and Southern Africa</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil society organizations</td>
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<tr>
<td>DCC</td>
<td>District Chain-linked Committee</td>
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<td>DEVAW</td>
<td>Declaration on the Elimination of Violence Against Women</td>
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<td>DVA</td>
<td>Domestic Violence Act</td>
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<td>EOC</td>
<td>Equal Opportunities Commission</td>
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<td>EU</td>
<td>European Union</td>
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<td>FCC</td>
<td>Family and Children Court</td>
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<td>FGM</td>
<td>Female Genital Mutilation</td>
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<td>FGMA</td>
<td>Female Genital Mutilation Act</td>
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<tr>
<td>GBB</td>
<td>Gender Bench Book</td>
</tr>
<tr>
<td>GLR</td>
<td>Great Lakes Region</td>
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<tr>
<td>GR</td>
<td>General Recommendation</td>
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<tr>
<td>HIV/AIDS</td>
<td>Human Immune Virus/Acquired Immune Deficiency Syndrome</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICD</td>
<td>International Crimes Division of the High Court of Uganda</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communications Technology</td>
</tr>
<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
</tr>
<tr>
<td>ICPD</td>
<td>International Conference on Population and Development</td>
</tr>
<tr>
<td>IGG</td>
<td>Inspector General of Government</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>JCU</td>
<td>Justice Centres Uganda</td>
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<td>Justice Law and Order Sector</td>
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<td>Judicial Studies Institute</td>
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<td>LC</td>
<td>Local Council</td>
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<td>Local Council Courts</td>
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MCA  Magistrates Court Act
MDG  Millennium Development Goal
OHCHR  Office of the High Commissioner for Human Rights
PCA  Penal Code Act
PF3  Police Form 3
PQD  Political Question Doctrine
RCC  Regional Coordination Committee
RS  Rome Statute
SACCO  Savings and Credit Cooperative
SCP  Small Claims Procedure
SGBV  Sexual and Gender-based Violence
SDGs  Sustainable Development Goals
SIP  Strategic Investment Plan
SRHRs  Sexual and Reproductive Health Rights
TIA  Trial on Indictments Act
UDHR  Universal Declaration of Human Rights
UGP  Uganda Gender Policy
UHRC  Uganda Human Rights Commission
ULS  Uganda Law Society
UN  United Nations
UNAIDS  Joint United Nations Programme for HIV/AIDS
UNDP  United Nations Development Programme
UNECA  United Nations Economic Commission for Africa
UNESCO  United Nations Education, Scientific and Cultural Organization
UNFPA  United Nations Population Fund
UNICEF  United Nations Children’s Fund
UNIFEM  United Nations Development Fund for Women
UNSC  United Nations Security Council
UNSCR  United Nations Security Council Resolutions
UN Women  United Nations Entity for Gender Equality and the Empowerment of Women
UPDFA  Uganda Peoples’ Defence Forces Act
UDC  Unit Disciplinary Committee
VAW  Violence Against Women
VAWG  Violence Against Women and Girls
WHO  World Health Organization
**Key Definitions**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Access to justice</td>
<td>The ability of any person, regardless of income or classification, to use the legal system to advocate for themselves and assert their rights.</td>
</tr>
<tr>
<td>Affirmative action</td>
<td>A policy, programme or measure that seeks to redress past discrimination through active measures to ensure equal opportunity and positive outcomes in all spheres of life.</td>
</tr>
<tr>
<td>Care-giver</td>
<td>Any person who provides emotional, psychological, physical, economic, spiritual or social care and support services to another.</td>
</tr>
<tr>
<td>Child</td>
<td>Any human being below the age of eighteen years.</td>
</tr>
<tr>
<td>Convention</td>
<td>A formal agreement between States covering particular matters, synonymous with the term ‘treaty’ and same as a Covenant.</td>
</tr>
<tr>
<td>Discrimination</td>
<td>Any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of an individual’s human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</td>
</tr>
<tr>
<td>Equality</td>
<td>The state of being equal in terms of enjoyment of rights, treatment, quantity or value, access to opportunities and outcomes, including resources.</td>
</tr>
<tr>
<td>Gender</td>
<td>The roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women. Refers to the social attributes and opportunities associated with being male and female and the relationships between women, men, girls, boys. In most societies, there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities.</td>
</tr>
<tr>
<td>Gender-Based Violence</td>
<td>Acts perpetrated against women, men, girls and boys on the basis of their sex which cause or could cause them physical, sexual, psychological, emotional or economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed or other forms of conflict.</td>
</tr>
<tr>
<td>Gender-blind</td>
<td>Inability to make a distinction between the sexes or having the quality of ignoring gender.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-----------------------------</td>
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</tr>
<tr>
<td>Gender equality</td>
<td>Equal enjoyment of rights and the access to opportunities and outcomes, including resources, by women, men, girls and boys.</td>
</tr>
<tr>
<td>Gender equity</td>
<td>Just and fair distribution of benefits, rewards and opportunities between women, men, girls and boys.</td>
</tr>
<tr>
<td>Gender mainstreaming</td>
<td>The process of identifying gender gaps and making the concerns and experiences of women, men, girls and boys integral to the design, implementation, monitoring and evaluation of policies and programmes in all spheres so that they benefit equally.</td>
</tr>
<tr>
<td>Gender-sensitive</td>
<td>Acknowledging and considering the specific gender needs of both men and women at all levels of planning, implementation, monitoring and evaluation.</td>
</tr>
<tr>
<td>Gender stereotypes</td>
<td>Beliefs held about characteristics, traits, responsibilities, and activity domains that are deemed appropriate for women, men, girls and boys based on their conventional roles both in the private and public spheres.</td>
</tr>
<tr>
<td>Health</td>
<td>A complete state of physical, mental, spiritual and social well-being.</td>
</tr>
<tr>
<td>Human rights</td>
<td>Entitlements and freedoms that every human being has by virtue of being human. We are born with them and they cannot be taken away.</td>
</tr>
<tr>
<td>Human trafficking</td>
<td>The recruitment, transportation, harbouring or receipt of persons, by means of threat, abuse of power, position of vulnerability, force or other forms of coercion, abduction, fraud or deception to achieve the consent of a person having control over another person for the purpose of amongst other things, sexual and financial exploitation.</td>
</tr>
<tr>
<td>Informal sector</td>
<td>That portion of a country’s economy that lies outside of any formal regulatory environment.</td>
</tr>
<tr>
<td>Multiple roles of women</td>
<td>The many responsibilities that women shoulder in the reproductive, productive and community management spheres.</td>
</tr>
<tr>
<td>National gender machinery</td>
<td>National structures (e.g., Ministry of Gender, Labour and Social Development) with the mandate of executing and monitoring gender-related policies and programmes in line with national, regional and international commitments.</td>
</tr>
<tr>
<td>Protocol</td>
<td>The official procedure or system of rules governing affairs of state or diplomatic occasions.</td>
</tr>
<tr>
<td><strong>Quasi-judicial proceedings</strong></td>
<td>Administrative proceedings that are undertaken for the settlement of specific rights or obligations which may require discretion and decisions which may be subject to notice and hearing requirements and judicial review.</td>
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<tr>
<td>-------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Sex</strong></td>
<td>The biological state of being female or male. It may also be socially constructed for those individuals whose anatomical characteristics do not conform to the dominant sex binary.</td>
</tr>
<tr>
<td><strong>Sexual and Reproductive Health Rights</strong></td>
<td>The universal human rights relating to sexuality and reproduction, sexual integrity and safety of the person, the right to sexual privacy, the right to make free and responsible reproductive choices, the right to sexual information based on scientific enquiry, and the right to sexual and reproductive health care.</td>
</tr>
<tr>
<td><strong>Sexual harassment</strong></td>
<td>Any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another whether such sexual advance or request arises out of unequal power relations.</td>
</tr>
<tr>
<td><strong>Social safety nets</strong></td>
<td>Measures taken or applied to mitigate the effects of poverty, gender-based violence and other social ills.</td>
</tr>
<tr>
<td><strong>State party</strong></td>
<td>A Member State that is a party to a convention or a protocol.</td>
</tr>
</tbody>
</table>
List of Cases Referred to in this Gender Bench Book


4. *Arther Tindimwebwa & Others v. Joy Muhereza & Another*, High Court Civil Appeal No.55 of 2010


9. *Best Kemigisa v. Mabel Komuntale*, High Court Civil Suit No. 5 of 1998


21. **Former Employees of GS Security Services v. G4S Security Services Ltd.**, Supreme Court Civil Appeal No.18 of 2010

22. **Gagula Benefansio v. Wakidalu Merabu**, High Court Civil Appeal No. 29 of 2006

23. **Hortensia Wanjiku Yawe v. Public Trustee**, High Court Civil Appeal No 13 of 1976 (K)


25. **In the Matter of Adoption of Mark Kakembo**, High Court Family Cause No. 169 of 2014


30. **Julius Rwabinumi v. Hope Bahimbisomwe**, Supreme Court Civil Appeal No. 10 of 2009


32. **Kasibante Moses v. Katongole Singh Marwana &Another**, Election Petition No. 23 of 2011


35. **Law and Advocacy for Women in Uganda v. Attorney General**, Constitutional Petition No. 5 of 2006


38. *Laxmi Mandal & Others v. Deen Harinagar Hospital & Others*, WP (C) 8853/2008 (New Delhi High Court); Enforceability, ESCR


41. *Mbithi Mulu and Another v. Mitwa Mutunga*, Civil Application No NAI 17 of 1983(K)

42. *McCall v McCall*, 1994 (3) SA 2001 at 204I – J


45. *Minister of Health v. Treatment Action Campaign*, (No.2) 2002 (5) SA 721 (CC)

46. *Mohamed v. Makomo*, High Court Civil Appeal No. 45 of 2001 (TZ)


55. *Negulu Milly Eva v. Dr. Serugga Solomon*, Civil Appeal No. 103 of 2013 [2014] UGHCCD 64 (30 April 2014)

56. *Nemezi Ayiiya v. Sabina Onzia Ayiiya*, Divorce cause No. 8 of 1973

58  *P and S v. Poland*, Application No.57375/08, European Court (2012)

59  *P O v. Board of Trustees, AF and 2 others*, 2014 e-klr

60  *P v. P*, 2007 (5) SA 94 (SCA)


62  *Paul Kaggwa v. Jackeline Muteteri*, High Court Matrimonial Cause No. 23 of 2005

63  *Pettit v. Pettit*, [1969] 2 ALL ER 385

64  *President of the Republic of South Africa and Another v. Hugo*, 1997 (6) BCLR 708 (CC) at 727J-728B.

65  *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgment (June 1, 2001)


67  *R v. Bourne*, [1939] 1 KB 687

68  *R v. Hussein s/o Mohamed*, (1952) 20 EACA 161


71  Re: *Kibiego*, [1972] EA 172


73  *RR v. Poland*, Application No.27617/04, European Court (2011)


75  *Samwiri Massa v. Rose Achen*, [1978] HCB 297

76  *Sara H. Longwe v. Intercontinental Hotels*, [1993] 4 LRC 221

77  *Satrose Ayuma & Others v. The Registered Trustees Kenya Railways Staff Retirement Scheme*, Petition No. 65 of 2010 Constitutional and Human Rights Division of the High Court of Kenya
Sempiga v. Sempiga Musajjawaza, High Court Divorce Cause No. 7 of 2005

Simon Kyamanywa v. Uganda, Supreme Court Criminal Appeal 2000 (2) EALR 426

Student Representative Council of Molepolole College of Education v. Attorney General, [1995] (3) LRC 447

Tanja Kreil v. Federal Republic of Germany, Case C-285/98


Uganda Association of Women Lawyers and Others v. Attorney General, Constitutional Petition No. 2 of 2003

Uganda Law Society v. Attorney General, Constitutional Petition no. 18 of 2005

Uganda v. Apio Agnes, High Court Criminal Session Case No. 0123 of 2014

Uganda v. Apai Stephen, High Court Criminal Session Case No. 23 of 1994

Uganda v. Jacqueline Uwera Nsenga, High Court Criminal Session Case No.13 of 2013

Uganda v. Kamuhanda Emmanuel, High Court Criminal Session Case No. 24 of 2012

Uganda v. Kusemererwa Julius, High Court Criminal Session Case No.15 of 2014

Uganda v. Peter Matovu, High Court Criminal Session Case No. 146 of 2001

Uganda v. Tereza Nakayima, High Court Criminal Session Case No. 378 of 1971

Uganda v. Thomas Kwoyelo, High Court Criminal Session Case No. 02 of 2010

Uganda v. Yiga Hamidu and Others, High Court Criminal Session Case No. 55 of 2002

V. K. v. Bulgaria, Communication No. 20/2008 11th - 29th July 2011


Yovan v. Uganda, [1970] EA 405
Executive Summary

The Gender Bench Book (GBB) is aimed at enhancing the gender-responsiveness of the judicial system, ensuring that judgments in Uganda are increasingly gender-sensitive and improving access to justice for women.

This Book is a tool for judicial officers to use and refer to in the adjudication of cases. It is intended to support and enhance the capacity of judicial officers to deliver gender-sensitive justice to the general population of Uganda. It is the first tool in Uganda available to assist the judiciary in making court processes and judgments more gender-sensitive. In addition to judicial officers, the Gender Bench Book will be useful to academics, social and legal researchers, civil society and non-government organizations working in the area of gender justice.

The GBB presents local and international best practices, including recommendations from treaty bodies such as the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on enhancing women’s access to justice. It discusses the right of all persons to access justice without discrimination, the duties of the state to promote women’s access to justice, and the role of judges, magistrates and other judicial officers to ensure equality between men and women, and to ensure that women can access justice. Judicial officers are urged to recognize the various gender-based economic, social and cultural hurdles that women face in seeking justice, and to accordingly improve women’s access to justice through their judgements and practices, among others.

The GBB focuses on gender-responsive provisions embedded in the 1995 Constitution (as amended) of the Republic of Uganda and the various international and regional legal instruments that Uganda has ratified. Hence, it is a resource for broadening and sharpening understanding of international standards of women’s rights and gender equality, and how these are translated or integrated within the national context - both critical aspects of access to justice.

Importantly, the GBB builds on Uganda’s other internationally-recognized milestones. Uganda has been applauded for having one of the most gender-sensitive constitutions in the world. The Constitution guarantees the right to equality and liberty of all persons and outlaws discrimination based on sex, colour, race and religion, among others. It requires that special measures be taken by the State to protect women and their rights, taking into account their unique status and natural maternal functions. The Constitution mandates the judiciary to interpret the law and protect the rights of all individuals. In 2012, the Judiciary launched its own Gender Policy and Strategy with the overall objective of “ensure(ing) that there is gender sensitivity and responsiveness in the delivery of justice in Uganda”. Courts in Uganda have passed landmark cases in a bid to enhance women’s access to justice. This is in addition to reviewing laws, rules, policies and practices that are not gender-responsive, to align them to constitutional provisions, and to international and regional laws that promote justice for women. Special measures and procedures have also been established by the judiciary to specifically address women’s access to justice. These include, among others, gender-sensitivity training for judicial
officers and law enforcement upon appointment; one-stop legal aid service centres; an amended form (Police Form 3A) to improve evidence collection in gender-based violence cases; and non-custodial sentences (such as community service), which help female offenders to continue to take care of their children.

Despite this, numerous gender justice gaps remain, and a lot more needs to be done to close these gaps. Women face institutional barriers: from geographically distant justice service locations and technically complex justice procedures, to discriminatory attitudes based on deeply entrenched male bias at all levels of the legal process, insensitivity to women’s specific needs, and corruption. When compounded with the socio-cultural challenges that women face - such as lower literacy levels, poverty, access to resources, and strictly proscribed cultural norms that dictate their behaviour in society - women are altogether less likely to be aware of their rights, the remedies available to them, and the relevant justice mechanisms that should be accessed.

The Gender Bench Book discusses some of the international, regional and national landmark cases in which superior courts have dealt with barriers that women face in accessing justice, including relevant decisions of the Supreme Court. The GBB gives guidance on how the rights to equality, equal protection of the law and prohibition of discrimination may be interpreted to enhance women’s access to justice - including through the provision of examples of judgments that interpret the law to confront gender stereotypes and cultural biases that have perpetuated and continue to limit women’s access to justice. The GBB is thematically organized to focus on specific core issues that affect women’s access to justice including family relations; sexual and gender-based violence; employment; property rights; and sexual and reproductive health rights. The book also discusses pertinent concepts related to women’s access to justice including the principles of equality and non-discrimination, affirmative action, intersectional discrimination and gender stereotyping. Especially vulnerable women, such as those affected and infected with HIV/AIDS, those with various forms of disabilities, and older women are also given attention in the book.

The Gender Bench Book does not take anything about adjudicating for granted. Therefore, it discusses issues regarding the courts’ structure, mandate, composition, jurisdiction and quorum, administration of the law, as well as physical and legal access. Some of these issues may seem obvious, but misinterpretations and inadvertent errors have been made in the past, ultimately impacting access to justice. Hence, the GBB deliberately chooses to err on the side of caution.

Last but not least, the GBB makes recommendations on strategic best practices that should be adopted by various stakeholders in the justice delivery system to ensure women’s access to justice. Deliberate emphasis has been made throughout to condemn trivialization of gender issues, and highlight the importance of gender mainstreaming in the administration of justice.
CHAPTER 1:

BASICS OF WOMEN’S ACCESS TO JUSTICE
1. This introductory chapter provides a brief explanation of a few key concepts related to access to justice as a way of improving the quality of Uganda’s judge craft (i.e. the art of judging). Such concepts are neither elaborated in the Laws of Uganda nor are they available in regulations or procedural rules. The primary aim is to refresh the knowledge required for judicial officers to adjudicate in line with their solemn oath to “do right to all manner of people in accordance with the Constitution of the Republic of Uganda as by law established and in accordance with the laws and usage of the Republic of Uganda without fear or favour, affection or ill will”.

2. The rights of women are given prominence in the Constitution of the Republic of Uganda. Article 33 specifically outlines women’s rights:

### Article 33 of the Constitution of Uganda: Rights of Women

1. Women shall be accorded full and equal dignity of the person with men.
2. The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.
3. The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.
4. Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.
5. Without prejudice to Article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

3. Human rights are applicable to all human beings, women and men, girls and boys while a specific set of women’s human rights exist which address the dignity, welfare or interests of women. Laws, cultures, customs and traditions which undermine the status of women are prohibited by the Constitution. Because women are not a homogenous group and have different needs depending on age, disability, location (e.g. rural or urban), and reproductive capacity, etc., the Constitution has mandated the State to provide the facilities and opportunities necessary to enhance the welfare of all women to enable them to realize their full potential and advancement. This requires that the Government runs innovative programmes and projects on affirmative action.

4. The Constitution directs the State (read: the Executive, Judiciary and Parliament) to protect women and their rights. When protecting women’s human rights, courts must take into account their unique status and natural maternal functions in society. In the Gender Bench Book (GBB) context, the courts shall craft not only legal remedies but also user-friendly legal procedures, language and affordable justice delivery and enforcement mechanisms to enable women’s access to justice. This calls for judicial activism on the part of every judicial officer.

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3 Judicial Oath found in the First Schedule to the Oaths Act (Cap 19), Laws of the Republic of Uganda.
4 See Article 32(2) of the Constitution.
5. Access to justice is a fundamental element of the rule of law and democracy. This human right is especially crucial for marginalized social groups such as women. Figure 1 below summarizes the various dimensions related to women’s access to justice as identified by the CEDAW Committee.²

![Figure 1: Dimensions Related to Women’s Access to Justice](source)

**Source:** Hon. Justice Batema N.D.A.’s compilation

6. There are numerous gender-related issues (quantitative and qualitative) that can hamper women’s access to justice. Various mechanisms have been devised at the international, regional and national level in an attempt to overcome these impediments. Uganda has ratified most of the key international human rights treaties, indicating its willingness to be bound by the standards established therein.

7. The Ugandan Constitution has incorporated most international human rights standards. Article 50 provides for the enforcement of human rights, by allowing any person, whose Constitutional rights have been violated either by the state or by non-state actors, to seek recourse in the courts of judicature. The standards set by international and regional law can be very useful in guiding domestic courts in enhancing women’s fundamental rights and access to justice.

8. Uganda is a dualist country. The implementation of international law in Ugandan courts requires both ratification and domestication of the laws into national law (Kabagambe, 2016).⁶ What then are the technicalities of “domestication”? First of all, Uganda’s foreign policy entrenches “respect for international law and treaty obligations.”⁷ Second, Article 2(2) of the Constitution

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² Adopted from CEDAW General Recommendation No. 33 para. 1. For a comprehensive elaboration of these five dimensions, see paragraphs 15 to 19.

⁶ See the Ratification of Treaties Act (Cap 204) and The Republic of Uganda “Report to the African Commission” presented at the 39th ordinary session of the Commission in May 2006, 6-7.

⁷ See Principle xxviii(i)(b) of the National Objectives and Directive Principles of State Policy to the 1995 Constitution. Justice Benjamin Odoki argues that the National Objectives and Directive Principles “serve to make the state more responsive to
renders all laws subordinate to it when it declares the Constitution to be the supreme law of the land; any other law or any custom inconsistent with the provisions of this Constitution shall, to the extent of the inconsistency be void and the Constitution shall prevail over it. In essence therefore, the Constitution domesticates international human rights standards (with a few exceptions that will be pointed out in this GBB). This means that the judiciary does not need any special mechanism as a prerequisite to applying international treaties that Uganda has ratified when deciding local cases. Indeed, as this GBB will demonstrate, this has been the practice in numerous cases decided in the post-1995 period.8

9. Domesticating international human rights standards is only one part of the story. The second involves the enormous challenge of harmonizing the different laws that preceded the promulgation of the Constitution and aligning them to international human rights standards. The task is ensuring that the laws are brought up to par with the dispensation stipulated by the 1995 Constitution as enshrined in Article 274.

10. Over the years, since the promulgation of the 1995 Constitution, the judiciary has repeatedly declared some laws as unconstitutional in their various judgments and rulings. However, the executive and parliament are yet to amend or repeal most of the offensive laws. In this respect, Ugandan courts can take a leaf from jurisdictions such as the USA, India, South Africa and Kenya9 by going a step further and routinely utilizing the device of structural interdict (sometimes referred to as structural injunction) to ensure that the people of Uganda access Constitutional justice. Both the Constitution and the Civil Procedure Act empower courts to retain jurisdiction in any case and to demand a report back on any measures which a particular party has taken in compliance with a court directive.10 Indeed, Ugandan courts have adopted this strategy in a few recent cases such as the 2010 case of Behangana Domaro & Another v. Attorney General11 and the 2016 case of Re: Prof. J. Oloka-Onyango & Others (Amicus Curiae): Amama Mbabazi v. Yoweri Kaguta Museveni & Others.12 In both cases, courts made specific interdicts to monitor the implementation of their orders within an explicitly-stated report back period.

11. The1988 Bangalore Principles on the Domestic Application of International Human Rights norms implore courts to look to international law particularly where there is ambiguity or uncertainty in the Constitution, in legislation or in judicial precedent.13 (See Chapter 8 – Best Practices from Other Jurisdictions – for more details on the Bangalore Principles).

12. While acknowledging that the topic of women’s access to justice is wide and includes many multi-faceted issues, this first chapter focuses on five important concepts related to the topic as a way to introduce the GBB. These concepts include: Access to Justice; Equality and Non-Discrimination; Affirmative Action; Intersectional Approach to Discrimination; and Gender Stereotypes.
1.1 Access to Justice

13. Justice is the fair and proper administration of the law (Garner, 2009). Access to justice is the ability of persons or groups within a society to use courts and other legal institutions to obtain a quick, effective and fair response to protect rights, prevent or resolve disputes, and control the abuse of power. This requires a transparent and effective process in which justice mechanisms are available, affordable and accountable (UNDP, 2011).

14. Access to justice not only involves judicial recourse, but also the availability of accessible, affordable, timely and effective means of redress or remedies. Access to justice encompasses the recognition that everyone is entitled to the protection of the law and that rights are meaningless unless they are enforced (Robins, 2011). Traditional justice mechanisms that include informal conflict and dispute resolution mechanisms and/or systems operate at the community level and contribute to access to justice. These employ social-cultural norms and values to reach decisions or work with parties to achieve mutually acceptable results.

15. Barriers to women’s access to justice in Uganda are evident at every stage of the legal process starting from the decision by the rights holder to take legal action, to the investigation, prosecution and litigation of the case, until the issuance of a final decision and its enforcement. Despite the progress made under the 1995 Constitution, there are still laws and practices in Uganda that discriminate against women, such as those on land registration, and the requirement of a father’s consent for a daughter to marry, among others.

16. In July 2015, the CEDAW Committee adopted General Recommendation No. 33 on Access to Justice. The Recommendation elaborates the obligations of States Parties in ensuring that women have access to justice. It highlights the important fact that “effective access to justice optimizes the emancipatory and transformative potential of law”.

Paragraph 3 of the CEDAW General Recommendation No. 33

[There are a] number of obstacles and restrictions that impede women from realizing their right of access to justice on a basis of equality. They include a lack of effective jurisdictional protection offered by the States Parties in relation to all dimensions of access to justice. These obstacles occur in a structural context of discrimination and inequality, due to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women. All of these obstacles constitute persistent violations of women’s human rights.

17. Access to justice as a human right combines all of the processes and mechanisms that ensure that this right is implemented, in order to provide a legal response to a complicated situation, and above all human rights violations, whether on an individual or group basis. General

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15 CEDAW Committee General Recommendation No.33, para. 2. CEDAW/C/GC/33.
Recommendation 33 points out that women are also “disproportionately criminalized due to their situation or status, for instance women in prostitution, migrant women, women accused of adultery, women who undergo abortion or women belonging to other discriminated groups”.\(^{17}\)

It recommends the abolition of such discriminatory criminalization, and calls on states parties to review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against women.\(^{18}\)

18. Article 8 of the **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa** (hereafter referred to as the “Maputo Protocol”) is also dedicated to the right to access to justice and calls on states parties to take appropriate measures to ensure, among others, that women get effective access to judicial and legal services, including legal aid, and that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights. It further calls for the reform of existing discriminatory laws and practices in order to promote and protect the rights of women. All in all, the judiciary is required to interpret the law in line with international human rights standards on women’s rights and gender equality. This calls for creative and pragmatic judging.\(^{19}\)

19. In Uganda, pragmatic judging (or call it judicial activism) is clearly enshrined in the 1995 Constitution of the Republic of Uganda and in particular under Articles 2, 8, 32, 33, 126 and 274. Article 126(2) specifically enumerates the five core principles on which the adjudication of all cases should be based. It reads:-

**Article 126(2) of the Constitution of Uganda**

In adjudicating cases of both a civil and criminal nature, the court shall, subject to the law, apply the following principles:

- (a) justice shall be done to all irrespective of their social or economic status;
- (b) justice shall not be delayed;
- (c) adequate compensation shall be awarded to victims of wrongs;
- (d) reconciliation between parties shall be promoted; and
- (e) substantive justice shall be administered without undue regard to technicalities.

20. In enforcing the five principles above, judicial officers are not limited by legislation and precedents at all times. **Rather, they can look at the broader, purposive and liberal interpretation of the law and consider the extent to which it advances human rights, improves social justice or equality and enhances constitutionalism and democratic governance in Uganda.** Once the application of existing law is in violation of the five principles, then a judicial officer is free to differ from legislation and precedent using Articles137 and 274 of the 1995 Constitution.

\(^{17}\) CEDAW Committee General Recommendation No.33, para. 49. CEDAW/C/GC/33.

\(^{18}\) Ibid., para. 51().

\(^{19}\) See the five core meanings of judicial activism (Kmiec, 2004). Also see Oloka-Onyango (2017).
In the landmark case of *Uganda Association of Women Lawyers v. Attorney General*, Justice G. M. Okello clarified how Article 274(1) should be applied by judicial officers. He held:

> [T]he message which the makers of the Constitution intended to send out in that Article is loud and clear. They enjoined courts to clear away existing laws that they find to be inconsistent with any provision of the Constitution. They are to do that by modifying them such that they do not exist but be void. That does not prevent the Constitutional Court from declaring such a law unconstitutional.

21. There has been debate as to which court can introduce reforms in the existing law using Article 274 of the Constitution. Whereas the question regarding the interpretation of the Constitution is a jurisdiction vested in the Constitutional Court under Article 137, interpretation of the existing law under Article 274 is open to all courts and not a reserve of the Constitutional Court. In the case of *Simon Kyamanywa v. Uganda*, Justice Kanyeihamba ruled that any court and any tribunal that is properly constituted has jurisdiction to hear and determine any dispute arising from the application and enforcement of any provision of the Constitution. He observed:

> If it were to be held that every time any matter affecting or related to the provisions of the Constitution had to go to the Constitutional Court for interpretation or construction, the Constitution would become entirely stale and entirely unreliable.

22. Furthermore, the Constitutional Court in the case of *Joyce Nakachwa v. Attorney General* stated:

> The Constitution does not require a constitutional interpretation to determine whether a person’s constitutional rights have been violated. For example, if it is established that the person was arrested without cause and detained for more than 24 hours without being taken to court, it is a matter of drawing an inference, which can be done by a competent court. In that case, an application for redress would be better entertained under Article 50 of the Constitution.
23. Courts in Uganda have been proactive in implementing Article 274 as seen in their decisions. For instance:

In *Uganda v. Yiga Hamidu and 4 Others*, Justice Musoke Kibuuka rejected the accused’s defence of mistaken belief that the complainant was his wife. He further stated that by virtue of Article 31, husband and wife enjoy equal rights in marriage. The court noted that the complainant was subjected to the highest level of human indignity and that her right to human dignity was significantly trampled upon.

Through this precedent, the court enabled women to access justice by construing the existing law on rape through the reasoning that the constitutional provisions on equality in marriage and the recognition of the equal dignity of women and men had effectively amended Sections 9 and 123 of the Penal Code, which originally excluded husbands from being held criminally liable for marital rape. This is a good example of judicial activism by the trial judge.

24. In Uganda, section 39(2) of the Judicature Act expressly calls for judicial activism in the absence of legal procedures. It reads:

> Section 39(2) of the Judicature Act

> Where in any case no procedure is laid down for the High Court by any written law or by practice, the court may, in its discretion, adopt a procedure justifiable by the circumstances of the case.

One such law relates to the remand of prisoners pending a minister’s orders. The law under section 48 of the Trial on Indictments Act (TIA) requires the trial court which finds a “criminal lunatic” not guilty by reason of her or his insanity to send the record to the minister who then makes the order of discharge or treatment or continued detention or otherwise deal with the prisoner. There is no procedure provided for returning the prisoner to court if the minister fails to take action. As a result, many prisoners are serving long periods on remand pending the minister’s orders. In *Bushoborozi Eric v. Uganda*, Justice Batema N.D.A. moved under Article 274 of the Constitution and section 39(2) of the Judicature Act, and provided guidelines for dealing with suspects with mental disabilities in the absence of a known legal procedure. He held:

> The law on Minister’s orders under Section 48 of the Trial on Indictments Act is such a law that should be construed with modifications, adaptations, qualifications and exceptions to bring it in conformity with the constitutional provisions on judicial powers and the right to a fair and speedy trial before an independent and impartial court established by law. This is a case which calls for judicial activism on the part of judicial officers to breathe life into the law in Articles 126, 128 and 274 of our Constitution. The Constitution allows our courts to be innovative and introduce changes that will give the law the most correct interpretation and effect that serves the ends of substantive justice. Our hands are not tied by the existing law.

23 High Court Criminal Session Case No. 55 of 2002 at Masaka.

24 High Court Misc. Cause No. 11 of 2015 at Fort Portal.
25. Borrowing the words of Lord Denning in Parker v. Parker, Justice Batema N.D.A., in the same case, justified the crafting of a legal remedy and new procedure:—

*What is the argument on the other side? Only this; that no other case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on: and that will be bad for both. Thus the winds of change are upon us. We have a duty to give the law a purposive and liberal legal interpretation.*

In defence of the independence of the judiciary, he further held that:—

*Judicial power belongs to the people of Uganda and the people have, through the Constitution, vested their judicial power with the courts of law and not the minister...... The provisions of the law that gave the minister such powers can safely and constitutionally be construed to be the powers of court under Articles 126 and 274 of the Constitution.... Any court waiting for the minister’s orders is giving away the independence of the Judiciary and is in one way or another accepting to be ordered around by the minister who, as experience has shown, is too busy to issue the orders. Courts should not allow any law or practice that ousts the jurisdiction of court and hold the courts at ransom in judicial matters.*

26. Hence, when addressing issues of access to justice, it is crucial to be aware of the intersecting ways that inequality and discrimination can operate, and the differing impact this can have on different persons. Access to justice is a critical tool in promoting social cohesion and civic accountability, and in combating discrimination and abuse of state authority. It enhances human rights protection, respects and builds individual and communal solidarity, and ultimately leads to greater social transformation and social justice.

### Key Documents on Access to Justice

- CEDAW
- CEDAW General Recommendation No. 33
- Maputo Protocol, Article 8
- 1995 Constitution of the Republic of Uganda, Articles 50, 126, 137, 274
- Bangalore Principles of Judicial Conduct, 2007

### 1.2 Equality and Non-Discrimination

27. The principle of equality before the law and its concomitant value of non-discrimination are fundamental to international human rights law. Together, they form the cornerstone of human rights and democracy, and are clearly articulated in the three main documents that constitute
the International Bill of Human Rights, namely: (a) the Universal Declaration of Human Rights (UDHR); (b) the International Covenant on Civil and Political Rights (ICCPR); and (c) the International Covenant on Economic, Social and Cultural Rights (ICESCR). Uganda is a signatory to all these documents as well as to the African Charter on Human and Peoples’ Rights (hereinafter referred to as the Banjul Charter) which reaffirms the right to equality. These principles are echoed in Article 21 of the 1995 Constitution of the Republic of Uganda.

**Article 21 of the Constitution of Uganda**

1. All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

2. Without prejudice to clause (1) of this Article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

3. For the purposes of this Article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

4. Nothing in this Article shall prevent Parliament from enacting laws that are necessary for:-
   (a) implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society; or
   (b) making such provision as is required or authorised to be made under this Constitution; or
   (c) providing for any matter acceptable and demonstrably justified in a free and democratic society.

5. Nothing shall be taken to be inconsistent with this Article which is allowed to be done under any provision of this Constitution.

28. The twin principles of equality and non-discrimination are intrinsically linked to the concept of access to justice. Article 2 of CEDAW provides in part:-

**Article 2 of CEDAW**

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 paragraph 2(e) establishes an obligation of States parties to eliminate discrimination by any public or private actor. Such obligation is not limited to constitutional or legislative measures but also those that ensure the practical realization of the elimination of discrimination against women, and women’s equality to men.27

29. In 2008, a group of Human Rights Advocates and experts in international human rights law and equality law sought to broaden the consensus on the rights to equality and non-discrimination through the Declaration on the Principles of Equality (DPE).28 Based on international human rights law, the Declaration on the Principles of Equality (DPE) provides:

**Declaration on the Principles of Equality (DPE)**

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 paragraph 2(e) establishes an obligation of States parties to eliminate discrimination by any public or private actor. Such obligation is not limited to constitutional or legislative measures but also those that ensure the practical realization of the elimination of discrimination against women, and women’s equality to men.27

Based on international human rights law, the Declaration on the Principles of Equality (DPE) provides:
principles, the DPE usefully breaks down all the elements of equality and non-discrimination, explaining the intricacies and values of the two norms. Although the DPE qualifies as “soft law” and is not legally binding, it provides a useful resource for better understanding the principles underlying the concepts of equality and non-discrimination.

30. There is an oft-quoted legal principle which states: “Justice should not only be done; it must also be seen to be done.” In this context, it is important to distinguish between de jure or formal equality and de facto or substantive equality. Article 4 of CEDAW urges states parties to adopt temporary special measures aimed at accelerating substantive equality between men and women. In its General Recommendation 25, the CEDAW Committee clarifies that a purely legal or programmatic approach to gender inequality is not sufficient to achieve substantive equality. It elaborates:-

**General Recommendation No. 25 of CEDAW**

It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.

31. The CEDAW Committee explains that among the “temporary special measures” to effect the structural, social and cultural changes necessary for achieving substantive equality between men and women, is affirmative action.

A good example of a progressive move by courts of law in enforcing equality can be found in the judgment of Justice Claire L’Heureux-Dubé in the Canadian case of *Egan v. Canada*, where she held:-

_Together, our over arching goal must be to ensure that substantive equality and impartiality are the predominant reality in our courts and in our communities, rather than a mythical ideal. The more we strive to reach this goal, the more myths and stereotypes will be eradicated from the law, where they have no rightful place. With every success, we will be one step closer to attaining our goal of doing justice for all._

1.3 **Affirmative Action**

32. There is one form of discrimination that is legally accepted in international human rights law, that is, affirmative action.\(^{30}\) CEDAW urges States Parties to adopt “temporary special measures aimed at accelerating *de facto* equality between men and women”.\(^{31}\) The impermanence of affirmative action policies is important - they should be discontinued once the desired goal has been achieved and sustained for a period of time. Importantly, General Recommendation 25 clarifies that “the duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time.”\(^{32}\)

33. The journey from *de jure* equality towards *de facto* equality may take various routes ranging from legislative to executive to administrative and other regulatory instruments, policies and practices, such as outreach or support programmes.\(^{33}\) An example of a legislative measure may be a law that specifically provides for preferential treatment or quota systems. An example of such a law is the Local Governments Act (Cap 243) which reserves special seats for marginalized groups, including women, at all five levels of local councils.

34. **Uganda has institutionalized affirmative action in its Constitution.**\(^{34}\) Article 32 provides for the right to affirmative action in favour of marginalized groups, including women.

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30 Affirmative action has been defined as “any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future”. (U.S. Commission on Civil Rights, Statement on Affirmative Action, October 1977).

31 Article 4(1) of CEDAW and General Recommendation No. 25.

32 CEDAW Committee General Recommendation No.25, para 20. CEDAW/C/GC/25..

33 Ibid., para 22.

34 Also see Articles 33(5), 78 and 180(2).
Article 32 of the Constitution of Uganda

1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

2) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or any marginalised group to which clause (1) relates or which undermine their status, are prohibited by this Constitution.

3) There shall be a commission called the Equal Opportunities Commission whose composition and functions shall be determined by an Act of Parliament.

4) The Equal Opportunities Commission shall be established within one year after the coming into force of the Constitution (Amendment) Act, 2005.

5) Parliament shall make relevant laws for the purpose of giving full effect to this Article.

35. Affirmative action is therefore a constitutional right and not a privilege. It is positive discrimination aimed at enabling marginalized and underprivileged groups to enjoy their human rights and fundamental freedoms. Courts delivering justice have a mandatory duty to observe and enforce this right. The institutional mechanisms established to implement and monitor these measures include the Ministry of Gender, Labour and Social Services, the Human Rights Commission and the Equal Opportunities Commission.

36. The United Nations Human Rights Committee has elaborated, in the case of Jacobs v. Belgium Communication,\(^35\) that reserving a quota for the recruitment of female judges was not discrimination against men; but rather, affirmative action to bring gender equality to the bench.

Key Documents on Affirmative Action

- CEDAW, Article 4
- CEDAW General Recommendations 5, 8, 23 and 25
- Maputo Protocol, Article 9

1.4 Intersectional Approach to Discrimination

37. Discrimination is a complex phenomenon. Not every marginalized group, sub-group or individual experiences discrimination in the same way. It is therefore important to recognize the multiple ways that different forms of discrimination interact to compound gender-based discrimination (Crenshaw, 1989). Some forms of discrimination may affect some groups of women in a primary fashion, while affecting others to different degrees or in different ways than men.\(^36\) An intersectional approach to discrimination therefore requires guarding against generalizations and stereotypes. Intersectional discrimination has a direct link to access to justice.\(^37\)

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\(^{36}\) CEDAW Committee General Recommendation No. 25, para. 12

\(^{37}\) See CEDAW Committee General Recommendation No. 33.
General Recommendation No. 33, Paragraph 12 of CEDAW

Discrimination against women is compounded by intersecting factors that affect some women to a different degree or in different ways than men and other women. Grounds for intersectional or compounded discrimination may include ethnicity/race, indigenous or minority status, colour, socio-economic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, and being lesbian, bisexual, trans-gender women or inter-sex persons. These intersecting factors make it more difficult for women from those groups to gain access to justice.

A good example to demonstrate a court’s sensitivity to intersectional discrimination can be found in the International Criminal Tribunal for Rwanda (ICTR) case of Prosecutor v. Jean-Paul Akayesu.\(^{38}\) Akayesu was the mayor of the Taba commune in Rwanda and in February 1996, he was indicted by the ICTR Prosecutor on twelve counts, including genocide, incitement to commit genocide, crimes against humanity, and violations of Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II. Although Akayesu had not personally been involved in acts of violence, he was indicted for ordering, inciting and instigating international crimes. The crimes had been committed mostly against the Tutsi people (men and women) in Rwanda. In the course of adjudicating the case, it became apparent to the court that in addition to the violations that Tutsi women suffered based on their ethnicity, they also suffered further systematic crimes on account of their gender. Hence, a year later, the court permitted the ICTR prosecutor to amend the charge sheet by adding three new counts of rape and other forms of sexual violence as crimes against humanity. By recognizing the intersecting strands of vulnerabilities suffered by Tutsi women, the ICTR became a landmark case in the history of women’s jurisprudence. It became the first international tribunal to recognize rape as a war crime and an act of genocide in international law (Davis, 2015).

1.5 Gender Stereotypes

38. Gender stereotyping is the practice of ascribing specific attributes, characteristics or roles to an individual man or woman by reason only of her or his membership in a social group of men or women, respectively. It involves over-generalizations about the characteristics of a group based on gender. The UN Office of the High Commissioner for Human Rights defines it thus:\(^{39}\)

A gender stereotype is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by women and men. A gender stereotype is harmful when it limits women’s and men’s capacity to develop their personal abilities, pursue their professional careers and make choices about their lives and life plans.

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\(^{38}\) Case No. ICTR-96-4-A, Judgment (June 1, 2001).  
Gender stereotyping affects the distribution of political power, resources, wealth, work, decision-making and the enjoyment of rights and entitlements within the family, as well as public life. A particular characteristic of gender stereotypes is that they are resilient, pervasive and persistent.

39. Article 5 of CEDAW adds a key concept to equal protection and access to justice analysis: the need to eradicate 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 of men and women. States parties to CEDAW have a responsibility under Article 5(a):

**Article 5 (a) of CEDAW**

States Parties shall take all appropriate measures
(a) 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.

40. In its General Recommendation No. 33, the CEDAW Committee makes the link between gender stereotypes and the perpetuation of discrimination against women and urges States parties to adopt education and public information programmes to help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women under Article 5.

41. According to Cook and Cusack (2010), in order to abolish all forms of discrimination against women, priority needs to be given to the elimination of gender stereotypes. While stereotypes affect both men and women, they can have conspicuously negative and harmful impacts on women, often devaluing them and assigning them to subservient roles in society. Treating women according to restrictive generalizations instead of their individual needs, abilities, and circumstances denies women their human rights and fundamental freedoms.
In its **General Recommendation No. 33**, paragraph 26, the CEDAW Committee makes the link between gender stereotyping and women’s access to justice:–

**CEDAW Committee General Recommendation No. 33, Paragraph 26**

Stereotyping and gender bias in the justice system […] impede women’s access to justice in all areas of law, and may have a particularly negative impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often judges adopt rigid standards about what they consider to be appropriate behavior for women and penalize those who do not conform to these stereotypes. Stereotyping also affects the credibility given to women’s voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far reaching consequences, for example, in criminal law where it results in perpetrators not being held legally accountable for violations of women’s rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the re-victimization of complainants.

Under Article 2(2) of the **Maputo Protocol**: “States Parties shall 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 inferiority or superiority of either of the sexes, or on stereotyped roles for women and men.” Article 12(1)(b) thereof enjoins States Parties to take all appropriate measures to “eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination”.

Gender stereotyping excludes any individualized consideration of, or investigation into, a person’s actual circumstances and their needs or abilities. When a judicial officer engages in stereotyping, they judge an individual based on pre-conceived beliefs about a particular social group and not relevant facts or actual enquiry related to that individual or the circumstances of his or her case. Stereotyping becomes particularly problematic when it ignores characteristics of individuals, their abilities, needs, wishes and circumstances in a way that denies individuals their human rights and fundamental freedoms.

Below are examples of two cases where gender stereotyping was an important factor in the courts in the name of justice:–

In the Case of **Law and Advocacy for Women in Uganda v. Attorney General**, the Ugandan Constitutional Court examined a Penal Code provision that made adultery a crime for married women but not for married men. Under section 154 of the Penal Code, a married man commits no criminal offense when he has sexual intercourse with unmarried sex partners. But a married woman commits a criminal offence when she has sexual intercourse with any other man not being her husband. The Court held that the law was discriminatory, violating constitutional provisions on the right to equality and the right to dignity and protection from inhuman treatment.
In a Communication presented to the CEDAW Committee: In *R.K.B v. Turkey*, an employer terminated the employment contract of a female employee for having had an affair with a male colleague. She was dismissed from work but he was not. Upon application to court, the court accepted allegations of extramarital relationships by male employees, but not by female employees. The Committee decided that the Turkish courts based their decisions on gender stereotypes, tolerating allegations of extramarital relationships by male employees but not by female employees, and that there had been a violation of Article 5(a), 11(1a) and 11(1d) of CEDAW. The Committee noted that the State has an obligation to improve women’s position in society and to eliminate gender stereotypes, implement laws on gender equality in the work environment and also provide training to judges, lawyers and law enforcement personnel on women’s rights and gender-based stereotypes.

46. Impartiality can be seriously compromised when judicial officers disregard law and facts in favour of stereotypes. Therefore, judicial officers must reach impartial decisions based on law and relevant facts, and not generalized preconceived ideas about the social group from which parties before them emanate. *This is because judicial outcomes based on generalized views or preconceptions do not take a person’s actual needs, abilities or circumstances into account and, therefore, distort the truth.*

47. Gender stereotyping can, for example, influence a judicial officer’s understanding of different offences related to gender-based violence and their perception of whether or not a criminal offence has occurred. Amnesty International has reported that in some countries the police, prosecutors, and judges apply prevailing stereotypes to conclude that a sex worker (or an unmarried woman) could not possibly have been raped. There also exist many stereotypes about domestic violence. For instance in Uganda, there is a common belief that domestic violence is a private matter between spouses that should never be discussed in public. Such false stories only serve to make women feel guilty and make it difficult for them to ask for help.

48. Stereotyping can also affect the views of judicial officers regarding witness credibility and their legal capacity. There is a long history of judges questioning the credibility of witnesses and their evidence on the basis of stereotypes (Mack, 1994). Stereotyping has often contributed to judges forming negative views about the credibility of women victims and survivors of violence. It can lead judges to form a favourable view of the credibility of men accused of gender-based violence.

49. Judicial officers must therefore refrain from stereotyping and ensure that it does not infringe on human rights. In particular, they must ensure that women can exercise and enjoy the right to be free from harmful gender stereotyping. In the case of *V. K. v. Bulgaria*, the CEDAW

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41 See Communication No.28/2010, R.K.B. The Committee decided that adequate compensation should be paid to the author, however, it remains to be seen how the recommendations will be enforced. Still, the decision is an important one because of the significant number of unemployed women in Turkey, and the declining female participation rate in the labour force. Further, the decision highlighted that the court (not the executive branch) was responsible for rights violations.


43 Amnesty International (Tania Baldwin-Pask), Submission to the Committee on the Elimination of Discrimination against Women on its General Discussion on Access to Justice, (TIGOIOR40/2013.008, 30 January 2013, 6.)

44 Communication No. 20/2008 11th -29th July 2011.
Committee noted that States parties are accountable under CEDAW for judicial decisions that are based on gender stereotypes rather than on law and fact. The Committee stated that stereotyping affects women’s right to a fair hearing, and that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender based violence.

50. State parties to CEDAW have a responsibility under Article 5(a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary 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.

Key Documents on Gender Stereotypes

- CEDAW, Articles 1, 4, 5
- CEDAW Committee’s General Recommendation Nos. 3, 26
- Maputo Protocol, Articles 2 and 12
Cases Referred to in Chapter One

3. Behangana Domaro & Another v. Attorney General, Constitutional Petition No. 53 of 2010
9. Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-A, Judgment (June 1, 2001)
12. Satrose Ayuma & Others v. The Registered Trustees Kenya Railways Staff Retirement Scheme, Petition No. 65 of 2010 Constitutional and Human Rights Division of the High Court of Kenya
15. Uganda v. Thomas Kwoyelo, High Court Criminal Session Case No.02 of 2010
16. Uganda v. Yiga Hamidu and Others, High Court Criminal Session Case No. 55 of 2002
17. V. K. v. Bulgaria, Communication No. 20/2008 11th - 29th July 2011
CHAPTER 2:

FAMILY RELATIONS
1. The family and marriage are the cornerstones of society. The Universal Declaration of Human rights (UDHR) declares that: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.” Indeed, the family is one of the pivotal sites where gender relations are produced and reproduced. The differences between men and women in family relations manifests in the gendered systems governing the areas of marriage, divorce, cohabitation and their relationship to children.

2. Extensive research globally has revealed that the family unit in most societies is typically organized on the basis of hierarchy and gender inequality, wherein the rights of women to equal status are restricted in marriage, and wherein gendered power relationships dictate that women and girl children are treated as subordinate to men and boy children. The husband is considered the head of the family (and the household), and the wife (and girl children) may suffer discrimination on account of their gender. Oftentimes, Violence Against Women and girls is supported, condoned and even encouraged within this context. This goes against fundamental international human rights standards on family relations. In its General Recommendation No.33, the CEDAW Committee makes the critical point that inequality in the family underlies all other aspects of discrimination against women and is often justified in the name of ideology, tradition and culture.

3. While the legal regime in Uganda has made some progress in addressing these issues, there is a lot that still needs to be done, particularly in regards to tackling the structural issues that impinge on the rights of women.

4. There have been several attempts in Uganda’s post-independence legal history to embed the principle of gender equality in domestic matters (Tamale, 2017). In January 1964, the newly-independent government established the Commission on Marriage, Divorce and the Status of Women (the Kalema Commission) (Tamale, 1993). One year later, the Kalema Commission Report was published with several progressive recommendations related to marriage, divorce, children and inheritance. However, most of them have been largely ignored and the struggle to transform family law continues today.

5. For example, four decades later, the Domestic Relations Bill (DRB) was introduced in the Parliament of Uganda. The bill proposed to introduce a new and more egalitarian legal regime governing family relations. Seeking a total overhaul of domestic relations in Uganda, the bill addressed, inter alia, the following: the property rights of married and cohabiting women; women’s non-monetary contribution as wives, mothers or cohabitees; women’s right to negotiate sex on health grounds; recognition of the concept of ‘irretrievable breakdown of marriage’; the prohibition of “widow inheritance”, spousal rape and female genital mutilation; vetoing bride wealth as an essential element of marriage; criminalization of the refund of dowry; and the introduction of conditions to be fulfilled before a polygynous man takes on subsequent wives (e.g. proof of economic capability, keeping wives in separate homes, treating all wives equally and seeking the consent of existing wife(ves) before taking on a new one).

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45 Article 16(3) of UDHR. Also see the preamble of the Ugandan Constitution – National Objectives and Directive Principles of State Policy XIX.
46 CEDAW Committee General Recommendation No.33, para. 45. (CEDAW/C/GC/33). See also Article 16 of the CEDAW Convention.
47 Some of the recommendations were incorporated in the Succession (Amendment) Decree of 1972 and the Administration of Estates Decree of the same year.
6. The DRB proved to be “too controversial” and Government decided to split it into two documents: (a) The Marriage and Divorce Bill; and (b) The Administration of Muslim Personal Law Bill. To date neither of the proposed laws have been passed by Parliament, leaving the fate of women in the domestic sphere, and within the family structure, hanging in the balance.

Key Points

The following are different but interlinked aspects of family relations that intrinsically affect women’s access to justice:

- The artificial line that society draws to separate public from private life, privileging the public over the private and relegating women to the latter sphere, means that the roles that women perform in the domestic sphere are viewed as inferior. Moreover, the disproportionate responsibilities that women carry in the domestic sphere negatively affect their personal development.

- Traditional practices that construct men as the heads of families and households lead to adverse consequences for women when it comes to important issues such as decision-making, equal access to resources, and enjoying equal status within the family and society.

- Negative stereotypes and traditional perceptions of women’s roles inhibit women from enjoying equal legal capacities as men, including their domicile, inheritance, and child custody rights.

- Polygamous marriages which allow men to marry multiple wives often have wide-ranging negative consequences for women.

- While the Constitution outlaws laws, cultures and traditions that go against the dignity, welfare and interests of women, in reality non-enforcement of this constitutional provision perpetuates women’s subordinate status in family matters, including child marriages.

2.1 Marriage

7. The right to marry and found a family is guaranteed in international and national law.

Subject: Article 16(1) of the Universal Declaration of Human Rights

| Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. |

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48 Polygyny is the practice of a man taking on more than one wife. Polygamy is the generic term for marriages with multiple spouses. Polyandry is when a woman takes on more than one husband.
8. Similar sentiments are echoed in the ICCPR, the ICESCR, CEDAW and the ACHPR. The Ugandan Constitution imported these international standards into its Article 31:-

**Article 31 of the Constitution of Uganda**

1. A man and a woman are entitled to marry only if they are each of the age of eighteen years and above and are entitled at that age-
   (a) to found a family; and
   (b) to equal rights at and in marriage, during marriage and at its dissolution.

2. Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.
   (a) Marriage between persons of the same sex is prohibited.

3. Marriage shall be entered into with the free consent of the man and woman intending to marry.

4. It is the right and duty of parents to care for and bring up their children.

5. Children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law.

9. Article 16 of CEDAW is particularly relevant to the equal status of men and women in family relations. It requires States parties to ensure that men and women have equal rights in all aspects of marriage and family relations, including the selection of a spouse, ownership and matters related to the birth, adoption and the raising of children. In its General Recommendation No.21 on marriage and family relations, the CEDAW Committee has laid down elaborate guidelines regarding the implementation of Article 16 on Equality in Marriage and Family Relations.
Article 16 of CEDAW

1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
   (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
   (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

10. Uganda’s legal pluralistic system recognizes multiple types of marriage, including civil, customary and religious (Christian, Islamic and Hindu) marriages. While customary and Islamic marriages are potentially polygynous, Christian, Hindu and civil marriages are monogamous and follow the Common Law requirements laid out in the 1866 English case of Hyde v. Hyde.49
    A marriage union that is not heterosexual is rendered invalid under the Constitution.50

11. It is prohibited under the law to mix different types or systems of marriage. However, in practice it is quite common to find people intermingling elements of customary law with Christian, civil and Islamic marriages. Most times such overlaps end up affecting women’s access to justice in adverse ways. The most common examples include when:-
   (a) A man married to multiple wives under customary law subsequently decides to wed his “favourite” wife in a Christian marriage and denounces all the other customary wives; or
   (b) A man already married in a Christian or civil marriage subsequently decides to customarily “marry” another wife.

12. While Article129(1)(d) of the Ugandan Constitution provides for the establishment of Qadhis courts to deal with Islamic matters relating to marriage, divorce, inheritance of property and

49 [1866] LR 1 P&D 130.
50 See Article 31(2)(a) of the Ugandan Constitution.
guardianship, these are yet to be established. Qadhis courts are intended to decide on “personal law” matters, based on Islamic Sharia law, relating to marriage, divorce, inheritance, child support, property, inheritance, and guardianship, among others, in a manner consistent with the law and the Constitution. However, given that Sharia Law applicable in Qadhis courts must be in line with the Constitution, it is bound to trigger further controversy due to the numerous contradictions and tensions that exist between Sharia and Constitutional ideals (Mujuzi, 2012).

13. Once in place, the Qadhi’s courts will apply Sharia Law to all “personal law” issues relating to marriage, divorce, inheritance, child support, domestic violence, and so forth. Muslims applauded the parallel ‘personal law’ that would not conflict with ‘Islam’.

14. The Penal Code Act (PCA) defines some offences related to domestic relations. While some of these crimes (e.g., bigamy, desertion of children, neglecting to provide food) are important in ensuring that women are able to exercise their human rights, including the right to access justice, other offences are gender-biased, targeting women only. For example, the offence of adultery created under section 154 of the PCA defines adultery differently for men and women. Section 154 (2) extends culpability to any married woman who has sexual intercourse with any man not being her husband, but limits adultery to only men who have sexual intercourse with married women. A married man thus commits no criminal offence when he has sexual intercourse with unmarried sex partners—he is free to have several sexual partners as long as they are not married women. Furthermore, a wife’s complaint must prove two things: (a) that the husband had extra-marital sex; and (b) that the other woman (co-respondent) was indeed a married woman. The discrimination and double standards sanctioned by section 154 was challenged in the case of Law and Advocacy for Women in Uganda v. Attorney General. The Constitutional Court found that section 154 of the Penal Code was unconstitutional because its provision constituted discrimination based on sex. The Court found that it was inconsistent with the Constitutional right to equality and non-discrimination. Furthermore, it was contrary to the Constitutional guarantee to equal rights between spouses in a marriage and at its dissolution.

However, implicit in the Constitutional Court decision of Law and Advocacy for Women in Uganda v. Attorney General, was the view that adultery should remain as a matrimonial offence applicable to both husband and wife. This goes against the global trend to decriminalize adultery (Brown, 2007). Indeed, the CEDAW Committee recommends for the decriminalization of all forms of behavior that are not criminalized or punished as harshly if they are performed by men.

15. Regardless of the type of marriage (civil, customary or religious), women disproportionately face dis-empowerment through their marital status. As the majority of women in Uganda substantially depend on their male spouses for financial and social support, they have limited options in seeking justice. Even for wives that are financially independent, who may be able to afford the costs associated with accessing justice, this access may still be impeded by cultural and religious barriers.

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51 See clause 2(3) of the Administration of Muslim Personal Law Bill, 2008.
52 See Sections 149-155 of the PCA.
53 See Section 154(1) of the PCA.
54 Constitutional Petition No.13/05 and No.5/06.
55 CEDAW Committee General Recommendation No.33, para. 51(1). CEDAW/C/GC/33.
2.2 Separation and Divorce

16. Most married women come into contact with the justice system when differences between the spouses have reached irreconcilable proportions and one of the parties is seeking for separation or the dissolution of the marriage. When this happens, issues relating to division of matrimonial property and custody of children come to the fore. As we have already seen in the preceding section, international human rights standards require equal rights between men and women at the dissolution of marriage. Article 31(1)(b) of the 1995 Constitution domesticates these standards into the Ugandan legal system. However, the relevant legislation, which was enacted at the turn of the last century, is yet to be harmonized with the Constitution.

17. For example, the Divorce Act sets different standards for men and women who seek a termination of their marriage. Section 4 of the Act requires a husband to prove only one ground (i.e. adultery) when seeking for divorce. A wife, on the other hand, must petition the court for the dissolution of her marriage on more than one ground - that since the solemnisation of the marriage:-

(a) her husband has changed his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or

(b) has been guilty of:-

(i) incestuous adultery;

(ii) bigamy with adultery;

(iii) marriage with another woman with adultery;

(iv) rape, sodomy or bestiality;

(v) adultery coupled with cruelty; or

(vi) adultery coupled with desertion, without reasonable excuse, for two years or upwards.

18. Since adultery alone is so hard to prove, the requirement for women to prove additional grounds makes their exit from abusive marriages very difficult. Yet, men can easily get divorced by proving only one ground of adultery. Given the patriarchal nature of lawmakers, it is unsurprising that adultery was defined differently for men and women, and was considered a sufficient ground for granting divorce to male petitioners. The inequality and double standards exhibited in section 4 as well as sections 5, 21-24 and 26 of the Divorce Act were successfully challenged in the Case of Uganda Association of Women Lawyers and Others v. Attorney General. Below is an extract of the lead judgment by Justice Alice Mpagi-Bahigeine:-

It is well to remember that the rights of women are inalienable, interdependent human rights which are essential in the development of any country and that the paramount purpose of human rights and fundamental freedoms is their enjoyment by all without discrimination which discrimination is manifest in The Divorce Act. The concept of equality in the 1995 Constitution is founded on the idea that it is generally wrong and unacceptable to discriminate against people on the basis of personal characteristics such as their race or gender.... [T]he

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56 Constitutional Petition No. 2 of 2003.
1995 Constitution is... fully in consonance with the International and Regional Instruments relating to gender issues (The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) which is the women’s Bill of Rights and the Maputo Protocol on the Rights of Women in Africa [2003]). Be that as it may, its implementation has not matched its spirit. There is urgent need for Parliament to enact the operational laws and scrap all the inconsistent laws so that the right to equality ceases to be an illusion but translates into real substantial equality based on the reality of a woman’s life, but where Parliament procrastinates, the courts of law being the bulwark of equity would not hesitate to fill the void when called upon to do so or whenever the occasion arises.

[Emphasis supplied].

19. The concept of domicile is another source of inequality for married women. Domicile refers to a country where one lives or considers their permanent home. Article 15(4) of CEDAW requires States parties to: “Accord men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.” A person’s domicile has great jurisdictional implications and has often disadvantaged married women’s access to justice. For example, Uganda adopts the Common Law rule which requires that the domicile of a woman and minor children follows that of the family head, i.e. the husband/father. A wife’s dependent domicile is further sanctioned by the Succession Act of Uganda.57 This rule is based on gender stereotypes that assume that the husband is the sole breadwinner and the wife the homemaker who must follow her husband wherever he finds employment opportunities. It may limit a wife’s access to the courts of law in her country of residence if it is different from her country of domicile as happened in the case of Joy Kiggundu v. Horace Awori.58 In that case the Uganda-based wife had been separated from her husband who lived in their matrimonial home in Kenya. She was denied a hearing when she filed for divorce in the High Court of Kampala on the grounds that the court had no jurisdiction under section 1 of the Divorce Act, since her domicile was in Kenya.

20. Article 15(4) of CEDAW provides:-

**Article 15(4) of CEDAW**

Art. 15(4): States parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

The CEDAW Committee recommends that an adult woman should be capable of changing her domicile at will regardless of her marital status: “Any restrictions on a woman’s right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.”59

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57 See Sections 15-16 of the Succession Act (Cap 162).
59 See CEDAW Committee General Recommendation No. 21, para. 9.CEDAW/C/GC/21.
21. A customary divorce is only legally sanctioned with the refund of dowry or bride price by the wife’s parents to their son-in-law. In many cases, by the time a woman seeks for divorce, the dowry gifts which usually consist of livestock are no more. And the relatives who shared the bride price may have died long ago. Until recently, this requirement of refund of dowry kept many women stuck in abusive marriages because their families were incapable of refunding the dowry. The case responsible for putting an end to this obstacle to women’s access to justice was MIFUMI (U) Ltd and 12 others v. Attorney General and Kenneth Kakuru. The Supreme Court held that the customary practice of the refund of bride price as condition precedent to a valid dissolution of marriage violated Articles 31(1)(b), 32(2) and 33(1) of the Ugandan Constitution. Justice Jotham Tumwesigye held:-

Most ethnic groups in Uganda, apart from the Baganda ethnic group, practice the custom of refund of bride price at the dissolution of customary marriage... In my considered view, the custom of refund of bride price devalues the worth, respect and dignity of a woman. I do not see any redeeming feature in it. The 2nd respondent stated in his submissions that it is intended to avoid unjust enrichment. With respect, I do not accept this argument. If the term “bride price” is rejected because it wrongly depicts a woman as a chattel, how then can refund of bride price be accepted?... Bride price constitutes gifts to the parents of the girl for nurturing and taking good care of her up to her marriage, and being gifts, it should not be refunded. Apart from this, the custom completely ignores the contribution of the woman to the marriage up to the time of its break down. Her domestic labour and the children, if any, she has produced in the marriage are in many ethnic groups all ignored. I respectfully do not agree with the suggestion proposed by the 2nd respondent that when the marriage breaks down, a woman’s contribution should be subjected to valuation, taking into account the length of the marriage, the number of children the woman has produced in the marriage, etc., on the basis of which the refund should be determined. If a man is not subjected to valuation for the refund of bridal gifts ("emihingiro" in Runyankore) when the marriage breaks down, it is not right or just that a woman should be subjected to valuation. She is not property that she should be valued.

22. The gender biases in the law on adultery and divorce actually reinforce gender biases in society and thus limit access to justice for women. Outside the legal arena, where the majority of marriages fall, the social construction of relationships sanctions multiple partners for men, while it constructs divorce on the basis of a fault principle on the woman’s part (Nassali, 2017).

23. The Divorce Act, which governs the dissolution of marriages, also contains unfair provisions relating to marital property. A divorcing wife would lose her property and go empty-handed if she was found guilty of adultery. Under section 26, the court may order the whole or any part of the property to be settled for the benefit of the husband, or of the children of the marriage, or both. This does not apply to the husband in similar adulterous circumstances.

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Section 26 of the Divorce Act

When a decree of dissolution of marriage or judicial separation is pronounced upon account of adultery by the wife, and the wife is entitled to any property, the court may, notwithstanding the existence of the disability of coverture, order the whole or any part of the property to be settled for the benefit of the husband, or of the children of the marriage, or both.

24. A woman’s property, whether acquired before or during marriage, is first subjected to the provisions of section 26 or is left uncovered for the six months between a Decree Nisi and the Decree Absolute. It appears that the legislators stereotyped women as potentially adulterous and wanted to penalize such wives who acquire property through adultery. Section 26 of the Divorce Act which allows the husband to legally confiscate such property was successfully challenged in the Constitutional court.\textsuperscript{62}

25. In \textit{Mohamed v. Makomo},\textsuperscript{63} the High Court of Tanzania reversed an award of only 5 per cent of the matrimonial home to a female divorcee. The trial Magistrate had held that she failed to prove the extent of her contribution to its acquisition; the respondent had presented no such evidence. The trial Magistrate merely made an assumption that the husband builds the matrimonial home. \textbf{Justice N.P. Kimario} reasoned that the decision reflected a stereotyped view of men’s and women’s roles. She found the decision discriminatory and in contravention of the CEDAW requirement of equality before the law for both men and women.

26. In \textit{Julius Rwabinumi v. Hope Bahimbisomwe},\textsuperscript{64} an appeal was made against the Court of Appeal decision that property belonging to either spouse becomes matrimonial property upon the exchange of marriage vows. The Supreme Court reversed that judgment and held that a married spouse is free to own personal individual property alone or in association with others under Article 26 of the Constitution and that such property individually owned cannot be treated as matrimonial property upon divorce. It is only matrimonial property that may be equally divided and shared to the extent possible and practicable at divorce.

27. Section 27 of the Divorce Act provides for ante- and post-nuptial agreements after a decree absolute of dissolution or nullity of the marriage. The court may honour these agreements or vary them to the application of the whole or part of the settled property for either or both spouses and/or the children for the benefit of either. But no order shall be made at the expense of the children for the benefit of one or both parents. Under section 28, the court may appoint trustees to whom money may be paid in respect of such settled property.

2.3 Cohabitation

28. The 2002 National Population and Housing Census in Uganda revealed a 60 per cent increase of cohabiting couples among Ugandans. However, the law does not recognize such de facto unions as valid marriages. Given this gap, there have been increasing calls by Ugandan women including members of the Uganda Women Parliamentarians Association (UWOPA) to

\textsuperscript{63} Civil Appeal No. 45 of 2001.
\textsuperscript{64} Supreme Court Civil Appeal No. 10 of 2009.
recognize such unions and establish some rights and responsibilities that accrue from them.\footnote{See Nalugo, Mercy, “Why Women Want Cohabitation Legalised,” Daily Monitor, June 19, 2010, available at: http://www.monitor.co.ug/Magazines/Full-Woman/689842-941592-x77q7v/index.html} The need for such rights is highlighted at the time of separation or death of a partner. In General Recommendation No. 21, the CEDAW Committee addresses this issue of eliminating discrimination against women living in de facto unions:-

**General Recommendation No. 21, paragraph 18**

Women living in such [cohabitation] relationships should have their equality of status with men both in family life and in the sharing of income and assets protected by law. Such women should share equal rights and responsibilities with men for the care and raising of dependent children or family members.

29. General Recommendation No. 21 further recommends that cohabiting couples should be guaranteed all the rights irrespective of the woman’s marital status. Where neither partner is married to another person or is in a registered partnership with another person, governments should consider the situation of women in these unions, and of the children resulting from them, and take the necessary measures to ensure the protection of their economic rights.\footnote{Civil Application No NAI 17 of 1983.}

30. In the absence of any legal framework that recognizes cohabitation, some countries have invoked the English Common Law principle of presumption of marriage to recognize the rights of cohabiters after a reasonable period of living in a de facto union. By so doing, courts have declared that for all intents and purposes the cohabitation is a “marriage.” Kenya is a good example of such pragmatism. For example, in the Kenyan case of *Hortensia Wanjiku Yawe v. Public Trustee*,\footnote{Civil Appeal No 13 of 1976.} the court ruled that parties seeking to rely on the presumption of marriage doctrine must prove two elements, namely: (i) prolonged cohabitation; and (ii) that they held themselves out to the general public as a married couple. This precedent was followed in the subsequent case of *Mbithi Mulu and Another v. Mitwa Mutunga*.\footnote{Section 14 of the Judicature Act (Cap 13).}

31. The Judicature Act recognizes Common Law as a source of law in Uganda.\footnote{Section 14 of the Judicature Act (Cap 13).} As long as Uganda’s marriage law remains silent on de facto unions, which are becoming increasingly common, the legal lacuna can be filled with the Common Law principle of Presumption of Marriage.

### 2.4 Relations to Children

32. As the bearers and primary care providers of children, women have their rights intertwined with that of future generations. But in patriarchal societies such as Uganda, where descent is also patrilineal, women’s relations to children may sometimes be precarious. Traditionally, children belong to their fathers and this has serious implications for mother’s rights relating to their minor children.

33. Article 5(b) of CEDAW provides for the common responsibility of men and women in the upbringing and development of their children. Article 16(1)(f) of the Convention and paragraph 20 of General Recommendation No. 21 elaborate on gender equality in this area of women’s lives:

**CEDAW Article 16(1)(f)**

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount.

**CEDAW General Recommendation 21, Para. 20**

The shared rights and responsibilities enunciated in the Convention should be enforced at law and as appropriate through legal concepts of guardianship, wardship, trusteeship and adoption. States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.

34. **Article 34 of the Constitution of the Republic of Uganda** elaborates the rights of children:

1. Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.
2. A child is entitled to basic education which shall be the responsibility of the State and the parents of the child.
3. No child shall be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.
4. Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.
5. For the purposes of clause (4) of this Article, children shall be persons under the age of sixteen years.
6. A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.
7. The law shall accord special protection to orphans and other vulnerable children.

35. The position before the 1995 Constitution, represented the largely patriarchal view that children belonged to the father as demonstrated in the following two custody cases:

In **Samwiri Massa v. Rose Achen**, Justice Ntabgoba J. (as he then was) ruled that: “It’s trite law that where issues of custody of a child is between the father and its mother and taking into

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account the paramount interest of the child, custody of such child, especially when it’s of tender years must be granted to the father…”

In *Nakagwa v. Kiggundu*, Justice Odoki J. (as he then was) held that in such cases it was relevant to consider “the father’s natural and superior right to the custody of the child as against the mother.”

Such gender-stereotyped beliefs are so entrenched in people’s minds that even in post-1995 custody cases, where such arguments are rendered unconstitutional, counsel are still invoking *Nakagwa v. Kiggundu*.

36. The Children Act (as amended in 2016) enumerates children’s rights and gives elaborate guidance on how to apply the welfare principle for the best interest of the child. For instance, section 73 of the Children Act gives court the powers, on application by a sole applicant or joint applicants, to grant custody of the child on such conditions as may be determined by court. In doing this, the court shall primarily consider the welfare principle of the child.

37. **Section 4 of the Children Act provides for the rights of the child** to include the right to:-

(a) live with his or her parent or guardian;

(b) where capable, express his or her view, belief or opinion on any matter that affects his or her wellbeing;

(c) access any information to which a parent, guardian or other person in authority deems critical to the child’s well-being;

(d) be registered after birth;

(e) a name and nationality;

(f) inherit property where applicable;

(g) safety, privacy, information and access to basic social services;

(h) leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities;

(i) to use any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;

(j) be treated without discrimination of any kind, irrespective of his or her race, colour, religion, belief, age, family status, culture, language, ethnicity, nationality, or social origin, citizenship, gender, disability if any, political or social opinion, property or any other condition;

(k) effective legal aid including representation in all civil, criminal, and administrative proceedings; and,

(l) exercise, in addition to all the rights stated in this Act, the rights set out in the United Nations Convention on the Rights of the Child and the Organization of African Charter on

71 [1978] HCB 139.

72 See for example, the case of Anne Musisi v. Herbert Musisi[Divorce Cause No. 14 of 2007] where counsel for the father who was contesting for custody of his children cited Nakagwa v. Kiggundu. Fortunately, Justice Mwangusya rejected it for its unconstitutionality.

73 Children Act, Cap 59 (as Amended).
the Rights and Welfare of the Child with appropriate modifications to suit circumstances in Uganda that are not specifically mentioned in this Act.

**Section 3 of the Children (Amendment) Act, 2016:**

**Welfare and Guiding Principles**

(1) The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child’s property, or the application of any income arising from that administration.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be given to the general principle that any delay in determining the matter is likely to be prejudicial to the welfare of the child.

(3) In determining any question under subsection (1), the court or any other person shall have regard to:-

(a) the ascertainable wishes and feelings of the child concerned, with due regard to his or her age and understanding;

(b) the child’s physical, emotional and educational needs;

(c) the likely effects of any change in the child’s circumstances;

(d) the child’s sex, age, background and any other circumstances relevant in the matter;

(e) any harm that the child has suffered or is at the risk of suffering; and

(f) where relevant, the capacity of the child’s parents, guardian or any other person involved in the care of the child, and in meeting the needs of the child.

38. In the Namibian case of *DNM v SM*, Justice Silungwe, AJ, illuminated the ‘best interest’ principle:-

*The fundamental and guiding principle concerning custody disputes and all matters involving children is that a child’s best interests are of paramount importance. Determining what custody arrangement will serve the best interests of the child in any particular case involves the making, by the Court, of a value judgment, based on its findings of fact, in the exercise of its inherent jurisdiction as the upper guardian of minor children.*
In the South African Case of *McCall v McCall*, Justice King listed 13 factors which are linked to the determination of the best interest of the child:

- The love, affection and other emotional ties between parent and child and the parents' compatibility with the child;
- The capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires;
- The ability of the parent to communicate with the child and the parents' insight into, understanding the sensitivity to the child’s feelings;
- The capacity and disposition of the parent to give the child the guidance which he requires;
- The ability of the parent to provide for the basic physical needs of the child, the so-called creature comforts such as food, clothing and housing and other material needs, generally speaking, the provision of economic security;
- The ability of the parent to provide for the educational well-being and security of the child, both religious and secular;
- The ability of the parent to provide for the child's emotional, psychological, cultural and environmental development;
- The mental and physical health and moral fitness of the parent;
- The security or otherwise of the child’s existing environment. Having regard to the desirability of maintaining the status quo;
- The desirability or otherwise of keeping siblings together;
- The child's preference, if the court is satisfied that in the particular circumstances the child's preferences should be taken into consideration;
- The desirability or otherwise of applying the doctrine of same sex matching;
- Any other factor which is relevant to the particular case with which the court is concerned.

40. It is an offence for a person to unlawfully remove a child from the lawful custody of another person, institution or organization (see s.73 (4) of the Act).

41. Under section 73A of the Children Act, a probation and social welfare officer, mother, father or guardian of a child may apply to the family and children court for an interim custody order pending the determination of custody of the child by court.

42. Section 73B of the Children Act provides for custody by agreement whereby the parents of a child can enter into an agreement to determine which of them shall have custody of the child.

43. The 2007 South African Supreme Court case of *P v P* demonstrates that the value systems and societal beliefs underpinning the “maternal preference” or “tender years” principle have been challenged, and the Courts have stressed “that parenting is a gender-neutral function and that the assumption that a mother is necessarily in a better position to care for a child than the father belongs to a past era”. Evidently, the overriding reason for this development is merely that the...
interests of the child must prevail. **Van Heerden, JA,** (with whom four other judges agreed) remarked\(^79\):

> In determining what custody arrangement will best serve the children’s interests in a case such as the present, a Court is not looking for the ‘perfect parent’ – doubtless there is no such being. The Court’s quest is to find what has been called the least detrimental available alternative for safeguarding the child’s growth and, development. (See Joseph Goldstein, Anna Freud and Albert J Solnit Beyond the Best Interests of the Child (1973) at 53, as cited in Boberg’s Law of Persons and the Family 2 ed. (1999) at 528–9 n 117).

44. Part VII of the Children Act (as amended in 2016) provides for adoption. The Act gives powers to the Chief Magistrate’s Court to handle applications for adoption within the jurisdiction of which the applicant or the child resides, when both the child and the applicant are citizens of Uganda. If the child or applicant is not a citizen of Uganda then the application is made to the High Court.\(^80\) Section 44(2) stipulates that a child need not be a Ugandan to be adopted.

45. Section 45(1)(a) of the Children Act provides that an adoption order may be granted to a sole applicant or jointly to spouses where the applicant or one of the joint applicants has attained the age of 25 and is at least 21 years older than the child. Under section 45(3), an adoption order shall not be made in favour of a sole male applicant in respect of a female child or in favour of a sole female applicant in respect of a male child unless the court is satisfied that there are special circumstances that justify, as an exceptional measure, the making of an adoption order.

46. Section 46(1)(a) of the Children Act provides that a person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she has stayed in Uganda for at least one year or has fostered the child for at least one year under the supervision of a probation and social welfare officer. Advocates, probation and social welfare officers or a guardian ad litem for children may facilitate the courts of law with information to protect the best interest of the child. Stringent measures have been put in place making inter-country adoption very difficult—such adoption shall be considered only as the last option to orphaned, abandoned or legally relinquished children. Emphasis is put on a continuum of comprehensive child welfare services including:

(a) Family preservation;
(b) Kinship care;
(c) Foster care;
(d) Institutionalization.

47. **Once an adoption order has been granted, all rights, duties, obligations and liabilities of the biological parents or guardians in relation to the future custody, maintenance and education of the child, including all rights to appoint another guardian or to consent or give notice of consent to any legal transaction are extinguished.**

\(^79\) Ibid. para. 26 (101J–102A).
\(^80\) Section 44 (1) (a) and (b) of the Children Act, Cap 59 (as Amended).
48. Under section 52(1) of the Children Act (as amended in 2016), where the adopter dies intestate, his or her property devolves in all respects as if the adopted child were the natural child of the adopter. In testamentary disposition of property, any reference to the child or children is to be construed as including reference to the adopted child.\textsuperscript{81}

49. Section 2 of the Children Act\textsuperscript{82} defines a guardian as a person having parental responsibility for a child. Part VI provides for \textbf{guardianship}. Section 43A applies to the guardianship of children in Uganda by citizens of Uganda. A person who is not a citizen of Uganda shall not be eligible to apply for legal guardianship. Application for legal guardianship may be made by any person above the age of eighteen years at the High Court and it must be accompanied by a report of the probation and social welfare officer.\textsuperscript{83}

50. Section 43C of the Children Act (as amended in 2016) introduces \textbf{customary guardianship}. Family members may appoint a guardian of a child in accordance with their customs, culture or tradition where both parents of the child are deceased or cannot be found; or where the surviving parent is incapacitated; or where the child has no guardian or any other person having parental responsibility for him or her.

51. Under section 43D of the Children Act (as amended in 2016) provides for \textbf{guardianship by agreement}. Here, the parent of a child may, by agreement or deed, appoint any person to be a guardian. The agreement or deed must be dated and signed by the parent in the presence of two witnesses, one of whom must be a probation and social welfare officer, and the other must be a local councillor at Local Council (LC) I level. A “parent” under section 1(n) of the Act is defined as the biological mother or father, or adoptive mother or father of a child.

52. \textbf{Section 43F(1) of the Children Act (as amended in 2016) provides conditions for guardianship:}-

\begin{quote}
\textbf{The Court shall, before making a guardianship order, satisfy itself that:-}
\begin{enumerate}
\item There is no known relative or next of kin of the child;
\item the relative or next of kin are unwilling or unable to take parental responsibility of the child;
\item all alternative care options available to the child have been exhausted;
\item the child is suffering or likely to suffer significant harm under present custody;
\item consideration has been given to the wishes of the child, having regard to the age and understanding of the child, where in the view of the court, the child is able to understand the guardianship proceedings; and
\item where the child is twelve years of age or above, his or her consent to the guardianship has been obtained, unless it is impossible for the child to express his or her consent.
\end{enumerate}
\end{quote}

\textsuperscript{81} Section 52 (2) of the Children Act, Cap 59 (as Amended).
\textsuperscript{82} Children Act, Cap 59 (as Amended).
\textsuperscript{83} Ibid., Section 43B.
53. **Justice Percy Tuhaise** relied heavily on the Welfare Principle to grant guardianship to the applicant in the case of *In the Matter of Adoption of Mark Kakembo*. The tendency is to place greater emphasis on financial contributions rather than non-financial contributions. Husbands are more likely to work outside the home and earn an income or, where the wife also works outside the home, to earn more than the wife.

54. The tendency is to give fathers priority over mothers for legal guardianship of children. The Succession Act, for example, provides that only a father, through a will, can appoint a guardian or guardians for his child during minority. These provisions of the Succession Act were challenged and the Constitutional Court declared them unconstitutional in the case of *Law and Advocacy for Women in Uganda v. Attorney General*.

55. **Section 7 of the Children Act** (as amended in 2016) provides against harmful cultural practices to children:–

   (1) A person shall not expose a child to any customary or cultural practice that is harmful to his or her health, wellbeing, education or social-economic development

   (2) “Harmful customary or cultural practice” is defined to mean any activity that is mentally, physically, socially or morally harmful to a child and includes an activity that interferes with a child’s education and social development.

   (3) It is an offence for a person to contravene this section and where a person is liable on conviction, to a term of imprisonment not exceeding seven years or to a fine not exceeding one hundred and sixty eight currency points, or both.

56. **Section 8 of the Act prohibits harmful employment of children**:–

   (1) A person shall not employ or engage a child in any activity that may be harmful or hazardous to his or her health, or his or her physical, mental, spiritual, moral or social development.

   (2) The minimum age of employment of a child is 16 years.

   (3) Defines “*harmful or hazardous employment*” to include work which exposes a child to physical or psychological torture, sexual abuse, work underground, work at dangerous heights or in confined spaces, work with dangerous machinery, equipment and tools, or manual handling or transportation of heavy loads, work with chemicals and dangerous substances, work under extreme temperatures, high levels of noise, or working for longer hours; or any other form of child labour which includes slavery, trafficking in persons, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution, pornography and illicit activities.

57. **Section 8A of the Children Act** (as amended in 2016) prohibits sexual exploitation of children. It is unlawful for any person to use:

   (a) a child in any work or trade that exposes the child to activities of a sexual nature whether paid for or not;

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84 Family Cause No. 169 of 2014 at Kampala. The “Welfare Principle” requires that when making custody-related decisions, the best interests of the child forms the first and paramount consideration.

85 See sections 43 and 44 of the Succession Act.

86 Constitutional Petition No. 13 of 2005.
(b) inducement or coercion in the encouragement of a child to engage in any sexual activity; children in prostitution or other unlawful sexual practices; and
(c) children in pornographic performances or materials.

A convict under this section is liable to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.

58. **Sections 42A, under Part V of the Children Act (as amended in 2016), protects children against all forms of violence.** This includes protection against sexual abuse and exploitation, child sacrifice, child labour, child marriage, child trafficking, institutional abuse, female genital mutilation, and any other form of physical or emotional abuse.

59. A person who on reasonable grounds believes that a child has been abused or is in imminent danger which may result in physical injury, sexual abuse, deliberate neglect, or is in need of care and protection may, under section 42A(2), report to a designated child protection organization or authority.

60. The following officers have a legal mandate, under section 42A(3), to report on any matter which affects the well-being of a child under their charge: a medical practitioner, a social worker, a teacher or a local Councillor at LC I Level.

61. **When it comes to sentencing women for criminal offences, it is important to take into account the fact that they are the primary caretakers of children. For this reason, where appropriate, non-custodial punishments should be used for women.** The Community Service Act (2000) provides for non-custodial punishments and regulates community service for offenders in certain cases. The 2010 UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) provide guidelines for sentencing authorities (among others) to reduce the imprisonment of women and to meet their specific needs when incarcerated.

62. It is important to note that community service is intended to help the offender keep his/her job and ensure his/her family is provided for. Community service was a response to the problem that imprisonment and other forms of punishment were perceived as punishing both the offender and his/her family. It was observed that imprisonment and other forms of punishment had a worse effect on female offenders, who following the sentencing, faced broken families and whose children found themselves motherless (Kasiko, 1998). For purposes of punishing offenders without breaking up families, the accused has to be placed in a location that is near his/her home to enable him/her to serve the punishment as ordered while still carrying out his/her family obligations. The CEDAW Committee recommends for gender-sensitive non-custodial sentences for women who tend to suffer from discrimination in criminal cases.

87 Also see the Community Service Regulations (SI 55/2001).
89 CEDAW Committee General Recommendation No.33, paras. 48 and 51(o). CEDAW/C/GC/33.
Key Documents on Family Relations

- UDHR, Article 16
- ICCPR, Article 23
- ICESCR, Article 10
- CEDAW, Article 2, 15, 16
- CEDAW General Recommendation Nos. 21, 29 and 33
- Human Rights Committee General Comment No. 19
- Maputo Protocol, Articles 6 and 7
- Convention on the Rights of the Child
- Judicature Act (Cap 13)
- Marriage Act (Cap 251)
- Divorce Act (Cap 249)
- Marriage of Africans Act (Cap 253)
- Marriage and Divorce of Mohammedans Act (Cap 252)
- Hindu Marriage and Divorce Act (Cap 250)
- Customary Marriage (Registration) Act (Cap 248)
- Succession Act (Cap 162)
- Community Service Act, 2000
- The Children Act (Cap 59, as amended in 2016)
Cases Referred to in Chapter Two

2. **Hortensia Wanjiku Yawe v. Public Trustee**, Civil Appeal No 13 of 1976
3. **Hyde v. Hyde** [1866] LR 1 P&D 130
4. In the Matter of Adoption of **Mark Kakembo**, High Court Family Cause No. 169 of 2014 at Kampala
6. **Julius Rwabinumi v. Hope Bahimbisomwe**, Supreme Court Civil Appeal No. 10 of 2009
7. **Law and Advocacy for Women in Uganda v. Attorney General**, Constitutional Petition No.5/06
9. **Mbithi Mulu and Another v. Mitwa Mutunga**, High Court Civil Application No. 17 of 1983
10. **McCall v McCall**, 1994 (3) SA 2001 at 204I – J
12. **Mohamed v. Makomo**, High Court Civil Appeal No. 45 of 2001 (TZ)
15. **Samwiri Massa v. Rose Achen**[1978] HCB 297
17. **Anne Musisi v. Herbert Musisi** [Divorce Cause No. 14 of 2007]
CHAPTER 3:

SEXUAL AND GENDER-BASED VIOLENCE
1. Acts of Sexual and Gender-Based Violence (SGBV) range from domestic violence, arbitrary killings, torture and mutilation, sexual violence, forced marriage, forced prostitution and forced impregnation, to forced termination of pregnancy and sterilization. For women it may be narrowed down to Violence Against Women. Violence Against Women has been defined in the UN Declaration on the Elimination of Violence Against Women (DEVAW). The essence of that definition was adopted by the Banjul Charter’s Maputo Protocol:\textsuperscript{90}:-

**UN Declaration on the Elimination of Violence Against Women (DEVAW)**

“Violence Against Women” means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.

2. DEVAW affirms “that Violence Against Women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms” and describes concerns “about the long-standing failure to protect and promote those rights and freedoms in the case of Violence Against Women”. It further recognizes “that Violence Against Women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that Violence Against Women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.\textsuperscript{91}

The topic of SGBV has been in the global spotlight since the 1980s. Numerous studies have been conducted, books and reports published, laws and policies passed, and yet the problem persists with impunity. In Uganda, statistics indicate that up to 60% (sixty percent) of married women aged 15-49 have ever experienced some form of violence inflicted by a spouse or intimate partner (UDHS 2011). Figures from the most recent 2016 National Demographic and Health Survey show that the situation has not improved at all (UBOS 2017: 53):-

*Women in Uganda are more than twice as likely to experience sexual violence as men. More than 1 in 5 women age 15 - 49 (22 percent) report that they have experienced sexual violence at some point in time compared with fewer than 1 in 10 (8 percent) of men. Thirteen percent of women and 4 percent of men reported experiencing sexual violence in the 12 months preceding the survey. Women aged 15-19 are less likely (5 percent) to report recent experience of sexual violence than older women (13-16 percent). Women in urban areas (9 percent), women in Acholi subregion (5 percent), and never-married women (1

\textsuperscript{90} Article 1(j) of the Maputo Protocol. Also see UN Declaration on the Elimination of Violence Against Women (DEVAW), adopted by the General Assembly under resolution 48/104 (1993), Article 1. See Preamble to DEVAW.

\textsuperscript{91} See Preamble to DEVAW.
percent) are less likely than other women to report recent experience of sexual violence. Experience of sexual violence ever and in the past 12 months is lowest among women with more than secondary education.

3. Although CEDAW does not contain any specific provision on Violence Against Women, subsequent developments in its jurisprudence have addressed the issue. In particular, the interpretive General Recommendations of the CEDAW Committee and General Recommendation No.19 specifically, have recognized SGBV as discrimination against women: “Gender-Based Violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”

CEDAW Committee General Recommendation No. 19, Paragraph 6

The Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

4. SGBV infringes on numerous women’s rights. According to General Recommendation 19, the rights impaired include:

(a) The right to life;
(b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
(c) The right to equal protection according to humanitarian norms in the time of international or internal armed conflict;
(d) The right to liberty and security of person;
(e) The right to equal protection under the law;
(f) The right to the highest standard attainable of physical and mental health; and
(g) The right to just and favorable conditions of work.

5. Judicial officers must therefore treat acts of Violence Against Women not as a moral issue but as discrimination against women. In fact, judicial officers will find General Recommendation 19 very useful in providing a comprehensive discussion of how gender-based violence relates to the provisions of CEDAW. Further, the CEDAW Committee recommends that States parties implement a policy of zero tolerance for SGBV.

92 See CEDAW Committee General Recommendation No.19, para.1. CEDAW/C/GC/19.
93 Ibid., para 7.
94 Currently, the sexual offences are misguidedly listed in the Penal Code Act Cap 120 of the Laws of Ugandan under Chapter XIV entitled, “Offences Against Morality”.
95 CEDAW Committee General Recommendation No.30, para 38. CEDAW/C/GC/30.
The rich interpretation of the concept of discrimination defined in Article 1 of CEDAW directly speaks to violated women accessing justice. This is true whether the violator is acting on behalf of the state actor or is a non-state actor. While all women face the risk of SGBV by virtue of their gender, some women are more vulnerable due to intersecting variables. These include being married, disabled and/or being rural-based, or migrating to urban areas in search of employment.  

6. The Maputo Protocol comprehensively deals with the issue of SGBV in both the public and private spheres, linking it to the violation of women’s rights to dignity, life, integrity and security. The Protocol enhances existing international human rights standards on SGBV by explicitly proscribing specific acts such as female genital mutilation (FGM).

7. To a large extent, Uganda has heeded the recommendation of the CEDAW Committee to “take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act”.

8. However, traditional gender stereotypes continue to be used to justify SGBV - including domestic violence, forced marriage and FGM. “The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.”

9. The African Commission on Human and Peoples’ Rights (ACHPR) also recognizes that Violence Against Women can amount to discrimination contrary to Article 18(3) of the African Charter on Human and Peoples’ Rights (Banjul Charter). In the *Egyptian Initiative for Personal Rights and Interights v. Egypt* the Commission found that the State of Egypt was responsible for sexual violence committed against four women during a protest in May 2005. In particular, the Commission held that Egypt violated their right to equality and non-discrimination, right to dignity and protection from cruel, inhuman and degrading treatment and their right to express and disseminate opinions within the law. The Commission also concluded that the State of Egypt was responsible for a violation of Article 5 of the Banjul Charter (the right to dignity and the prohibition of torture and cruel, inhuman and degrading treatment).

**Key Points**

- SGBV permeates all aspects of human rights, i.e. civil and political, as well as economic, social and cultural. It occurs everywhere within the public and private spheres, and is perpetrated by both state and non-state actors.

- Uganda has obligations under CEDAW, the Maputo Protocol, the Rome Statute, the 1995 Constitution and other specific national laws to prevent, investigate and punish all forms of SGBV. Such obligations extend to ensuring that women and girls can access justice, and that law enforcement agencies adopt gender-sensitive investigative procedures to address SGBV.

96 CEDAW Committee General Recommendation No.19, paras 21 and 23. CEDAW/C/GC/19.
97 See Articles 2 to 5, 11, 22 and 23 of the Maputo Protocol.
98 See Article 5 of the Maputo Protocol.
100 *ibid.*, para. 11.
101 African Commission on Human and Peoples’ Rights Communication 334/06.
102 CEDAW Committee General Recommendation No.30, para 38. CEDAW/C/GC/30.
International criminal law recognizes Violence Against Women and girls, particularly conflict-related SGBV. The evidentiary requirement of corroboration in sexual crimes is not a legal requirement under the ICC Rules of Procedure and Evidence.\textsuperscript{103}

SGBV leads to additional violations of other human rights, including the right to education for girls, lack of access to justice and attacks on women human rights defenders.

Survivors of SGBV usually suffer from various levels of trauma, shame, depression and many psychosocial problems which affect their memory recall, coherence and concentration levels – issues which do not make them the best witnesses. Courts must therefore treat such people with sensitivity and patience in order to accord them justice.

The nomenclature to describe individuals who have suffered SGBV alternates between “victim” and “survivor.” The terminology in most UN documents is “victim”\textsuperscript{104} but women human rights defenders and gender equality advocates tend to use the term “survivor.” The reason is that for them the designation “victim” suggests passivity and a permanent state of victimhood. Sometimes, terms are seen as appropriate – “survivor” celebrates the individual, but “victim” recognizes the enormity of the system of gender-based discrimination that women and girls face (Gupta, 2014).

The following sections of this chapter tackle the various and complex manifestations of SGBV under the areas of: sexual violence; domestic violence; conflict-related violence; trafficking; and harmful practices with the aim of improving understanding of the sheer scale and nature of the problem.

3.1 Sexual Violence

10. Sexual violence is the most pervasive form of Violence Against Women and girls. It is also chronically under-reported - cases that reach the judicial system are only the tip of the iceberg. Given the nature of the crime and the taboo of discussing sexual violence in Ugandan society, adjudication continues to be a complicated matter. Furthermore, more often than not, perpetrators are known to their victims which further complicates the prosecution of such cases. The complexity of the crime makes it easy for the defence to build doubt in the mind of the court, and perpetrators walk away scot free. All these factors mean that survivors of sexual violence are often denied access to justice. The law on sexual offences in Uganda is in dire need of reform even though attempts to amend it via the Sexual Offences Bill have been in the offing since the year 2000.

11. In 2007 the Penal Code Act underwent some amendments primarily to expand the offence of “defilement of persons under 18 years”.\textsuperscript{105} The amendment also introduced the offence of “aggravated defilement” and provided for compensation to be paid by the offender to the survivor of defilement.\textsuperscript{106}

\textsuperscript{103} See Rule 63(4) of the ICC Rules of Procedure and Evidence.
\textsuperscript{104} For example, see the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted under General Assembly resolution 40/34 (1985) and also see Article 43(6) of the Rome Statute of the International Criminal Court.
\textsuperscript{105} Section 129 of the Penal Code (Amendment) Act of 2007.
\textsuperscript{106} Section 129B of the Penal Code (Amendment) Act of 2007.
12. Section 129 of the Penal Code Act was amended to introduce new classifications of defilement:-
   i. Simple defilement
   ii. Aggravated defilement
   iii. Child-to-child defilement.

   Section 129(1) creates simple defilement, which is defilement of children aged 14 years and above but less than 18 years. This is an offence triable by Chief Magistrates, and on conviction, the maximum sentence is life imprisonment. Section 129(3) creates a new category of defilement termed ‘aggravated defilement’, triable by the High Court only. A convict is liable to suffer death as a maximum punishment. Further, section 129(4) provides for circumstances under which one can be charged with aggravated defilement, where:-
   (a) the victim is below 14 years of age;
   (b) the offender is infected with HIV;
   (c) the offender is a parent, guardian, or person in authority over the victim;
   (d) the victim is a person with a disability;
   (e) the offender is a serial offender.

   By implication, the 2007 Penal Code (Amendment) Act introduced compulsory HIV/AIDS testing of all suspects of sexual offences. There is a strong correlation between SGBV and HIV, including the deliberate transmission of HIV, and the use of SGBV, through rape, as a weapon of war.\textsuperscript{107} Suspects of defilement who are found HIV-positive are charged with aggravated defilement. HIV is also considered as an aggravating factor for sentences in other sexual assaults.

13. In many cases, the Director of Public Prosecutions has been charging males with rape where the assaulted girl is above 14 years of age or where the defiler uses excessive force or first cuts or causes grievous harm or burns the victim to force her into sexual intercourse. This is unlawful. Simple defilement, though a lesser charge attracting a lesser punishment should be preferred under sub-section (1) of section 129 of the PCA. In Uganda v. Kusemererwa Julius,\textsuperscript{108} Justice Batema N.D.A. condemned the practice and ruled:-

   \textit{The DPP can only prefer charges whose ingredients are best supported by the evidence on the police file. Rape is clearly rape of a woman capable of giving consent, withdrawing consent or refusing to consent to sexual intercourse. In the context of the current Penal Code provisions in Uganda, a girl is a minor who is incapable of consenting to sex and cannot therefore be raped. Technically speaking, rape ceased to apply to girls in 1990 and was replaced with provisions of defilement. Going by the 2007 amendments to the PCA, the two offences are distinct, distinguishable by the age element, criminal jurisdiction and the difference in the prescribed punishments.}

\textsuperscript{107} See Case of Prosecutor v. Jean-Paul Akayesu, Case no ICTR-96-4-T, ICL 129 (ICTR 1998).
\textsuperscript{108} High Court Criminal Session Case No.15 of 2014 at Fort Portal.
In the same case, Justice Batema N.D.A. further clarified on the definition of Rape:-

*Having legislated and amended the Penal Code to create the new offence of Simple Defilement, Parliament cannot be said to have intended to retain any age of girls as victims of rape under S.123 of the PCA. It is a question of an omission or poor legislative draftsmanship or poor cross-referencing not to delete the words "or girl" from the definition of Rape. The word 'girl' in that section is redundant and meaningless. We cannot say that we are correctly interpreting the law of defilement or rape if we go by the mere wording "woman or girl" in Section 123 PCA. Law is not mere words. Law is made by legislators for a particular purpose. As the Latin maxim goes; *Legislatorum est viva vox, rebus et non verbis legem imponere*. Meaning that, "The voice of legislators is a living voice, to impose laws on things, and not on words."

14. Several procedural issues during a sexual violence trial can work against survivors of violence. In fact, because of the considerable discrimination that survivors of sexual violence face during the process of cross-examination, many have said that they feel as if they are the ones on trial. For example, Section 154(d) of the Evidence Act (Cap 6) provides:-

*The credibility of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him or her - when a man is prosecuted for rape or an attempt to ravish, by evidence that the prosecutrix was of generally immoral character.*

This provision has been used in numerous cases to let perpetrators off the hook. *This law wrongly perpetuates the stereotype that females who are considered to be of “loose morals” (such as sex workers), enjoy sexual intercourse as a fact, are available to any man, and do not, therefore, have the moral authority to complain of rape, defilement or attempts thereof.*

15. Another procedural practice prejudicial to the survivors of sexual offences is the requirement for corroboration of their evidence. This means that the survivor’s evidence must be supported by some additional independent evidence in order to sustain a conviction. *The requirement is based on the gender stereotype that women are incorrigible liars, especially when it comes to sexual matters.*

16. Justification for corroboration in sexual offence cases was restated in the 1970 Kenyan case of *Maina v. Republic*,109 by Mwendwa C.J, following the case of *Neville and 5 Others*110:-

*It has been said again and again that in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. It is dangerous because human experience has shown that girls and women sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons and sometimes for no reason at all.*

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110 Cr. APP.R 150 (N.C 1918).
17. However, thanks to the pragmatic judging of some judges, the requirement of corroboration in sexual assault cases has been held to be discriminatory and unconstitutional. In the case of Uganda v. Peter Matovu, Justice Lugayizi relied on CEDAW to argue that the legal requirement for corroboration discriminated against women who were “by far, the most frequent victims of sexual offences and is therefore inconsistent with Uganda’s international obligations.” He dismissed the cautionary rule practiced by courts when receiving the evidence of female victims holding that:

Court has not come across any empirical data or basis for the belief that women are great liars than men are or for that matter, that they are more likely to tell a lie than to say the truth in matters concerning sexual allegations. For that matter both the belief and resultant rule have no logical basis.

18. The international human rights standard on the evidentiary rule of corroboration in sexual offences can be gleaned from Rule 63(4) of the International Criminal Court’s (ICC) Rules of Procedure and Evidence which provides: “A Chamber shall not impose a legal requirement that corroboration is required in order to prove any criminal court, in particular, crimes of sexual violence.” [Emphasis supplied].

19. Trials in open court are acknowledged to be stressful situations for persons of any gender. In cases of gender-based crime - especially sexual offences such as rape or defilement - since women and girls are the most common victims/survivors, their access to justice is particularly affected. Due to the unique power imbalances involved in these crimes, and the societal stigma attached to them, victims and witnesses may be nervous, scared or embarrassed. The defence counsel often asks embarrassing questions in vulgar language in the presence of relatives and children. Furthermore, many witnesses, irrespective of gender or age, fail to recount in detail the sexual assaults committed against them for fear of the public’s reaction. Many prefer to use euphemisms or words with hidden meanings because the actual names and descriptions are too explicit. This is particularly common in cases involving child victims who often have less knowledge or vocabulary that enables accurate description of sexual offences. It is good practice therefore, for these types of trials to be held in camera or in closed court. This prevents additional trauma for victims and witnesses, based on assumed or real negative perceptions from the public.

20. Article 68(2) of the Rome Statute of the ICC provides that as an exception to the principle of public hearings, the Chamber may conduct any part of the proceedings in camera, or allow the presentation of evidence by electronic or other special measures to protect victims and witnesses. In particular, such special measures are mandatory in the case of a victim of sexual violence, or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

21. In Uganda, audio-visual witness protection technology has so far only been installed in the High Courts of Kampala, Fort Portal, Mbale and Gulu. This technology enables the witness/victim/ survivor to provide their testimony from a remote location within the court, and reduces the risk of re-traumatization by avoiding contact with the alleged perpetrator. The issue of hearing

111 Criminal Session Case No. 146 of 2001. Also see the Kenyan case of Mukungu v. Republic [2003]2 EA 482.
sexual offences cases in open court largely continues, posing numerous problems for the witness/victim/survivor.

22. Article 28(1) of the Ugandan Constitution provides for a fair, speedy and public hearing before an independent and impartial court established by law. Public hearings are set out in Section 137 of the Trial of Indictment Act, (Cap. 23), which states:-

The place in which the High Court is held for purpose of trying any offence shall be deemed to be an open court which the public generally may have access. So far as the place can conveniently contain them; but the presiding judge may, if he or she thinks fit, order at any stage of the trial of any particular case that the public generally or any particular person shall not have access to or be or remain in the room or building used by the court.

23. Under Section 40 of the Magistrates Court Act (MCA), the hearing of criminal cases must take place in open courts. However, Section 40(1A) of the MCA affords court some discretion:-

In particular, the court shall, when conducting a trial of the offence of defilement, consider the need, in the interest of the child, to exercise its power under Article 28 (2) of the Constitution, to exclude the press and the public from the proceedings before the court for reasons of morality and to protect the victim of the offence.

Hence the presiding judicial officers have discretion to exclude the press and the general public in the hearing of sexual offences. But because the hearing of cases in camera is not mandatory; many judicial officers conduct such trials in open court.

24. The case of Uganda v. Apai Stephen,112 is a classic example of how open court hearings can deny female victims of sexual violence access to justice. In this case, the elderly victim of rape refused to testify using explicit language claiming that the words were “too big to go through her mouth.” Instead, she described what happened to her using euphemisms: “He made me his wife and worked on me.” Justice Ssempa Lugayizi dismissed the statement as “vague and meaningless” and acquitted the accused for lack of compelling evidence. Concluding with a gender-insensitive statement, the judge said:-

Before I take leave of this matter, may I also point out that the complainant (PW1) has only herself to blame for the fact that this case collapsed. Indeed, the learned Resident Senior State Attorney endeavoured to guide her in her evidence for more than one and half hours, but she stubbornly refused to say exactly what took place inside the accused’s hut on the day in issue. She was very satisfied with leaving the court with the useless statements above. By her looks, PW1 was probably a grandmother. Children under the age of 18 years have on countless number of times before, given valuable evidence to this Honourable Court on matters such as these. The Court therefore expected PW1 to perform a lot better than she did.

112 High Court Criminal Session Case No. 23 of 1994 at Tororo.
Judicial Stereotyping - in this case age and gender-related - led the Judge to denying the woman justice. He blamed the victim for the violent act and not the accused, especially where the victim did not fit the standard of the “ideal victim.”

25. Survivors of sexual violence often have to fit the **“ideal victim” standard** before some judges can hold offenders legally accountable. Judicial stereotyping of the “ideal” sexual assault victim is used to disqualify a complainant’s accounts of her sexual assault experience. The woman who comes to the attention of the authorities has her victimization measured against the ideal rape mythologies, that is:-

- who she should be in order to be recognized as having been, in the eyes of the law, raped;
- who her attacker must be in order to be recognized, in the eyes of the law, as a potential rapist; and
- how injured she must be in order to be believed.

26. A close scrutiny of the old Police Form 3 and its annex in respect of examination of victims of sexual offences reveals the judicial stereotyping of an “ideal victim” as below:

i. If able-bodied, the victim was expected to physically resist sexual assault.

ii. The victim had a duty not only to express an unequivocal “NO”, but also to fight her way out of such a situation.

iii. The perpetrator had only one responsibility to ascertain consent during the assault because it was believed no African female readily says “YES” to sexual intercourse.

27. If her victimization did not fit these myths, which stem from social prejudices and gender stereotyping, it was unlikely that an arrest would be made or a conviction obtained. To this extent, the “ideal victim” myth often worked to undermine the credibility of those women who were seen to deviate too far from stereotypical notions of ‘authentic’ victims, and from what were assumed to be ‘reasonable’ victim responses. Credibility assessments remained absolutely pivotal in sexual assault trials. These assessments of credibility remain deeply influenced by stereotypes surrounding ‘ideal’, ‘real’, or ‘genuine’ victims of sexual assault as observed by a well-known researcher on gender stereotyping - Simone Cusack.113 Fortunately all these stereotyped standards of the ideal sexual assault victim were dropped in PF3A.

28. Procedurally, with the 2011 amendments to the Police Forms, prosecution of crimes involving sexual violence under the Penal Code is currently assisted by Police Form 3A(PF3A)114 and PF24A.115 Police Form (PF3) is still in use but is limited to documentation of injuries in other offences excluding sexual offences. These revised forms have substantially enhanced the management and response mechanisms to SGBV in Uganda.

29. PF3A is used in the course of medical investigations of sexual assault cases to obtain medical and forensic evidence from health practitioners. Such evidence is required under the Penal Code Act (Cap 120) and the Police Act of 2006 (as amended) to document physical or other injuries of survivors and is critical corroboration for the successful prosecution of SGBV cases.

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114 For examination of victims.
115 For the examination of suspects.
The comprehensive four-page form 3A includes pictograms intended to ensure that medical practitioners carry out high quality and precise medical examinations and draw arrows pointing at the particular body parts examined and where injuries are found (see Annex 4).

30. Among the important changes under the new procedural regime is the fact that the PF3A need not only be completed by police surgeons (as required before in PF3), who are thin on the ground, and can thus hamper survivors’ efforts to access justice. In addition to medical doctors, other medical practitioners such as clinical officers, nurses and midwives now can also perform the task of examining a victim, documenting the evidence and testifying in court. In addition, in replacing the original PF3 with its annex in respect of sexual offences, the new PF3A has removed the “ideal-victim” gender bias and ambiguity in proving ingredients of sexual offences. The victims now need not prove that they resisted the sexual assault or got overpowered by the attacker.

31. But even as judicial officers consider the evidence procured in PF3A, they must be aware that in rape or other sexual assaults there might be no sign of friction, resistance, or non-consensual sexual intercourse. Not all survivors of sexual assaults will necessarily have signs of physical injuries, such as lacerations, abrasions, tears, fractures, bruises, bleeding, among others. Medical findings confirm that it is possible to penetrate the female sex organ and rest the male sex organ or any object between the outer lips (labia) without necessarily entering the vaginal cavity. In other words, legally, the hymen does not have to be ruptured for it to constitute defilement or rape. Moreover, judicial officers should be aware that many activities may break the hymen including strenuous exercise. In the absence of a hymen, there might be no bleeding at all. Bleeding from the private parts of a female may also be a sign of tears of the wall or other membranes and not necessarily the rupture of the hymen.

32. There is no one “right way” to respond to a sexual assault and therefore absence of physical injuries on the body does not create any doubt about the assault or necessarily point to the victim’s consent. Sometimes perpetrators use weapons or threats of violence to prevent a physical struggle or sometimes they take advantage of people who are not able to consent because they are drunk, for example. The shock and fear caused by a sexual attack may also paralyze victims and prevent fighting or alarm raising. Since rape is life threatening, many victims also make a conscious decision not to fight back in order to save their lives (Smith, 2001). This partly explains why some victims do not make any disclosures or delay reporting until their safety is guaranteed. Others fear embarrassment or ridicule from the community for not resisting or fighting back. Unfortunately, those who fight back and kill the rapists are charged with murder and denied the defence of self defence or the Battered Woman Syndrome.

33. The Battered Woman Syndrome is a reference to any person who, because of constant and severe domestic violence usually involving physical abuse by a partner, may become depressed or unable to take any independent action that would allow him or her to escape the abuse. The courts in Australia, Canada, New Zealand, United Kingdom, and United States have accepted the extensive body of research showing that battered partners can use force to defend themselves and sometimes kill their abusers because of the abusive and sometimes life-threatening situation in which they find themselves, acting in the firm belief that there is no other way than to kill for self-preservation.
34. In Uganda, women who commit violent crimes are denied this internationally-recognised defence of the **Battered Woman Syndrome**. Research has shown that accumulated violence cannot reduce an accused’s legal responsibility for her crime.\(^{116}\) In *Uganda v. Tereza Nakayima*,\(^{117}\) the court rejected the victim’s defence of self-defence because her act of killing was in reaction to completed acts of assaults against her. Court did not consider her accumulated anger from the completed acts, which is an essential element in the Battered Woman Syndrome. Nakayima killed her husband after he had wounded her on the forehead, cut her left index finger and bruised her middle finger. There was also evidence of a history of persecution of the accused by the deceased which the court should have considered as a mitigating factor. But in sentencing the offender, **Justice Youds** said:-

\[
I \text{ am sure you must have been provoked and persecuted by your husband before you resorted to the desperate act of cutting him to death. But your act was dreadful and wicked. Justice must be done by sending you to prison. The law must be observed and the wives cannot be allowed to go and kill their husbands even when they are persecuted by them, without receiving punishment.}
\]

35. In *Uganda v. Jacqueline Uwera Nsenga*,\(^{118}\) the court followed reasoning similar to that in *Nakayima* and did not consider the Battered Women’s Syndrome as a partial or full defence to past acts of domestic violence. Instead, it considered the past acts of violence against the accused as forming the bedrock of malice aforethought. **Justice Duncan Gaswaga** said:-

\[
The \text{ marriage in question was characterized by mistrust, hatred, frustration and threats. An accumulation of these elements over a long period of ten years resulted in the formation of a tinderbox, which constituted the bedrock of the accused’s intention or malice aforethought to kill the husband.}
\]

36. However, the High Court in *Uganda v. Kamuhanda Emmanuel*,\(^{119}\) considered accumulated anger arising from repeated acts of domestic violence, and more so when they are committed with impunity, as a partial defence to homicides and other crimes committed against a perpetrator of domestic violence. Indeed, accumulated anger was viewed as a very serious mitigating factor in sentencing. The court called for an amendment of section 193 of the Penal Code Act which defines provocation arguing that it is blind to the gendered inequalities in domestic violence. *(See also ‘Provocation’ in the section on Domestic Violence on page 56.)*

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117 HCCSCML 378 of 1971. The term “Battered Woman Syndrome” refers to “a pattern of responses and perceptions presumed to be characteristic of women who have been subjected to continuous physical abuse by their mate” (Schuller and Vidmar, 1992 at 274).
118 High Court Criminal Session Case No. 013 of 2013.
119 High Court Criminal Session Case No. 24 of 2012 at Fort Portal (unreported).
3.2 Domestic Violence

37. Also known as “violence in the family” or “intimate partner violence”, domestic violence is the abuse of individuals within a domestic setting. According to the 2006 Uganda Law Reform Commission study, 66 per cent of Ugandan women had experienced some form of domestic violence (CEDOVIP, 2007). This phenomenon is so pervasive that Ugandans witness it almost every day in television news reports like ‘Agataliko Nfuufu’ and all the daily newspapers.

38. Judicial officers should always remember that domestic and sexual matters are secretive and not usually discussed in the open by African women. Stereotyping can have dire consequences. Stereotypes related to the so-called “inherent” and “natural” differences between women and men are sometimes relied upon in support of the claim that women and men make unique contributions to properties. Stereotypes about the roles of women and men within marriage and family relations may also be relied upon at times, including the stereotype that men are heads of households, which implies that their wishes and desires should be prioritized over those of women and their children. When such stereotypes are relied upon in determinations concerning the care and custody of children where there has been a history of domestic violence, there is a risk that the rights of the perpetrator will be prioritized over the rights to life and physical and mental integrity of the female victim/survivor and the best interests of the child.

39. The CEDAW Committee makes some specific observations on domestic violence in its General Recommendation No. 19:-

CEDAW Committee General Recommendation No. 19

Para. 23

Family violence is one of the most insidious forms of Violence Against Women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.

Para 24(r)

Measures that are necessary to overcome family violence should include:-

(i) Criminal penalties where necessary and civil remedies in cases of domestic violence;
(ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
(iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;
(iv) Rehabilitation programmes for perpetrators of domestic violence;
(v) Support services for families where incest or sexual abuse has occurred.
41. The CEDAW Committee further recommends that:-

States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials are essential for the effective implementation of the Convention. [Para. 24(b)].

42. Enactment of the Domestic Violence Act (2010) (DVA) was a positive step towards meeting Uganda’s obligations under the UN DEVAW, the UDHR, CEDAW, and the CEDAW Committee’s General Recommendation No.19 on Violence Against Women. The Act also imports into national law international standards set in the provisions of the Convention against Torture.

43. Most importantly, the DVA implements Articles 24 and 44 of the Ugandan Constitution that provide for freedom from torture or cruel, inhuman and degrading treatment or punishment. The DVA is a unique hybrid law with both civil and criminal provisions, procedures and remedies. It provides for several issues:-

(a) the protection and relief of victims of domestic violence;
(b) the punishment of perpetrators of domestic violence;
(c) the procedure and guidelines to be followed by the court in relation to the protection and compensation of victims of domestic violence; and
(d) the jurisdiction of court; the enforcement of orders made by the court, and the empowerment of the family and children’s court to handle cases of domestic violence.

44. The Domestic Violence Regulations were passed in 2011 to operationalize the DVA. However, enforcement has been slow to take off, which has negative implications for women’s access to justice.

3.2.1 Marital Rape

45. The UN DEVAW recognizes marital rape as constituting Violence Against Women: Article 2(a) expounds on the definition of Violence Against Women to include:

Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

46. Courts in Uganda have been following the old Common Law practice which exempts husbands from rape charges, interpreting the phrase, “unlawful carnal knowledge of a woman” found in section 123 of the Penal Code, which criminalizes rape to mean that husbands are excluded since sex with their wives is always “lawful”.

120 See Statutory Instrument No. 59 of 2011.
47. This practice of exempting husbands from the charge of marital rape was imported from England, and has its origin in the speech of the Chief Justice of England, Sir Mathew Hale, at a conference in 1736. He stated:-

But the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.

Courts of law took this Statement seriously and have continued to practice it as if it was law. At that time, the principle was that a husband being the superior partner in marriage had a right to demand conjugal rights at any time. And the wife would automatically oblige like a subservient chattel of the husband, as to say “No” would be against her marriage vows.

48. This practice has since been discarded in England. In the English case of R v. R121 a husband’s defence to rape was rejected by the Court of Appeal, which held that:-

This is not the creation of a new offence, it is the removal of a common law fiction which has become anachronistic and offensive and we consider that it is our duty having reached that conclusion to act upon it.

49. In S.W. v. The United Kingdom122 the European Court of Human Rights held that:-

[Common] law should adapt itself to changing social attitudes.... The status of women has changed out of the recognition of marriage as a partnership of equals and no longer one in which the wife must be a subservient chattel of the husband. ... The abandonment of the unacceptable idea of the husband being immune against prosecution for rape of his wife was in conformity not only with a civilized concept of marriage but also, and above all, with the fundamental objectives of the convention, the very essence of which is respect for human dignity and human freedom.

50. Some homegrown relief (albeit limited) on this issue for married women in Uganda can be found in the Domestic Violence Act (DVA) of 2010. “Domestic Violence” as defined under section 2 of the DVA includes sexual abuse in a “domestic relationship” which includes husband/wife and cohabitees. This in effect created the offence of marital rape. Unfortunately, the Directorate of Public Prosecutions and the police are yet to put to the test this section of the DVA. Concerned about the serious constraints that marital rape places on women’s ability to obtain justice, some activists argue that the punishment for the offence of domestic violence of a maximum of two years’ imprisonment is too light for the offence of marital rape.

3.2.2 Bride Wealth and Domestic Violence

51. Domestic violence has been linked closely to the institution of bride wealth but the courts in Uganda have refused to declare bride wealth unconstitutional. For example, the women’s rights organization in Uganda, called MIFUMI filed a class action case in the Constitutional Court

121 [1991] 3 WLR 767.
seeking for a declaration that dowry was unconstitutional. MIFUMI lost the case. It was only Hon. Justice Twinomujuni, in his dissenting judgment, who held that:-

> Bride price helps to perpetuate a belief in society that a man is superior to a woman, that once he buys a woman, he can batter her, humiliate her and treat her as he likes. The custom of paying bride price in a customary marriage violates all the Constitutional provisions which were enacted to give protection to women, and is repugnant to good conscience. The practice has become purely commercialised and highly exploitative and humiliating to women and it is high time that the custom is abolished and the woman should be set free.

There was an appeal to the Supreme Court. Although the Supreme Court abolished the traditional practice of refunding dowry under customary divorce, the institution of bride wealth was left intact as an essential element of customary marriages.

3.2.3 Common Perceptions about Family Relations and Domestic Violence

52. Some people argue that marriage is private, and what happens inside marriage is nobody else’s business. In fact, marriage is a public agreement - when two people take their marriage vows, they openly declare that they will respect, love and care for each other; and when the marriage breaks down, it is everyone’s problem. When a husband beats his wife, therefore, it is the same as a stranger beating her in the street. Marriage does not give husband permission to assault.

53. Others argue that women really want men to beat them as a sign of love. The fact is, nobody wants to be beaten or abused; no woman wants a man to harm her. Some people also say that it is “the drink, not the man”. But drunkenness is no excuse for violent behaviour, and in itself does not cause violent behaviour. Alcohol may provoke the violence, but violence is a learnt behaviour not natural, and a manifestation of a complex web of unequal gendered power relations within the family.

54. There are people who say that domestic violence cannot be that bad, otherwise the woman would leave. In fact, it is very difficult for a woman to leave an abusive relationship, especially if she has children. Some women only want the violence to stop and not divorce. She may have no money, nowhere to go, no support system, and no means of earning a livelihood to support her children. It is difficult to leave the security of a social institution that gives women validity. Furthermore, it may be difficult to leave because consistent abuse leads to low self-esteem, loss of self trust and with it, the inability to trust others. Also, women may stay because they think that things may change and get better.

3.2.4 Provocation

55. The DVA offers a good opportunity for judicial officers to put an end to the impunity being enjoyed by the perpetrators of domestic violence. This is exactly what Justice Batema N.D.A did in the case of Uganda v. Kamuhanda Emmanuel, where he set a precedent by

reinterpreting the concept of provocation in light of gender-based violence. The Kamuhanda case essentially overturned the old reasoning on provocation that one proved must react in the heat of passion. The accused had been charged with the murder of his father who had for many years inflicted violence on their mother. The accused had warned his father to stop this abuse but this went unheeded. This led to the accused attacking his father after his last act of abuse. Holding that, “the gendered power relations in domestic violence can no longer be ignored in our principles of criminal law and in criminology in general,” Justice Batema N.D.A mitigated the accused’s sentence to only two years. He noted that the murder arose from “accumulated anger in domestic violence. It is high time courts considered this as a strong partial defence to homicides just like other defences such as provocation”.

56. Justice Batema N.D.A further noted in the Kamuhanda case:-

Section 193, in general and more so subsection (2) of section 193 in particular, defining what amounts to provocation in a domestic relation can no longer hold. This provision looks gender-neutral but is in fact gender-blind protecting violent husbands. It promotes domestic violence against family members considered to be under the immediate care of the perpetrator of the violence. In our communities, it is men who are often, and sometimes automatically, still treated as heads of the home and the women and children they live with as subordinates under their immediate care. The assumption under the Penal Code Act is that no subordinate is supposed to get annoyed with and react violently to any abuse by the master of the home. I find that unlawful and unconstitutional.

In R v. Hussein s/o Mohamed the East African Court of Appeal acknowledged the significance of culture and class in determining provocation. It held that:-

The standard of the reasonable man is within the cultural background of the accused. [...] Where the wrongful act or insult is of such a nature as would be likely to deprive an ordinary person of the class to which the accused belongs of power of self-control, there is provocation within the meaning of the statute.

57. In Yovan v. Uganda the court held that provocation must be judged by the standard of an ordinary person of the community to which the accused belongs. What might be a deadly insult to a member of one community might be a mere triviality to members of another community. Moreover, the image of a “reasonable man” in law is biased. As Naffin (1987:3) puts it:-

Law’s reasonable man represents the male point of view. That is to say, the mythical man of law is intended to be ungendered, an objective standard of human conduct and yet characteristics are invariably men’s... In the law’s search for a perfectly impartial standard of reasonable human behaviour courts have retained in their mind’s eye an image of a man, not a woman.
58. What Jones (1980:310-1) wrote about murders in American society is also true of Uganda:—

Standards of acceptable homicide have been on male models and expectations. Familiar images of self-defence are a soldier, a man protecting his home, family or the chastity of his wife or a man fighting off an assailant. Society, through its prosecutors, juries and judges has more readily excused a man for killing his wife’s lover than a woman killing a rapist.

There are problems with the test of a “reasonable man” in a patriarchal society. The test, which is gender-neutral, is in fact gender-insensitive. It does not take into consideration the emotional feelings of a reasonable woman who commits a crime.

3.2.5 Mediation

59. Many courts often refer SGBV cases, particularly domestic violence cases, to family or clan leaders for mediation and reconciliation. The procedure is constitutional and lawful but it can deny women access to justice if handled by gender-insensitive mediators. Before recommending mediation in domestic violence cases, a judicial officer thus ought to consider the dangers that can often beset this process, based on the following:

- **Mediation wrongly assumes joint responsibility for violence.** Violence is always the responsibility and choice of the person who uses it - not the one who experiences it.

- **Mediation wrongly assumes that both partners have equal power.** In cases of domestic violence the person using violence holds power over the person experiencing violence. During mediation someone who uses violence can further control his or her partner with hidden signals or threats, making mediation difficult and unsafe. Since the victim will most likely be unable to freely express his or her needs in mediation, a fair agreement is very difficult to achieve.

- **Mediation may put the victim or his or her family in danger.** What a victim says in mediation may put him or her, the children or the family at increased risk during or after the session. The suspect may blame her for putting “bedroom matters” in public and want to punish her for it.

- **Mediation wrongly assumes that both partners want a violence-free relationship.** Many people who use violence against their partners believe it to be necessary and acceptable. Mediation alone is unlikely to change this—they need support to change.

- **It is very unlikely that mediation will stop domestic violence.** Domestic violence can only end if the person using violence chooses to stop. Mediation tends to focus on the event that triggered a particular incidence of violence, rather than recognizing the pattern of abuse and the real cause of violence. Because of this, it actually does not solve the problem and there is likely to be another incidence of violence in the future if the root cause of the violence is not dealt with.

- **The “sorry” phase may just make the mediation a phase in the violence.** The perpetrator of domestic violence may say “sorry” to the victim and to the community during a mediation session, and the community may believe him/her. However, usually saying
“sorry” is just a phase in the cycle of violence. If the mediator is not properly trained, they may fail to see this and blame the victim for future violence, thinking the public apology the perpetrator gave was the end of his/her bad behavior, when it most likely just became more private.

3.3 Conflict-Related Sexual and Gender-Based Violence

60. It is indisputable that women are disproportionately affected by violence in situations of armed conflict. Moreover, they are systematically targeted by sexual violence as a weapon of war. It was in recognition of this fact that in October 2000, the UN Security Council adopted the landmark Resolution (UNSCR) 1325 on Women, Peace, and Security. Resolution 1325 emphasizes the responsibility of all States to put an end to impunity and prosecute those responsible for sexual and other Violence Against Women and girls.

61. Today, UNSCR Resolution 1325 together with its subsequent Resolutions, provide the broad normative framework for Member States to take action around the women, peace, and security agenda. The agenda rests on four pillars, viz., (a) Prevention; (b) Participation; (c) Protection; and (d) Peace-building and recovery. It has become the focal point for galvanizing worldwide efforts to deal with the many challenges that women face in situations of conflict and peace-building, including with regard to access to justice.

UNSCR Resolutions on the Women, Peace and Security Agenda

- **Resolution 1325 (2000)** emphasizes the responsibility of all States to put an end to impunity, and to prosecute those responsible for sexual and other Violence Against Women and girls.
- **Resolution 1820 (2008)** calls on States to ensure that women and girls have equal protection under the law and equal access to justice.
- **Resolution 1888 (2009)** urges States to undertake comprehensive legal and judicial reforms to ensure that survivors of conflict-related sexual violence have access to justice.
- **Resolution 1889 (2009)** encourages States to design concrete strategies to respond to women and girl’s needs and priorities in post-conflict situations, including access to justice.
- **Resolution 2106 (2013)** encourages States to include the full range of crimes of sexual violence in national penal legislation to enable prosecutions for such acts; and draws attention to the importance of a comprehensive approach to transitional justice, encompassing the full range of judicial and non-judicial measures.
- **Resolution 2122 (2013)** stresses the need for continued efforts to address obstacles in women’s access to justice in conflict and post-conflict settings, including through gender-responsive legal, judicial and security sector reform and other mechanisms.
- **Resolution 2242 (2015)** urges States to strengthen access to justice for women in conflict and post-conflict situations, including through the prompt investigation, prosecution and punishment of perpetrators of sexual and gender-based violence.

128 Also see United Nations Security Council Resolutions.
62. The women, peace and security agenda provides a strong mandate and framework for judicial officers to ensure that women’s priorities and perspectives are central to work on access to justice in conflict-affected settings, and throughout the development continuum. Uganda has a number of such conflict zones, including northern Uganda and the Rwenzori region. The Courts administering justice in war or conflict zones will find the peace and security principles applicable.

63. The CEDAW Committee’s General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations speaks to the obligation of States parties to address all violations of women’s rights, and the particular role of transitional justice mechanisms in delivering justice and accountability for violations in conflict-affected settings. The CEDAW Committee notes the historical failure of transitional justice mechanisms to fully address the gendered impact of conflict, and emphasizes that post-conflict justice should address the full range of human rights violations, including violations of economic, social and cultural rights. In addition, transitional justice mechanisms have the potential to secure a transformative change in women’s lives, by addressing the structural sex- and gender-based discrimination which underpins conflict-related rights violations, and which continue to impede women’s enjoyment of their rights under the Convention in the aftermath of conflict.

64. Under the Rome Statute of the ICC, SGBV is not explicitly addressed under its Article 6 on genocide. But all the underlying crimes of genocide may have a sexual or gender element. However, Article 7(1)(g) explicitly sets out sexual and gender-based crimes including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, other forms of sexual violence of comparable gravity, and persecution on the grounds of gender as constituting crimes against humanity. Article 8 also lists rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence as war crimes, constituting a grave breach of the Geneva Conventions or a serious violation of Common Article 3.

65. The best case to demonstrate the link between SGBV and genocide is the International Criminal Tribunal for Rwanda (ICTR) case of Prosecutor v. Jean-Paul Akayesu (discussed in Section 1.4 paragraph 37 of this GBB).
3.4 Trafficking

66. DEVAW recognizes “trafficking in women and forced prostitution” as constituting Violence Against Women.129

67. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was passed in 2000 (Trafficking in Persons Protocol). Although Uganda is yet to ratify this Protocol, the definition of the term “Trafficking in Persons” is what Ugandan law uses, in part, in its own national law against trafficking - the Prevention of Trafficking in Persons Act (2009).130 Article 3 of the UN Protocol provides:-

<table>
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<th>Article 3 of the UN Trafficking Protocol</th>
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<tr>
<td>(a) Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</td>
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<tr>
<td>(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;</td>
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<tr>
<td>(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this Article;</td>
</tr>
<tr>
<td>(d) ‘Child’ shall mean any person under eighteen years of age.</td>
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68. Women and girls are trafficked for various reasons including trafficking for enslavement, sexual slavery, rape of women and girls, enforced prostitution, forced pregnancy or forced sterilization. Under certain circumstances these acts constitute crimes against humanity under the Rome Statute of the ICC. Article 7(1)(c) criminalizes enslavement, which is understood by the Court’s Elements of Crimes to include trafficking in persons, particularly women and children.131

69. CEDAW requires that: “States parties . . . take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.”132 The Convention on the Rights of the Child (CRC) also provides that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse”.133

129 Article 2(b) of DEVAW.
130 See section 2(r) of the Prevention of Trafficking in Persons Act, 2009.
132 Article 6 of CEDAW.
133 Article 34 of the CRC.
The CEDAW Committee identifies some key factors that lead to such abuse:

**The CEDAW Committee’s General Recommendation No.19**

**Para. 14**
The CEDAW Committee’s General Recommendation No.19 Para. 14
Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

**Para. 15**
Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

**Para. 16**
Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

**71. Uganda is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking.** High levels of poverty and unemployment, in particular, tend to lure women and young girls into the hands of traffickers with false promises of well-paying jobs in the city or abroad. The government of Uganda took a step towards realizing its obligation under CEDAW to prevent, investigate and punish trafficking and SGBV when it enacted the Prevention of Trafficking in Persons Act of 2009. However, there is a need to develop well-defined regulations for implementation and enforcement in order to effectively prohibit trafficking, as well as to amend labour export regulations to curb labour recruiters who traffic in persons.

**3.5 Harmful Practices**

**72. Article 1(g) of the Maputo Protocol defines “harmful practices” as “all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.”** It requires States to “enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general wellbeing of women.”

**73. The Joint General Recommendation by the CEDAW Committee and the Committee on the Rights of the Child** focuses on harmful practices - comprehensively addressing the...
eradication of such practices, which are strongly rooted in social norms and attitudes. It lists some examples of harmful practices including inter alia, female genital mutilation (FGM), child and/or forced marriage, polygyny, neglect of girls (linked to the preferential care and treatment of boys), virginity testing and related practices, branding/inflation of tribal marks, corporal punishment, violent initiation rites, widowhood practices, accusations of witchcraft, infanticide and incest. They also include body modifications that are performed for the purpose of beauty or marriageability of girls and women (such as fettening, isolation, the use of lip discs and neck elongation with neck rings).136

Joint General Recommendation No. 31 of the CEDAW Committee and General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices

Para. 17
The causes of harmful practices are multidimensional and include stereotyped sex- and gender-based roles, the presumed superiority or inferiority of either of the sexes, attempts to exert control over the bodies and sexuality of women and girls, social inequalities and the prevalence of male-dominated power structures. Efforts to change the practices must address those underlying systemic and structural causes of traditional, re-emerging and emerging harmful practices, empower girls and women and boys and men to contribute to the transformation of traditional cultural attitudes that condone harmful practices, act as agents of such change and strengthen the capacity of communities to support such processes.

Para. 18
The efforts to combat harmful practices notwithstanding, the overall number of women and girls affected remains extremely high and may be increasing, including, for example, in conflict situations and as a result of technological developments such as the widespread use of social media. Through the examination of State parties’ reports, the Committees have noted that there is often continued adherence to harmful practices by members of practising communities who have moved to destination countries through migration or to seek asylum. Social norms and cultural beliefs supporting such harmful practices persist and are at times emphasized by a community in an attempt to preserve its cultural identity in a new environment, in particular in destination countries where gender roles provide women and girls with greater personal freedom.

74. The Maputo Protocol imposes obligations on state parties to prohibit and condemn all forms of harmful practices which negatively impact on the human rights of women.137 Such obligations extend to judicial officers implementing legislation that address issues such as FGM.

75. The 1995 Constitution prohibits: “Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women… or which undermine their status.”138 Uganda has recently enacted various laws to address some harmful practices, including the Prohibition of Female Genital Mutilation Act (2010), the Anti-Pornography Act (2014) and the Children Act (Cap 59) (as amended in 2016).

137 See Article 5 of the Maputo Protocol.
138 Article 32(2) of the 1995 Constitution.
76. The case of *Law and Advocacy for Women in Uganda v. Attorney General*,\(^\text{139}\) examined the constitutionality of the custom and practice of FGM. The court found that the practice was unconstitutional and declared it null and void. The court quoted in detail the United Nations Inter-Agency Statement on Eliminating Female Genital Mutilation.\(^\text{140}\)

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**UN Interagency Statement on Eliminating FGM**

Female genital mutilation violates a series of well-established human rights principles, norms and standards, including the principles of equality and non-discrimination on the basis of sex, the right to life when the procedure results in death, and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment as well as the rights identified below. As it interferes with healthy genital tissue in the absence of medical necessity and can lead to severe consequences for a woman’s physical and mental health, female genital mutilation is a violation of a person’s right to the highest attainable standard of health.

Female genital mutilation has been recognized as discrimination based on sex because it is rooted in gender inequalities and power imbalances between men and women and inhibits women’s full and equal enjoyment of their human rights. It is a form of violence against girls and women, with physical and psychological consequences. Female genital mutilation deprives girls and women from making an independent decision about an intervention that has a lasting effect on their bodies and infringes on their autonomy and control over their lives.

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777. Furthermore, and within this context, while the right to participate in cultural life and freedom of religion are protected by international law, the latter also stipulates that freedom to manifest one’s religion or beliefs might be subject to limitations necessary to protect the fundamental rights and freedoms of others. **Therefore, social and cultural claims cannot be evoked to justify FGM.**\(^\text{141}\)

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\(^\text{139}\) Constitutional Petition No.8 of 2007.
\(^\text{141}\) International Covenant on Civil and Political Rights, Article 18.3; UNESCO, 2001, Article 4.

*The Gender Bench Book 2016*
KEY DOCUMENTS ON SGBV

- Universal Declaration of Human Rights, Arts. 3, 5, 7-9, 24 and 25
- International Covenant on Civil and Political Rights, Arts. 3, 6, 7, 8, 9 and 17
- International Covenant on Social, Economic and Cultural Rights, Arts. 2, 10, 12
- Rome Statute of the International Criminal Court, 1998, Arts. 6, 7 & 8
- Declaration on Violence Against Women (DEVAW), 1993
- CEDAW, Articles 1, 2, 5 and 6
- CEDAW Committee General Recommendation Nos. 12, 14, 19, 30 and 31
- Trafficking in Persons Protocol, 2000
- Charter on the Rights of the Child, Articles 19 and 34
- Committee on the Rights of the Child, General Comments No. 13 and 18
- Human Rights Committee, General Comment No. 28
- Committee on CESCR, General Comment No 20,
- Maputo Protocol, Articles 2-5, 11(3), 12(1)(c), 20, 22 and 23
- Beijing Platform for Action, 1995
- Sustainable Development Goals, Goal No. 5
- Employment Act, 2006
- Penal Code (Amendment) Act, 2007
- Prevention of Trafficking in Persons Act, 2009
- Prohibition of Female Genital Mutilation Act, 2010
- Domestic Violence Act, 2010
- 1995 Constitution of the Republic of Uganda, Article 24 and 44
- Domestic Violence Regulations, 2011
- Employment (Sexual Harassment Regulations), 2012
- Succession Act, Cap
- Anti-Pornography Act, 2014
- Children Act, Cap 59
- Trial on Indictment Act, Cap 23
- Evidence Act, Cap 6
- Kampala Declaration on the Fight Against Sexual and Gender-Based Violence in the Great Lakes Region, 2011
- Beijing Declaration and Platform for Action (BPFA), 1995
- National Gender Based Violence Policy, 2015
- National Action Plan on the Elimination of Gender Based Violence 2016-2021
- East African Judicial Manual on SGBV (Judicial Studies Institute - JSI)
- Ugandan Judicial Manual on SGBV: Cases and Materials (JSI)
Cases Referred to in Chapter Three

1. **Egyptian Initiative for Personal Rights and Interights v. Egypt** African Commission on Human and Peoples’ Rights, Communication No.334/06
5. **Prosecutor v. Jean-Paul Akayesu**, Case No. ICTR-96-4-T
6. **R v. Hussein s/o Mohamed** (1952) 20 EACA 161
9. **Uganda v. Apai Stephen**, High Court Criminal Session Case No. 23 of 1994 at Tororo
10. **Uganda v. Kamuhanda Emmanuel**, High Court Criminal Session Case No. 24 of 2012
11. **Uganda v. Kusemererwa Julius**, High Court Criminal Session Case No. 15 of 2014
12. **Uganda v. Peter Matovu**, Criminal Session Case No. 146 of 2001
14. **Neville and 5 others Cr. APP.R 150(N.C 1918)
15. **Mukungu v. Republic** [2003]2 EA 482
CHAPTER 4:
EMPLOYMENT
1. A major issue with regard to the question of access to justice for women is the manner in which the law treats women within the sphere of employment, both formal and informal. With the exception of migrant labour, employment is largely a matter of domestic national concern. In light of the diversity of legal traditions and practices within the area of labour, there is no comprehensive international legal regime governing the area.

2. Nevertheless, several instruments such as the UDHR, the ICCPR and the ICESCR contain provisions on the right to work - the quintessential element of the employment relationship. The Banjul Charter largely duplicates these instruments. Further, Goal 8 of the Sustainable Development Goals (SDGs) provides for decent work and economic growth for all.

### Article 23 of the UDHR

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;

(2) Everyone, without any discrimination, has the right to equal pay for equal work;

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection; and

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Importantly, Article 24 of the UDHR provides for the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.
3. With the exception of Article 13 of the Maputo Protocol, none of these instruments is particularly gender-sensitive, and they do not specifically consider the situation of women. Here, Article 11 of CEDAW is the provision that is most germane to the topic:-

CEDAW, Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:-
   (a) The right to work as an inalienable right of all human beings;
   (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
   (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
   (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
   (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
   (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:-
   (a) To Prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
   (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
   (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
   (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this Article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

4. Most of the developments in the area of women and employment have been recorded through the work and regulations of the International Labour Organization (ILO), which has enacted four key instruments on gender equality, viz. the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Workers with Family Responsibilities Convention (No. 156) and the Maternity Protection Convention (No. 183). Conventions 100 and 111 are also among the eight fundamental conventions, and the principles and rights enshrined therein are found in the ILO Declaration on Fundamental Principles.
and Rights at Work.\footnote{142} The CEDAW Committee has provided a more gender-focused angle through General Recommendation No. 13 on equal remuneration for work of equal value.\footnote{143}

5. **Although there has been considerable improvement with the recent Ugandan legislation governing work and conditions of work, problems still remain regarding equality of access, opportunity and treatment of women.** Furthermore, there is an almost complete silence in the law on the phenomenon of informal employment, which obviously has significant implications for women who make up the majority of workers in this sector.\footnote{144}

6. The main law governing the workplace in Uganda is the **Employment Act of 2006**, which in the first instance creates the offence of sexual harassment. It also provides for paid maternity leave of 60 days for women, and an additional 30 days in case of medical complications. The Act also grants men paid paternity leave of four days, and provides for equal pay for equal work for both men and women in formal employment.

7. The Act has both a civil and criminal component depending on the remedy sought by the complainant. The standard of proof also changes according to whether it is an administrative or criminal remedy being sought. If it is an administrative remedy, the standard of proof is on a balance of probability; if a criminal prosecution, the standard of proof must be proof beyond reasonable doubt. At the instigation of the Labour Officer, under Section 14 of the Act, the courts are entrusted with the jurisdiction to entertain cases touching on any provision of the Act that also include cases of sexual harassment. This chapter examines the issues of Equal Pay, Pay Equity, Sexual Harassment, Maternity Leave and Domestic Labour.

**Key Points**

- The workplace in the public arena was designed largely from a traditional male perspective.
- Given the male-centric design of the workplace, issues such as equal pay, discrimination and sexual harassment have presented special problems for women.
- Unsurprisingly, pregnancy, child-rearing and other care-giving activities are still treated in the workplace as peculiar occurrences, rather than what they are: commonplace functions that serve the larger good.
- The workplace is designed with the assumption that there is supposed to be someone at home full-time to take care of children and other care-giving responsibilities. Such activities are never considered a natural part of a worker’s life. This gives rise to situations, for example, where a woman who misses too many days from work because she is looking after a chronically sick child will be fired from her job.
- Waged domestic work - especially that undertaken by poor, illiterate and marginalized individuals who fall within the broad category of “house-help” - is completely unregulated. To make matters worse, Uganda does not have minimum wage legislation.

\footnote{142} Also of relevance are the Resolution concerning Gender, adopted in June 2009 and the Resolution concerning the Promotion of Gender Equality, Pay Equity, adopted in June 2004. The eight fundamental conventions include Conventions 100 and 111 mentioned above plus: Freedom of Association and Protection of the Rights to Organise Convention; Right to Organise and Collective Bargaining Convention; Forced Labour Convention; Abolition of Forced Labour Convention; Minimum Wage Convention; and Worst Forms of Child Labour Convention.

\footnote{143} CEDAW General Recommendation No. 13. CEDAW/C/GC/13.

\footnote{144} See CEDAW Committee General Recommendation No. 16 on unpaid women workers in rural and urban family enterprises.
Although there is an Industrial Court with specialized jurisdiction over issues related to the employment contract, since its revival a few years ago, it has been dogged by capacity and workload challenges.¹⁴⁵

Employment matters are the subject of attention within the general courts of law and within constitutional bodies such as the Uganda Human Rights Commission and the Equal Opportunities Commission.¹⁴⁶

### 4.1 Equal Pay

8. The subject of equal pay stems from the broader issues of equality of treatment under the law in general, and more specifically with respect to the place of work. Thus, Section 6(3) of the Employment Act(2006) stipulates:-

**Section 6(3) of the Employment Act**

Discrimination in employment shall be unlawful and for the purposes of this Act, discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

9. Ugandan women constitute only 20 percent of the entire formal sector labour force. This figure underlies two main problems. First, women are a minority in the workplace, which means that the laws designed for that space were (and are) mainly concerned with the situation of men. Second, where women were recognized as members of the labour force, the terms on which this was accorded were largely discriminatory.

10. Thus, for example, the predecessor of the Employment Act, that is, the Employment Decree,¹⁴⁷ purported to protect women against certain hazardous forms of employment such as mining. Such a provision, however, represented a paternalistic approach to the situation of women in employment, on the basis of gender stereotypes and social norms about what women’s roles and responsibilities should be. In the case of *Tanja Kreil v. Federal Republic of Germany*,¹⁴⁸ the European Court of Justice required the Federal Republic of Germany to allow a woman electrician to work in weapon electronics. It reasoned that the law did not allow women to be excluded from certain types of employment. It is thus wrong to stereotype women (in contrast to men), as vulnerable, and therefore in need of laws to specifically protect them against physical danger in the work place.


¹⁴⁶ There is some dispute as to whether labour matters can be heard in judicial forums other than the Industrial Court. The definitive case on the matter—which held that the High Court has unlimited original jurisdiction to hear employment matters as a court of first instance—is the case of Former Employees of GS Security Services v. G4S Security Services Ltd. (S.C. Civil Appeal No.18 of 2010).

¹⁴⁷ No. 5 of 1975.

¹⁴⁸ Case C-285/98.
11. **Needless to say, the only justifiable differentiation in employment law on the basis of sex is that concerning the specific reproductive role of women.** Article 40(4) of the 1995 Constitution is very clear about this: “The employer of every woman shall accord her protection during pregnancy and after birth, in accordance with the law.” Women should therefore not suffer because of their role in procreation. As the law presently stands, a working mother is entitled to only 60 days’ maternity leave with full pay.\(^{149}\)

12. **The question of equal pay lies at the core of the employment contract and is designed to ensure that work of equal value is rewarded with equal remuneration.** It is considered to be the essential tenet of non-discrimination within the employment relationship, confirmed by Article 2(1) of the 1951 UN Equal Remuneration Convention:

\[\text{Article 2(1) of the 1951 UN Equal Remuneration Convention}\\
\text{Each Member State shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.}\]

The same principle is covered by Article 7 of the ICESCR and Article 15 of the Banjul Charter.

13. Domestically, Article 40(1)(b) of the Ugandan Constitution provides: “Parliament shall enact laws to ensure equal payment for equal work without discrimination.” In this respect, Section 6(7) of the Employment Act stipulates: “Every Employer shall pay male and female equal remuneration for work of equal value.”

14. Furthermore, Section 6(6) of the Employment Act, 2006 provides:

\[\text{Section 6(6) of the Employment Act, 2006}\\
\text{The Minister and the Labour Advisory Board shall, in performing their duties, seek to give effect to the principle of equal remuneration for male and female employees for work of equal value. [Emphasis supplied]}\]

While this principle appears to be relatively straight-forward, courts need to be sensitive to the different ways in which employers may attempt to get around it, for example, through using differential schemes for allowances or rebates. The issue is further complicated by the phenomenon of pay equity.

\(^{149}\) See Section 56 of the Employment Act. Section 57 grants four days’ paternity leave (per year) to a man whose wife has delivered or miscarried.
4.2 Pay Equity

15. A significant cause of the gap in male-female earnings is the fact that women have been segregated into certain positions, which have been devalued precisely because they are considered “female jobs”. Nurses, librarians, elementary school teachers, secretaries and clerical workers are examples of workers who have been found to suffer a wage penalty because they work in female-dominated professions. One way that some countries have tackled the problem of sex discrimination within the formal labour force is through the application of the concept of “comparable worth” or “pay equity.”

16. The principle of ‘Comparable Worth’ essentially goes beyond “equal pay for equal work” and provides that sex discrimination includes not only a situation in which a woman is paid less than a man in precisely the same job, but also where a woman is paid less than a man performing a different job that is comparable in terms of education, skills, working conditions and other factors. In other words, the concept focuses on paying an entire profession or occupation the same wage rate as a second profession or occupation, both of which are determined by some outside authority to be of the same worth or value to an employer.

17. Certain states in the US have enacted legislations that require comparable worth. A leading example is the state of Minnesota, where female employees who cared for disabled children, who were being paid less than male zookeepers, successfully petitioned for a pay rise. Similarly, nurses in Denver found that they were paid less by the city government than tree trimmers, despite the fact that nurses were required to have much higher educational qualifications for their jobs. Many other jurisdictions (including the United Kingdom, Canada, and Australia) have expressly included the principle of comparable worth in legislation and have actively implemented it through a variety of mechanisms.

18. Comparable worth legislation is a positive mechanism in assisting employers to avoid unlawful devaluation of female-dominated positions. It is especially useful in jurisdictions like Uganda which have neither minimum wage legislation, nor strong unions and collective bargaining. While the Equal Opportunities Commission is the body to implement equal pay for work of equal value, courts of law can also play an important role in this regard.

19. Low pay is an index both of male domination of certain professions (e.g. law firms), and the devaluing of those sectors of the labour market dominated by women (e.g. nursing). As a result of this marginalization of women in the formal sector, their wages are generally lower in relation to those earned by men. This situation is reinforced by the incorrect assumption (based on gender stereotypes) that all families are headed by males with a dependent female partner, and that the resources of the family are used for the greatest benefit of all members.

4.3 Sexual Harassment

20. The Employment Act (2006) defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment is committed against an employee if the employer or the representative of an employer does any of the following:-

   a) Directly or indirectly makes a request of that employee for sexual intercourse, sexual
contact or any other form of sexual activity that contains: an implied or express promise of preferential treatment in employment; an implied or express threat of detrimental treatment of employment; an implied or express threat about present or future employment status of the employee;

b) Uses language, whether written or spoken, of a sexual nature;
c) Uses visual materials of a sexual nature; or
d) Shows physical behavior of a sexual nature.

21. Such actions directly or indirectly subject the employee to behavior that is unwelcome or offensive to her/him and, that either by its nature or through repetition, has a detrimental effect on his/her employment, job performance, or job satisfaction.

22. There are three elements of sexual harassment:-

(i) **Quid pro quo harassment**: where someone in a position of authority asks for sex-related favours in exchange for work-related favours. This is the most widespread, and most commonly understood by the public, and is an overt abuse of power by a person in authority;

(ii) **Environmental harassment (poisoned environment)**: when the place of work is made unbearable for an individual on the basis of their sex;

(iii) **At the heart of sexual harassment**: lies a violation of human rights - mostly women’s dignity and self-worth.

Sexual harassment refers to unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work and educational institutions. This can include unwelcome physical, verbal or non-verbal conduct. Sexual harassment includes such unwelcome determined behaviour, whether directly or indirectly, such as: advances; sexual favours; sexually-coloured remarks; and showing of pornography and other verbal and non-verbal conduct of a sexual nature that is unwelcome or humiliating to the woman.

23. Under section 7(4) of the Act, an employer who employs more than 25 employees is required to have in place measures to prevent sexual harassment occurring in their work place. This does not mean however, that employers with less than 25 people need not have such measures to prevent sexual harassment occurring in their work place.

24. At the Instigation of the Labour Officer under section 14 of the Employment Act, the courts are entrusted with the jurisdiction to entertain cases touching on any provision of the Act which includes cases of sexual harassment.

25. Consequently, it is the effect of the action on the victim, not primarily the intention of the offender, which defines an action as sexual harassment. One standard to keep in mind is: “Behavior that a reasonable woman or man would find offensive.”

26. Courts should be sensitive to cases of underlying harassment, e.g. unlawful dismissal or assault at the workplace, and should investigate the possibilities of SGBV in the alleged offence. Several organizations may have no legal framework under which complaints could be handled.
The courts must hold the employers liable and give them necessary guidelines and procedures to take steps to effectively deal with complaints. Examples to illuminate this include:

- The South African case of *J v. M Ltd*,\(^{150}\) held that sexual harassment, depending on the form it takes, violates the right to integrity of the body and personality which belongs to every person and which is protected in the legal system both criminally and civilly. An employer has a duty to ensure that its employees are not subjected to this form of sexual harassment.

- In *P O v. Board of Trustees, AF and 2 others*,\(^{151}\) the Kenyan Industrial Court stated that: “The claimant was not treated fairly by the respondents, and the conduct of the 2nd respondent against the claimant had the effect of nullifying or impairing the equality of opportunity or treatment in employment, based on her sex.” Further, sexual harassment may likewise be deemed a workplace health and safety issue, as provided for under Section 8 of the Occupational Safety and Health Act No. 15 of 2007. The court ruled that the 2nd respondent’s behaviour to the claimant was appalling and left the claimant humiliated, sexually violated and jobless. The Kenyan Government was encouraged to take appropriate measures to safeguard motherhood and ensure the health and safety of all women workers.

27. In one example from India, in *Vishaka & Others v. the State of Rajasthan & Others*,\(^{152}\) the petitioners complained of sexual harassment, but there was no legal framework under which such a complaint could be made. The Indian Supreme Court found that it was the duty of the employer or other responsible persons in the workplace, to prevent or deter the commission of acts of sexual harassment and to provide the procedure for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

28. Following on from the general provisions in the Employment Act mentioned above, the Ugandan Government has put in place a legal and policy framework to fight sexual harassment at the workplace. The *2012 Employment (Sexual Harassment) Regulations* have been hailed as being simple to follow without legal technicalities, and indeed protective of the victims or would-be victims of sexual harassment. *The regulations are important in both defining the phenomenon and compelling employers to adopt anti - sexual harassment policies.* The Regulations carry more important rules to combat sexual harassment:

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\(^{150}\) Industrial Law Journal, 1989: 755-762

\(^{151}\) 2014 e-klr.

\(^{152}\) [1997] [7] [SC 384].
Regulation 3 of the Employment (Sexual Harassment) Regulations

An employer with more than twenty-five employees shall adopt a written policy against sexual harassment which shall include the following:

a. notice to employees that sexual harassment at the workplace is unlawful;
b. a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for co-operating in an investigation of a sexual harassment complaint;
c. a description and examples of sexual harassment;
d. a statement of the consequences for employers who are found to have committed sexual harassment;
e. a description of the process for filing sexual harassment complaints and the addresses and telephone numbers of the person to whom complaints should be made;
f. education and training programmes on sexual harassment for all employees on a regular basis; and
g. additional training for the committee on sexual harassment, supervisory and managerial employees.

29. Regulation 5 expressly prohibits the dissemination of sexual materials at a place of employment. An employer shall specifically prohibit the dissemination of sexually explicit voice mail, e-mail, graphics, downloaded material or websites in the workplace policy. Regulation 8 directs that an employer with more than 25 employees shall designate a person who is gender-sensitive to be in charge of sexual harassment complaints.

30. Regulation 10 provides for the composition of sexual harassment committee of four members who shall be persons knowledgeable in and sensitive to gender and sexual harassment issues. Regulations 11, 12, 13 and 14 provide the procedure of receiving and dealing with complaints. The Committee prepares and provides reports under the complaints procedure to the labour commissioner or labour officer. Where the commissioner has failed to dispose of a complaint referred to him or her under regulation 13(f), he or she shall refer the matter to the Industrial Court for hearing. A person aggrieved by the decision of a labour officer may within 21 days give a notice of appeal to the Industrial Court in the form prescribed in the Third Schedule.

31. Regulation 17 provides for the protection of persons involved in investigations against retaliation or discrimination. Finally, under Regulation 19, a person who contravenes these Regulations, commits an offence and is liable on conviction to a fine not exceeding six currency points or imprisonment not exceeding three months or both.

32. Although they represent a significant step, the Regulations have however been criticized because they were obviously designed for large institutions with more than 25 employees. Many small enterprises where sexual harassment occurs fall outside the ambit of the Regulations. The other shortcoming is that Regulations have never been given enough publicity and many workplaces have not yet complied with the law - enforcement is thus still very weak.
4.4 Maternity Leave

33. The issue of maternity leave is one of the most important with respect to the situation of women at the workplace, and indeed Section 56 of the Employment Act, 2006 provides for maternity leave of 60 days for mothers, and a token 4 days of paternity leave for fathers. The question of child-bearing and child-rearing obviously impacts much more on women in the workplace than it does on men. In the words of Justice Goldstone in the South African case of President of the Republic of South Africa and Another v. Hugo:\(^{153}\):

> For many South African women, the difficulties of being responsible for the social and economic burdens of child rearing, in circumstances where they have few skills and scant financial resources, are immense. The failure by fathers to shoulder their share of the financial and social burden of child rearing is a primary cause of this hardship. The result of being responsible for children makes it more difficult for women to compete in the labour market and is one of the causes of the deep inequalities experienced by women in employment ... It is unlikely that we will achieve a more egalitarian society until responsibilities for child-rearing are more equally shared.

34. Article 11 of CEDAW makes reference to the need to ensure special protection from harmful types of work during pregnancy and the provision of paid maternity leave. Referring specifically to the impact of the maternal function on women’s lives, General Recommendation No.21, Article 16 (1)(e) states:\(^{154}\):

**General Recommendation No.21, Article 16 (1)(e)**

The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women’s lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children.

35. At the same time, it is important to ensure that the protection of the maternal function does not feed into the prescriptive, pervasive and persistent stereotypes that women should only be mothers, housewives and caregivers. Harmful cultural attitudes limit women’s opportunities to participate in public life, whether political or economic, through the stereotypical assignment of sole or major responsibility for childcare to women. Long maternity leave can also serve to exclude women from public life, including their ability to hold or stand for public office and to serve in the judiciary.

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\(^{153}\) 1997 (6) BCLR 708 (CC) at 727J-728B.

36. Relatedly, the phenomenon of the “maternal wall” consists of negative assumptions about decreased competence and performance attributed to mothers, and not fathers or other women who are not mothers. The phenomenon presupposes that a mother’s competence at work decreases in direct relation to the number of children she bears. Such presupposition is often a basis for denying a mother promotion to higher-level jobs that require travel because she is stereotyped as a selfless parent who prefers to be at home with her children. There have even been cases where female magistrates, judges, teachers, and other government employees have refused transfers (even on promotion) because they believe in their stereotyped role as caregiver, mother and housewife. When these stereotypes are given prominence - and are pervasive among both men and women - they can affect women’s access to justice.

4.5 Domestic Labour and Unremunerated Housework

37. Most studies in Uganda that analyze women in the workplace do not include domestic workers. Such workers are also ignored and overlooked both in the development process and by the women’s movement. Domestic workers make up a class of people in Uganda often described as “house-girls” or, in more politically-correct language, “domestic help.” In Uganda, the significance of domestic service to development can be equated to that of paper clips to office work organization - basic and cheap, but indispensable. While this labour is necessary to produce and maintain the value of labor power in the capitalist economy, its importance is hardly ever acknowledged or appreciated. This attitude stems from the dominance of the whole paradigm of domesticity, whereby activities that are carried out in the domestic/private sphere are devalued and undervalued.

38. Domestic work is characterized by difficulty, repetitiveness, drudgery, and for many domestic workers, it is also often dehumanizing. The human rights of domestic workers (the vast majority of whom are women) are rarely a topic of discussion even within the women’s movement in Uganda. The plight of domestic workers is a story of gender and class exploitation, and despite the importance of domestic service, workers are looked upon as inferior, and subject to some of the worst working conditions of any wage-earner in Uganda.

39. Because they are confined to the isolated “private” sphere of the home, little is often known about the circumstances under which domestic workers labor, and indeed, they have very limited ability to access the justice system. In Uganda, they are perhaps the only class of employees whose work is unregulated by law. For example, there is no legal minimum wage for domestic workers and they fall in the bottom quartile of the national income distribution. Such conditions require the courts of law to be especially sensitive therefore to the violation of the rights of women who work in this sector of the economy. Moreover, in Uganda many of the entrants into this labour are children.

40. Over the last two decades, several domestic worker placement agencies have sprung up in Kampala, connecting the urban middle class with potential domestic workers from the rural peasant class. Unfortunately, this new phenomenon of formalized and regulated recruitment does not seem to have translated into improved working conditions for domestic workers.
4.5.1 Unremunerated Work

41. At the household level, women are denied access to justice through the non-recognition of their unremunerated housework. On a daily basis, many women are engaged in any number of activities ranging from cooking, cleaning, garden works, fetching water, grazing animals, to caring for children, the elderly and the sick. None of these activities are recognized as work in commercial terms, and therefore are unremunerated in the domestic sphere. Yet, the same activities, when given commercial names, are recognized as formal work and therefore remunerated in the public sphere (see Table 1 on page 84). Judicial officers must value the work performed by women outside formal employment, rather than hold gender-blind or gender-stereotyped beliefs that women (or wives/daughters) who are not in the formal sector “do not work.”

Table 1: “My wife does not work”

<table>
<thead>
<tr>
<th>No.</th>
<th>Domestic Activity</th>
<th>Commercial name</th>
<th>Minimum wage per month (UGX)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cooking</td>
<td>Chef</td>
<td>300,000</td>
</tr>
<tr>
<td>2</td>
<td>Opens gate</td>
<td>Gatekeeper</td>
<td>70,000</td>
</tr>
<tr>
<td>3</td>
<td>Cares for the baby</td>
<td>Baby-sitter</td>
<td>150,000</td>
</tr>
<tr>
<td>4</td>
<td>Teaching children</td>
<td>Teacher</td>
<td>300,000</td>
</tr>
<tr>
<td>5</td>
<td>Attending to the sick</td>
<td>Nurse/medical Practitioner</td>
<td>500,000</td>
</tr>
<tr>
<td>6</td>
<td>Receives visitors</td>
<td>Receptionist</td>
<td>400,000</td>
</tr>
<tr>
<td>7</td>
<td>Fetching water</td>
<td>Water girl</td>
<td>100,000</td>
</tr>
<tr>
<td>8</td>
<td>Making tea</td>
<td>Tea girl</td>
<td>150,000</td>
</tr>
<tr>
<td>9</td>
<td>Washing clothes</td>
<td>Dry cleaner</td>
<td>80,000</td>
</tr>
<tr>
<td>10</td>
<td>Tilling land</td>
<td>Casual labourer</td>
<td>200,000</td>
</tr>
<tr>
<td>11</td>
<td>Grazing animals</td>
<td>Farm Manager</td>
<td>350,000</td>
</tr>
<tr>
<td>12</td>
<td>Making love?</td>
<td>Sex worker??</td>
<td>1,500,000???</td>
</tr>
</tbody>
</table>

Source: Hon. Justice Batema N.D.A’s compilation

42. By recognizing unremunerated domestic activities as labour contributing to household income, the courts will be able to promote a better understanding of gender equality in marriage. For example, recognising that women contribute to the household income is the starting point of recognising their right to an equal share in matrimonial property during marriage and at its dissolution.

155 See CEDAW Committee General Recommendation No. 17.
156 See Article 31(1)(b) of the Constitution and CEDAW Committee General Recommendation No.21.

*Matrimonial property is understood differently by different people. There is always that property which the couple chooses to call home. There may be property which may be acquired separately by each spouse before and after marriage. Then there is property which the husband may hold in trust for the clan. Each of these should in my view be considered differently. The property to which a spouse is entitled is that property which the parties chose to call home and which they jointly contribute to.*

44. He further recognized the non-monetary contribution of any spouse:

*[T]here seems to be no contention that at the termination of a marriage, including cohabitation, neither spouse walks off the marriage empty-handed. This is in recognition of the fact that each of the spouses makes a contribution towards acquisition of matrimonial property and this contribution is not necessarily financial.*

45. This marks an important landmark in giving unremunerated housework some degree of respect and legal recognition, at least for the purposes of the settlement of marital disputes.

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**Key Documents Related to Employment**

- Article 11 CEDAW
- Article 13 Maputo Protocol
- CEDAW Committee’s General Recommendation No.13
- CEDAW Committee’s General Recommendation No.16
- CEDAW Committee’s General Recommendation No.17
- CEDAW Committee’s General Recommendation No.21
- ILO Equal Remuneration Convention (No. 100)
- ILO Discrimination (Employment and Occupation) Convention (No. 111)
- ILO Workers with Family Responsibilities Convention (No. 156)
- ILO Maternity Protection Convention (No. 183)
- 1995 Constitution of the Republic of Uganda
- Employment Act, No.6 of 2006
- Employment (Sexual Harassment) Regulations of 2012

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157 High Court Matrimonial Cause No. 23 of 2005.
158 High Court Divorce Appeal No. 135 of 1997.
Cases Referred to in Chapter Four

1. Former Employees of GS Security Services v. G4S Security Services Ltd, Supreme Court Civil Appeal No. 18 of 2010
4. P O v. Board of Trustees, AF and 2 others 2014 e-klr
5. Paul Kaggwa v. Jackeline Muteteri, High Court Matrimonial Cause No. 23 of 2005
6. President of the Republic of South Africa and Another v. Hugo, 1997 (6) BCLR 708 (CC) at 727J-728B
8. Vishaka & Ors v. the State of Rajasthan & Others [1997] [7] [SC 384]
CHAPTER 5:

PROPERTY RIGHTS
1. **Article 17 of the UDHR** (Universal Declaration of Human Rights) declares “No one shall be arbitrarily deprived of his property,” underscoring the fact that the right to property is one of the most important social and economic rights to be enjoyed by an individual. Despite the controversy which surrounded its recognition in 1948 and later on - indeed the two Covenants (the ICCPR and the ICESCR) make no mention of it - there has been increasing recognition of the importance of the right as regards the situation of women in general, and in relation to their access to justice rights in particular.

2. Hence, the right to property is linked to several other rights, including the right to a livelihood, the right to health, and the right to improved standards of living. Articles 13 and 14 of the **Banjul Charter** recognize different aspects of the right, including the right to participate freely in the government of his/her country, the right to equal access to public services, and “the right of access to public property and services in strict equality of all persons before the law.”

3. More comprehensively, the **Maputo Protocol** has several provisions on the property rights of women, including Articles: 6(j) for married women; 7(d) on the equitable sharing of property on the dissolution of marriage; 20(c) which covers the state’s obligation to promote women’s access to and control over productive resources such as land, and to guarantee their right to property; and 21 on inheritance.

4. Despite the fact that the right to property for women - whether in a marital relationship or otherwise - is particularly crucial to their well-being and to that of their children and dependents, this right is too often violated, and at the mercy of social and cultural conditions that operate to deny it to women. Access to justice for women to realize and enforce their property rights is therefore essential. In the case of Uganda which has a predominantly rural population, **Article 14 of CEDAW** is especially important, reinforced by the **CEDAW Committee’s General Recommendation No. 34** on the rights of rural women.

5. General Recommendation No. 34 stipulates that States parties ensure that legal frameworks are non-discriminatory, and guarantee access to justice to rural women, in line with general recommendation No. 33, (on access to justice). Such a guarantee would include: “Providing training to the judiciary, lawyers, law enforcement officials, paralegals, traditional leaders and other relevant authorities and officials in rural areas on the rights of rural women and the negative impact of discrimination against them.”

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159 CEDAW Committee General Recommendation No.34, para. 9(h). CEDAW/C/GC/34.
Article 14 of CEDAW

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
   (a) To participate in the elaboration and implementation of development planning at all levels;
   (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
   (c) To benefit directly from social security programmes;
   (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
   (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
   (f) To participate in all community activities;
   (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
   (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

6. Article 26 of the 1995 Constitution of Uganda provides a generic right to property without explicit reference to the case of women. Although the Constitution is generally sensitive to the plight of women, many issues were left to Parliament to enact the necessary legislation to give effect to the principles of affirmative action and the protection of women’s rights that the instrument mandated. Thus, Article 31(2) stipulates that Parliament shall make appropriate laws for the protection of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children. Yet, to date, there has been little movement in terms of the enactment of this legislation. Recognizing that there is a disparity between what has been stipulated at the constitutional level, and what exists in terms of practical legislation, this Chapter highlights the questions surrounding matrimonial property, the division of property upon divorce, and the issue of property rights on the death of a spouse.

Key Points

- Even though women are responsible for the production of 80 percent of all food consumed in Uganda, provide 70 percent of the agricultural labour force, and produce 60 percent of exported crops, they own less than 20 percent of the land registered in Uganda (Asiimwe, 2014).

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160 In contrast, Article 154 of the Common Market for Eastern and Southern Africa Treaty provides: “Women make a significant contribution towards the process of economic transformation and sustainable growth and thus it is impossible to implement effective programmes for rural transformation and improvements in the informal sector without the full participation of women.”
With respect to unregistered land - which in most instances is held under Customary Law - the position of women is even more precarious since cultural practices largely exclude women from the ownership of such land. The problem is compounded by the fact that the majority of land is unregistered.

The issue of property rights for women is not simply a question of access, but more importantly one of control and ownership.

In light of discriminatory cultural practices regarding inheritance and succession, many women are dispossessed of not only control and ownership of land, but even of access.

Although the 1995 Constitution and subsequent enactments governing land have improved the situation somewhat, many obstacles still remain for women within the context of both statutory and customary regimes of land governance.

5.1 Matrimonial Property

7. Married women in Uganda are at a considerable disadvantage when it comes to property rights. While they are assumed by society to co-own property with their husbands, even where the land is public land with a lease or title, the title deed is however, usually registered exclusively in the name of the husband, the traditional head of the family. The practice in the majority of cases is that a wife may own chattels but not land or real property.

8. Under customary land tenure, clan land is firmly in the hands of men, whether as father, brother or son. Women only have the right to use the land during marriage and until their husbands die. A woman who re-marries - especially to a person outside her deceased husband’s family or clan - can be disenfranchised and even expelled from the property. Conversely, it is inconceivable that a widower would face such treatment.

9. Due to entrenched social norms and attitudes, wives are often uncomfortable with their constitutional right to own property on the same footing as their husbands. Many may prefer an arrangement where the matrimonial home is held in the name of the husband, even where the wife has also contributed to the purchase or development of the land. These attitudes continue to deprive women of control of resources, making them dependent on men, excluding them from decision-making within the family, and making them vulnerable to financial loss during separation.

10. Under English Common Law, property in the home was presumed to belong to the person in whose names the home is held - most often the husband. Thus, in Pettit v. Pettit,\textsuperscript{161} it was held that: “The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps with the painting or decorating. Those are the sorts of things that a wife does for the benefit of the family without altering the title to or interest in the property.” The presumption in England at that time was that the matrimonial home belonged to the party in whose names it was registered. Although England moved from that position in 1973 with the enactment of the Matrimonial Causes Act (1973), the law in Uganda has remained unchanged since 1902 when the Divorce Act was imported to the country.

\textsuperscript{161} [1969] 2 ALL ER 385.
11. At present, the only rights that women and their children have to marital property, where the spouses do not hold it jointly, are provided for under Section 39 of the Land Act (1998) providing for spousal consent. The provision restricts a person from selling, exchanging, transferring, pledging, mortgaging, leasing or giving away any land *inter vivos* or entering into any other transaction in respect of the land on which she/he resides with his/her spouse or minor children and from which they derive their sustenance, except with the prior consent of the spouse. The rights of a spouse automatically cease upon the dissolution of the marriage. The children who still derive their sustenance from the land retain their rights under Section 39, but it is still a major problem to enforce these rights since their consent to any transaction is no longer a legal requirement.

12. However, Section 39 does not apply to any transfer of land made by a mortgagee in exercise of powers under the mortgage before the date of the Land Act. As a result, homes that were mortgaged by husbands prior to the enactment of the law in 1998 continue to be sold thereby dispossessing wives and their children, as happened in the case of *Edward Mulindwa v. Sarah Kalanda*, in which the respondent lodged a caveat on a piece of property of which her husband was the registered proprietor in order to prevent its sale. The applicant sought to remove the caveat as purchaser of the property and the respondent challenged the sale on the grounds that she, her husband and their 14 children lived in a house situated on the said property; that the house had been completed by both herself and her husband; that the house is subject to a mortgage which she herself pursued; and that her husband sold the family home fraudulently. *Lady Justice C. Byamugisha* held that the wife’s declaration did not disclose the nature of her interest in the land and how it arose and whether this interest was capable of being registered as a charge on the land, when her husband was still alive. Consequently, the court held that the matters deponed to by the respondent were insufficient to create a legal or equitable estate or interest in the house entitling her to lodge a caveat on the property.

13. In Uganda, as is the case elsewhere in the world, unequal access to land is one of the most important forms of economic inequality between men and women, with consequences for women as social and political actors (Agarwal, 1995). The glaring statistics show that less than 20 per cent of women in Uganda own registered land either alone or jointly with their spouses. This has complex consequences. Women face a number of problems, for instance in terms of accessing the facilities of banks and other institutions that extend credit. There is a gender-neutral practice in banks and financial institutions that all persons are entitled to receive credit on the basis of collateral. The guiding presumption is that men and women can access and present collateral in terms of land titles or vehicle logbooks. For most Ugandan women, obtaining a commercial loan to start a business is very difficult - many do not have the required collateral of land title deeds, and many cannot afford the interest rates charged by commercial banks. The **bank practice on access to credit therefore effectively discriminates against the majority of women who do not have land titles.** In response to the gender-related constraints of women’s access to land, some banks and financial institutions have adjusted the requirement of collateral to include Group/Savings and Credit Cooperative (SACCO) loans for housewives and salary loans for those who are engaged in formal employment.

14. Despite many constraints, case law has provided several general modifications and clarifications to the status of matrimonial property which has somewhat improved the overall situation of...
women. Starting with the case of *Edita Nakinyi v. Merekizadeki*, the court applied equity by holding that a wife who had invested in her husband’s property was entitled to a share in it. The court took into account the “substantial” contribution (which was monetary) made by the wife. In the case of *Paul Kagwa v. Jacline Muteter*, Justice Mwangusya quoted the constitution and held that “each of the spouses makes a contribution towards acquisition of the matrimonial property and this contribution is not necessarily financial.” In *Kagga v. Kagga*, Mwangusya, J. held:-

“Our courts have established a principle which recognizes each spouse’s contribution to acquisition of property and this contribution may be direct, where the contribution is monetary or indirect where a spouse offers domestic services... When distributing the property of a divorced couple, it is immaterial that one of the spouses was not as financially endowed as the other as this case clearly showed that while the first respondent was the financial muscle behind all the wealth acquired, the contribution of the petitioner is no less important than that made by the respondent.

15. In the case of *Sempiga v. Sempiga Musajjawaza*, the court awarded the wife, inter alia, a 50 percent share in a farm measuring 154 acres.

16. Contention has also surrounded the status of property individually acquired before marriage. Section 3 of the Succession Act provides that no person shall acquire by marriage any interest in property of the person he or she marries. In effect this recognizes the concept of separate property acquired before marriage. It further provides that a person will not, by virtue of marriage, be incapacitated from doing any act with respect to his or her property, which he or she could have done before marriage.

17. Can a married woman thus own personal property? The case of *Julius Rwabinumi v. Hope Bahimbisomwe*, clarified the status of property belonging to individual spouses before and during marriage. In that case, an appeal was lodged in the Supreme Court against a Court of Appeal decision that property belonging to either spouse becomes matrimonial property at the point of exchanging marriage vows. The Supreme Court reversed the Court of Appeal judgment and held that a spouse is free to own property either individually or in association with others under Article 26 of the Constitution.

18. The above examples demonstrate that courts can creatively and constructively move the situation concerning women in a positive direction through the progressive application of the law. This could even be extended to the situation of customary law. The rule of Male Primogeniture is central to the customary law of succession in Uganda. Under this rule, the closest male heir is the “customary heir” and is both administrator and successor to the estate. If there are no male descendants, the deceased’s father or the father’s closest male descendant succeeds him.

19. Women do not ordinarily participate in the intestate succession regime and it is commonly believed that a woman cannot succeed her father. In a bid to elevate the status of African customary marriages, President Idi Amin’s regime introduced the registration of such marriages

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164 Matrimonial Cause No. 23 of 2005.
165 High Court Divorce Cause No. 11 of 2005.
166 High Court Divorce Cause No. 7 of 2005.
167 Supreme Court Civil Appeal No. 10 of 2009.
under the Customary Marriage (Registration) Decree 16/1973. While the intention of the decree may have been positive, as a matter of practice many women suffered as a result of the non-registration of their marriages.

20. However, failure to register a customary marriage does not render such a marriage invalid. In *Negulu Milly Eva v. Dr. Serugga Solomon*, Justice Godfrey Namundi held that failure to register a customary marriage does not necessarily invalidate it. He further held that one can consider himself/herself customarily married once the customary ceremonies of the community/tribe have been performed. Before ordering a retrial, he further noted that the trial magistrate should have considered the period of cohabitation which was not denied, and determined the rights of the petitioner to the property acquired individually on her own or jointly with the respondent during the said cohabitation within the provisions of Article 26(1) of the Constitution.

21. The *Negulu* case contrasts sharply with earlier decisions where the certificate was once held as conclusive evidence of such marriage. Thus, in *Mugisha v. Kakuru & Ors.*, a widow was denied Letters of Administration of her deceased husband’s estate because the unregistered marriage could not found a cause of action as “it was incapable of proof itself” (per Mpagi Bahigeine J.). Despite the fact that the plaintiff had been married to the deceased under customary law and they had three children, court did not perceive her as the lawful widow of the deceased and the letters of administration were granted to the brother of the deceased.

22. Today, family structures in Uganda are slowly but surely changing. For example, as noted in section 2.3 of this *Gender Bench Book*, more men and women cohabit for long periods, and for all intents and purposes portray themselves as husband and wife. Many such couples even have several children. Still, under the law, such couples are not considered lawful “husband” or “wife.” Women especially suffer under this legal regime when it comes to distribution of property on their partner’s intestate death. In *Babumba v. Kizito*, it was held that “having a child or children by the deceased is not enough to confer on the woman widowhood.” The very contentious debate about cohabitation at various points in the attempt to introduce presumption of marriage demonstrates that the matter is still controversial.

### 5.2 Division of Property at Dissolution of Marriage

23. There is no formula in Uganda setting out how assets are to be split upon divorce. All assets are identified and valued as part of the process of working out what there is to divide up. The home and any other property are included on the list regardless of whose name the property is in. Several cases have provided guidelines on how such property should be divided.

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168 Civil Appeal No. 103of 2013 [2014] UGHCCD 64 (30 April 2014) at Jinja.
169 HCCS No. 161 of 1993.
170 C.f., Re Kibiego [1972] EA 172 where a widow who had cohabited with the deceased, and had had children with him, was granted letters of administration. Court held that the widow was a fit and proper person to be granted letters of administration. Also, S.5 of the Administrator General’s Act gives precedence to widows/widowers over other relatives: “No grant of letters of Administration shall be made to any person except an executor appointed by will or to a widower or a widow.”
171 (1992) II KALR 75.
24. In *Paul Kaggwa v. Jackline Muteteri*, Justice Mwangusya applied the definition of matrimonial property as given by Justice Solome Bossa in the case of *John Tom Kintu Muwanga v. Myliouse Gafabusa Kintu*, where she held:

> There seems to be no contention that at the termination of a marriage including cohabitation neither spouse walks out of the marriage empty-handed. This is in recognition of the fact each of the spouses makes a contribution towards acquisition of matrimonial property and this contribution is not necessarily financial.

She further stated:

> Matrimonial property is understood differently by different people. There is always that property which the couples choose to call home. There may be property which may be acquired separately by each spouse before and after marriage. Then there is property which the husband may hold in trust for the clan. Each of these should in my view be considered differently. The property to which spouse is entitled is that property which the parties chose to call home and which they jointly contribute to.

25. Upon the dissolution of marriage, the following options are available for consideration by the spouses and judicial officers:

i. One spouse could buy out the other and keep the house;

ii. The property could be sold and the proceeds shared;

iii. If there are children, the spouse with the custody of children should be enabled to retain the house in order to maintain as much continuity as possible; and

iv. When this is the case, the other partner may receive other assets to even up the distribution, or may agree to defer receiving the balance until the property is sold when the children become of age and move out or the partner remarries.

26. In all these options, the property should first be valued for the settlement. If a couple cannot agree upon a value, the court will order the execution of a joint survey and evaluation report. The figures given should be both the fair market value and a forced sale price. Valuations can be updated if there is a significant fall or rise in the market but changes in prices can be factored in from the start.

27. The *Divorce Act* - which governs the dissolution of marriages contracted under the Marriage Act - contains several unfair provisions relating to marital property. Section 26 of the Act states:

> When a decree of dissolution of marriage or judicial separation is pronounced upon account of adultery by the wife, and the wife is entitled to any property, the court may, notwithstanding the existence of the disability of coverture, order the whole or any part of the property to be settled for the benefit of the husband, or of the children of the marriage, or both.

172 High Court Matrimonial Cause No. 23 of 2005, Kampala Family Division (Unreported).
173 High Court Divorce Appeal No. 135 of 1997.
This state of affairs does not apply to the husband in similar adulterous circumstances and is thus clearly unconstitutional and should be disregarded by the courts when making a determination with regard to the distribution of property. This section, together with others in the Divorce Act, was challenged in Uganda Association of Women Lawyers & Ors. v. Attorney General.\textsuperscript{174} The Constitutional Court found that they violated Articles 21, 31 and 33 of the 1995 Constitution. (See also Section 2.2 on Separation and Divorce).

28. It should also be noted that a woman’s property, whether acquired before marriage or during marriage, is first subjected to the provisions of Section 26 of the Divorce Act, otherwise it is left uncovered for the six months between a Decree Nisi and the Decree Absolute. It appears that the legislators stereotyped women as potentially adulterous and wanted to penalize such wives who acquire property through adultery. The law allows the husband to legally confiscate such property.

29. Section 27 of the Divorce Act discusses ante- and post-nuptial agreements after a Decree Absolute of dissolution or nullity of the marriage. The court may honour these agreements or vary them to the application of the whole or part of the settled property for either or both spouses and/or the children for the benefit of either. But no order shall be made at the expense of the children for the benefit of one parent or either of them. Under Section 28, the court may appoint trustees to whom money may be paid in respect of such settled property.

30. Under customary law, many Ugandan communities still demand a refund of dowry gifts upon divorce. Such a practice clearly causes difficulties for the woman, compelling her to stay in the marriage even if it has irretrievably broken down - she may fear that her parents will not allow her to leave the marriage because of the high cost of the refund. However, the practice was successfully challenged in the landmark case of MIFUMI (U) Ltd and 12 others v. Attorney General and Kenneth Kakuru,\textsuperscript{175} where the Constitutional Court held that in some cases bride price plays a factor in domestic abuse, and women being treated as inferior to men. It was also in agreement with the view that the customary practice of the husband demanding a refund of the bride price in the event of dissolution of the marriage demeaned and undermined the dignity of a woman and thus violates Article 32(2) of the Constitution. Moreover, the demand for a refund violates a woman’s entitlement to equal rights within marriage, during marriage, and at its dissolution. However, the court declined to declare the institution of bride wealth unconstitutional on such a ground and declined to outlaw bride price.

5.3 Property Inheritance Rights

31. Few issues are more contentious in Ugandan family law than the question relating to inheritance and succession, and the distribution of property upon the demise of an individual. Again, courts have been called upon to settle the many disputes that have arisen over these matters.

32. The Succession (Amendment) Decree 1972 attempted to streamline the law of inheritance in Uganda and improve upon the status of women in this area of the law.\textsuperscript{176} For example, the law guaranteed a wife’s share in her husband’s estate, whether he died testate or intestate. A widow also has the right to the matrimonial home until she dies or remarries. The Decree also gave

\textsuperscript{174} Constitutional Petition No.2 of 2003.
\textsuperscript{175} Constitutional Petition No. 12 of 2007.
\textsuperscript{176} See Section 28 of the Succession (Amendment) Decree No. 22 of 1972.
the right of inheritance to dependent female relatives. In the case of *Re Kibiego*, the court awarded a widow Letters of Administration of her late intestate husband’s estate and held that she was entitled to the largest share of the estate.

33. Some communities around the country are slowly recognizing that a girl can be heir to her father’s estate. While the issue of the inheritance of girls has long been a contentious one, the case of *Ephraim v. Pastory and Kaizingele*, provides some light at the end of the tunnel. In that case, the Tanzanian High Court held that a local custom prohibiting females from inheriting and administering clan land flies in the face of the country’s Bill of Rights and therefore discriminatory on the basis of sex and contrary to the principles of the UDHR. Such a decision could plausibly be made in a Ugandan court.

34. In the case of *Best Kemigisa v. Mabel Komuntale*, the plaintiff was the Queen mother and widow of the late king of Toro Patrick Kaboyo Olimi III who died intestate in 1995. Her right to inherit her husband’s estate was challenged by her sister-in-law. Justice J.B.A. Katutsi held that as a general matter, a widow is entitled to apply to court to grant letters of administration to administer the estate of her late husband for the benefit of her children and herself and under the law she has first priority especially when the children are minors. He thus ordered that the caveat be lifted/removed. He concluded his judgment with the following observation:-

> As we enter the third millennium the survival of kingdoms will depend on the whims and mercy of politicians... I protest against the claim that we should remain chained to medieval conceptions and cling to customs which would ignore reality by refusing people like the plaintiff a grant of letters of administration to administer the estates of their late husbands for the benefit of their children and themselves. A legal system ought to be able to march with the changing conditions fitting it into aspirations of the people, which it is supposed to safeguard and serve. Fortunately, I read nothing in our law which compels courts to follow blind and backward looking customs.

35. This position is adequately reflected in Articles 20 and 21 of the *Maputo Protocol*, the first of which stipulates that widows should not be subjected to inhuman, humiliating or degrading treatment. It also provides that the widow automatically becomes guardian and custodian of her children, and shall have the right to re-marry the person of her choice. Article 21 (entitled Right to Inheritance) stipulates as follows:-

> Article 21 of the Maputo Protocol

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents’ properties.

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178 [1990] LRC 757 [TZ].
179 Civil Suit No. 5 of 1998.
36. The reality in Uganda today is that customary law still exercises a very strong influence over matters of inheritance. The majority of the populace continues to operate in total disregard of the provisions of the law, effectively impeding women’s access to justice. In the case of *Omella & Omella v. Etieng & Odeke*, the plaintiffs were co-wives and widows of the late Azalia Omella, and the first and second defendants were respectively brother and father of the deceased. The plaintiffs had applied for a grant of letters of administration to the estate of their deceased husband and the defendants opposed the grant on the grounds that it would be a breach of Teso customary law for the wives to administer the estate of the deceased without permission of the clan members. Counsel for the defendants cited Genesis 38:6 and submitted that Teso customary inheritance practices were good law as they were in conformity with the Bible. Importantly, the court held that it was not contrary to customary law, equity and written law for a widow to apply for grant of letters of administration for her husband’s estate. Furthermore, since there were children of the deceased not begotten of the co-plaintiffs, a clan elder should be joined to co-administer the estate with the applicants.

37. According to Section 27 of the *Succession Act* the surviving widow (or widows in a polygynous marriage) is/are entitled to 15 percent of the deceased intestate husband’s estate; a customary heir, who must be male, to 1 per cent; dependents, to 9 per cent; and all the children, to 75 per cent. These shares are graphically represented in the figure below:-

*Figure 2: Distribution scheme upon the death of a male intestate.*

![Distribution scheme upon the death of a male intestate](image)

*Source: Hon. Justice Batema N.D.A.’s compilation*

38. Courts need to ask themselves a number of questions with regard to this provision: Is this a fair share for the wife or wives considering the input they contribute in the form of domestic labour? Do widows actually recover this 15 per cent in practice? What limitations does the legal definition of “widow” impose on some women? What are the other unfair/unjust provisions of the Succession law?

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180 (1994) KALR 98.
181 See the case of Mpirinwe v. Nsabimana (1994) IV KALR 88 where a woman who had cohabited with the deceased for almost 7 years and had had twins with him was disinherited. She was not recognized as a customary wife as no dowry had been paid for her (a fine paid to her parents for the cohabitation was not equivalent to dowry). Thus only the three co-wives who had been married customarily were granted letters of administration. Also see Babumba & Ors. v. Nakazi Kizito (1987).
Furthermore, the distribution is obviously not equitable in view of the constitutional provisions of equality at marriage, during marriage and at its dissolution. The law stipulated that only males can be heirs succeeding deceased males of the patrilineal lineage. Women and girls were not permitted to inherit any property, particularly land, which is a valuable resource to the economic independence of women. However, in the case of *Law & Advocacy for Women in Uganda v. Attorney General*,\(^\text{182}\) the provision governing the distribution scheme (and many other discriminatory provisions of the Succession Act) was struck down and declared unconstitutional.

The Court noted that the allocation of 15 per cent to the surviving wife or wives in intestate succession effectively discriminates against women. The law was oblivious to the contribution of wives to the acquisition of matrimonial property. **However, the court merely stopped at declaring the law unconstitutional. It did not go ahead to suggest any remedy. Consequently, each judicial officer has been left to use common sense in the adjudication of such matters.** Needless to say, “common sense” needs to be augmented by a positive and progressive approach to addressing the situation of the disadvantaged - if law reform is lagging behind, the courts can be creative in applying the Constitution as well as international and regional standards in order to arrive at a just result. This is illustrated in the Tanzanian divorce case of *Mwajuma Mohamed Njopekka v. Juma Said Mkologoro*,\(^\text{183}\) where the court relied on the fundamental principles of state policy on equal protection before the law in the Constitution, Article 7 of the UDHR, and CEDAW to declare that the appellant in the case was entitled to one of the couple’s two matrimonial houses.

**Key Documents on Property Rights**

- CEDAW, Article 14
- Maputo Protocol
- ACHPR Resolution No.262
- CEDAW General Recommendation No.16
- CEDAW General Recommendation No.17
- CEDAW General Recommendation No.34
- 1995 Constitution, Articles 20, 21, 26, 31, 32, and 33
- Land Act, 2006
- Succession Act, Cap.162
- Administration of Estates (Small Estates) (Special Provisions) Act Cap. 156
- Administrator General’s Act, Cap.157

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\(^{182}\) Constitutional Petition No. 5 of 2006.

\(^{183}\) High Court of Tanzania at Dar es Salaam, (PC) Civil Appeal No.6 of 2001 (Unreported).
Cases Referred to in Chapter Five

2. Best Kemigisa v. Mabel Komuntale Civil Suit No. 5 of 1998
7. Julius Rwabinumi v. Hope Bahimbisomwe, Supreme Court Civil Appeal No. 10 of 2009
8. Kagga v. Kagga, Divorce Cause No. 11 of 2005
14. Negulu Milly Eva v. Dr. Serugga Solomon Civil Appeal No. 103 of 2013 [2014] UGHCCD 64 (30 April 2014) at Jinja
16. Paul Kaggwa v. Jackline Muteteri High Court Matrimonial Cause No. 23 of 2005
17. Pettit v. Pettit [1969] 2 ALL ER 385
CHAPTER 6:

SEXUAL AND REPRODUCTIVE HEALTH RIGHTS
1. Even though concern with the right to health is expressed clearly in a vast majority of human rights instruments, the sub-set of Sexual and Reproductive Health Rights (SRHRs) is considerably more controversial, and has consequently been met with a degree of trepidation and even outright opposition.

2. First introduced as a human right at the 1994 International Conference on Population and Development (ICPD) in Cairo, reproductive health was defined as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes”.

3. Reproductive health also implies “that people are able to have a satisfying and safe sex life and they have the ability to reproduce and the freedom to decide if, when and how often to do so”. It includes “sexual health, the purpose of which is the enhancement of life and of personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases” (Twinomugisha, 2015: 43-44).

4. The table below captures the division (and links) between the two categories of rights

<table>
<thead>
<tr>
<th>Table 2: Description of Sexual Rights and Reproductive Health Rights</th>
</tr>
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<tbody>
<tr>
<td><strong>Sexual Rights</strong></td>
</tr>
<tr>
<td>❖ To the highest attainable standard of sexual health</td>
</tr>
<tr>
<td>❖ To seek, receive and impart information on sexuality</td>
</tr>
<tr>
<td>❖ To sexuality education</td>
</tr>
<tr>
<td>❖ To respect for bodily integrity</td>
</tr>
<tr>
<td>❖ To choose their partner</td>
</tr>
<tr>
<td>❖ To decide to be sexually active or not</td>
</tr>
<tr>
<td>❖ To consensual marriage</td>
</tr>
<tr>
<td>❖ To decide whether or not and when to have children</td>
</tr>
<tr>
<td>❖ To pursue a satisfying, safe and pleasurable sexual life</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th><strong>Reproductive Health Rights</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>❖ The right to life</td>
</tr>
<tr>
<td>❖ Rights to bodily integrity and security of person</td>
</tr>
<tr>
<td>❖ The right to health</td>
</tr>
<tr>
<td>❖ The right to equality in marriage and divorce</td>
</tr>
</tbody>
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5. **The Beijing Declaration & Platform for Action of 1995** pushed the debate further, pointing out that: “Reproductive health eludes many of the world’s people because of factors such as: inadequate levels of knowledge about human sexuality and inappropriate or poor-quality reproductive health information and services; the prevalence of high-risk sexual behaviour; discriminatory social practices; negative attitudes towards women and girls; and the limited power many women and girls have over their sexual and reproductive lives.”

6. **Sustainable Development Goal (SDG) No.5** specifically addresses governments’ commitments to do the following: end discrimination and gender-based violence; eliminate child marriage and female genital mutilation; ensure access to sexual and reproductive health care; protect women and girls’ reproductive rights; eliminate gender disparities in education; expand women’s...
economic opportunities and recognize their rights to resources; and reduce the burdens of unpaid care work on women and girls.

7. The provision of CEDAW concerning the right to health, including the right to reproductive health, is succinct:-

**Article 12 of CEDAW**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this Article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

8. The CEDAW Committee’s General Recommendation No.24 also makes explicit, and describes different dimensions of, the right of women and girls to sexual and reproductive health, within the context of States parties’ obligations under Article 12:-

**CEDAW Committee’s General Recommendation No.24, paragraphs 18 and 23**

18. The issues of HIV/AIDS and other sexually transmitted disease are central to the rights of women and adolescent girls to sexual health. Adolescent girls and women in many countries lack adequate access to information and services necessary to ensure sexual health. As a consequence of unequal power relations based on gender, women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices. Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. Women in prostitution are also particularly vulnerable to these diseases. States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, including those who have been trafficked, even if they are not legally resident in the country. In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality.

23. In their reports, States parties should state what measures they have taken to ensure timely access to the range of services which are related to family planning, in particular, and to sexual and reproductive health in general. Particular attention should be paid to the health education of adolescents, including information and counselling on all methods of family planning.
9. The **Maputo Protocol** provides a comprehensive definition of the right to health, including sexual and reproductive health:-

**Article 14, Maputo Protocol**

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:-
   a) the right to control their fertility;
   b) the right to decide whether to have children, the number of children and the spacing of children;
   c) the right to choose any method of contraception;
   d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
   e) the right to be informed on one’s health status and on the health status of one’s partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
   g) the right to have family planning education.

2. States Parties shall take all appropriate measures to:
   a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
   b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
   c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.

It should be noted that the Maputo Protocol (Article 14(2)(c)) is the very first treaty to recognize abortion, under certain conditions, as women’s human right which they should enjoy without restriction or fear of being prosecuted.

10. Although health rights are not expressly provided for in the Ugandan Constitution, one can safely advocate for them as a matter of national interest. **Article 8A of the Constitution** provides that:-

(1) Uganda shall be governed based on principles of national interests and common good enshrined in the national objectives and directive principles of state policy.

(2) Parliament shall make relevant laws for purposes of giving full effect to clause (1) of this Article.

This makes the National Objectives and Directive Principles of State Policy (NODPSP) justiciable. They can be considered as substantive constitutional provisions.
11. Ugandan domestic legislation in the area of health has largely failed to incorporate a rights-based approach to its focus. In the first instance, the Bill of Rights contains no specific provision on the right to health, although Article XIV of the NODPSP stipulates that the State shall endeavour to fulfill the fundamental right of all Ugandans to social justice and economic development and in particular ensure that “… all Ugandans enjoy rights and opportunities [and] access to … health services.” Further, Objective XX stipulates that: “The State shall take all practical measures to ensure the provision of basic medical services to the population.” Secondly, most of the legislation on health is regulatory in nature, focusing on medical practitioners rather than on the substance of the services that they deliver.

12. Uganda still maintains a reservation to Article 14(2)(c) of the Maputo Protocol which addresses the termination of pregnancy in life threatening conditions such as sexual assault, rape and incest. As is evident from this position, chief opposition to the recognition and enforcement of SRHRs has largely centred around the issue of abortion, although questions such as sex education, contraception, sex work and the age of consent have also been flash-points of contention. Such a situation thus requires the courts of law to adopt a much more vigorous approach to the protection and implementation of the right to health, including sexual and reproductive health.

13. In this respect, the 2015 Supreme Court decision in the case of CEHURD & 3 Others. v. The Attorney General,185 provides a particularly useful point of commencement. The original case sought to test the constitutionality of certain actions and omissions on the part of the government and its staff in providing maternal health services in government hospitals/health facilities. The Court of Appeal declined to hear the merits of the application on the grounds that it raised a “Political Question” that could not be the subject of judicial review, hence the appeal to the Supreme Court. On appeal, Justice Esther Kisaakye ruled that the Political Question Doctrine (PQD) had limited application following enactment of the 1995 Constitution which declared all individuals and institutions bound by its provisions, and vested the Constitutional Court with the power of interpretation in the event of an alleged contravention of the instrument.

14. In a concurring judgment, Chief Justice Bart Katureebe held that even though badly conceptualized and drafted, the petition raised important issues of constitutional interpretation regarding the right to health and medical services (Objectives XIV and XX), life (Article 22), and, more broadly, fundamental rights and other human rights and freedoms (Chapter 4). In his view, the Constitutional Court would need to consider where the right to health falls within the Constitution and whether the government had taken “all practical measures to ensure basic medical services” as required under Objective XX:-

"The primary duty of courts is to the Constitution and the law ... Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such a policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to say so. In so far as this constitutes an intrusion into the domain of the executive, it is an intrusion mandated by the Constitution itself."

15. **Given the above statement, the issue of the status of the right to health and its constitutionality has more or less been determined.** What remains is for the Constitutional Court to examine whether the specific actions complained about violated the relevant provisions of the Constitution. Here, the Court would do well to take a cue from the South African Constitutional Court in *Minister of Health v. Treatment Action Campaign (No.2)*, where it stated:—

> If a citizen alleges that the implementation of that health policy or actions and omissions made under that policy are inconsistent with the provisions of the Constitution as given above, then, in my view, the Constitutional Court has a duty to come in, hear the petition and determine whether indeed there is any act that is being implemented which is inconsistent with the Constitution. For example, the court should be able to receive evidence on measures being taken by government to satisfy itself that they fall within the stated objective XX. The court would have to interpret what amounts to “all practical measures to ensure the provision of basic medical services.

If the court adopts such a posture it will provide a stronger foundation on which future judicial decisions with respect to the right to health can be made.

16. **The sexual and reproductive health rights of women with disabilities need special attention as they face tremendous discrimination in accessing justice.** This is because most people do not recognize people with disabilities as sexual beings, and the law continues to equate mental disability with lack of legal capacity. The law uses derogatory language such as “lunatics”, “idiots” and “imbeciles” to describe people with disabilities, and when they interact with the justice system, they are often dehumanized. **Uganda needs to develop a strong policy, specific to the SRHR of women with disabilities, in line with the Convention on the Rights of People with Disabilities (CRPD).** Article 16 (freedom from exploitation, violence and abuse), Article 23 (respect for home and the family) and Article 25 (health) of the CRPD are specifically relevant. According to Sexual Health and Family Planning Australia (2013), the best practices principles for positive SRHR outcomes for people with disabilities include:—

(a) Inclusion of people with disability in decision-making about their sexual and reproductive health;

(b) Implementation of policy and practice guidelines;

(c) Provision of SRHR education and information;

(d) A skilled and confident workforce; and

(e) Partnerships between parents/carers and professionals.

When addressing the SRHR of women with disabilities, it is important for the courts to take into account the specific type of disability, because what constitutes best practice is defined by the group for whom the practice is created.
17. Article 18(4) of the Banjul Charter provides that people with disabilities shall “have the right to special measures of protection in keeping with their physical or moral needs”. The African Commission has made it clear that the health needs of people with disabilities, including SRHR, should be fully realized in order to sustain their optimum level of independence and performance.187

Key Points

- Despite the obvious centrality to human existence and livelihood, the Ugandan Constitution lacks an express provision on the right to health.
- Until recently with the Supreme Court decision in the CEHURD Appeal (2015), judicial responses to right to health claims have been largely negative.
- Given the fairly dismal health statistics regarding maternal care and the continued recourse to “backstreet” abortion providers, the State is in serious abdication of its basic SRHRs obligations to women.
- In the absence of legislative reform, courts of law need to look to comparative jurisdictions as well as to regional and international developments which have given SRHRs much more articulation and prominence.

18. As a starting point for analysis, this chapter looks primarily at the issue of pregnancy and maternal health, and then at the question of abortion, in a bid to consider the manner in which courts of law can play a progressive role in enhancing different elements of the sexual and reproductive health rights implicated by the two areas of concern.

6.1 Pregnancy and Maternal Health

19. The 2016 Uganda Demographic Health Survey placed Uganda’s maternal mortality ratio at 336 per 100,000 live births. Maternal deaths represented 18 percent of all deaths among women aged 15 - 49 between the years 2009 and 2016 (UBOS, 2017:57). This is a large number of preventable maternal deaths and raises serious questions regarding governmental obligations to protect and enforce the right to health. It also raises questions as to whether courts of law could have a role to play in addressing what is a serious crisis in the provision of health services.

20. CEDAW General Recommendation No.24 points out that: “States parties’ compliance with Article 12 of the Convention is central to the health and well-being of women.188 It requires States parties to eliminate discrimination against women in their access to health care services, throughout the life cycle, particularly in the areas of family planning, pregnancy, confinement and during the post-natal period.” GR No. 24 also provides that States parties should ensure that “… all health services [to] be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice.”189 For courts of law, these are particularly important principles to bear in mind when dealing with issues related to SRHRs.

187 See the case of Purohit and Moore v The Gambia (2003) AHRLR 96 (ACHPR 2003). Also see the Commission’s General Comment on Article 14 (1)(d) and (e) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Comment on Article 14 (1)(d) and (e) of the Protocol on Women) at paras 4-5 available at http://www.achpr.org/news/2012/11/d65/

188 CEDAW/C/GC/24 para. 2

189 CEDAW/C/GC/24 para 31(e)
Furthermore, there is also an obligation on the part of State agencies (such as the Judiciary) to prevent and impose sanctions for violations of rights by private persons and organizations, and to put in place “fair and protective procedures for hearing complaints and imposing appropriate sanctions on health care professionals guilty of sexual abuse of women patients”.190

21. A review of the case law which has dealt with issues of maternal health in Uganda shows that few cases of this kind have arrived in the Judiciary whether for review or to test the constitutionality of specific provisions of the law or practice. Needless to say, such review can help demonstrate not only that courts of law have an important role to play in this respect, but also that there can be alternative, more sensitive and progressive approaches to these issues once they come up for adjudication.

22. The first case that sought to test the right to health provisions of the Constitution was *Joyce Nakacwa v. Attorney-General & Others*.191 Here, the petitioner alleged that the denial of medical and or maternity care, constituted the violation of her Article 33(3) human rights which obliges the state to “protect women and their rights, taking into account their unique status and natural maternal functions in society.” A preliminary objection challenged the jurisdiction of the Constitutional Court arguing that since the allegations by the petitioner did not require constitutional interpretation, the petition should be dismissed. Although the Court dismissed the objection the petitioner died before the petition could be heard, leading to its abatement.

23. The later case of *Centre for Health, Human Rights and Development & Others v. Nakaseke District Local Administration*,192 was more positive. The action was brought on behalf of the deceased who died at the defendant’s hospital due to the lack of emergency obstetric care. The plaintiffs argued that the deceased had an obstructed labour condition but did not receive the appropriate medical care and attention due to the absence of a doctor assigned to her. Following a visit to the hospital, Justice Kabito held that the deceased’s right to basic medical care had been violated under Articles 33(3) and 34 of the Constitution which protects the rights of children.

24. The example of the Indian case of *Laxmi Mandal & Others v. Deen Harinagar Hospital & Others*,193 demonstrates how courts can creatively deploy international law in order to ensure that rights violations are properly redressed. In that case the court recognised the internationally-protected right to maternal health care and ordered compensation for the violations experienced by two impoverished women and their babies during childbirth. The court found that there were violations of the fundamental right to life under the Constitution, and of the right to health under international law. The state and its entities were thus ordered to compensate the women and their families to ensure the provision of food and medication to the two babies. The state and its entities were also directed to remedy the deficiencies in, and improve the monitoring of, public health programmes (Twinomugisha, 2015: 38).

25. Courts can also be innovative in the manner in which they approach traditional definitions of human rights and adapt them to suit existing circumstances. In an example from The Gambia, in *Purohit and another v. The Gambia*,194 the African Commission on Human and

190 CEDAW Committee General Recommendation No.24, para.15. CEDAW/C/GC/24.
191 Constitutional Petition 2/2001 (Constitutional Court).
192 Civil Suit 111 of 2012 (Unreported).
193 WP (C) 8853/2008 (New Delhi High Court).
Peoples’ Rights adopted a broad interpretation of the right to health and declared that the right included “the right to health facilities, access to goods and services” without discrimination of any kind.

26. In summary, the avenues for creative judicial interventions in the arena of maternal care are numerous. Courts first have to disabuse themselves of the notion that health rights cannot be the subject of adjudication. Secondly, viewing health as an inter-connected phenomenon can also help in arriving at a just decision. Finally, international and regional legal provisions where Uganda is bound by treaty law and comparative jurisprudence from jurisdictions that are similar can always assist in getting to the best result.

6.2 The Question of Abortion

27. Article 22(2) of the 1995 Constitution provides: “No person has the right to terminate the life of an unborn child except as may be authorised by law” [Emphasis supplied]. Section 224 of the Penal Code legally authorizes surgical operations “for the preservation of the mother’s life”. This means that any person can procure a miscarriage in order to save the life of a pregnant woman or girl. It would not amount to culpable transgression of the law.

28. The phrase “preservation of the mother’s life” in a similarly-worded law of England was lent wide and liberal interpretation in the old English case of R v. Bourne. In that case, a 14-year-old girl was raped resulting in a pregnancy, and she sought an abortion. The court held that the “preservation of the life of the mother” could be understood as including the mental health of the mother that was at threat. In the words of Justice Macnaghten:-

\[\ldots\text{those words ought to be construed in a reasonable sense, and, if the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under those circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother.}\]

29. How significant is the level of abortion in Uganda and how does this relate to the broader issue of the sexual and reproductive health rights of women? Of significant concern in this context is the practice of unsafe abortion. This refers to when a pregnancy is terminated either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both. Women, including adolescents, with unwanted pregnancies often resort to unsafe abortion when they cannot access safe abortion. Barriers to accessing safe abortion include: restrictive laws; poor availability of services; high cost; stigma; conscientious objection of health-care providers; and unnecessary requirements such as: mandatory waiting periods, mandatory counseling, provision of misleading information, third-party authorization, and medically unnecessary tests.

195 [1939]1 KB 687.
196 Ibid.at p. 694.
197 The persons, skills and medical standards considered safe in the provision of induced abortions are different for medical abortion (performed with drugs alone), and surgical abortion (performed with a manual or electric aspirator). Skills and medical standards required for safe abortion also vary depending upon the duration of the pregnancy and evolving scientific and technical advances. See World Health Organization, Fact Sheet: Preventing Unsafe Abortion (updated May 2016), http://www.who.int/mediacentre/factsheets/fs388/en/
30. With estimates of 26 per cent of unsafe abortion-related maternal mortality, Uganda ranks on the higher side of the Eastern African average of 18 per cent. These estimates particularly relate to poor, young and rural-based women, immediately manifesting an obvious situation of discrimination on various grounds (Ngwena, 2016: p. 117). There is also a class dimension involved - women with the economic means and who reside in places where they can access safe abortion services are less likely to suffer the consequences of a poorly-performed operation.

31. Uganda has made a reservation to Article 14(2) (c) of the Maputo Protocol, which states that the State is not bound by Article 14(2) (c) unless it is permitted by domestic legislation expressly providing for abortion. Thus the question is whether the national law permits abortion. The reservation is irrelevant if it does so permit.198

32. The popular but wrong perception is that abortion is illegal. Many scholars have rightly pointed out that there are exceptions recognized through the Common Law and decided cases. Abortion thus is not necessarily illegal, although the issue faces many restrictions, within a confusing policy framework. According to Ben Twinomugisha (2015: 53), the law in place is also biased:-

The law is discriminatory in that it criminalises health services-access to abortion-that only women need. Such law impairs women's right to reproductive choice-to make free and responsible decisions. In so doing, the state through law exercises a significant influence over a woman's bodily autonomy in general and over the construction of her sexuality in particular. A woman is compelled to be a mother; yet from a human rights perspective, motherhood should be a choice that is available to those who need it. Denying women the right of access to safe abortion makes them bear the hardship and blame for unwanted pregnancies, ignoring the fact that men bear the responsibility too, and that unwanted pregnancies may have resulted from unwanted intercourse such as rape. In such a case, the law violates women's rights to health, bodily integrity and at times life itself.

33. Charles Ngwena adopts a more nuanced view, contending that Uganda’s abortion laws need to be “… understood as not only permitting abortion in given circumstances but also as importing, on the part of the state, a positive duty to implement what is permitted in ways that are tangible to women with unwanted pregnancies as well as to health care professionals with the competence to provide abortion services” (Ngwena, 2016:114). In support of this argument, Ngwena points out that taken together, Uganda’s legal regime-starting with the Constitution-permits abortion in certain circumstances, summarized below:-

- On the one hand, the Constitution protects unborn life but, on the other, implicitly mandates abortion if permitted by law (restriction v. proscription);
- Other constitutional rights also need to be taken into account, including: equality and non-discrimination (Article 21); life (Article 22); personal liberty (Article 23); human dignity

198 Uganda’s reservation to this provision when it signed the Maputo Protocol in July 2010 reads as follows:- “Article 14(2) (c) interpreted in a way conferring an individual right to abortion or mandating State party to provide access thereto. The State is not bound by this clause unless permitted by domestic legislation expressly providing for abortion. The Republic of Uganda makes this ratification on the understanding that the above clause […] of the present Protocol shall not apply to the Republic of Uganda.” See Centre for Reproductive Rights, (2012). A Technical Guide to Understanding the Legal and Policy Framework on Termination of Pregnancy in Uganda, p. 10, available athttp://reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_UgandaBriefingPaper_v5.pdf
and protection from inhuman treatment (Article 24); privacy (Article 27); protection of freedom of conscience (Article 29); the full and equal dignity of women, including freedom from laws, cultures and traditions that undermine the status of women (Article 33) and administrative justice (Article 42).

- Provisions of the NODPSP are also relevant, in this case Objectives XIV (General Social and Economic Objectives) and XX (Medical Services);
- Progressive comparative law from similar jurisdictions;
- Progressive interpretation of the Penal Code provisions governing the offence, especially the exceptions; and
- Applying jurisprudence from the United Nations (UN) and European Union (EU) treaty bodies.

34. **The policy framework in Uganda is quite ambiguous and confusing as policy statements from the government’s Ministry of Health are more permissible than the Penal Code.** An example is the 2006 “National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights,” which are more in line with Article 14(2)(c) of the Maputo Protocol.\(^\text{199}\) Indeed, the government of Uganda needs to revisit the criminal legal framework on termination of pregnancy\(^\text{200}\) in order to synchronize it with the international human rights standards.

35. The following are more illustrative cases taken respectively from the United Nations Human Rights Committee (KL and LMR) and CEDAW (LC):

In **KL v. Peru**,\(^\text{201}\) a 17-year-old girl, KL, who was pregnant with a foetus affected with anencephaly, had been denied an abortion by hospital authorities, and regardless of medical and social evidence confirming that continuing with the pregnancy would seriously harm KL’s health. More importantly, the request for an abortion otherwise met the eligibility grounds under Article 119 of the Peruvian Criminal Code, which permitted abortion if it was the only way of saving the life of the pregnant woman or avoiding serious and permanent damage to her health. The Committee found Peru violated Article 2 (the right to an effective remedy), Article 7 (the right to be free from inhuman and degrading treatment), Article 17 (the right to privacy) and Article 24 (the right to special protection as a minor) of the ICCPR. The committee noted however, that although Peruvian law permitted abortion, there was no domestic administrative structure, short of constitutional litigation, to allow the complainant to realise her right.

In **LMR v. Argentina**,\(^\text{202}\) the complainant was a 19 year-old girl with an intellectual disability and medically certified as having a mental age of 8-10 years. She became pregnant following a suspected rape. Through her mother, she requested an abortion and was refused her wish, despite falling within the exceptions permitted by Article 86(2) of the Argentinean Criminal Code, and was instead, required to obtain permission from the courts. The Human Rights Committee found Argentina to be in violation of Article 2(3) (the right to an effective remedy) taken together with Articles 3 (the right to equal enjoyment of rights), 7 (the right to be free

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200 Sections 141 – 144 of the PCA.
from inhuman and degrading treatment) and 17 (the right to privacy). It noted that, despite meeting the criteria for legal abortion, the complainant had to appear before three courts, which had the effect of prolonging by several weeks the gestation period. The delay occasioned by the requirement to obtain judicial authorization became the reason why the hospital ultimately declined to perform the abortion and the complainant had to resort to a clandestine procedure. According to the Committee, these facts highlighted the fact that Argentina did not have the administrative framework to provide an effective remedy for women seeking abortion under domestic law.

In LC v. Peru, a 13-year-old girl had become pregnant following sexual abuse, and on discovering she was pregnant, attempted suicide by jumping from a building, causing her to suffer severe injuries. Although she required emergency surgery, hospital authorities did not render treatment because they took the view that treatment would harm the foetus. When she requested an abortion, she was refused despite being eligible under the Peruvian Criminal Code. The CEDAW Committee observed that the complainant had been left without access to an effective procedure to establish her entitlement and noted that because of the absence of laws and regulations for implementing the permitted exceptions under the Peruvian Penal Code, access to abortion was determined arbitrarily, with each hospital authority determining its own legal grounds and procedures. According to the Committee, Article 12 of CEDAW required states to “respect, protect and fulfil” women’s right to health-care including in its legislation, executive action and policy.

In the cases of Tysiac v. Poland, A, B and C v. Ireland, RR v Poland, and P and S v. Poland, the European Court has held that “… where national authorities rely on criminal regulation of abortion but permit certain exceptions, they must take positive administrative steps to ensure that the circumstances in which abortion is permitted are articulated in a way that is reasonably clear, not just to women seeking abortion services, but also to health care professionals. Furthermore, they must establish an accessible and timely administrative procedure for allowing women who are aggrieved by a decision refusing them abortion to contest the decision” (Ngwena 2015: 19-20).

All of the above demonstrate that the Ugandan Penal Code provisions on abortion should be viewed as merely restrictive and not prohibitive. In other words, depending on the facts of a particular case, the human rights issues implicated, and precedential support from comparative constitutional and international jurisprudence, courts can give effect to the rights of women rather than exacerbating a situation which is already a traumatic one for the individual involved.

205 Appln No.25579/05, [2010] ECHR 2032 European Court.
206 Appln No.27617/04, European Court (2011) 29.
207 Appln No.57375/08, European Court (2012).
Key Documents on Sexual and Reproductive Health

- CEDAW, Article 12
- Maputo Protocol, Article 14
- CEDAW General Comment No.14
- CEDAW General Recommendation No.24
- CRPD, Articles 16, 23 and 25
- ACHPR General Comment No.2
- 1995 Constitution, NODPSP Nos. XIV and XX; Articles 21(1) and (2), 22 and 24
- Public Health Act Cap.281
- Medical and Dental Practitioners Act Cap.272
- Penal Code Act, sections 141, 142, 143 and 224

Cases Referred to in Chapter Six

1. **A, B and C v. Ireland**, Application No. 25579/05, [2010] ECHR 2032 European Court
3. **Centre for Health, Human Rights and Development & Others v. Nakaseke District Local Administration**, High Court Civil Suit 111 of 2012
6. **Laxmi Mandal & Others v. Deen Harinagar Hospital & Others** WP (C) 8853/2008 (New Delhi High Court)
8. **Minister of Health v. Treatment Action Campaign** (No. 2) 2002 (5) SA 721 (CC)
11. **R v. Bourne** [1939] 1 KB 687
CHAPTER 7:

COURTS OF LAW AND ADMINISTRATION OF JUSTICE IN UGANDA
1. The Judiciary is an independent arm of government comprised of Courts of Judicature as provided for by the Constitution. It forms part of the Justice, Law and Order Sector (JLOS), which holistically connects institutions with closely linked mandates of administering justice, and maintaining law and order and human rights (see section 7.3 below). The Judiciary is entrusted to administer justice through courts of judicature including the Supreme Court, the Court of Appeal, the High Court, Magistrates Courts and other courts or tribunals established by Parliament. The highest court in Uganda is the Supreme Court. The Court of Appeal is next in hierarchy and it handles appeals from the High Court but it also sits as the Constitutional Court in determining matters that require Constitutional interpretation. The High Court of Uganda has unlimited original jurisdiction.

2. Subordinate Courts include Magistrates Courts, and Local Council Courts, Qadhis’ courts (for marriage, divorce, inheritance of property and guardianship), and tribunals such as those established under the Land Act (Cap 227), Communications Act (Cap 106), Electricity Act (Cap 145), and Tax Appeals Tribunal Act.

3. The basis of judicial power is provided for under Article 126 of the Constitution of the Republic of Uganda:

   **Article 126 of the Constitution**

   (1) Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.

   (2) In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles:-

   (a) justice shall be done to all irrespective of their social or economic status;

   (b) justice shall not be delayed;

   (c) adequate compensation shall be awarded to victims of wrongs;

   (d) reconciliation between parties shall be promoted; and

   (e) substantive justice shall be administered without undue regard to technicalities.

4. The existing judicial system in Uganda operates mainly under the Constitution, the Judicature Act (Cap 13) and the Magistrates Court Act (Cap 16). The Constitution is the supreme law of Uganda and all laws must meet the standards it sets for women’s rights. But not all the existing laws are gender-sensitive. Some laws partly comply with, and others blatantly contravene provisions of the 1995 Constitution as far as gender discrimination is concerned. Where the law is not gender-sensitive or is no longer applicable, the courts must declare it unconstitutional, and therefore null and void. It is only the constitutionally-compliant provisions of the existing law that can be used by the courts. Discriminatory laws must be rejected and discarded to the extent that they are inconsistent with the Constitution.

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5. Article 2 declares the supremacy of the Constitution:

**Article 2 of the Constitution**

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

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

6. The judiciary is the only organ of the State vested with powers to interpret the law and determine all justifiable disputes. Laws which respect and protect human rights are upheld through the formal courts mentioned above. Rights set out in various human rights instruments are protected by the Constitution, supplemented by various Acts of Parliament such as the Penal Code Act, Magistrates Court Act (MCA), the Trial on Indictment Act and other procedural laws.

7. Local Council Courts at the grassroots level of society were established by the Local Council Court Act of 2006 to operate from the village to the sub-county level. Due to their proximity to the people and their informal nature, they appeal to ordinary Ugandans. Their practical operation is fraught with challenges however, which often lead to denying women access to substantive justice. For instance, Local Council Courts lack legal knowledge and legal reference materials, logistic equipment and office space - many carry out inadequate investigation processes and lack supervision.

8. Courts are mandated to protect and promote human rights and the rule of law as well as deal with human rights abuses, including sexual and gender-based violence. Apart from courts, there are other constitutional bodies that are also mandated to handle cases of human rights abuse such as the Human Rights Commission (HRC), the Equal Opportunities Commission (EOC) and the Inspector General of Government (IGG).

9. The other important mandate for courts is to interpret the existing law to bring it into conformity with the Constitution. The relevant law is Article 274 which provides:

**Article 274 of the Constitution**

1. Subject to the provisions of this Article, the operation of the existing law after the coming into force of this Constitution shall not be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.

2. For the purposes of this Article, the expression “existing law” means the written and unwritten law of Uganda or any part of it as existed immediately before the coming into force of this Constitution, including any Act of Parliament or Statute or statutory instrument enacted or made before that date which is to come into force on or after that date.
10. Figure 3 below is a chart showing the structure of the courts of law in Uganda.

*Figure 3: Structure of the Courts of Uganda.*

```
Supreme Court
   ↓
  Court of Appeal
   ↓
  High Court
   ↓
Chief Magistrate Court
   ↓
Magistrate Grade I
   ↓
Magistrate Grade II
↑
Local Council III
↑
Local Council II
↑
Local Council I
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**KEY**

- ↓ Administrative Hierarchy
- ➡ Appeals

*Source: Hon. Justice Batema N.D.A.'s compilation*

### 7.1 Jurisdiction and Composition of Courts

11. Jurisdiction is the power of a court or administrative body to entertain a legal action or other proceeding. It also refers to the territorial district or limits within which the judgments or orders of a court can be enforced or executed. In general practice, the subject of dispute or accused person must be within the jurisdiction of the court issuing the summons.

12. Each court in Uganda is given different powers by Parliament to deal with different cases. It is only the High Court that has unlimited jurisdiction to hear all types of cases and also hear appeals from subordinate courts all over Uganda. When a case is filed in the wrong court, that is, a court without the power of jurisdiction, it will be dismissed. A case filed in a court of competent jurisdiction but in a wrong geographical district (territorial jurisdiction) will not be dismissed. Instead, it is within the powers of the judicial officer to order for the transfer of the case to the right court or forward it to the High Court.
13. The composition and jurisdiction of the different courts are found in different laws.

**The Supreme Court**

Section 3 of the Judicature Act provides that the Supreme Court shall consist of the Chief Justice and six justices. It hears criminal and civil appeals from the Court of Appeal. The Supreme Court as the last appellate court does not have original jurisdiction except in Presidential election petitions only. The decisions of the Supreme Court are final except in criminal matters where the president has the prerogative of mercy to forgive a convict or reduce the sentence passed. No death sentence can be executed until the President has signed the death warrant.

**The Court of Appeal**

Section 9 of the Judicature Act provides that the Court of Appeal shall consist of the Deputy Chief Justice and seven justices. The Court of Appeal hears appeals from decisions of the High Court. Most cases decided by the Court of Appeal can also be appealed to the Supreme Court, but the Court of Appeal is the final court in election petitions filed after Parliamentary elections or elections provided for by the Local Government Act.

The Court of Appeal also sits as a Constitutional Court to decide any question on the interpretation of the Constitution. The Constitutional Court sits with a bench of five justices at all times.

**The High Court**

Article 139 of the 1995 Constitution grants the High Court unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the constitution or other law. This means that the High Court can hear all matters regardless of the subject matter. In addition, it hears appeals from subordinate courts and exercises general supervisory powers over them unless the law expressly says otherwise.

Section 13 of the Judicature Act provides that the High Court shall consist of the Principal Judge and other judges. The court is headed by the Principal Judge, who also heads subordinate courts and in that capacity, assists the Chief Justice in the administration of the High Court and subordinate courts.

The High Court is duly constituted by a single judge. However, in criminal matters the judge is assisted by assessors.

The High Court is situated in Kampala with circuits in Nakawa, Jinja, Mbale, Masaka, Mbarara, Soroti, Kabale, Masindi, Lira, Gulu, Arua, and Fort Portal. More circuits are might be created. The High Court at Kampala has the following specialized divisions: Civil, Criminal, Commercial, Land, Anti-Corruption, International Crimes and Executions & Bailiffs and Family Division.
Magistrates Courts

Magistrates courts exercise original jurisdiction in criminal and civil matters except for capital offences. Under section 4 (2) of the Magistrates Courts Act (MCA), Magistrates courts are divided into three grades.

The Chief Magistrate Court is situated at the district level, although sometimes a Chief Magistrate can be responsible for more than one district. There are currently over 39 Chief Magisterial Areas carved out of one or more districts of Uganda. These include: Nakawa, Mengo, Lira, Apac, Buganda road, Nabweru, Makindye, Mubende, Mbarara, Bushenyi, Rukungiri, Kabale, Masaka, Masindi, Fort portal, Jinja, Luwero, Mubende, Hoima, Nakasongola, Mukono, Moroto, Arua, Soroti, Iganga, Tororo, Busia, Pallisa, Kapchorwa, Moyo, Gulu, Kitgum, Nebbi, Mpigi, Rukungiri, Bushenyi, Entebbe and Kasese.

14. Every Magistrate shall be deemed to have been appointed to and have jurisdiction in each and every magisterial area, but may be assigned to a particular magisterial area or to a part of any magisterial area within the boundaries of Uganda by the Chief Justice. The Chief Justice has power under Article 133(1) of the Constitution and sections 6 and 7 of the MCA to authorize a magistrate to hold court anywhere in Uganda provided that the authorization is in writing. In the case of *Davis Wesley Tusingwire v. Attorney General*,209 a petition challenging the powers of the Chief Justice to deploy Magistrates in the Anti-Corruption Division of the High Court was dismissed, and it was held that all Magisterial Areas have to be gazetted by the Chief Justice in writing.

15. Section 161 of the MCA provides that the Chief Magistrates Court can hear and decide all criminal cases except capital offences whose punishment is death such as murder, rape, defilement and treason. A Chief Magistrates Court can hear all civil cases where the value of the subject matter in dispute does not exceed fifty million shillings (UGX50,000,000/=), and has unlimited jurisdiction in disputes relating to conversion, damage to property or trespass and all matters that relate to customary law or customary practices.

16. The Chief Magistrate also hears appeals from the lower magistrates and Local Council III courts. With regard to sentencing, section 162 of the MCA provides that subject to any limitations contained in any written law, a Chief Magistrate can pass any sentence authorized by law.

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209 Constitutional Petition No. 02 of 2013.
17. The Magistrate Grade I court is directly below the Chief Magistrates Court with the following powers and jurisdiction:-

**Magistrate Grade I Court**

Section 161 of the MCA provides that the Magistrate Grade I Court can hear and decide all criminal cases except those whose punishment is life imprisonment or death such as murder, rape, defilement, treason, aggravated robbery, attempted murder, arson and manslaughter.

Section 207 of the MCA provides that the Magistrate Grade I Court can hear all cases where the value of the subject matter does not exceed twenty million Shillings (UGX 20,000,000). The court can hear all matters that relate to customary law or customary practices, family and children matters.

With regard to sentencing, section 162 of the MCA provides that a Magistrate Grade I can pass a sentence of imprisonment for a period not exceeding ten years or to a fine not exceeding four million eight hundred thousand shillings (UGX 4,800,000/=).

18. Grade 11 Magistrates Courts are directly below Grade 1 Magistrates Courts but they are supervised by Chief Magistrates. They have the following powers and jurisdiction:-

**Magistrate Grade II Court**

The jurisdiction of a Magistrate Grade II is very limited to minor offences. The First schedule of the MCA provides a very long list of offences which cannot be tried and provisions which cannot be administered or enforced by a Magistrate Grade II.

Section 207 of the MCA provides that the Magistrate Grade II Court can hear all cases where the value of the subject matter does not exceed five hundred thousand shillings (UGX 500,000/=). The Magistrate Grade II can hear all matters that relate to customary law or customary practices, family and children matters.

With regard to sentencing, section 162 of the MCA provides that a Magistrate Grade II can pass a sentence of imprisonment for a period not exceeding three years or to a fine not exceeding five hundred thousand shillings (500,000/=) or both.

Section 173 of the MCA requires that a sentence of two years or more must be confirmed by the High Court.

19. There have been some important court decisions on the issue of jurisdiction including the 2017 judgment of the Constitutional Court in *Murisho & Ors v. Attorney General & Another*, where Justice Kenneth Kakuru, JCC held that: “An interim or substantive order or injunction, nonetheless, may still be granted by a full Coram of the Constitutional Court under such term and conditions as it may deem appropriate because it is ceased with jurisdiction to do so.”

210 Constitutional Application No. 2 of 2017
20. And the Court in Murisho’s petition ordered and directed that:-
   a) All interim orders issued by a single Justice of the Constitutional Court which are still in force are null and void and of no effect.
   b) Any interim or substantive orders of injunction issued by a Coram of three Justices of the Constitutional Court which are still in force are null and void and of no effect.
   c) The Registrar of this court is directed to place all pending Constitutional applications before a full Coram of Constitutional Court for determination including those which have been heard by either a single Justice or a Coram of three but whose rulings have been delivered.

21. In Davis Wesley Tusingwire v. Attorney General, the petitioner challenged the deployment of magistrates in the Anti-Corruption Division of the High Court claiming that they were exercising jurisdiction meant for the High Court. The Supreme Court laid down the principle that:-

   **Davis Wesley Tusingwire v. Attorney General**

   The exercise of judicial power does not depend on the label of the Court. It is the substance of the law that must be regarded, and not the form. The Chief Justice has powers to deploy magistrates in any part of Uganda under Article 133 of the Constitution. Deploying magistrates to sit in the High Court division did not mean that they were exercising any powers of High Court judges.

22. Earlier on in Kasibante Moses v. Katongole Singh Marwana & Another, Justice Musoke Kibuuka held that:-

   **Kasibante Moses v. Katongole Singh Marwana & Another**

   1. The term jurisdiction is not a term of art. It is a term of law. It is a term of very extensive legal import. It embraces every kind of judicial action. It confers upon the court the power to decide any matter in controversy. It pre-supposes the existence of a duly, constituted court with full control over the subject matter under adjudication. It also presumes full control by the court of the parties to the subject matter under investigation by it. Jurisdiction defines the power of a court to inquire into facts, to apply the relevant law, to make decisions and to declare the final outcome of the subject matter under its inquiry.
   2. It is trite law that no court can confer jurisdiction upon itself. It is equally trite law that no court can assign or delegate jurisdiction vested in it.

23. In Ahmed Kawoya Kaugu v. Bangu Aggrey Fred & Another, Justice Bart M. Katureebe held that Jurisdiction of the Court is not a matter for implication but must be prescribed by law. This principle is what was followed in Arther Tindimwebwa & Others v. Joy Muhereza & Another.

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211 Constitutional Petition No.02 of 2013
212 Election Petition No. 23 of 2011
213 Supreme Court Civil Application No. 4 of 2007
214 HCT-05-CV-CA-0055-2010.

**Gagula Benefansio v. Wakidalu Merabu**

The lack of jurisdiction by a court over a matter cannot be regarded as a mere technicality under Article 126(2)(e) of the 1995 Constitution. Issues of jurisdiction are substantive and go to the core of a case and if a Court lacks jurisdiction, whether pecuniary or territorial, over the subject matter of litigation its judgment and orders however precisely certain and technically correct, are of no legal consequences and may not only be set aside any time by the Court in which they were rendered, but be declared void in every Court in which they are presented.

25. This jurisprudence shows that it is now settled law in Uganda that jurisdiction is always a creature of statute, and where the statute does not expressly confer such jurisdiction, a court cannot competently entertain the matter.

### 7.2 Special Courts

26. Apart from the courts discussed above, there are five other Special Courts in Uganda. These include:

(a) Courts-martial;
(b) Industrial Court;
(c) Family and Children Court;
(d) Qadhis Court; and
(e) Local Council Courts.

27. Uganda’s military justice system is governed by the Uganda Peoples’ Defence Forces Act (UPDFA) of 2005. This law provides for establishing a Unit Disciplinary Committee (UDC) for each army unit. UDCs enjoy jurisdiction to try all offenses covered by the Act, excluding capital offenses. Superior to UDCs is a Divisional Court-martial, which have jurisdiction to try offenses that carry the death penalty, and a General Court-martial, which enjoys full original and appellate jurisdiction. Section 119(h) of the UPDFA provides that persons found in the unlawful possession of arms, ammunition, or equipment “ordinarily being the monopoly of the Defence Forces” may be subject to military law.

28. However, in *Uganda Law Society v. Attorney General*,<sup>216</sup> the Constitutional Court held that military courts do not have jurisdiction over civilians. The court specifically stated that the trial of civilians accused of terrorism and unlawful possession of a firearm before military courts is unconstitutional.

29. The Industrial Court was established under Section 7 of the Labour Disputes (Arbitration and Settlement) Act (2006). This court was established to settle unresolved disputes between employers and trade unions over terms and conditions of employment. The Court has the same status as the High Court and has jurisdiction to prosecute complaints filed by individuals, labour

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<sup>215</sup> HCT Civil Appeal No. 29 of 2006 (Jinja).
<sup>216</sup> Constitutional Petition no. 18 of 2005.
unions and employers. The decision of the Industrial Court on a matter relating to employment is final. However, appeals to the Court of Appeal can be made on a point of law or an issue relating to jurisdiction.

30. Section 14 of the Children Act (Cap 59), established the Family and Children Court with powers to hear and determine criminal charges against a child, as well as applications relating to childcare and protection. The court also exercises any other jurisdiction conferred on it by the Act or any other written law.

31. Qadhis Courts are provided for under the Constitution but are yet to be established. They are intended to decide on Islamic matters, based on Islamic Sharia law, relating to marriage, divorce, inheritance or property and guardianship in a manner consistent with the law and Constitution.

32. Local Council Courts are established under the Local Council Courts Act. They were established to hear simple civil cases and land disputes respectively falling within their local areas of jurisdiction. These courts try cases of a civil nature such as debts, contracts, assault, battery, conversion, damage to property and trespass.

33. Local Council Courts also try civil disputes governed by customary law. These include:
   - disputes in respect of land held under customary tenure;
   - disputes concerning marriage, marital status, separation, divorce or the parentage of children;
   - disputes relating to the identity of a customary heir;
   - customary inheritance
   - customary bailment.

34. Local Council criminal jurisdiction is limited to cases of simple assault between children only.

7.3 Other Institutions Promoting Women’s Access to Justice in Uganda

7.3.1 Legal aid

35. The Justice Centres Uganda (JCU) is a project of the Government of Uganda under the Justice, Law and Order Sector (JLOS). Started in December 2009, it is well established and operationalized in the Judiciary.

36. The JCU are one-stop legal aid service centres that seek to bridge the gap between the supply and demand sides of justice. The centres provide legal aid services in civil and criminal areas of justice to indigent, marginalised and vulnerable persons, while at the same time empowering individuals and communities to claim their rights. They represent the beginning of fundamental efforts to restructure the provision of legal aid in Uganda by making it more easily available and accessible to the most disadvantaged and underserved populations.

37. The JCU offers the following Services:-
   a) Legal advice;
   b) Court representation;
c) Alternative Dispute Resolution (ADR);
d) Counseling and psycho-social support services;
e) Referral and follow-up with other relevant institutions;
f) Legal and human rights awareness creation;
g) Advocacy at the local and international level; and,
h) Advocacy for legal aid policy framework at the national level.

38. The JCU also disseminates legal rights awareness messages through different avenues, such as radio talk shows and spot messages. The latter discuss a specific legal matter in the form of dramatization, on a wide range of topics such as: marriage, succession and inheritance, the law on defilement, bride price, land law and land rights, women and the law, property rights, application of customary laws and rights of women, the functionality of the Local Council Courts and their roles in access to justice, fundamental human rights, domestic violence, sexual offences, child-to-child sex, writing of a will, gender-based violence, and the rights of prisoners.

39. Justice Centres also conduct community outreach programs to create public awareness and community empowerment, focusing particularly on sensitizing the public about the law, about citizens’ rights and how to claim them. This has helped women access justice.

40. The JCU has offices in different parts of the country covering various districts. Among others, these include:-

a) Lira Justice Centre: (Amolatar, Pader, Apac, Kitgum, Oyam, Dokolo, Kaberamaido and Kotido Districts.)
b) Tororo Justice Centre: (Bukwo, Bududa, Manafwa, Busia, Pallisa, Butaleja)
c) Jinja Justice Centre: (Jinja, mayuge, Kamuli, Buyende, Kaliro, Luuka, Namutumba, Bugiri, and Iganga Districts.)
d) Hoima Justice Centre: (Masindi, Kibaale, Kiryandongo and Buliisa Districts.)
e) Mengo Justice Centre: (Kampala, Mpiigi, Luweero, Butambala and Mityana Districts.)
f) Fort portal Justice Centre: (Kabarole, Kyenjojo, Kyeggegwa, Kasese, Kamwenge, Ntoroko and Bundibugyo districts.)

41. The foundation of the right to legal aid in the criminal justice system is premised in the universally accepted principle of “fair trial.” The right to legal counsel when charged with a criminal offence is integral to the right to a fair hearing, which is universally recognised and documented in the 1995 Constitution.

Article 28(3)(e) of the 1995 Constitution

Every person who is charged with a criminal offence shall in the case of any offence which carries a sentence of death sentence or imprisonment for life, be entitled to legal representation at the expense of the state.

219 Article 28 and Article 44(c).
42. The right to legal aid is also found in regional and international human rights instruments that Uganda has ratified\(^{220}\) such as the UDHR (Articles 10 and 11), the ICCPR, the Convention on the Rights of the Child (Articles 37(d)) and the African Charter on Human and Peoples’ Rights (Article 7).

43. Thus, the right to legal aid is a demonstration of the need to level the powers of the prosecution with those of the suspect. The right to legal aid and representation at the expense of the State becomes a constituent element of the right to a fair trial.

44. The JLOS Strategy prioritizes access to justice for all, particularly the poor, and other marginalised groups, including women. Therefore the removal of barriers to access to justice, including the provision of legal aid services, has become a measurable indicator of sector performance. The strategy recognises the complementary roles of non-State actors, civil society organizations and the legal profession, development partners, and the regulatory institutions in the delivery of legal aid services.

45. To further improve the quality of services delivered, the Uganda Law Council is strengthening the regulatory framework for legal aid provision, including setting up and ensuring compliance with standards of legal aid service delivery. For example, legal aid service providers are now organized under the Legal Aid Service Providers Network, an innovation that has strengthened the voice for legal aid provision in the strategy implementation process. There is a Legal Aid bill and policy being debated.

46. There are 11 sites of **Paralegal Advisory Services** throughout the country to provide basic legal aid to persons in conflict with the law. Paralegals and social workers ensure that those on the demand side of justice, including accused persons, victims, complainants, witnesses and sureties understand the process and procedures of accessing justice at different stages in all justice institutions. Through the activities of paralegals and social workers, the Service acts as a link between the users and administrators of justice - they hold the administrators of justice accountable by reminding them of their operational standard procedures and guidelines.

47. For example, through continuous follow-up of cases and liaising with the administrators of justice, the Service assists the sick and elderly to be identified and presented to resident judges and trial magistrates to have their cases expeditiously heard and concluded. The Service also engages in advocacy and lobbying for minor offenders who qualify for non-custodial sentences such as fine payment, cautions and community service sentences, or when they could benefit from alternative dispute resolution instead of going through the full trial.

7.3.2 **The role of the Justice, Law and Order Sector (JLOS)**

48. The Justice, Law and Order Sector (JLOS) is a sector-wide approach adopted by the Government of Uganda bringing together institutions with closely linked mandates of administering justice, maintaining law and order and human rights, into developing a common vision, policy framework, unified objectives and plan of action over the medium term. The sector focuses on a holistic approach to improving access to and administration of justice through the sector-wide approach to planning, budgeting, programme implementation, monitoring and evaluation.

49. JLOS comprises the following institutions:

(a) Ministry of Justice and Constitutional Affairs;
(b) Ministry of Internal Affairs;
(c) The Judiciary;
(d) Uganda Police Force;
(e) Uganda Prison Service;
(f) Directorate of Public Prosecutions;
(g) Judicial Service Commission;
(h) The Ministry of Local Government (Local Council Courts);
(i) The Ministry of Gender, Labor and Social Development (Probation and Juvenile Justice);
(j) The Uganda Law Reform Commission;
(k) The Uganda Human Rights Commission;
(l) The Law Development Centre;
(m) The Tax Appeals Tribunal;
(n) The Uganda Law Society;
(o) Centre for Arbitration and Dispute Resolution; and
(p) The Uganda Registration Services Bureau.

50. Currently, JLOS is implementing its Strategic Investment Plan III 2011/2012-2015/2016 (SIP III) promoting the rule of law, by focusing on increasing public confidence and trust in the justice system, as well as user satisfaction in the services offered by the sector.

51. JLOS institutions under SIP III are giving special consideration to children, poor women and men, and other identified categories of users presently underserved by JLOS institutions. It is specifically prioritizing the concerns of the most vulnerable, including women, in order to ensure that they are able to attain justice. JLOS is also tracking institutional performance with respect to services that vulnerable groups commonly access, using administrative data collected by the various institutions and disaggregating data based on gender, age, education, location and other variables. These include administrative services, particularly those by the Administrator General; case management with specific reference to gender-based crime; violence against children; and land, and family justice.
7.4 Institutional Barriers to Women’s Access to Justice

7.4.1 Administration of Law and Access to Justice

52. Women’s experiences of facing institutional barriers in accessing justice manifest at various levels (Mukasa, 2001). These include:

- Physically distant justice delivery agencies
- Gender-insensitive training and orientation of judicial officers
- Gender insensitivity and non-responsiveness of both technical and non-technical staff in justice delivery agencies
- Lack of confidence in the justice delivery system as impartial and transparent
- Degree of technicalities involved in the justice delivery system
- Delayed delivery of justice due to case backlog
- Corruption in the judiciary

53. The Judiciary Gender Policy notes that although these institutional gaps affect all court users, they are more likely to affect those who have less resources, lower levels of education, and less influence - and more often than not, these are women. Lower literacy levels, poverty, and strictly proscribed cultural norms that dictate their behavior, mean that women are less likely to be aware of their rights, the remedies available to them, and the relevant justice mechanisms that should be accessed.

54. The geographical distance of the courts is a challenge, especially in rural areas. The National Service Delivery survey results of 2001 indicated that only 18.2 per cent of people in rural areas were able to access a Magistrate Court within a distance of less than five kilometres compared to 56 per cent in urban areas (Mukasa, 2001). Furthermore, it is a common occurrence for witnesses to fail to appear in court due to lack of transport, which delays the progress of cases. According to the JLOS SIP III, this problem of access to justice delivery agencies is significant - many services remain largely inaccessible outside of urban settings and particularly impact socially and economically disadvantaged groups. The problem has been compounded by the creation of new districts without the necessary budgets to construct new courts and staff them.

55. This is especially onerous for women who are already burdened by the triple roles they play. Women, who bear the brunt of domestic responsibilities (caregiving, housework etc.), are expected to complete their daily household chores before attending court sessions and therefore struggle with time poverty when attempting to seek justice. Rural women cannot afford to hire domestic help, and so must carry their children on their backs to justice delivery agencies. Long walking distances may mean women attend late, after court has already adjourned, or not at all for lack of transport. The end result is limited or no access to justice for such women. The situation may not be as challenging for men who typically control the household income and do not shoulder domestic responsibilities.

222 Judiciary Gender Policy (supra).
223 That is Reproductive, Productive and Community Roles rural women have in their daily lives.
56. Ensuring equal access to justice for men and women, therefore, calls for an appreciation by judicial officers and others within the justice delivery agencies of the socio-economic realities of users of the justice delivery system - particularly the poor, vulnerable and marginalized. In order to deliver impactful substantive justice, there is also a critical need to improve the representation of all justice delivery agencies throughout the country, bearing in mind that their design and size need to be appropriate for the rural setting.

57. There are limited skills and capacity of judicial officers and others charged with the administration of the law. For instance, the lack of facilities for breast feeding mothers, lack of playing space for young toddlers who come to court with their mothers.224

58. The curriculum at the major police and legal training centers like the Police Training School, University Law schools and the Law Development Centre, all largely teach the law without systematically relating it to the social environment of poverty and gender discrimination (Mukasa, 2001). The training focuses on producing police officers, advocates, judicial officers and attorneys who know the content and technical procedures of the law, but who lack a gender-responsive understanding of the socio-economic situation of women (especially rural women), the various dimensions and levels of discrimination that they face, and how this can significantly limit their ability to access justice.

Deeply entrenched male bias, is evident at all stages of the legal process whether in interpreting the law, evaluating evidence and/or exercising judicial discretion. There is lacking capacity of both technical and non-technical judiciary staff to understand and respond to gender-specific needs, as well as outright discrimination based on widely-held gender stereotypes that are the product of social norms and attitudes that accord a lower status to women and girls compared to men and boys. There are numerous reports of insensitivity towards female court users and advocates225 - when making interpretation of law and fact, judicial officers need to constantly remind themselves to avoid conclusions influenced by gender stereotypes and biases.

59. Discriminatory attitudes affect women both at personal and institutional levels when it is embedded in the legal culture. At the personal level, internalized cultural and social expectations and values may prevent women from seeking justice. For instance, there is a “culture of silence” in cases related to the family sphere such as child support, domestic violence, sexual assaults and divorce proceedings. Intersectional discrimination is evident where women from lower social classes are less likely to seek justice due to a lack of confidence in the justice system, or fear of mistreatment and a dismissive attitude by law enforcement officers. Such lack of confidence in the justice system derives in large part from an institutional culture that does not sufficiently take into account the needs of women claimants on the one hand, and that manifests in discriminatory attitudes, secondary victimisation or inadequate legal counsel on the other.

60. Due to stigma and fear of negative social consequences (such as community retaliation, ostracization, or even re-victimization), survivors of sexual violence often refrain from reporting or giving evidence that they were sexually violated, as well as seeking the necessary counseling and treatment. There is a need to appreciate the fact that in patriarchal societies such as Uganda - where the vast majority of women live in rural areas where this patriarchal value system is

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224 The High Court at Kampala under the Family Division used to have this space for toddlers but this has since ceased to exist.
225 Judiciary Gender Policy and Strategy (supra).
most cherished and practiced\textsuperscript{226} - culture and religion play a significant role in defining what women may or may not do or say. Such rules include the culture of silence that deters women from exposing sexual violence in the public sphere and seeking justice.

61. Lower literacy levels, poverty, and strictly proscribed cultural norms that dictate their behavior, mean that women are also less likely to be aware of their rights, the remedies available to them, and the relevant justice mechanisms that should be accessed. This system places a high premium on educating boys as opposed to girls. Therefore, more girls find themselves outside the education system, which thus creates a large group of illiterate and ignorant women. The laws are written in English, and since the vast majority of the women cannot write or read, they are therefore constrained in using the justice system.

Illiterate people especially women fear pursuing their rights through the police and law courts. Both the uneducated and educated fear the myths about the law and legal rituals of the court. This is aggravated by a strict interpretation and application of the law. For instance, a woman who files for Letters of Administration is left in tears when she is told that she has no rights as a wife since she was not legally married according to the law. The legal definition of a wife is in sharp contrast with the lived reality in which the majority of the populations build homes and families on the basis of cohabitation.

Judicial officers who handle illiterate and ignorant women should engage in affirmative action in favour of women to ensure that they understand the legal processes and their rights.

62. Public confidence in the courts of law is an important pillar in the promotion of the rule of law and access to justice. Everyone who comes into contact with the justice delivery system must be treated fairly and without discrimination. Importantly, litigants must believe that they are being treated fairly and without any form of discrimination, or public confidence and trust in the judicial system will be eroded. When the public loses confidence in the justice delivery system, people usually resort to mob justice, taking the law into their own hands. The judiciary cannot allow the mob to take away the judicial power entrusted to the courts of law by the Constitution.

63. Public confidence and trust can be regained and maintained by using justice delivery methods that appeal to the public. In his autobiography, The Odyssey of a Judicial Career in Precarious Times: My Trials and Triumphs as a Three-Time Chief Justice of Uganda, retired Chief Justice S.W.W. Wambuzi gives the examples of mediation and arbitration. He notes that the choice of procedure and the law to apply open to the parties, and the informality of the proceedings are matters that reassure the parties of fairness - persons subscribe to the acceptability of the arbitrator’s verdict. Consequently, justice is not only done but is seen to be done (Wambuzi, 2014).

64. The use of legal and highly technical language contributes to the perception of the judiciary as inaccessible, especially for those with language barriers, lower levels of education, and limited access to resources and influence (many of whom are women). In fact, the law, both civil and criminal, as enacted in the statute books, is couched in technical legalistic language which is obscure even to lay persons who understand and speak English (the official language of the court). Further, such technical challenges may also affect women seeking justice. They may

\textsuperscript{226} Stella Mukasa, Supra: 25
prevent women from properly understanding legal processes, their legal rights and the remedies available, or may deter them from engaging the services of legal counsel to represent them.

65. Describing a typical court scene where all justice delivery agencies were represented, Women and the Law in Southern African Research and Education Trust concluded that the procedures followed (read: legal rituals) during a hearing are alienating, abrupt, too technical, insensitive, and exclusionary, thus leading to lack of participation (WLSA, 2000). This keeps poor and illiterate men and women in the shadow of the law. For women, the situation is aggravated by the compounding effects of gender-based discrimination.

66. A judge has the duty to administer justice fairly and even-handedly, without fear or favor, and to be seen to do so. As the time-tested maxim goes: “Justice delayed is justice denied.” During the National Service Delivery Survey, approximately 30 percent of respondents indicated that it takes more than six months to obtain a hearing, while 33 percent indicated a period between 1-6 months. The delays in obtaining a hearing reflect problems within all agencies that are involved in the process - police, the States attorney, the bar, the Judiciary and the prison service.

67. The courts are faced with a backlog of cases. This may include the number of cases that have been filed in the courts but not yet disposed of, and or cases ready to be tried but waiting for trial. It also includes those cases being tried but not finalized within two years. Today, it is not uncommon to find a trial judicial officer with as many as 30 to 50 or more partially-heard cases (Wambuzi, 2014). Justice Wambuzi attributes this problem largely to indiscipline in the judicial system, irregular attendance of court, unnecessary adjournments, and poor case management. He notes:-

For example, a case is set down for three days, and on the first day one witness turns up and is dealt with in less than an hour. The case is then adjourned for lack of witnesses; and because the court is not to remain idle, another case is called with the same result. This is how the list of partly-heard cases grows. (Wambuzi, 2014:151)

68. Other causes of backlog include: insufficient manpower (judges, magistrates, and other court officials) to do the necessary work; insufficient funding that leads to failure to mount and properly equip the necessary court sessions; poor record keeping that results in loss of case files or other necessary records; and poor procedural laws that lead to delays. These factors have delayed the delivery of justice to women, and must be urgently addressed by justice delivery agencies.

69. Former Chief Justice Wambuzi (2014:95) acknowledges two types of corruption in the judiciary - real and perceived. For example, some parties make false allegations of corruption simply because they have lost a case. He wrote this of perceived corruption:-

I recollect that after reading the judgment of both parties, that is to say the plaintiff and the defendant, one of whom had lost his case, prostrated before me in the manner I had seen in the long-gone native courts, which was an expression of thanks and also an outward sign of acceptance of the court’s authority and decision. I was touched. I recall this incident because in the modern times the trend is for the losing parties to allege corruption of the court. This does not go for individuals only but for institutions as well as the government.
infrequently, the executive sings praises of the judiciary when the government wins a case in court but condemns the judiciary and accuses it of all manner of crimes like siding with criminals or even of corruption when the government loses a case. What a change in the circumstances!

70. He also gives a detailed account of an example of real corruption in the judiciary (Wambuzi, 2014: 95):

“I decided I needed time to see the performance of the judges concerned before I could support their confirmation. Regarding the alleged corruption, the lawyers promised to give a written statement including evidence of the alleged misbehavior. I was startled by what was alleged. Regarding one High Court judge, it was alleged that he demanded from advocates a portion of the damages he granted to successful litigants in civil cases to be paid to him in cash. This kind of behavior would not rule out inflation of damages to increase the cut of the judge’s cake, if I may say so. What a travesty of justice!

I called the judge to my chambers and put the facts to him. He denied any wrongdoing. I asked him to give me one reason why advocates should tell such a heinous lie against him and whether he had any enemies who wished to get him into trouble. He said he had none. I told him the allegations against him were of grave misconduct and that a tribunal would be appointed to investigate the matter; and if found true, he would certainly be removed from office. I advised the judge to think over the matter and to take advice from his friends or colleagues. A few days later the judge came to me and admitted that the allegations against him were true and regretted his behavior.

71. Commenting on corruption by support staff, His Lordship continued:

There was a form of corruption attributed to judicial officers that was, in fact, perpetuated by support staff particularly court clerks. Handwritten draft judgments were sent to the typing pool for typing before delivery. On seeing the draft decision, some unscrupulous clerk would approach the winning party and pretend to have been sent by the presiding judge or magistrate to demand money in return for a favorable verdict. More often than not, the money was paid. It would be next to impossible in those circumstances to convince such a litigant that it was not his or her money that enabled him or her to win the case. (Wambuzi 2014: 117).

72. The judiciary has since established a registry of Inspector of Courts to handle complaints against judicial officers and support staff. The Inspector sits in Kampala and receives written complaints, and sometimes goes around the country to attend to issues of ethics and integrity. The Chief Magistrates, High Court Registrars and Resident Judges have also been given some administrative powers by the Principal Judge to handle complaints within their areas of local jurisdiction. Suggestion boxes are placed in all courts and at district headquarters to gather
information about the performance of courts. This complaint system against corruption has the possibly of enhancing women’s access to justice.

7.5 Barriers to Women’s Access to Justice

73. The National Development Plan,\(^{227}\) which is the overall development planning framework for Uganda, notes a number of barriers that women experience in accessing legal services. Among these are:
   - Relatively higher levels of illiteracy;
   - Lack of information about legal rights;
   - Their restricted mobility; and
   - Poverty.

74. The Judiciary Gender Policy and Strategy notes other barriers to include\(^ {228}\):-
   - Women’s lack of knowledge about their rights or the justice system;
   - Dependence on male relatives for assistance and financial resources; and
   - Threat of sanction or stigma as a result of reporting male relatives to court.

75. In addition, the majority of women cannot afford the costs of legal representation and litigation, because men continue to largely own and control productive resources. Litigation is also widely regarded as a masculine practice, and it is considered “uncultured” for women to get involved.

76. Discussed below are the main barriers to women’s access to justice particularly at the community and personal level, as they relate to: the role of culture and patriarchy in community management, the plurality of community-based decision-making fora; poverty and the cost of justice, the private-public divide, illiteracy, ignorance, conflict and insecurity in the community.

77. Judicial officers should recognise the fact that Uganda is a country with a deeply entrenched patriarchal cultural value system. Patriarchy confers unto men a higher status over women and stems from unequal power relations between men and women, from the level of the family as the basic unit of society to the larger community. Culture and religion within this patriarchal paradigm, play a significant role in defining what men and women may or may not do. They determine what women should own, control, access, and be entitled to. The system of patriarchy, like other systems of dominance, thrives on emphasizing and enforcing various rules and ideologies to maintain the status quo. Such rules include the culture of silence that forbids women from exposing domestic problems in the public sphere. Patriarchy, which is the underlying cause of the gender-discrimination that women face, leaves women significantly disadvantaged, unable to utilize opportunities, and access services including those from the legal system.

78. In criminal law, we have already noted that the principle tests of a reasonable man, ordinary person and reasonable force and the defence of provocation are all deeply rooted in the culture of the accused and the community where the dispute occurred.\(^ {229}\) These require law reform.

\(^{228}\) 2010/11-2014/15: 291.
\(^{229}\) The Judiciary Gender Policy and Strategy, ibid: 19
\(^{229}\) R v. Hussein s/o Muhammed (1952) 20 EACA 1 6 1, Yovan v. Uganda [1970] EA 405
79. The most prevalent cultural practice in Uganda relates to land. Although it is a critical resource in a predominantly rural country, women do not customarily own land. Despite constitutional guarantees of equality of men and women and the outlawing of discriminatory practices, and the fact that judicial practice requires that statutory law must prevail over customary law, customary inheritance and succession practices have continued to pass on properties, most especially land, through the male lineage. The majority of girls and women are denied the opportunity of succeeding their fathers, with land passing only to boy children and male relatives. In some clan systems, women cannot own land and can only access it through their male relatives. There are other clan systems where communal lands can only be distributed by clan leaders. This practice, common in northern and north-eastern Uganda has led to conflicts between individual families and widows holding Letters of Administration.

80. Fortunately, more and more cultural institutions are beginning to embrace gender equality and reject gender-discrimination. In the Acholi region, the Cultural Council Ker Kwaro Acoli (KKA) passed an Ordinance of gender equality principles which recognises the right of the surviving spouse to inherit the estate of the deceased spouse. In addition, widows also have a right to remarry whomever they choose, and are entitled to do so in the matrimonial home they shared with their deceased husband provided it is not on clan land.

81. Gender and power relations start at the household level. Unequal power relations affect access to justice in various ways. The divide between the public and private spheres relegates women to the undervalued domestic arena. Men are usually the “heads of households”, breadwinners and ultimate decision makers; they control productive resources such as land, and they participate in public life. Because women are financially dependent on men, they are often forced to compromise on their rights. In fact, even where women may be financially independent, social and cultural norms dictate that they still be under the authority of their husbands. When the violation of rights is perpetrated by her spouse, the cultural dictate of male supremacy can prohibit even financially-independent women from accessing justice through the formal system.

82. Judicial officers working towards the elimination of sexual and gender-based violence ought to understand the gendered power inequalities and power dynamics that can exist at the household level. Gender-based violence is predominantly a problem of dominance and control deriving from unequal power relations between men and women. The husband has power and control of the household, he is possessed of a higher status, different social powers, privileges, and opportunities in comparison to his wife. He is the undisputed decision-maker by virtue of being the head of the home. In many cases, he uses violence to maintain this status quo and to dictate the quality of life for his spouse(s) and children. Figure 4 below shows the “Power and Control Wheel” to demonstrate how men use violence at the household level.

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230 Ker Kwaro Acoli (KKA): Some of the Acholi Cultural Practices. Acholi Principles on Gender Relations (Published under the UN Joint Programme on Gender Based Violence. Sections 7 and 9.

231 Ibid. Section 7 (d).
Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman’s life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.

83. In order to effectively address the abuse of power and control at the household level, judicial officers should introduce the concept of gender equality within the mediation and arbitration process. The “Wheel of Equality” in figure 5 below can be used by judicial officers to demystify the dynamics of power and control at the household level, and introduce actions that promote nonviolent behaviour.
Figure 5: Equality Wheel

**Equality Wheel**

- **Nonviolence**
  - Non-threatening Behavior: talking and acting so that she feels safe and comfortable expressing herself and doing things.
  - Economic Partnership: making money decisions together. Making sure both partners benefit from financial arrangements.
  - Shared Responsibility: mutually agreeing on a fair distribution of work. Making family decisions together.
  - Responsible Parenting: sharing parental responsibilities. Being a positive, nonviolent role model for the children.
  - Respect: listening to her non-judgmentally. Being emotionally affirming and understanding. Valuing her opinions.
  - Trust and Support: supporting her goals in life. Respecting her right to her own feelings, friends, activities, and opinions.

**Equality**

- **Nonviolence**

(Source: National Center on Domestic and Sexual Violence, USA)
7.6 Strategies to Enhance Women’s Access to Justice

The Ugandan Judiciary has formulated some strategies to enhance women’s access to justice. These include:

7.6.1 Legal Education and Training

Training offered to judicial officers and law enforcement agencies on matters related to gender equality has not been a standard practice. Such training on gender, human rights and the law - key to ensuring a more gender-sensitive administration of justice - is now required of judicial officers following appointments into office. One area that has increasingly received attention is Violence Against Women. Trainings have been conducted for police officers, judicial officers and state prosecutors to raise awareness and understanding about the different dimensions of domestic violence, and the special needs of certain groups of women such as survivors of sexual and gender-based violence. It is essential that gender-sensitivity continues to be a key element of initial vocational as well as on-the-job training.

7.6.2 Chain-linked Initiative

The Chain-linked Advisory Board

The Chain-linked Initiative was established to bring together core JLOS institutions to cooperate, communicate and coordinate on justice delivery, including identifying bottlenecks and devising solutions to improve the administration of justice and maintenance of law and order.

At the national level, JLOS has established the Chain-linked Advisory Board chaired by the Principal Judge and the Registrar of the High Court as secretary. Other Members are:-

I. Commissioner General of Prisons
ii. Inspector General of Police
iii. Director of Public Prosecutions
iv. Senior Resident Judges in charge of court circuits
v. Chairperson National Community Service Programme
vi. Chief Registrar

The board offers policy advice, addresses issues raised by District Chain-linked Committees (DCCs) and mentors and provides direction on addressing impediments to the administration of justice and maintenance of law and order. The board is resourced by the JLOS secretariat.

7.6.3 Regional Coordination Committees (RCC)

Regions under JLOS are equivalent to the High Court Circuits. At the regional level, JLOS has established Regional Coordination Committees (RCC), which are chaired by the Most Senior Resident Judge in the circuit, with the High Court Registrar as Secretary. Each RCC is comprised of the Chairpersons of all DCCs in the circuit, Regional Police Commanders, and all JLOS actors with a regional mandate. RCCs guide the roll out of JLOS programmes in the circuit, act as a technical resource by backstopping and providing direction to DCCs, link DCCs to the national level (and vice versa), and craft regional solutions to ensure attainment of JLOS
7.6.4 District Chain-linked Committee (DCCs)

87. At the district level, JLOS is represented by District Chain-linked Committees (DCCs) responsible for joint planning, supervising, monitoring and evaluating performance against set targets. Each DCC is chaired by the most senior judicial officer in the district, usually the Chief Magistrate or Magistrate Grade 1, and comprises of the following representatives:-

i. All the JLOS institutions present in the district;

ii. Representatives of the legal profession;

iii. Relevant civil society and private sector organizations operating within the four JLOS focal areas of Criminal Justice, Land Justice, Commercial Justice and Family Justice;

iv. District Probation and Social Welfare Officers;

v. Local government representatives;

vi. Civil and local Leaders; and

vii. Nominated members of the public.

7.6.5 Small Claims Procedure (SCP)

88. The Judiciary has embarked on the reform of dispute settlement mechanisms involving civil/commercial disputes by establishing the Small Claims Procedure (SCP). With its basis in the 1995 Constitution, the Judicature Act\textsuperscript{232} and The Judicature (Small Claims Procedure) Rules,\textsuperscript{233} the SCP is meant to be a fast track mechanism in claims whose subject matter does not exceed ten million shillings.\textsuperscript{234} Disputes under SCP are resolved in a speedy manner using simpler, cheaper and less adversarial means. The following describe important aspects of the SCP:-

(a) Jurisdiction of SCP

Small claims are claims whose subject matter value does not exceed UGX 10,000,000. However, the following matters are excluded\textsuperscript{235}:-

i. Family disputes relating to the management of an estate;

ii. A claim against the Government;

iii. A suit for defamation, malicious prosecution, wrongful imprisonment, wrongful arrest or seduction;

iv. A petition for divorce, nullification of marriage or separation of a spouse;

v. A case involving the validity of a will;

vi. A claim in which specific performance is sought without an alternative claim for payment of damages, except in the case of a claim for rendering an account or

\textsuperscript{232} Cap 13.

\textsuperscript{233} Statutory Instrument No.25 of 2011.


\textsuperscript{235} Ibid., by virtue of Rule 5 (2).
transferring movable property, and disputes arising out of tenancy agreement not exceeding ten million Uganda shillings in value; or

vii. Contract of service and contract for service.

(b) Who Can Sue Using SCP

Under Rule 8, only a natural person may institute an action in Court but a body corporate may become a party to an action as a defendant. It follows therefore that when a body corporate is sued, it has a right to counterclaim.236

(c) No Legal Representation under SCP

A person to an action under SCP shall appear in person and shall not be represented by an advocate during the proceedings.237 A body corporate brought as a defendant may appear before the Court by a representative not being an advocate.

(d) ADR under SCP

The SCP has room for Alternative Dispute Resolution (ADR). Under Rule 22, within 14 days before the hearing of the case, a Judicial Officer shall in any appropriate case, refer the parties to mediation, arbitration or other forms of ADR. Where the parties reach an agreement, the judicial officer shall register a consent judgment. Where the parties fail to settle the matter through ADR, the matter will be heard by the judicial officer on the date fixed for hearing.

(e) Benefits of the SCP

i. The procedure is less formal and more user-friendly. It requires no legal representation as technical rules of evidence and procedure are discouraged. A party is expected to walk in with his/her claim and walk away with his/her judgment within a very short time.

ii. The SCP is cheap. This is because it takes a short time, involves no lengthy pleadings and the only Court costs are reimbursed by the losing party to the successful party (i.e. Court fees and cost of service of process).

iii. The SCP is inquisitorial rather than adversarial. It therefore facilitates quick and more meaningful settlement of claims.

iv. It is a useful tool for case backlog reduction.

v. It demystifies the complex court system and legal procedures, and it fosters better access to justice, especially for poor, vulnerable people, including women.

vi. It boosts public confidence in the courts.

7.6.6 Plea Bargaining

89. A plea bargain is a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to a lesser offence or to one of multiple charges in exchange for some concession by the prosecutor, usually a more lenient sentence or a dismissal of some of

236 Ibid., under Rule 13(b) and (c).
237 Ibid., Rule 8(2) and (3).
It is therefore an agreement that the accused will plead guilty to the crime in exchange for which, the prosecution may agree to:

i. Withdraw some of the charges.
ii. Reduce the charge to a lesser offence.
iii. Ask the court for a lighter sentence.

The principal justification for plea bargaining is the notion of judicial economy in that plea bargains avoid the time and expense of a full trial, freeing up the courts to hear other cases. The court system is also saved the burden of conducting a full trial for every crime charged.

The Uganda Judiciary introduced plea bargaining to:-

i. Enhance efficiency of the criminal justice system for the orderly, predictable, uniform, consistent and timely resolution of criminal matters;
ii. Enable the accused and the prosecution in consultation with the victim, to reach an amicable agreement on an appropriate punishment;
iii. Facilitate reduction in case backlog and prison congestion;
iv. Provide relief from the anxiety of criminal prosecution;
v. Encourage the accused person to own up to his or her criminal responsibility; and
vi. Involve the victim in the adjudication process.

The programme is spearheaded by the Judiciary, Uganda prisons, Director of Public Prosecution (DPP) and the Uganda Law Society (ULS).

Sentencing Guidelines

90. The Sentencing Council for England and Wales describes Sentencing Guidelines as follows:-

Criminal offences are broadly defined and can have different levels of seriousness. Sentencing guidelines provide guidance on factors the court should take into account that may affect the sentence given. They help ensure that courts are consistent in their approach to sentencing. They set out different levels of sentence based on the harm caused to the victim and how blameworthy the offender is. Offences happen in many different ways with many different results. For example, assault offences can range from an argument where someone pushes someone else causing no injury, up to a carefully-planned gang attack that causes life-changing injuries. It is therefore necessary to have a range of sentences that appropriately reflect the seriousness of each individual offence.

(http://www.sentencingcouncil.org.uk/about-sentencing/about-guidelines/)

The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions (2013) were established in exercise of the powers conferred upon the Chief Justice by Article 133(1)(b) of the 1995 Constitution of the Republic of Uganda.

240 Ibid.
241 Article 133 (1)(b) provides that the Chief Justice “may issue orders and directions to the courts necessary for the proper and efficient administration of justice”.

The Gender Bench Book 2016
The stated objectives of the Uganda Judiciary’s Sentencing Guidelines are to:-

1. Set out the purpose for which offenders may be sentenced or dealt with;
2. Provide principles and guidelines to be applied by courts in sentencing;
3. Provide sentence ranges and other means of dealing with offenders;
4. Provide a mechanism for considering the interests of victims of crime and the community when sentencing; and
5. Provide a mechanism that will promote uniformity, consistency and transparency in sentencing.

Furthermore, the Sentencing Guidelines provide that:-

“The purpose of sentencing is to promote respect for the law in order to maintain a just, peaceful and safe society and to promote initiatives to prevent crime.”

In light of the above objectives and purposes, the Sentencing Guidelines direct judges to pass sentences aimed at:-

i. denouncing unlawful conduct;
ii. deterring a person from committing an offence;
iii. separating an offender from society where necessary;
iv. assisting in rehabilitating and reintegrating an offender into society;
v. providing reparation for harm done to a victim or to the community; or
vi. promoting a sense of responsibility by the offender, acknowledging the harm done to the victim and the community.

90. The Sentencing Guidelines offer guidance in the context of special sentences and non-custodial sentencing options. Section 9 sets forth the considerations for the court before imposing a custodial sentence. Section 18 outlines the “rarest of the rare” cases where a court may pass a sentence of death. In *Mugabe Stephen v. Uganda*, the appellant was arraigned before Justice Batema of the High Court sitting at Fort Portal and pleaded guilty to the indictment of murder. He was convicted accordingly and sentenced to death. He appealed against the sentence on the ground “that the sentence of death given by the trial Judge was manifestly excessive, harsh and unfair in the circumstances.” The court of Appeal dismissed the appeal and agreed with the trial judge that this was a ‘rarest of the rare’ case deserving a death sentence. The killing was cold-blooded and senseless, because the body was dismembered and some organs removed in a brutal manner. The appellant was not a first offender, which contrary to the submissions of his Counsel, are aggravating factors rather than mitigating factors.

91. Part XI of the sentencing guidelines concerns community service. Although this is meant for those convicted of minor offences, the High Court has extended it to all cases where they have deemed it fit to give a sentence of not more than two years. In *Uganda v Apio Agnes*, the

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244 Criminal Appeal No. 0412 of (Arising from High Court Case No. 139 of 2011 at Fort Portal).
245 High Court Criminal Session Case No. 0123 of 2014 at Lira.
convict was indicted for the murder of her husband. She was convicted on her own plea of guilty and sentenced by Hon. Justice Dr. Winfred Nabisinde to community service of 240 hours. The facts revealed that she had started cohabiting with the deceased when she was barely 15 years old. The deceased infected her with HIV/AIDS, and they had three children, two of whom tested HIV-positive. The deceased had an affair with her younger sister who had come to help them nurse the sick children. On learning of this affair, Apio got angry, picked up a club, hit her husband on the head and he died instantly. At sentencing, court took cognizance of the circumstances under which the offence was committed, and noted most specifically, the pain of a woman who had been suffering from HIV/AIDS since a very early age, with two children to care for who were suffering from the same disease, and then finding out that the man who should have shared this burden was having a sexual relationship with her own sister who would now then most likely also be infected by HIV/AIDS. Importantly, Court stated that women, such as the defendant, needed more support than punishment, and that the mitigating factors outweighed the aggravating factors in this case. Court condemned the acts of sexual relations with young girls, and especially with relatives of one’s spouse. Court reasoned therefore that the convict, a 24-year-old mother of three children, two of whom were sickly, deserved mercy and support instead of imprisonment.

92. Uganda’s Sentencing Guidelines also include provisions calling for the generation of third party impact statements. Section 14(2) gives sentencing court the power to require the prosecution to produce victim impact statements and community impact statements. Section 4 defines a community impact statement as “a written or oral account of the general harm suffered by members of a community as a result of the offence”, and defines a victim impact statement as “a written or oral account of the personal harm suffered by a victim of crime”. Section 55(3) (a) requires the prosecutor to present to the court all relevant information relating to the impact on the victim, victim’s family members and the community. Form A of the First Schedule to the Guidelines provides a model form for the victim impact statement and Form B provides the model form for the community impact statement.

93. Community Service: The Community Service Act came into force in 2000 to provide for matters related to community service and to regulate such for offenders in certain cases. The promulgation of the Community Service Regulations then paved the way for the operationalization of the Act and for certain gazetted courts in Uganda to award community service orders.

94. Under the Act, community service is defined as a non-custodial punishment by which after conviction, the court, with the consent of the offender, makes an order for the offender to serve the community rather than be incarcerated. Bergman and Berman (2015) justify the concept behind community service:

> Judges can sentence defendants to perform unpaid community work called ‘community service’ to repay a debt to society for having committed the offence. In some cases, the ‘victim’ is society, and by performing community service the offender is paying back to the community, which he wronged.

246 Long Title to the Community Service Act.
248 Section 2(a) of the Act.
Community service can be given in cases where the offender has committed a minor offence, which is an offence for which a court may pass a sentence of not more than two years imprisonment. Guidelines, set out in part A of the Second Schedule to the Community Service Regulations, guide courts and judicial officers in the performance of their functions regarding the making and operation of orders. Community service may be given as a punishment in respect to other offences as long as the court decides to impose a sentence of not more than two years. It therefore follows that any offender charged with committing any offence may qualify to serve a community service order depending on the sentence the court has passed against him/her.

A community service order requires the offender to perform work within the community for a specified period of time. Before a sentence is passed, the court considers the circumstances, character and antecedents of the offender and asks whether they consent to the order. For example, in *Uganda v. Yang*, Court held that before sentencing, the judge must consider the antecedents of the accused, whether the accused is a first offender, the pre-sentence report by the probation officer, and the general prevalence of the crime in the community. Court further observed that the effect of the punishment on the accused should be taken into consideration before sentencing. In the guidelines for the court to follow when giving the order, it is provided that before an accused person is sentenced, the court should carefully explain what the scheme entails and what the alternative might be in case of breach. The accused must consent to the order and in the absence of consent; the order should not be given.

Before a person is sentenced to the scheme, a pre-sentencing report has to be presented to the court by the probation officer or community development officer. In *Uganda v. Yang*, a pre-sentencing report was defined as a report provided by the probation officer that explains the antecedents of the offender and his characteristics, to help the court determine the type of punishment the accused should be given. The challenge with the above provision is that the probation officer may lack the means to come up with the necessary information to guide the court at the time of sentencing. This could be due to poor record keeping about criminals, and in most cases, difficulty of gathering such records in the absence of proper systems and facilities.

It is important to note that community service is intended to help the offender keep their job and maintain their regular family life. This notion arose from the fact that imprisonment and other forms of punishment had been seen as punishing both the offender and his family. It was deemed worse especially for female offenders who typically shouldered full responsibility for care giving, and thus were left with broken families and children forced into unknown predicaments (Kasiko, 1998). Related to this is the importance of placing the accused in a

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249 Section 3(1) of the Act.
250 Section 2 (g) of the Act.
252 Case of Uganda v Apio Agnes, Supra.
253 Part E, 2nd Schedule of the Regulations: The offences listed for which the order may be given include those offences whose sentence range from imprisonment of 3 months to 5 years. The regulations tend to limit the sentence to those offences though the Act tends to give the sentencing authority the discretion to sentence any offender charged with any offence to community service.
254 Section 2b of the Act.
256 Rule 18, of the Regulations.
257 Section 3(2) of the Act.
258 Part A, 2nd Schedule of the Regulations.
location which is easy for him/her to get to so as to make it easy to carry out the community work as ordered and still meet family obligations.

98. Under the Second Schedule of the Community Service Regulations, Part A Rule 13 provides the grid of hours for Community Service. A convict is expected to perform not more than 8 hours work per day for 5 days in a week totaling 40 hours of work per week. In prison 8 hours is equivalent to one third of 24 hours. Table 4 below can be used to provide for sentences in default of community service:-

**Table 4: Sentencing in Default of Community Service**

<table>
<thead>
<tr>
<th></th>
<th>Number of Hours</th>
<th>Duration of community service order</th>
<th>Imprisonment in default</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>40</td>
<td>7 days</td>
<td>1 month</td>
</tr>
<tr>
<td>B</td>
<td>80</td>
<td>14 days</td>
<td>2 month</td>
</tr>
<tr>
<td>C</td>
<td>160</td>
<td>1 month</td>
<td>4 month</td>
</tr>
<tr>
<td>D</td>
<td>320</td>
<td>2 months</td>
<td>8 months</td>
</tr>
<tr>
<td>E</td>
<td>480</td>
<td>3 months</td>
<td>12 months</td>
</tr>
<tr>
<td>F</td>
<td>640</td>
<td>4 months</td>
<td>16 months</td>
</tr>
<tr>
<td>G</td>
<td>800</td>
<td>5 months</td>
<td>20 months</td>
</tr>
<tr>
<td>H</td>
<td>960</td>
<td>6 months</td>
<td>24 months</td>
</tr>
</tbody>
</table>

*Source: Community Service Act, 2000.*

**Judicial officers are not bound to make an order strictly in line with the grid.** A reduction from the grid should be reflected in less imprisonment being ordered, and reasons for orders should be given. In addition, a magistrate who declines to grant a community service order must explain to the offender why.
Cases Referred to in Chapter Seven

3. *Davis Wesley Tusingwire v. Attorney General* Constitutional Petition No. 02 of 2013
4. *Gagula Benefansio v. Wakidalu Merabu* HCT Civil Appeal No. 29 of 2006 (Jinja)
9. *Uganda v Apio Agnes* High Court Criminal Session Case No. 0123 of 2014 at Lira
10. *Uganda v. Apai Stephen* Criminal Session Case No. 23/94 at Tororo
CHAPTER 8:

BEST PRACTICES FROM OTHER JURISDICTIONS
1. The judiciary in many jurisdictions within and outside Africa is playing an important role in enhancing women’s access to justice through strategic and impactful judgments. Importantly, courts have, for example, laid down directives and guidelines despite the absence of gender-sensitive laws.

8.1 Examples from Outside Uganda

2. In Dhungana v. Nepal\(^{260}\), a law in Nepal gave preference to males regarding ancestral property inheritance. The Forum for Women, Law and Development asked the Supreme Court of Nepal to overturn this law, citing CEDAW, which had the status of national law in Nepal. Instead of striking down this law directly, the Court directed the government to pass legislation within one year in consultation with women’s groups, sociologists and other concerned actors after studying legal provisions in other countries.

3. In the Indian case of Vishaka and Others v. State of Rajasthan\(^{261}\), the Supreme Court, in addition to declaring sexual harassment unlawful under the constitution and international conventions, provided guidelines for observance at all workplaces and other institutions which would remain applicable until sexual harassment legislation was adopted by parliament. The case involved a woman who had been raped by five men in front of her husband. Although she sought justice, she encountered numerous obstacles - the police inadequately responded to her complaint, and government doctors refused to properly conduct a medical examination. The Court, in observing that there was no established procedure and guidelines for combating sexual harassment in the workplace, used CEDAW in enacting guidelines for Parliament to follow to create legislation to better protect women in the workplace. The Court said:-

Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof.

This is an example of bold judicial activism directing Parliament on the ideal content of the bill.

4. In another Indian case of Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others\(^{262}\), the High Court provided directions to improve government schemes on elimination of maternal and infant mortality.

5. There are two important cases on the rights of pregnant students expelled from school. In the Botswana case of Student Representative Council of Molepolole College of Education v. Attorney General\(^{263}\), it was held that the college regulation that provides for the expulsion of female students who became pregnant while enrolled at the college was unconstitutional. A similar decision was reached in South Africa in the case of Mfolo and Others v. Minister of Education, Bophuthatswana\(^{264}\).

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\(^{262}\) W.P. (C) Nos. 8853 of 2008, ESCR.

\(^{263}\) [1995] (3) LRC 447.

\(^{264}\) [1992] (3) LRC 181.
6. In *Attorney General of Botswana v. Unity Dow*, the petitioner claimed that the provision of the Citizenship Act (1984) that conferred citizenship to a child born in Botswana only if “his father was a citizen of Botswana” or in the case of a person born out-of-wedlock, “his mother was a citizen of Botswana” violated guarantees of gender equality in the Botswana Constitution. Women married to foreigners were unable to transmit nationality to their children. The Botswana High Court and the Court of Appeal interpreted the country’s Constitution as prohibiting discrimination based on sex, even if it was not explicitly identified as one of the grounds of discrimination. The court held that the provision infringed the right not to be discriminated against on the basis of sex.

7. In *Sara H. Longwe v. Intercontinental Hotels*, the Zambian High Court was satisfied that the petitioner was discriminated against on the basis of sex when she tried to enter the Luangwa Bar. The hotel required all women to be accompanied by another human being but who must be a male, in order to be allowed by the hotel to patronize the Bar. The same rule did not apply to males. That the reason for the discrimination was because she was a female who did not have a male company at the material time. That discrimination was based on gender, being a female and nothing else; Court held that as a very naked discrimination against the female on the basis of their gender or sex, by the respondent hotel. Government was faulted for not enforcing non discrimination as a term in the commercial license it issued to the hotel.

8. In this regards, Article 10(b) of the 1995 Constitution of the Republic of Uganda confers citizenship to every person born in or outside Uganda, one of whose parents or grandparents was at the time of birth of that person a citizen of Uganda by birth. Article 12(2) enables every person married to a Ugandan citizen to acquire citizenship by registration upon application on the following conditions:

   a) Proof of a legal and subsisting marriage of three years or such other period prescribed by Parliament;
   b) Proof that he or she has legally and voluntarily migrated to and has been living in Uganda for at least ten years or such other period prescribed by Parliament;
   c) Proof that he or she has lived in Uganda for at least twenty years.

However, in practice, universities and other institutions of higher learning have often refused to accord students whose fathers are of foreign origin the same rights given to Ugandan students, without bothering to find out in the first place whether they are citizens or not.

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266 [1993]4 LRC 221
9. Table 3 below provides more examples of best practices from various jurisdictions.

**Table 3: Best Practices from other Jurisdictions that Enhance Women’s Access to Justice**

<table>
<thead>
<tr>
<th>Jurisdiction/Actor</th>
<th>Institutional Mechanisms</th>
<th>Institutional Reform measures</th>
<th>Legal Reforms</th>
<th>Advocacy/Research and Training Programmes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Canada</strong></td>
<td>Established the “Diversity, Equality and Access to Justice” Division within the Department of Justice: to improve the justice system’s response to the needs and concerns of women and a fair system of justice that promotes respect of rights and freedoms.</td>
<td>Under the Gender Equality Initiative introduced the Gender Equality analysis which: - ensures that every justice issue is analyzed for its impact on gender equality; - helps identify the adverse impact of “neutral” laws on women; - shapes laws and policies which recognize women’s social realities and thus respond to their needs.</td>
<td>Use of substantive approach to equality and contextualised legal reasoning in Canadian Courts.</td>
<td>Federal plan for Gender Equality which includes a commitment to ensure that future legislation and policies include an analysis of their potential for unequal impacts on women and men and adoption of strategies that advance gender equality.</td>
</tr>
<tr>
<td><strong>Australia</strong></td>
<td>National Women’s Justice Program to ensure equality before the law and improve women’s access to the legal system.</td>
<td>More government funding for legal aid to assist women. - More funding for community legal education programmes/ legal advice services. - Establishment of community-based legal centres/training of paralegals. - Establishment of court support schemes. - Introduction of more user-friendly and gender-sensitive court facilities and procedures. - Production of guidelines and standing orders to judicial officers on the handling of gender-based crimes.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>South Africa</strong></td>
<td>Department of Justice developed a Gender Policy that aims at eradicating all obstacles to women’s access to justice.</td>
<td>Launched a National Gender Forum whose main functions are to:- - facilitate the coordination and mainstreaming of gender issues into planning and policies; - implementation of policy in the department’s activities.</td>
<td>Prevention of Family Violence Act No:133 (1993) which provides for:- - the granting of an interdict with regard to family violence - an obligation by certain persons to report cases of ill treatment of children; - conviction of a husband for rape.</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Actions</td>
<td>Domestic Violence Act which provides for:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------------------------------------------------------------</td>
<td>------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Namibia</td>
<td>- a wide definition of domestic violence covering all levels of relationships at the household level; - both criminal and civil remedies to suit particular circumstances; - police powers of search and seizure; - protection orders.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>The University of Zimbabwe in conjunction with the University of Oslo runs Diploma, M.Phil and Ph.D programmes on ‘Women's Law’ targeting people within the legal fraternity.</td>
<td>The Musasa Project has raised awareness about Violence Against Women in the legal system by targeting the police and raising their consciousness of domestic violence and negative attitudes through a series of workshops on the plight of battered women.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td>The women’s access to justice project set up to examine the response of the legal system to the experiences of women in New Zealand.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **World Bank** | | The Bank has supported various research initiatives and conferences on gender and the law. Specific ones include:-
| | | ♦ World Bank working papers on gender and the law;
| | | ♦ research on legal constraints to women’s economic empowerment in Uganda;
| | | ♦ research and conferences on gender and the law in both Eastern Africa and Francophone Sub-Saharan Africa.
| | | The Bank has also provided support to organizations that work to improve access to justice for the poor.
| **Women & Law in Southern Africa Research Trust (WLSA)** | | WLSA has implemented various research projects on women and the law and have highlighted and documented gender gaps and constraints in access to justice in several Southern African countries.
| | | In 1999, the institute issued competitive grants to conduct research on Gender and Economic Reforms in Africa.
| **The North-South Institute (Toronto)** | | Court drafts proposed legal guidelines and procedure.

### 8.2 Bangalore Principles on the Application of International Human Rights Norms

9. Between 24th and 26th February 1988 a high-level Judicial Colloquium on the Domestic Application of International Human Rights Norms was convened in Bangalore, India. The Colloquium was convened by the **Hon. Justice P. N. Bhagwati** (former Chief Justice of India)
and organised by the Commonwealth Secretariat. It was at this colloquium that the **Bangalore Principles on Human Rights** were adopted.

10. The Bangalore Principles reflect the universality of human rights - inherent in men and women - and the vital duties of an independent judiciary in advancing human rights by interpreting and applying national constitutions and laws in the light of these principles. These international principles are applicable in all countries, although the means by which they become applicable may differ.

11. There was a comprehensive exchange of views and full discussion of expert papers presented. The Convener summarized the discussions in the following paragraphs:

i. Fundamental human rights and freedoms are inherent in all humankind and find expression in constitutions and legal systems throughout the world and in the international human rights instruments.

ii. These international human rights instruments provide important guidance in cases concerning fundamental human rights and freedoms.

iii. There is an impressive body of jurisprudence, both international and national, concerning the interpretation of particular human rights and freedoms and their application. This body of jurisprudence is of practical relevance and value to judges and lawyers generally.

iv. In most countries whose legal systems are based upon the common law, international conventions are not directly enforceable in national courts unless their provisions have been incorporated by legislation into domestic law. However, there is a growing tendency for national courts to have regard to these international norms for the purpose of deciding cases where the domestic law – whether constitutional, statute or common law – is uncertain or incomplete.

v. This tendency is entirely welcome because it respects the universality of fundamental human rights and freedoms and the vital role of an independent judiciary in reconciling the competing claims of individuals and groups of persons with the general interests of the community.

vi. While it is desirable for the norms contained in the international human rights instruments to be still more widely recognized and applied by national courts, this process must take fully into account local laws, traditions, circumstances and needs.

vii. It is within the proper nature of the judicial process and well-established judicial functions for national courts to have regard to international obligations which a country undertakes – whether or not they have been incorporated into domestic law – for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law.

viii. However, where national law is clear and inconsistent with the international obligations of the State concerned, in common law countries the national court is obliged to give effect to national law. In such cases the court should draw such inconsistency to the attention of the appropriate authorities since the supremacy of national law in no way mitigates a breach of an international legal obligation, which is undertaken, by a country.
ix. It is essential to redress a situation where, by reason of traditional legal training, which has tended to ignore the international dimension, judges and practicing lawyers are often unaware of the remarkable and comprehensive developments of statements of international human rights norms. For the practical implementation of these views it is desirable to make provision for appropriate courses in universities and colleges, and for lawyers and law enforcement officials; provision in libraries of relevant materials; promotion of expert advisory bodies knowledgeable about developments in this field; better dissemination of information to judges, lawyers and law enforcement officials; and meetings for exchanges of relevant information and experience.

x. These views are expressed in recognition of the fact that judges and lawyers have a special contribution to make in the administration of justice in fostering universal respect for fundamental human rights and freedoms.

8.2.1 Victoria Falls Proclamation on the Human Rights of Women

12. Between 19th and 20th August 1994, at the African Regional Judicial Colloquium for Senior Judges on the domestic application of international laws on Gender Issues in Victoria Falls, Zimbabwe, participants re-affirmed the principles stated in Bangalore, amplified in Harare, affirmed in Banjul, confirmed in Abuja, re-affirmed at Balliol, Oxford and re-enforced at Bloemfontein. The meeting issued the Victoria Falls Proclamation on the Human Rights of Women, where participants noted that all too often universal human rights are wrongly perceived as confined to civil and political rights and not extending to economic and social rights, which may be of more importance to women. They stressed that civil and political rights, and economic and social rights, are integral and complementary parts of one coherent system of global human rights. Importantly, participants also emphasised, as did the 1993 United Nations World Conference on Human Rights, that the human rights of women are as valuable as the human rights of men.

8.2.2 Key Issues and Agreements at the 1994 Judicial Colloquium

13. Participants noted that universal human rights are usually interpreted as applying to regulate the public sphere. Violations of human rights in the private sphere, including the family - the site of much of women’s experience of violations - are usually perceived to be outside the reach of universal human rights. Participants also noted that, although the state does not usually directly violate women’s rights in the private sphere, it often supports or condones an exploitative family structure through various laws and rules of behaviour, which legitimize the authority of male family members over the lives of female members. In addition, the state, in any event, often fails to act to protect women from private violations or tolerates or, indeed, encourages a structure wherein private violations occur all too frequently.

14. Participants noted that although international human rights are inherent in all humankind, very often, such rights are perceived to be owned, only or largely, by men. They acknowledged that many of the existing international and regional human rights standards were formulated within a

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primarily male perspective with insufficient gender-sensitivity, and sometimes failed to provide protection for the gender-specific needs of women. Thus, there was an urgent need for the formulation of further specific rights for women, particularly in the economic and social field. Participants stressed the vital need for women to be centrally involved in decision-making at all levels.

15. In recognizing that discrimination against women can be direct or indirect, participants noted that indirect discrimination requires particular scrutiny by the judiciary. The need therefore was to ensure not only formal, but also substantive equality for women and, for that purpose; affirmative action may be adopted if necessary.

16. Participants recognised that international human rights instruments, both generally and particularly with reference to women and their developing jurisprudence enshrine values and principles long recognised as essential to the happiness of humankind. These international instruments have inspired many of the constitutional guarantees of fundamental rights and freedoms within and beyond the countries of the Commonwealth. These constitutional guarantees should be interpreted with the generosity appropriate to charters of freedom; in particular, the known discrimination guarantee should be construed purposively and with a special measure of generosity.

17. Participants agreed that it is essential to promote a culture of respect for internationally and regionally-stated human rights norms and particularly those affecting women. Such norms should be applied in the domestic courts of all nations and given full effect. They ought not to be considered as alien to domestic law in national courts. In this regard, there is a particular need to ensure that judges, lawyers, litigants and others are made aware of applicable human rights norms as stated in international and regional instruments and national constitutions and laws. It is crucially important for them to be aware of the provisions of those instruments which particularly pertain to women. New initiatives to boost implementation were recommended including: gender-sensitivity in legal education; provision of material for libraries; programmes of continuing judicial discussion and professional training for lawyers and other interest groups in the protection of women’s human rights; and better dissemination of information about developments in this field to judges and lawyers. Moreover, the meeting agreed that judges and lawyers had a duty to familiarize themselves with the growing international jurisprudence of human rights, and particularly with the expanding material on the protection and promotion of the human rights of women. Closer links and co-operation across national frontiers by the judiciary on the interpretation and application of human rights law should be encouraged.

18. There was a need to translate the international human rights instruments and the African Charter on Human and Peoples’ Rights into local languages, in a form accessible to the public. Participants were of the view that governments should mount extensive awareness campaigns through diverse means to disseminate and impart human rights education and encourage and support efforts by non-governmental organisations in this context. The important contribution of non-governmental organizations was acknowledged, especially in the dissemination of information about women’s human rights and making women aware of those rights. Governments were called on to support the work of such organizations, and to enable them to provide amicus curie briefs and other legal advice, assistance and representation to women in cases involving human rights issues. Participants stressed the need to provide free legal aid and advice to women at
state cost for enforcement of their human rights. Further, public interest litigation and other means of access to justice to litigants, especially women, who wish to complain of violations of their rights, should be developed. Non-governmental organizations involved in women’s issues should also be permitted to bring violations of human rights of women before the courts for redress.

8.2.3 Bangalore Principles on Judicial Conduct (2002)

19. Closely linked to the Bangalore Principles on Human Rights are the Bangalore Principles on Judicial Conduct (2002). These came out of a meeting of the Judicial Integrity Group in Bangalore in February 2001. They summarize the conduct expected of a judicial officer (as has been discussed in this Gender Bench Book) in order to guarantee women’s access to justice. The Principles represent the bedrock of the integrity of the judiciary as a guarantor of social justice and the rule of law.

20. The Bangalore Principles of Judicial Conduct were endorsed by the UN Commission on Human Rights in 2003. They are viewed as vital to access to justice because they emphasize several principles under the following six core values of judicial conduct:

i. Judicial Independence;

ii. Impartiality;

iii. Integrity;

iv. Propriety;

v. Equality; and

vi. Competence and Diligence.

These six values have been adopted by the Judiciary in the Uganda Code of Judicial Conduct.

268 Available at: http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf
Cases Referred to in Chapter Eight

In order to effectively enhance women’s access to justice, there is a need to combine the efforts of all stakeholders, including the Government, judiciary, civil society organizations and development partners. Below are recommendations for different stakeholders on key issues that need to be addressed to make progress in this area.

9.1 Government

1. Ensure specialized gender and human rights training of judicial officers and attorneys, as well as comprehensive adoption of sentencing guidelines, plea bargaining, small claims procedures and other new innovative mechanisms by the judiciary aimed at enhancing women’s access to justice.

2. All relevant decisions of the Supreme Court, Constitutional Court, Court of Appeal and the High Court directing Parliament to amend or repeal particular gender-insensitive laws should be circulated to the Hon. Members of Parliament for their information and action. Structural interdict/injunction should be utilized by courts to ensure that their orders are implemented.

3. Bills that have been shelved for consideration that need to be passed urgently in order to enhance women’s access to justice include:—
   i. The Marriage and Divorce Bill;  
   ii. The Sexual Offences (miscellaneous amendments) Bill;  
   iii. The Succession Amendment Bill; and  

4. Invest in infrastructure development to develop and improve on user-friendly facilities such as Family Courts, Family and Sexual Violence Desks and Units to improve women’s access to justice, particularly at the community level.

5. Establish a special fund for legal aid. It is noted that the Government of Uganda has been responsible for accrediting, monitoring and inspecting legal service providers, yet legal aid continues to depend almost entirely on funding from donor programmes.269

6. Raise awareness about new or amended gender-sensitive laws, and how the judicial system can deliver justice for women. The Government should fund and run specialized training courses for all actors in JLOS institutions, including training of local authorities on their new duties under the law. In addition, the Government should increase public awareness campaigns on the specifics of gender-sensitive laws and judicial processes, and how these can be of benefit to women.

7. Invest in IT resources for the judiciary to facilitate timely online law reports and access to all legislation, policies and best practices from around the globe. Such access can be achieved at minimal cost.

8. Ensure increased enforcement of the Female Genital Mutilation Act (2010) through prosecution and cross-border intergovernmental cooperation.

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9. Adopt special measures to overcome judiciary institutional obstacles including trial processes, staffing, rules of civil and criminal procedure, execution of court orders, sentencing, and effective court inspections.

10. Promote legal empowerment approaches. Women seem to be less present in legal procedures and processes than men for reasons that are not well-accounted for. The collection of gender-differentiated statistics are critical in this regard to ascertain the different dynamics involved so as to better respond to women seeking justice.

11. Establish hybrid institutions that share elements of both state and non-state systems, which are formally recognised by the state and integrated in the formal judicial system. This is an example of an institutional response to legal pluralism which may enhance access to justice for women. Examples of such hybrid institutions are local courts. These dispute resolution mechanisms may present an opportunity for innovative solutions for steering multiple legal orders.

12. Incorporate international human rights law in national laws, such as the principles enunciated in CEDAW, in order to make human rights treaties self-executing within the Constitution.

13. Take concrete measures to raise the awareness of all citizens, particularly women, on the rights of women. This would help tackle one of the biggest obstacles to women’s access to justice - the lack of knowledge about their constitutional rights, and potential remedies available to them through formal as well as customary and religious laws.

14. Introduce compulsory studies on gender and human rights in school curricula at all levels (from primary through university). Integrating these issues into the formal education system will go a long way towards transforming societal attitudes about women and helping to break down gender stereotypes.

15. Establish measures to squarely address the structural problems pertaining to the “feminization of poverty” which have a negative bearing on women’s access to justice.

16. Strengthen investigation capacity by enacting enabling laws and policies to concretize evidence collection, that is, the DNA Act, and update Standard Operating Procedures for JLOS to include the issue of Violence Against Women and girls (VAWG).

9.2 The Judiciary and Judicial Officers

17. Craft effective and impactful remedies based on gender equality principles. It is not enough for court to make mere declarations on the existing laws under Article 137 and 274 of the Constitution without providing specific redress, where appropriate.

18. Since courts are empowered to modify the existing law, they should draw guidelines for other arms of government for effective implementation of women’s rights in Uganda.

19. Examine procedural laws with a view to speeding up trials by: simplifying the rules of procedure, eliminating unnecessary steps, and making the court play a more active role through proper case management. This will help ensure that the case moves from one step to the next in good time, from filing to judgment.

Both the German and the Slovenian Constitutions provide explicit provision that international law supersedes federal and local laws. See UNIFEM (2007). Engendering Constitutions: Gender Equality Provisions in Selected Constitutions.
20. Establish witness rooms with ICT facilities in all courts of Uganda to enable witnesses to testify in privacy.

21. Ensure substantive equality by paying attention to power differences and hierarchal relations within households, communities and wider society, and how these may affect access to justice. For example, judicial officers should recognise and value unremunerated domestic work as work contributing to household income when distributing family property.

22. The Chief Justice or Principle Judge should issue a Practice Direction to guide Judicial Officers on property-sharing at the dissolution of marriage.

23. Courts should grant appropriate orders that enable women and girls to access safe abortions at least in cases of rape, incest and where the continued pregnancy endangers the mental and physical health of the mother or the fetus, in accordance with the law.

24. Adopt a multi-disciplinary approach to enhancing women’s access to justice. Investigate the potential of partnerships with non-legal service providers, in particular those working in the areas of women’s economic empowerment and income generation, protection from violence, and food security. Best practices include legal aid providers teaming up with non-legal service providers, such as combining domestic violence and counseling services with women’s shelters and family planning services; or bundling legal aid delivery with existing services frequently accessed by women, such as midwifery services or micro-credit schemes.

25. For women’s access to justice to be realistic, all agencies responsible for the administration of justice should receive training on gender sensitivity and how to be responsive to the specific needs of women. The implementation of the Bangalore Principles on Judicial Conduct could also be especially useful in this regard.

26. Urgently establish legal projects to examine the response of the judicial system to; the experiences of women in accessing justice; gender and economic reforms; legal constraints to women’s economic empowerment, and promoting gender equality in the system of law and justice.

27. Better assist court users by placing user guidelines and directions, not only in English but also local languages, in conspicuous places within the premises of justice delivery agencies, and ensure that office attendants approach all persons to ensure they are receiving service and know what to do and expect within the judicial process.

9.3 Development Partners

28. Invest more resources to identify and design effective, context-specific strategies to promote gender equality and access to justice for women.

29. Engage with informal justice systems, customary clan cultural systems (e.g. the Acholi traditional approach of Mato Oput) and religious courts, despite the challenges of programme design. Informal justice systems should not be pitted against formal justice systems.

30. Engage with civil society, and support local ownership to ensure the legitimacy and sustainability of measures targeting women’s access to justice.

31. Support the establishment of an accessible and cheap judicial review mechanism to monitor and implement the constitutional provisions on gender equality and access to justice.
32. Assist government ministries, departments and agencies by providing funding for activities aimed at improving women’s access to justice. For example, investment in infrastructure could help ensure that justice delivery agencies are distributed across all districts in Uganda, and thus made more accessible to marginalized and vulnerable people, including women.

33. Fund the production and reproduction of valuable resources in the form of videos for training purposes and materials used to raise awareness of women’s legal rights. A few examples include:


(b) **Neria:** A Media for Development Trust Production, 1991. Produced by Louise and John Riber, Harare.

(c) **Silent culture:** A Southern & Eastern African Regional Center for Women’s law Production, 2003. Produced by His Worship Mr. Batema N.D.A, Harare.

(d) **Sisters in law:** A Women Make Movies Production, 2005. Produced by Florence Ayisi and Kim Longinotto New York.

(e) **Soul City:** A South African Broadcasting cooperation Production, 1999 Series 4, Johannesburg.

(f) **The Convict:** A Link Africa Pictures Production, 2002. Produced by His Worship Mr. Batema N.D.A, Kampala.

(g) **What is Love?** A Motion Pictures Production, 1993. Produced by Brian Gibson. Los Angeles.
Annex 1 Map of Uganda showing the Physical Accessiblity of Courts
Annex 2 Table showing Statistics on the Literacy Levels of Women in Uganda
Annex 3 Table showing Statistics of Judicial Officers in Uganda by Gender
Annex 3A: Summary Breakdown of judicial officers as of September 2016
Annex 4 Amended Police Form 3A
Annex 5 Selected International Human Rights Instruments
Annex 5A Universal Declaration of Human Rights (UDHR)
Annex 5B International Covenant on Civil and Political Rights (ICCPR)
Annex 5C International Covenant on Economic, Social and Cultural Rights (ICESCR)
Annex 5D Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
Annex 5E Declaration on the Elimination of Violence Against Women (DEVAW)
Annex 5F United Nations Security Resolution 1325
Annex 5H Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children
Annex 5I CEDAW General Recommendation No. 19 on Violence Against Women
Annex 5J CEDAW General Recommendation No. 21 on Equality in Marriage
Annex 5K General recommendation No. 33 on women’s access to justice
Annex 6 Selected Regional Human Rights Instruments
Annex 6A African Charter on Human and Peoples’ Rights (the Banjul Charter)
Annex 6B The Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region
Annex 6C The Solemn Declaration on Gender Equality in Africa
Annex 7 Selected National Gender-Sensitive Legislations
Annex 7A Prohibition of Female Genital Mutilation Act, 2010
Annex 7B Prohibition of Female Genital Mutilation Regulations, 2013.
Annex 7C The Domestic Violence Act, 2010
Annex 7D The Domestic Violence Regulations, 2011
Annex 7E The Prevention of Trafficking in Persons Act, 2009
Annex 7F Statutory Instruments, 2009
Annex 1: MAP OF UGANDA SHOWING THE PHYSICAL LOCATION OF COURTS

Source: Hon. Justice Batema N.D.A.’s compilation
### Annex 2: Statistics on Literacy Levels of Women in Uganda

<table>
<thead>
<tr>
<th>Background characteristic</th>
<th>Secondary school or higher</th>
<th>Can read a whole sentence</th>
<th>Can read part of a sentence</th>
<th>Cannot read at all</th>
<th>No card with required language</th>
<th>Blind/visually impaired</th>
<th>Total</th>
<th>Percentage literacy</th>
<th>Number of women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td>35.9</td>
<td>24.2</td>
<td>15.2</td>
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<td>11.5</td>
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<td>100.0</td>
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<td>41.8</td>
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<td>100.0</td>
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<td>Rural</td>
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<td>0.1</td>
<td>100.0</td>
<td>58.8</td>
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<tr>
<td>Region</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>10.5</td>
<td>7.8</td>
<td>1.5</td>
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<td>Central 1</td>
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<td>16.2</td>
<td>20.0</td>
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<td>0.2</td>
<td>100.0</td>
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<td>100.0</td>
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<td>18.4</td>
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<td>0.2</td>
<td>100.0</td>
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<td>735</td>
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<td>0.2</td>
<td>100.0</td>
<td>45.1</td>
<td>500</td>
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</table>

29 Refer to women who attended secondary school or higher and women who can read a whole sentence or part of a sentence.
<table>
<thead>
<tr>
<th>Region</th>
<th>25.5</th>
<th>28.9</th>
<th>8.9</th>
<th>33.0</th>
<th>3.4</th>
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<td>0.0</td>
<td>100.0</td>
<td>75.5</td>
<td>1,097</td>
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**Wealth quintile**

<table>
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<tr>
<th>Quintile</th>
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<th>14.9</th>
<th>12.5</th>
<th>64.5</th>
<th>3.4</th>
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<th>100.0</th>
<th>32.0</th>
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<td>Lowest</td>
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<td>22.4</td>
<td>16.0</td>
<td>48.0</td>
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<td>0.3</td>
<td>100.0</td>
<td>49.6</td>
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<tr>
<td>Second</td>
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<td>33.2</td>
<td>1.2</td>
<td>0.3</td>
<td>100.0</td>
<td>65.3</td>
<td>1,608</td>
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<tr>
<td>Middle</td>
<td>30.6</td>
<td>27.3</td>
<td>13.9</td>
<td>26.8</td>
<td>1.3</td>
<td>0.0</td>
<td>100.0</td>
<td>71.8</td>
<td>1,726</td>
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<td>Fourth</td>
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<td>19.6</td>
<td>10.0</td>
<td>9.7</td>
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<td>0.0</td>
<td>100.0</td>
<td>89.6</td>
<td>2,242</td>
</tr>
<tr>
<td>Highest</td>
<td>27.7</td>
<td>22.8</td>
<td>13.7</td>
<td>34.0</td>
<td>1.7</td>
<td>0.1</td>
<td>100.0</td>
<td>64.2</td>
<td>8,674</td>
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</table>

**Source:** *Uganda Demographic and Health Survey 2011.*
### Annex 3: TABLE SHOWING STATISTICS OF JUDICIAL OFFICERS BY GENDER

<table>
<thead>
<tr>
<th>Category</th>
<th>Female</th>
<th>Male</th>
<th>EXISTING NUMBERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court Justices</td>
<td>4</td>
<td>5</td>
<td>09</td>
</tr>
<tr>
<td>Court of Appeal/Constitutional Court Justices</td>
<td>4</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>High Court Judges</td>
<td>21</td>
<td>28</td>
<td>49</td>
</tr>
<tr>
<td>Registrars</td>
<td>00</td>
<td>04</td>
<td>04</td>
</tr>
<tr>
<td>Deputy Registrars</td>
<td>14</td>
<td>18</td>
<td>32</td>
</tr>
<tr>
<td>Assistant Registrars</td>
<td>06</td>
<td>05</td>
<td>11</td>
</tr>
<tr>
<td>Chief Magistrates</td>
<td>19</td>
<td>27</td>
<td>46</td>
</tr>
<tr>
<td>Magistrates Grade I</td>
<td>100</td>
<td>96</td>
<td>196</td>
</tr>
<tr>
<td>Magistrates Grade II</td>
<td>10</td>
<td>39</td>
<td>49</td>
</tr>
<tr>
<td>Total</td>
<td>178</td>
<td>232</td>
<td>410</td>
</tr>
</tbody>
</table>

### Annex 3A: SUMMARY BREAKDOWN OF JUDICIAL OFFICERS AS OF SEPTEMBER 2016

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>FEMALE</th>
<th>MALE</th>
<th>TOTALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>JUDGES</td>
<td>29 (40.3%)</td>
<td>43 (59.7%)</td>
<td>72</td>
</tr>
<tr>
<td>REGISTRARS</td>
<td>20 (42.6%)</td>
<td>27 (57.4%)</td>
<td>47</td>
</tr>
<tr>
<td>MAGISTRATES</td>
<td>129 (44.3%)</td>
<td>162 (55.7%)</td>
<td>291</td>
</tr>
<tr>
<td>UGANDA JUDICIAL OFFICERS: TOTAL</td>
<td>178 (43.4%)</td>
<td>232 (56.69%)</td>
<td>410</td>
</tr>
</tbody>
</table>

*Source: Hon. Justice Batema N.D.A.,'s compilation*
Annex 4: AMENDED POLICE FORM 3A

TO: MEDICAL/HEALTH PRACTITIONER*

………………………………………………………………………

Police Unit: ………………………………………………………

Police Case No: …………………………………………………

Please examine…………………………………………………………

Who is victim in a………………………………………………...case and has been sent to you on the……..day of………………20………

Please report your findings in Part (b) below. The duplicate should be kept at the health unit.

Name of Police officer: …............................................ Force No......... Rank..............

Signature: .................................. Telephone contact: ........................................

PART (b)

MEDICAL EXAMINATION REPORT OF A VICTIM OF SEXUAL ASSAULT
(To be filled by a Medical/Health practitioner in duplicate)

1) Place of Medical Examination---------------------------------------------

SIGNSURE AND STAMP OF EXAMINING PRACTITIONER  DATE OF EXAMINATION

* Medical/Health practitioner means a clinical officer, registered midwife or a medical doctor
2) **Particulars of the Victim**

Name---------------------------------------------------------------

Sex ----- Occupation----------------------------------------------- Marital status --------

Place of Residence-----------------------------------------------------------------

3) **State the apparent age based on your medical examination and briefly explain how the age was estimated**

---------------------------------------------------------------------------------------------------

4) **History and Circumstances of the incident(s) as narrated to the practitioner**

---------------------------------------------------------------------------------------------------

---------------------------------------------------------------------------------------------------

Name of Narrator ----------------- Relationship to victim -------------

5) **General Examination (note the physical condition of the victim and the state of clothing where applicable)**

---------------------------------------------------------------------------------------------------

6) **Mental Examination (include behaviour and emotional state)**

---------------------------------------------------------------------------------------------------

7) **Examination of the regions of the body. (Carefully document the nature, number, position, age and dimensions of all injuries and show them on the pictogram on page 4)**

(a) Head and Neck (including the mouth) ---------------------------------------------

(b) Chest and Breast ---------------------------------------------------------------

(c) Abdomen and Back---------------------------------------------------------------

-----------------------------------------------------------------------------------

-----------------------------------------------------------------------------------

SIGNATURE AND STAMP OF EXAMINING PRACTITIONER DATE OF EXAMINATION

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT 2
(d) Upper and lower limbs

(e) Genitals

(f) Buttocks and anus (where applicable)

8) What is/are the probable cause(s) of the above injuries?

9) Material /samples for purposes of analysis/evidence (Indicate materials/samples taken for purposes of analysis/evidence)

10) Other investigations e.g Ultra-sound scan and X-rays

NB: Report and attach the results of the investigations in 9) and 10) above if available.

11) State whether there is need for referral or review and the reasons thereof

12) State any other relevant observations

Name of Examining Medical/Health practitioner

Title

Qualifications

Telephone contact and physical address

SIGNATURE AND STAMP OF EXAMINING PRACTITIONER

DATE OF EXAMINATION

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT
PICTOGRAM FOR EXAMINATION OF A VICTIM OF SEXUAL ASSAULT

SIGNATURE AND STAMP OF EXAMINING PRACTITIONER

DATE OF EXAMINATION

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT
Annex 5: Selected International Human Rights Instruments

Annex 5A: UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

Preamble
Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2
Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.
Article 3
Everyone has the right to life, liberty and security of person. Article 4
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6
Everyone has the right to recognition everywhere as a person before the law.

Article 7
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9
No one shall be subjected to arbitrary arrest, detention or exile. Article 10
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11
1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13
1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.
Article 14
1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15
1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16
1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17
1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20
1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21
1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
Article 22
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23
1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26
1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27
1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
Annex 5B: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following Articles:-

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4
1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from Articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5
1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.
PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this Article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

**Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

**Article 11**

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

**Article 12**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public
health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

**Article 13**

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

**Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

   (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

   (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to neither arbitrary nor unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order, or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

**Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

**Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:-

(a) To take part in the Conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections this shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.

**Article 26**

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.

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

**PART IV**

**Article 28**

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

**Article 29**

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in Article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

**Article 30**

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with Article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

**Article 31**

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

**Article 32**

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in Article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding Articles of this part of the present Covenant.
Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with Article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with Article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with Article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that Article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee’s responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.


Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.
Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:-
   (a) Twelve members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
   (b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this Article.

Article 41

1. A State Party to the present Covenant may at any time declare under this Article that it recognises the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this Article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this Article shall be dealt with in accordance with the following procedure:
   (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an
explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this Article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this Article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this Article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this Article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.
Article 42

1. (a) If a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under Article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with Article 36 shall also service the commissions appointed under this Article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission’s report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission’s report is submitted under subparagraph (c), the States Parties
concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this Article are without prejudice to the responsibilities of the Committee under Article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this Article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under Article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as lay down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or
member of any of its specialized agencies, by any State Party to the Statute of the International
Court of Justice, and by any other State which has been invited by the General Assembly of the
United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited
with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this
Article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-
General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this
Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the
Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument
of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth
instrument of ratification or instrument of accession, the present Covenant shall enter into force
three months after the date of the deposit of its own instrument of ratification or instrument of
accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations
or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the
Secretary-General of the United Nations. The Secretary-General of the United Nations shall
thereupon communicate any proposed amendments to the States Parties to the present Covenant
with a request that they notify him whether they favour a conference of States Parties for the
purpose of considering and voting upon the proposals. In the event that at least one third of the
States Parties favours such a conference, the Secretary-General shall convene the conference
under the auspices of the United Nations. Any amendment adopted by a majority of the States
Parties present and voting at the conference shall be submitted to the General Assembly of the
United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly
of the United Nations and accepted by a two-thirds majority of the States Parties to the present
Covenant in accordance with their respective constitutional processes. 3. When amendments
come into force, they shall be binding on those States Parties which have accepted them, other
States Parties still being bound by the provisions of the present Covenant and any earlier
amendment which they have accepted.
Article 52

1. Irrespective of the notifications made under Article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same Article of the following particulars:

(a) Signatures, ratifications and accessions under Article 48;

(b) The date of the entry into force of the present Covenant under Article 49 and the date of the entry into force of any amendments under Article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 48.
Annex 5C: INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with Article 27

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following Articles:-

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the
rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognise that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
(a) Remuneration which provides all workers, as a minimum, with:–

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike provided that it is exercised in conformity with the laws of the particular country.

2. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this Article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.
Article 10
The States Parties to the present Covenant recognise that:-

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
   (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
   (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   (b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;
(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action
for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

**Article 15**

1. The States Parties to the present Covenant recognise the right of everyone:-
   (a) To take part in cultural life;
   (b) To enjoy the benefits of scientific progress and its applications;
   (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

**PART IV**

**Article 16**

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

   (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

**Article 17**

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any
specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18
Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19
The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with Articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with Article 18.

Article 20
The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under Article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21
The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22
The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23
The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.
Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate
any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

**Article 30**

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same Article of the following particulars:-

(a) Signatures, ratifications and accessions under Article 26;

(b) The date of the entry into force of the present Covenant under Article 27 and the date of the entry into force of any amendments under Article 29.

**Article 31**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 26.
Annex 5D: CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

“...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields”

CONTENTS

INTRODUCTION

Content and Significance of the Convention

PREAMBLE

PART I

Discrimination (Article 1)
Policy Measures (Article 2)
Guarantee of Basic Human Rights and Fundamental Freedoms (Article 3)
Special Measures (Article 4)
Sex Role Stereotyping and Prejudice (Article 5)
Prostitution (Article 6)

PART II

Political and Public Life (Article 7)
Representation (Article 8)
Nationality (Article 9)

PART III

Education (Article 10)
Employment (Article 11)
Health (Article 12)
Economic and Social Benefits (Article 13)
Rural Women (Article 14)

PART IV

Law (Article 15)
Marriage and Family Life (Article 16)

PART V

Committee on the Elimination of Discrimination against Women (Article 17)
National Reports (Article 18)
Rules of Procedure (Article 19)
Committee Meetings (Article 20)
Committee Reports (Article 21)
Role of Specialized Agencies (Article 22)

PART VI

Effect on Other Treaties (Article 23)
Commitment of States Parties (Article 24)
Administration of the Convention (Articles 25-30)

INTRODUCTION

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women’s rights. The Commission’s work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

In its preamble, the Convention explicitly acknowledges that “extensive discrimination against women continues to exist”, and emphasizes that such discrimination “violates the principles of equality of rights and respect for human dignity”. As defined in Article 1, discrimination is understood as “any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field”. The Convention gives positive affirmation to the principle of equality by requiring States parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men” (Article 3).

The agenda for equality is specified in fourteen subsequent Articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

The legal status of women receives the broadest attention. Concern over the basic rights of political participation has not diminished since the adoption of the Convention on the Political Rights of
Women in 1952. Its provisions, therefore, are restated in Article 7 of the present document, whereby women are guaranteed the rights to vote, to hold public office and to exercise public functions. This includes equal rights for women to represent their countries at the international level (Article 8). The Convention on the Nationality of Married Women - adopted in 1957 - is integrated under Article 9 providing for the statehood of women, irrespective of their marital status. The Convention, thereby, draws attention to the fact that often women’s legal status has been linked to marriage, making them dependent on their husband’s nationality rather than individuals in their own right. Articles 10, 11 and 13, respectively, affirm women’s rights to non-discrimination in education, employment and economic and social activities. These demands are given special emphasis with regard to the situation of rural women, whose particular struggles and vital economic contributions, as noted in Article 14, warrant more attention in policy planning. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women’s legal capacity “shall be deemed null and void”. Finally, in Article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.

Aside from civil rights issues, the Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The preamble sets the tone by stating that “the role of women in procreation should not be a basis for discrimination”. The link between discrimination and women’s reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in Article 5, “a proper understanding of maternity as a social function”, demanding fully shared responsibility for child-rearing by both sexes. Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health care or education. Society’s obligation extends to offering social services, especially child-care facilities that allow individuals to combine family responsibilities with work and participation in public life. Special measures for maternity protection are recommended and “shall not be considered discriminatory”. (Article 4) “The Convention also affirms women’s right to reproductive choice. Notably, it is the only human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process (Article 10.h) and to develop family codes that guarantee women’s rights “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights” (Article 16.e).

The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women’s enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses “that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women”. States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate “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” (Article 5). And Article 10.c. mandates the revision of textbooks, school programmes and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man’s world and the domestic sphere as women’s domain are strongly targeted in all of the Convention’s provisions.
that affirm the equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.

The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). The Committee’s mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their Governments and elected by the States parties as individuals “of high moral standing and competence in the field covered by the Convention”.

At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the States parties on matters concerning the elimination of discrimination against women.

**The full text of the Convention is set out herein:**

The States Parties to the present Convention

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,
Concerned that in situations of poverty women has the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole.

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:-

**PART I**

**Article I**

For the purposes of the present Convention, the term “discrimination against women” shall 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.
Article 2

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 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

7. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

8. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:-

(a) 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;
(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in
urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To Prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

to provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this Article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this Article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counseling and services in family planning;
(c) To benefit directly from social security programmes;
(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
(f) To participate in all community activities;
(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV
Article 15
1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16
1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:-
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this Article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee’s responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
   (a) Within one year after the entry into force for the State concerned;
   (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (Amendment, status of ratification)

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.
Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.
Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this Article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this Article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.
Annex 5E: DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN (DEVAW)

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, 1/ the International Covenant on Civil and Political Rights, 2/ the International Covenant on Economic, Social and Cultural Rights, 2/ the Convention on the Elimination of All Forms of Discrimination against Women 3/ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 4/

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of Violence Against Women and that the Declaration on the Elimination of Violence Against Women, set forth in the present resolution, will strengthen and complement that process,

Concerned that Violence Against Women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, 5/ in which a set of measures to combat Violence Against Women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

Affirming that Violence Against Women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of Violence Against Women,

Recognizing that Violence Against Women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that Violence Against Women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

Recalling the conclusion in paragraph 23 of the Annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that Violence Against Women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

Recalling also Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of Violence Against Women,
Welcoming the role that women’s movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of Violence Against Women,

Alarmed those opportunities for women to achieve legal, social, political and economic equality in society are limited, *inter alia*, by continuing and endemic violence,


Convinced that in the light of the above there is a need for a clear and comprehensive definition of Violence Against Women, a clear statement of the rights to be applied to ensure the elimination of Violence Against Women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of Violence Against Women,

Solemnly proclaims the following Declaration on the Elimination of Violence Against Women and urges that every effort be made so that it becomes generally known and respected:

**Article 1**

For the purposes of this Declaration, the term “Violence Against Women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

**Article 2**

Violence Against Women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

**Article 3**

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, *inter alia*:-

(a) The right to life; 6/

(b) The right to equality; 7/

(c) The right to liberty and security of person; 8/ (d) The right to equal protection under the law;

(e) The right to be free from all forms of discrimination; 7/

(f) The right to the highest standard attainable of physical and mental health; 9/
(g) The right to just and favourable conditions of work; 10/ (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. 11/

Article 4

States should condemn Violence Against Women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating Violence Against Women and, to this end, should:-

(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;

(b) Refrain from engaging in Violence Against Women;

(c) 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;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of Violence Against Women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) 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 structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of Violence Against Women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish Violence Against Women receive training to sensitize them to the needs of women;
(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of Violence Against Women and encourage research on the causes, nature, seriousness and consequences of Violence Against Women and on the effectiveness of measures implemented to prevent and redress Violence Against Women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of Violence Against Women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to Violence Against Women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women’s movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of Violence Against Women;

(p) Facilitate and enhance the work of the women’s movement and non-governmental organizations and cooperate with them at local, national and regional levels;

(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of Violence Against Women in their programmes, as appropriate.

Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, *inter alia*:

(a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of Violence Against Women;

(b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of Violence Against Women;

(c) Foster coordination and exchange within the United Nations system between human rights treaty bodies to address the issue of Violence Against Women effectively;

(d) Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in Violence Against Women;

(e) Encourage coordination between organizations and bodies of the United Nations system
to incorporate the issue of Violence Against Women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;

(f) Promote the formulation of guidelines or manuals relating to Violence Against Women, taking into account the measures referred to in the present Declaration;

(g) Consider the issue of the elimination of Violence Against Women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;

(h) Cooperate with non-governmental organizations in addressing the issue of Violence Against Women.

Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of Violence Against Women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

85th plenary meeting

20 December 1993

Security Council
Distr.: General
31 October, 2000

Resolution 1325(2000)

Adopted by the Security Council at its 4213th meeting, on 31 October 2000

The Security Council,


Recalling also the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-First Century” (A/S-23/10/Rev.1), in particular those concerning women and armed conflict,

Bearing in mind the purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,

Expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and recognizing the consequent impact this has on durable peace and reconciliation,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,

Emphasizing the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,

Recognizing the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard noting the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693),

Recognizing also the importance of the recommendation contained in the statement of its President to the press of 8 March, 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,
Recognizing that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

Noting the need to consolidate data on the impact of armed conflict on women and girls,

1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;

2. Encourages the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;

3. Urges the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard calls on Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster;

4. Further urges the Secretary-General to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;

5. Expresses its willingness to incorporate a gender perspective into peacekeeping operations, and urges the Secretary-General to ensure that, where appropriate, field operations include a gender component;

6. Requests the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures, invites Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and further requests the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training;

7. Urges Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, inter alia, the United Nations Fund for Women and United Nations Children’s Fund, and by the Office of the United Nations High Commissioner for Refugees and other relevant bodies;

8. Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:

   (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;

   (b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

   (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;

10. Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other Violence Against Women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions;

12. Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions 1208(1998) of 19 November, 1998 and 1296 (2000) of 19 April, 2000;

13. Encourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants;

14. Reaffirms its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider appropriate humanitarian exemptions;

15. Expresses its willingness to ensure that Security Council missions take into account gender considerations and the rights of women, including through consultation with local and international women’s groups;

16. Invites the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and further invites him to submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nations;

17. Requests the Secretary-General, where appropriate, to include in his reporting to the Security Council progress on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls;

18. Decides to remain actively seized of the matter.

Security Council
Distr.: General

Resolution 1820 (2008)

Adopted by the Security Council at its 5916th meeting, on 19 June, 2008


Guided by the purposes and principles of the Charter of the United Nations, Reaffirming also the resolve expressed in the 2005 World Summit Outcome Document to eliminate all forms of Violence Against Women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts, in accordance with the obligations States have undertaken under international humanitarian law and international human rights law;


Reaffirming also the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto, and urging states that have not yet done so to consider ratifying or acceding to them,

Noting that civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities;

Recalling its condemnation in the strongest term of all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children;

Reiterating deep concern that, despite its repeated condemnation of Violence Against Women and children in situations of armed conflict, including sexual violence in situations of armed conflict, and despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur, and in some situations have become systematic and widespread, reaching appalling levels of brutality,

Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals,
Reaffirming the important role of women in the prevention and resolution of conflicts and in peace building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Deeply concerned also about the persistent obstacles and challenges to women’s participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women’s capacity and legitimacy to participate in post-conflict public life, and acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peace building,

Recognizing that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law,

Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians,

Welcoming the ongoing coordination of efforts within the United Nations system, marked by the inter-agency initiative “United Nations Action Against Sexual Violence in Conflict,” to create awareness about sexual violence in armed conflicts and post-conflict situations and, ultimately, to put an end to it,

1. Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence;

2. Demands the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;

3. Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety; and requests the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities;

4. Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes,
and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation;

5. Affirms its intention, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual Violence Against Women and girls in situations of armed conflict;

6. Requests the Secretary-General, in consultation with the Security Council, the Special Committee on Peacekeeping Operations and its Working Group and relevant States, as appropriate, to develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the United Nations in the context of missions as mandated by the Council to help them better prevent, recognise and respond to sexual violence and other forms of violence against civilians;

7. Requests the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations; and urges troop and police contributing countries to take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel;

8. Encourages troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual Violence Against Women and girls in conflict and post-conflict situations, including wherever possible the deployment of a higher percentage of women peacekeepers or police;

9. Requests the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN peacekeeping operations, consistent with their mandates, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard;

10. Requests the Secretary-General and relevant United Nations agencies, inter alia, through consultation with women and women-led organizations as appropriate, to develop effective mechanisms for providing protection from violence, including in particular sexual violence, to women and girls in and around UN managed refugee and internally displaced persons camps, as well as in all disarmament, demobilization, and reintegration processes, and in justice and security sector reform efforts assisted by the United Nations;

11. Stresses the important role the Peace building Commission can play by including in its advice and recommendations for post-conflict peace-building strategies, where appropriate, ways to address sexual violence committed during and in the aftermath of armed conflict, and in ensuring consultation and effective representation of women’s civil society in its country-specific configurations, as part of its wider approach to gender issues;
12. Urges the Secretary-General and his Special Envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peace-building, and encourages all parties to such talks to facilitate the equal and full participation of women at decision-making levels;

13. Urges all parties concerned, including Member States, United Nations entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations;

14. Urges appropriate regional and sub-regional bodies in particular to consider developing and implementing policies, activities, and advocacy for the benefit of women and girls affected by sexual violence in armed conflict;

15. Also requests the Secretary-General to submit a report to the Council by 30 June, 2009 on the implementation of this resolution in the context of situations which are on the agenda of the Council, utilizing information from available United Nations sources, including country teams, peacekeeping operations, and other United Nations personnel, which would include, inter alia, information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians; analysis of the prevalence and trends of sexual violence in situations of armed conflict; proposals for strategies to minimize the susceptibility of women and girls to such violence; benchmarks for measuring progress in preventing and addressing sexual violence; appropriate input from United Nations implementing partners in the field; information on his plans for facilitating the collection of timely, objective, accurate, and reliable information on the use of sexual violence in situations of armed conflict, including through improved coordination of UN activities on the ground and at Headquarters; and information on actions taken by parties to armed conflict to implement their responsibilities as described in this resolution, in particular by immediately and completely ceasing all acts of sexual violence and in taking appropriate measures to protect women and girls from all forms of sexual violence;

16. Decides to remain actively seized of the matter.
Annex 5H: PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

UNITED NATIONS 2000

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:-

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with Article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.
Article 2

Statement of purpose

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this Article;

(d) “Child” shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with Article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
   (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this Article;
   (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this Article; and
   (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this Article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
   (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:-
   (a) Appropriate housing;
   (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
   (c) Medical, psychological and material assistance; and
   (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this Article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.
Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to Article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this Article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This Article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This Article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
   (a) To prevent and combat trafficking in persons; and
(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this Article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

   (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

   (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

   (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.
Article 11
Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with Article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this Article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to Article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.
IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this Article. The other States Parties shall not be bound by paragraph 2 of this Article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this Article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this Article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A
regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

**Article 17**

**Entry into force**

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or accession to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this Article, whichever is the later.

**Article 18**

**Amendment**

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this Article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this Article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this Article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.
**Annex 5I**: CEDAW GENERAL RECOMMENDATION NO. 19

**Violence Against Women**

(ELEVENTH SESSION, 1992) **Violence Against Women: 29/01/92.**

**Background**

1. Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

2. In 1989, the Committee recommended that States should include in their reports information on violence and on measures introduced to deal with it (General recommendation 12, eighth session).

3. At its tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on Article 6 and other Articles of the Convention relating to violence towards women and the sexual harassment and exploitation of women. That subject was chosen in anticipation of the 1993 World Conference on Human Rights, convened by the General Assembly by its resolution 45/155 of 18 December 1990.

4. The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of Violence Against Women.

5. The Committee suggested to States parties that in reviewing their laws and policies, and in reporting under the Convention, they should have regard to the following comments of the Committee concerning gender-based violence.

**General comments**

6. The Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include:

(a) The right to life;

(b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
(c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
(d) The right to liberty and security of person;
(e) The right to equal protection under the law;
(f) The right to equality in the family;
(g) The right to the highest standard attainable of physical and mental health;
(h) The right to just and favourable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State’s obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see Articles 2 (e), 2 (f) and 5). For example, under Article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

Comments on specific Articles of the Convention

Articles 2 and 3

10. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under Articles 5-16.

Articles 2 (f), 5 and 10 (c)

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.

12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.

Article 6

13. States parties are required by Article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.
14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Article 11

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

Article 12

19. States parties are required by Article 12 to take measures to ensure equal access to health care. Violence Against Women puts their health and lives at risk.

20. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

Article 14

21. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

Article 16 (and Article 5)

22. Compulsory sterilization or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.

23. Family violence is one of the most insidious forms of Violence Against Women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces
many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.

Specific recommendations

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends:

(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;

(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;

(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;

(d) Effective measures should be taken to ensure that the media respect and promote respect for women;

(e) States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate Violence Against Women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence, and the effect of those measures;

(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women’s equality (recommendation No. 3, 1987);

(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures, that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;

(i) Effective complaints procedures and remedies, including compensation, should be provided;

(j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace;

(k) States parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling;
(l) States parties should take measures to overcome such practices and should take account of the Committee’s recommendation on female circumcision (recommendation No. 14) in reporting on health issues;

(m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;

(n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;

(o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;

(p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;

(q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;

(r) Measures that are necessary to overcome family violence should include:
   (i) Criminal penalties where necessary and civil remedies in case of domestic violence;
   (ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
   (iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;
   (iv) Rehabilitation programmes for perpetrators of domestic violence;
   (v) Support services for families where incest or sexual abuse has occurred;

(s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;

(t) That States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:
   (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace;
   (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
   (iii) Protective measures, including refuges, counselling, and rehabilitation and support services for women who are the victims of violence or who are at risk of violence;

(u) That States parties should report on all forms of gender-based violence, and that such reports should include all available data on the incidence of each form of violence, and on the effects of such violence on the women who are victims;

(v) That the reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome Violence Against Women, and on the effectiveness of such measures.

** Contained in document A/47/38.
Annex 5J: GENERAL RECOMMENDATION NO. 21

Equality in marriage and family relations

1. The Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, Annex) affirms the equality of human rights for women and men in society and in the family. The Convention has an important place among international treaties concerned with human rights.

2. Other conventions and declarations also confer great significance on the family and woman’s status within it. These include the Universal Declaration of Human Rights (General Assembly resolution 217/A (III)), the International Covenant on Civil and Political Rights (resolution 2200 A (XXI), Annex), the Convention on the Nationality of Married Women (resolution 1040 (XI), Annex), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (resolution 1763 A (XVII), Annex) and the subsequent Recommendation thereon (resolution 2018 (XX)) and the Nairobi Forward-looking Strategies for the Advancement of Women.

3. The Convention on the Elimination of All Forms of Discrimination against Women recalls the inalienable rights of women which are already embodied in the above-mentioned conventions and declarations, but it goes further by recognizing the importance of culture and tradition in shaping the thinking and behaviour of men and women and the significant part they play in restricting the exercise of basic rights by women.

Background

4. The year 1994 has been designated by the General Assembly in its resolution 44/82 as the International Year of the Family. The Committee wishes to take the opportunity to stress the significance of compliance with women’s basic rights within the family as one of the measures which will support and encourage the national celebrations that will take place.

5. Having chosen in this way to mark the International Year of the Family, the Committee wishes to analyse three Articles in the Convention that have special significance for the status of women in the family:

Article 9

1. States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States parties shall grant women equal rights with men with respect to the nationality of their children.

Comment

6. Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens,
women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

Article 15

1. States parties shall accord to women equality with men before the law.

2. States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Comment

7. When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband’s or a male relative’s concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman’s ability to provide for herself and her dependents.

8. A woman’s right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman’s right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman’s legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women’s ability to provide for themselves and their dependents.

9. Domicile is a concept in common law countries referring to the country in which a person intends to reside and to whose jurisdiction she will submit. Domicile is originally acquired by a child through its parents but, in adulthood, denotes the country in which a person normally resides and in which she intends to reside permanently. As in the case of nationality, the examination of States parties’ reports demonstrates that a woman will not always be permitted at law to choose her own domicile. Domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman’s right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.

10. Migrant women who live and work temporarily in another country should be permitted the same rights as men to have their spouses, partners and children join them.
Article 16

1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
   (f) The same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
   (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Comment

Public and private life

11. Historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior.

12. As such activities are invaluable for the survival of society; there can be no justification for applying different and discriminatory laws or customs to them. Reports of States parties disclose that there are still countries where de jure equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where de jure equality exists, all societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in Article 16 and also in Articles 2, 5 and 24 of the Convention are being violated. Various forms of family

13. The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition
within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as Article 2 of the Convention requires.

Polygamous marriages

14. States parties’ reports also disclose that polygamy is practiced in a number of countries. Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitution’s guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of Article 5 (a) of the Convention.

Article 16 (1) (a) and (b)

15. While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to enforce these laws in reality contravene the Convention.

16. A woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties’ reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman’s marriage to be arranged for payment or preferment and in others women’s poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman’s youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law.

Article 16 (1) (c)

17. An examination of States parties’ reports discloses that many countries in their legal systems provide for the rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, rather than by complying with the principles contained in the Convention. These variations in law and practice relating to marriage have wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage. Such limitations often result in the husband being accorded the status of head of household and primary decision maker and therefore contravene the provisions of the Convention.

18. Moreover, generally a de facto union is not given legal protection at all. Women living in such relationships should have their equality of status with men both in family life and in the sharing of income and assets protected by law. Such women should share equal rights and responsibilities with men for the care and rising of dependent children or family members.

Article 16 (1) (d) and (f)

19. As provided in Article 5 (b), most States recognise the shared responsibility of parents for the care, protection and maintenance of children. The principle that “the best interests of the child shall be the paramount consideration”, has been included in the Convention on the Rights of the Child (General Assembly resolution 44/25, Annex) and seems now to be universally accepted. However, in practice, some countries do not observe the principle of granting the parents of children equal status, particularly when they are not married. The children of such unions do not
always enjoy the same status as those born in wedlock and, where the mothers are divorced or living apart, many fathers fail to share the responsibility of care, protection and maintenance of their children.

20. The shared rights and responsibilities enunciated in the Convention should be enforced at law and as appropriate through legal concepts of guardianship, wardship, trusteeship and adoption. States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.

Article 16 (1) (e)

21. The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women’s lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children.

22. Some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilization. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in Article 10 (h) of the Convention.

23. There is general agreement that where there are freely available appropriate measures for the voluntary regulation of fertility, the health, development and well-being of all members of the family improves. Moreover, such services improve the general quality of life and health of the population, and the voluntary regulation of population growth helps preserve the environment and achieve sustainable economic and social development.

Article 16 (1) (g)

24. A stable family is one which is based on principles of equity, justice and individual fulfilment for each member. Each partner must therefore have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations, as provided in Article 11 (a) and (c) of the Convention. Moreover, each partner should have the right to choose his or her name, thereby preserving individuality and identity in the community and distinguishing that person from other members of society. When by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied these rights.

Article 16 (1) (h)

25. The rights provided in this Article overlap with and complement those in Article 15 (2) in which an obligation is placed on States to give women equal rights to enter into and conclude contracts and to administer property.
26. Article 15 (l) guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

27. In countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.

28. In most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman’s practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.

29. All of these rights should be guaranteed regardless of a woman’s marital status.

**Marital property**

30. There are countries that do not acknowledge that right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends. Many countries recognise that right, but the practical ability of women to exercise it may be limited by legal precedent or custom.

31. Even when these legal rights are vested in women, and the courts enforce them, property owned by a woman during marriage or on divorce may be managed by a man. In many States, including those where there is a community-property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman’s ability to control disposition of the property or the income derived from it.

32. In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight.

33. In many countries, property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged.

**Inheritance**

34. Reports of States parties should include comment on the legal or customary provisions relating to inheritance laws as they affect the status of women as provided in the Convention and in
Economic and Social Council resolution 884 D (XXXIV), in which the Council recommended that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession. That provision has not been generally implemented.

35. There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.

Article 16 (2)

36. In the Vienna Declaration and Programme of Action 12 adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16 (2) and the provisions of the Convention on the Rights of the Child preclude States parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”. Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted.

37. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.

38. Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman’s right freely to choose her partner.

39. States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.
Recommendations

Violence Against Women

40. In considering the place of women in family life, the Committee wishes to stress that the provisions of General Recommendation 19 (eleventh session) 13 concerning Violence Against Women have great significance for women’s abilities to enjoy rights and freedoms on an equal basis with men. States parties are urged to comply with that general recommendation to ensure that, in both public and family life, women will be free of the gender-based violence that so seriously impedes their rights and freedoms as individuals.

Reservations

41. The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of Article 16, especially when a reservation has also been entered to Article 2, claiming that compliance may conflict with a commonly held vision of the family based, inter alia, on cultural or religious beliefs or on the country’s economic or political status.

42. Many of these countries hold a belief in the patriarchal structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardships have encouraged a return to old values and traditions, women’s place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.

43. Consistent with Articles 2, 3 and 24 in particular, the Committee requires that all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation, in particular to Articles 9, 15 and 16 of the Convention.

44. States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom and progress to the stage where reservations, particularly to Article 16, will be withdrawn.

45. The Committee noted, on the basis of its examination of initial and subsequent periodic reports, that in some States parties to the Convention that had ratified or acceded without reservation, certain laws, especially those dealing with family, do not actually conform to the provisions of the Convention.

46. Their laws still contain many measures which discriminate against women based on norms, customs and socio-cultural prejudices. These States, because of their specific situation regarding these Articles, make it difficult for the Committee to evaluate and understand the status of women.

47. The Committee, in particular on the basis of Articles 1 and 2 of the Convention, requests that those States parties make the necessary efforts to examine the de facto situation relating to the issues and to introduce the required measures in their national legislations still containing provisions discriminatory to women.
Reports

48. Assisted by the comments in the present general recommendation, in their reports States parties should:-

   (a) Indicate the stage that has been reached in the country’s progress to removal of all reservations to the Convention, in particular reservations to Article 16;

   (b) Set out whether their laws comply with the principles of Articles 9, 15 and 16 and where, by reason of religious or private law or custom, compliance with the law or with the Convention is impeded.

Legislation

49. States parties should, where necessary to comply with the Convention, in particular in order to comply with Articles 9, 15 and 16, enact and enforce legislation.

Encouraging compliance with the Convention

50. Assisted by the comments in the present general recommendation, and as required by Articles 2, 3 and 24, States parties should introduce measures directed at encouraging full compliance with the principles of the Convention, particularly where religious or private law or custom conflict with those principles.
Annex 5K: GENERAL RECOMMENDATION NO. 33

Distr.: General

23 July 2015

Original: English

ADVANCE UN EDITED VERSION

Committee on the Elimination of Discrimination against Women

General recommendation No. 33 on women’s access to justice (CEDAW/C/GC/33)

Contents

I. Introduction and scope

II. General issues and recommendations on women’s access to justice

A. Justifiability, availability, accessibility, good-quality, provision of remedies and accountability of justice systems

B. Discriminatory laws, procedures and practices

C. Stereotyping and gender bias in the justice system and the importance of capacity building

D. Education and awareness-raising on impact of stereotypes
   D.1. Education in a gender perspective
   D.2. Awareness-raising through civil society, media and Information and Communication Technologies (ICTs)

E. Legal aid and public defense

F. Resources

III. Recommendations for specific areas of law

A. Constitutional law

B. Civil law

C. Family law

D. Criminal law

E. Administrative, social and labour law

IV. Recommendations for specific mechanisms

A. Specialized judicial and quasi-judicial systems, and international and regional justice systems

B. Alternative dispute resolution processes

C. National human rights institutions and ombuds offices

D. Plural justice systems
I. Introduction and scope

1. The right of access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms. The right to access to justice is multidimensional. It encompasses justifiability, availability, accessibility, good-quality and accountability of justice systems, and provision of remedies for victims. For the purposes of the present general recommendation, all references to “women” should be understood to include women and girls, unless otherwise specifically noted.

2. In this general recommendation, the Committee examines the obligations of States parties to ensure that women have access to justice. These obligations encompass the protection of women’s rights against all forms of discrimination with a view to empowering them as individuals and as rights holders. Effective access to justice optimizes the emancipatory and transformative potential of law.

3. In practice, the Committee has observed a number of obstacles and restrictions that impede women from realizing their right of access to justice on a basis of equality. They include a lack of effective jurisdictional protection offered by the States Parties in relation to all dimensions of access to justice. These obstacles occur in a structural context of discrimination and inequality, due to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women. All of these obstacles constitute persistent violations of women’s human rights.

4. The scope of the present general recommendation includes the procedures and quality of justice for women at all levels of justice systems, including specialized and quasi-judicial mechanisms. Quasi-judicial mechanisms encompass all actions of public administrative agencies or bodies, similar to those conducted by the judiciary, which have legal effects and may affect legal rights, duties and privileges.

5. The scope of the right of access to justice also includes plural justice systems. The term “plural justice systems” refers to the coexistence within a State party of State laws, regulations, procedures and decisions on one hand, and of religious, customary, indigenous or community laws and practices on the other hand. Therefore, plural justice systems include multiple sources of law, whether formal or informal—State, non-State and mixed—that women may encounter when seeking to exercise their right of access to justice. Religious, customary, indigenous and community justice systems—called traditional justice systems in this general recommendation—may be formally recognized by the State, operate with the State’s acquiescence with or without any explicit status, or function outside of the State’s regulatory framework.

6. International and regional human rights treaties and declarations and most national Constitutions contain guarantees relating to sex and/or gender equality before the law and an obligation to
ensure that everyone benefits from equal protection of the law. Article 15 of the Convention provides that women and men must have equality before the law and benefit from equal protection of the law. Article 2 stipulates that States parties must take all appropriate measures to guarantee the substantive equality of men and women in all areas of life, including through the establishment of competent national tribunals and other public institutions to ensure the effective protection of women against any act of discrimination. The content and scope of that provision are further detailed in the Committee’s General Recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention. Article 3 of the Convention mentions the need for appropriate measures to ensure that women can exercise and enjoy their human rights and fundamental freedoms on a basis of equality with men.

7. Discrimination may be directed against women on the basis of their sex and gender. Gender refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on biological differences, which are constantly reproduced amongst the justice system and its institutions. Under Article 5(a) of the Convention, States parties have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies.

8. Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms, and gender-based violence, which particularly affect women, have an adverse impact on the ability of women to gain access to justice on an equal basis with men. In addition, discrimination against women is compounded by intersecting factors that affect some women to a different degree or indifferent ways than men and other women. Grounds for intersectional or compounded discrimination may include ethnicity/race, indigenous or minority status, colour, socio-economic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, and being lesbian, bisexual, trans-gender women or inter-sex persons. These intersecting factors make it more difficult for women from those groups to gain access to justice.

9. Other factors also making it harder for women to access justice include: illiteracy, trafficking of women, armed conflict, seeking asylum, internal displacement, statelessness, migration, women heading households, widowhood, living with HIV/AIDS, deprivation of liberty, criminalization of prostitution, geographical remoteness, and stigmatization of women fighting for their rights. The fact that human rights defenders and organizations are frequently targeted because of their work must be emphasized and their own right to access justice protected.

10. The Committee has documented many examples of the negative impact of intersecting forms of discrimination on access to justice, including ineffective remedies, for specific groups of women. Women belonging to such groups often do not report violations of their rights to the authorities for fear that they will be humiliated, stigmatized, arrested, deported, tortured or have other forms of violence inflicted upon them, including by law enforcement officials. The Committee has also noted that, when women from those groups lodge complaints, the authorities frequently fail to act with due diligence to investigate, prosecute and punish perpetrators and/or provide remedies.

11. In addition to Articles 2(c), 3, 5(a) and 15 of the Convention, States parties have further treaty-based obligations to ensure that all women have access to education and information about
their rights and remedies available, and how to access these, and to competent, gender-sensitive dispute resolution systems, as well as equal access to effective and timely remedies.

12. The Committee’s views and recommendations concerning the steps that need to be taken to overcome obstacles encountered by women in gaining access to justice are informed by its experience in the consideration of States parties’ reports, its analysis of individual communications and its conduct of inquiries under the Optional Protocol to the Convention. In addition, reference is made to work on access to justice by other United Nations human rights mechanisms, national human rights institutions, civil society organizations, including community-based women’s associations, and academic researchers.

II. General issues and recommendations on women’s access to justice

A. Justiciability, availability, accessibility, good-quality, provision of remedies and accountability of justice systems

13. The Committee has observed that the centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender-insensitive judgments/decisions due to the lack of trainings, delays and excessive length of proceedings, corruption, etc.) all prevent women from accessing justice.

14. Six interrelated and essential components - justiciability, availability, accessibility, good-quality, accountability of justice systems, and the provision of remedies for victims - are therefore necessary to ensure access to justice. While differences in prevailing legal, social, cultural, political and economic conditions will necessitate a differentiated application of these features in each State party, the basic elements of the approach are of universal relevance and of immediate application. Accordingly:

(a) Justiciability requires the unhindered access by women to justice as well as their ability and empowerment to claim their rights under the Convention as legal entitlements;

(b) Availability requires the establishment of courts and other quasi-judicial or other bodies across the State Party in both urban, rural and remote areas, as well as their maintenance and funding;

(c) Accessibility requires that all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women including those who face intersectional or compounded forms of discrimination;

(d) Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems are contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women;

(e) Provision of remedies requires the ability of women to receive from justice systems viable
protection and meaningful redress for any harm that they may suffer (see Article 2 of the Convention); and

(f) Accountability of justice systems is ensured through the monitoring of the functioning of justice systems to guarantee that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility in cases in which they violate the law.

15. On justiciability, the Committee recommends that States parties:-

(a) Ensure that rights and correlative legal protections are recognized and incorporated in the law, improving the gender responsiveness of the justice system;

(b) Improve women’s unhindered access to justice systems and thereby empower them to achieve de jure and de facto equality;

(c) Ensure that the professionals of justice systems handle cases in a gender sensitive manner;

(d) Ensure the independence, impartiality, integrity and credibility of the judiciary and the fight against impunity;

(e) Tackle corruption in justice systems as an important element of eliminating discrimination against women on access to justice;

(f) Confront and remove barriers to women’s participation as professionals with in all bodies and levels of judicial and quasi-judicial systems and providers in justice related services. Take steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities;

(g) Revise the rules on the burden of proof in order to ensure equality between the parties, in all fields where power relationships deprive women of the chance for a fair judicial treatment of their case;

(h) Cooperate with civil society and community-based organizations to develop sustainable mechanisms to support women’s access to justice and encourage non-governmental organizations and civil society entities to take part in litigation on women’s rights; and

(i) Ensure that women human rights defenders are able to access justice, and receive protection from harassment, threats, retaliation and violence.

16. On availability of justice systems, the Committee recommends that State parties:

(a) Ensure the creation, maintenance and development of courts, tribunals and additional entities, as needed, that guarantee women’s right of access to justice without discrimination on the whole territory of the State party, including in remote, rural and isolated areas. The establishment of mobile courts, particularly for women living in those areas, should be considered, as well as the creative use of modern IT solutions when feasible;

(b) In cases of Violence Against Women, ensure access to financial aid, crisis centres, shelters, hot lines, and medical, psychosocial and counselling services;
(c) Ensure that rules on standing allow groups and civil society organizations with an interest to lodge petitions and participate in the proceedings; and

(d) Establish an oversight mechanism by independent inspectors to ensure the proper functioning of the justice system and address any discrimination against women committed by justice system professionals.

17. On accessibility of justice systems, the Committee recommends that State parties:

(a) Remove economic barriers to justice by providing legal aid and by ensuring that fees for issuing and filing documents as well as court costs are reduced for women with low income and waived for women living in poverty;

(b) Remove linguistic barriers by providing independent and professional translation and interpretation services when needed; provide individualized assistance for illiterate women in order to guarantee their full understanding of the judicial or quasi-judicial processes;

(c) Develop targeted outreach activities and distribute information about available justice mechanisms, procedures and remedies in various formats, and also in community languages such as through specific units or desks for women. Such activities and information should be appropriate for all ethnic and minority groups in the population and designed in close cooperation with women from these groups and, especially, women’s and other relevant organizations;

(d) Ensure access to Internet and other information and communication technologies (ICTs) to improve women’s access to justice systems at all levels. Give consideration to the development of internet infrastructure, including video conferencing, to facilitate the holding of court hearings, and sharing, collection and support of data and information among stakeholders;

(e) Ensure that the physical environment and location of judicial and quasi-judicial institutions and other services are welcoming, secure and accessible to all women. The creation of gender units as components of justice institutions should be considered. Special attention should be given to covering the costs of transportation to judicial and quasi-judicial institutions and other services for women without sufficient means;

(f) Establish justice access centres, such as “one-stop centers”, which include a range of legal and social services, in order to reduce the number of steps that a woman has to take to access justice. Such centres could provide legal advice and aid, start the legal proceedings and coordinate support services for women across such areas as Violence Against Women, family matters, health, social security, employment, property and immigration. They must be accessible to all women including those living in poverty and/or in rural and remote areas; and

(g) Give special attention to access to justice systems for women with disabilities.

18. On good quality of justice systems, the Committee recommends that State parties:

(a) Ensure that justice systems are of good quality and adhere to international standards of competence, efficiency, independence and impartiality, as well as to international jurisprudence;
(b) Adopt indicators to measure women’s access to justice;

(c) Ensure an innovative and transformative justice approach and framework including, when necessary, investing in broader institutional reforms;

(d) Provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women;

(e) Implement mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice;

(f) When necessary to protect women’s privacy, safety, and other human rights, ensure that, in a manner consistent with due process and fair proceedings, legal proceedings can be held privately in whole or in part, or testimony be given remotely or via communication equipment, in a way that only the concerned parties are able to access their content. It should also be allowed for them to use pseudonyms or to take other measures to protect their identities during all stages of the judicial process. State parties should guarantee the possibility of taking measures in order to protect the victims’ privacy and image by the prohibition of image capturing and broadcasting, in cases where this may violate the dignity, emotional condition and security of girls and women; and

(g) Protect women complainants, witnesses, defendants and prisoners against threats, harassment and other harm before, during and after legal proceedings and provide the budgets, resources, guidelines and monitoring and legislative frameworks necessary to ensure that protective measures function effectively.

19. On provision of remedies, the Committee recommends that State parties:

(a) Provide and enforce appropriate, timely remedies for discrimination against women and ensure that women have access to all available judicial and non-judicial remedies;

(b) Ensure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered. Remedies should include, as appropriate, restitution (reinstatement); compensation (whether provided in the form of money, goods or services); and rehabilitation (medical and psychological care and other social services). Remedies for civil damages and criminal sanctions should not be mutually exclusive;

(c) Take full account of the unremunerated domestic and caring activities of women in assessments of damages for the purposes of determining appropriate compensation for the harm, in all civil, criminal, administrative or other proceedings;

(d) Create women specific funds to ensure that women receive adequate reparation in situations in which the individuals or entities responsible for violating their human rights are unable or unwilling to provide such reparation;

(e) In cases of sexual violence in conflict or post conflict situations, mandate institutional reforms, repeal discriminatory legislation and enact legislation providing for adequate sanctions in accordance with international human rights standards. Determine reparation measures in close participation with women’s organizations and civil society in order to help overcome the discriminations that pre-existed the conflict;
(f) Ensure that, where human rights violations occur during conflict or in post conflict contexts, the non-judicial remedies, such as public apologies, public memorials and guarantees of non-repetition granted by truth, justice and reconciliation commissions are not used as substitutes for investigations into and prosecutions of perpetrators; reject amnesties for gender-based human rights violations such as sexual Violence Against Women and reject statutory limitation for prosecution of such human rights violations (See General Recommendation 30); and

(g) Provide effective and timely remedies and ensure that they respond to the different types of violation experienced by women, as well as adequate reparations; and ensure women’s participation in the design of all reparation programs, as pointed out by General Recommendation No.30.

20. On accountability of justice systems, the Committee recommends that State parties:-

(a) Develop effective and independent mechanisms to observe and monitor women’s access to justice in order to ensure that justice systems are in accordance with the principles of justiciability, availability, accessibility, good quality and effectiveness of remedies. This includes the periodical audit/review of the autonomy, efficiency and transparency of the judicial, quasi-judicial and administrative bodies taking decisions affecting women’s rights;

(b) Ensure that cases of identified discriminatory practices and acts by justice professionals are effectively addressed through disciplinary and other measures;

(c) Create a specific entity to receive complaints, petitions and suggestions about all personnel supporting the work of the justice system, including social, welfare and health workers as well as technical experts;

(d) Data should include but need not be limited to:-

1. The number and geographical distribution of judicial and quasi-judicial bodies;

2. The number of men and women in law enforcement bodies and judicial and quasi-judicial institutions at all levels;

3. The number and geographical distribution of men and women lawyers, including legal aid lawyers;

4. The nature and number of cases and complaints lodged with judicial, quasi-judicial and administrative bodies, these data should be disaggregated by sex of complainant;

5. The nature and number of cases dealt with by the formal and informal justice systems, these data should be disaggregated by sex of complainant;

6. The nature and number of cases in which legal aid and public defense were required, accepted and indeed provided, these data should be disaggregated by sex of complainant;

7. The length of the procedures and their outcomes, these data should be disaggregated by sex of complainant;

(e) Conduct and facilitate qualitative studies and critical gender analysis in collaboration
with civil society organizations as well as academic institutions of all justice systems in order to highlight practices, procedures and jurisprudence that promote or limit women’s full access to justice; and

(f) Systematically apply the findings of this analysis in order to develop priorities, policies, legislation and procedures to ensure that all components of the justice system are gender sensitive, user friendly and accountable.

B. Discriminatory laws, procedures and practices

21. Frequently, States parties have constitutional provisions, laws, regulations, procedures, customs and practices that are based on traditional gender-stereotypes and norms and are therefore discriminatory and deny women full enjoyment of their rights under the Convention. The Committee therefore consistently calls on State Parties in its concluding observations to undertake a review of their legislative framework and to amend and/or repeal provisions that discriminate against women. This is consistent with Article 2 of the Convention enshrining obligations for States parties to adopt appropriate legal and other measures to eliminate all forms of discrimination against women by public authorities and non-State actors as individuals as well as organizations and enterprises.

22. Women, nonetheless, face many difficulties in gaining access to justice as a result of direct and indirect discrimination, as defined in paragraph 16 of General Recommendation No.28 on the core obligations of States parties under Article 2 of the Convention. Such inequality is not only apparent in the discriminatory content and/or impact of laws, regulations, procedures, customs and practices, but also in the lack of capacity and awareness of judicial and quasi-judicial institutions to address violations of women’s human rights adequately. In its General Recommendation No. 28, the Committee therefore notes that judicial institutions must apply the principle of substantive or de facto equality as embodied in the Convention and interpret laws, including national, religious and customary laws, in line with that obligation. Article 15 of the Convention encompasses obligations for States parties to ensure that women enjoy substantive equality with men in all areas of the law.

23. Many of the Committee’s concluding observations and views under the Optional Protocol, however, demonstrate that discriminatory procedural and evidentiary rules and a lack of due diligence in the prevention, investigation, prosecution, punishment and provision of remedies for violations of women’s rights result in contempts of obligations to ensure that women have equal access to justice.

24. Special consideration is to be given to girls (including the girl child and adolescent girls, where appropriate) because they face specific barriers to access to justice. They often lack the social or legal capacity to make significant decisions about their lives in areas relating to education, health and sexual and reproductive rights. They may be forced into marriage or subjected to other harmful practices and various forms of violence.

25. The Committee recommends that States parties:

(a) Ensure that the principle of equality before the law is given effect by taking steps to abolish any existing laws, procedures, regulations, jurisprudence, customs and practices that directly or indirectly discriminate against women especially in their access to justice, and to abolish discriminatory barriers to access to justice, including:-
(i) Obligations and/or needs for women to seek permission from family or community members before beginning legal action;

(ii) Stigmatization by active participants in the justice system of women who are fighting for their rights;

(iii) Corroboration rules that discriminate against women as witnesses, complainants and defendants by requiring them to discharge a higher burden of proof than men in order to establish an offence or to seek a remedy;

(iv) Procedures that exclude or accord inferior status to the testimony of women;

(v) Lack of measures to ensure equal conditions between women and men during the preparation, conduct and aftermath of cases;

(vi) Inadequate case management and evidence collection in cases brought by women resulting in systematic failures in investigation; and

(vii) Obstacles faced in collection of evidence relating to emerging violations of women’s rights occurring online and with the use of ICT’s and new social media;

(b) Ensure that independent, safe, effective, accessible and child-sensitive complaint and reporting mechanisms are available to girls. Such mechanisms should be established in conformity with international norms especially the Convention on the Rights of the Child; and also ensure that these mechanisms are staffed by appropriately trained officials, working in an effective and gender-sensitive manner, in accordance with General Comment No.14 of the Committee on the Rights of the Child to have girls’ best interests taken as a primary consideration;

(c) Take measures to avoid marginalization of girls due to conflicts and dis-empowerment within their families and the resulting lack of support for their rights; abolish rules and practices that require parental or spousal authorization for access to services such as education, health, including sexual and reproductive health, as well as access to legal services and justice systems; and

(d) Protect women and girls against interpretations of religious texts and traditional norms creating barriers to their access to justice resulting in discrimination against them.

C. Stereotyping and gender bias in the justice system and the importance of capacity building

26. Stereotyping and gender bias in the justice system have far-reaching consequences on women’s full enjoyment of their human rights. They impede women’s access to justice in all areas of law, and may particularly impact on women victims and survivors of violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often judges adopt rigid standards about what they consider to be appropriate behavior for women and penalize those who do not conform to these stereotypes. Stereotyping as well affects the credibility given to women’s voices, arguments and testimonies, as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws. This has far reaching consequences, for example, in criminal law where it results in perpetrators not being held legally accountable for violations of women’s rights, thereby upholding a culture of impunity. In all areas of law, stereotyping compromises the impartiality and integrity of the
justice system, which can, in turn, lead to miscarriages of justice, including there victimization of complainants.

27. Judges, magistrates and adjudicators are not the only actors in the justice system who apply, reinforce and perpetuate stereotypes. Prosecutors, law enforcement officials and other actors often allow stereotypes to influence investigations and trials, especially in cases of gender-based violence, with stereotypes, undermining the claims of the victim/survivor and simultaneously supporting the defences advanced by the alleged perpetrator. Stereotyping, therefore, permeates both the investigation and trial phases and finally shapes the judgment.

28. Women should be able to rely on a justice system free from myths and stereotypes, and on a judiciary whose impartiality is not compromised by these biased assumptions. Eliminating judicial stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors.

29. The Committee recommends that State Parties:
   (a) Take measures, including awareness-raising and capacity-building for all actors of justice systems and for law students to eliminate gender stereotyping and in corporate a gender perspective in all aspects of the justice system;
   (b) Include other professionals, in particular health professionals and social workers, who can play an important role in cases of Violence Against Women and in family matters, in these awareness raising and capacity building programmes;
   (c) Ensure that capacity-building programmes address in particular:
      (i) The issue of the credibility and weight given to women’s voices, arguments and testimonies, as parties and witnesses;
      (ii) The inflexible standards often developed by judges and prosecutors on what they consider as appropriate behaviour for women;
   (d) Consider promoting a dialogue on the negative impact of stereotyping and gender bias in the justice system and the need for improved justice outcomes for women victims and survivors of violence;
   (e) Raise awareness on the negative impact of stereotyping and gender bias and encourage advocacy related to stereotyping and gender bias in justice systems, especially in gender-based violence cases; and
   (f) Provide capacity building to judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments related to human rights, including the CEDAW Convention and the jurisprudence of the CEDAW Committee, and on the application of legislation prohibiting discrimination against women.

D. Education and awareness-raising on impact of stereotypes

30. The provision of education from a gender perspective and public awareness-raising through civil society, the media, and Information Communication Technologies (ICTs) are essential to overcome the multiple forms of discrimination and stereotyping on access to justice and to ensure effectiveness and efficiency of justice for all women.

31. Article 5 (a) of the Convention provides that States parties must take all appropriate measures to modify social and cultural patterns of conduct with a view to eliminating prejudices as well as
customary and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes. In its General Recommendation No. 28, the Committee emphasized that all provisions of the Convention must be read jointly in order to ensure that all forms of gender-based discrimination are condemned and eliminated.

D.1 Education from a gender perspective

32. Women who are unaware of their human rights are unable to make claims for their fulfilment. The Committee has observed, especially during consideration of States parties’ periodic reports, that they often fail to guarantee that women have equal access to education, information and legal literacy programmes. Furthermore, the awareness of men about women’s human rights is also indispensable to guarantee non-discrimination and equality, in particular to guarantee women’s access to justice.

33. The Committee recommends that States parties:
   (a) Develop gender expertise, including by increasing the number of gender advisors, with the participation of civil society organizations, the Academia and the media;
   (b) Disseminate multi-format materials to inform women about their human rights and the availability of mechanisms for access to justice. States parties should inform women about their eligibility for support, legal aid, as well as for social services that interface with justice systems; and
   (c) Integrate educational programmes on women’s rights and gender equality, including legal literacy programmes, into curricula at all levels of education which emphasize the crucial role of women’s access to justice and the role of men and boys as advocates and stakeholders.

D.2. Awareness-raising through civil society, media and Information and Communication Technologies (ICTs)

34. Civil society, the media and ICTs play an important role in both reaffirming and reproducing gender stereotypes as well as overcoming them.

35. The Committee recommends that States parties:
   (a) Emphasize the role that the media and ICTs can play in dismantling cultural stereotypes about women in connection with their right to access justice. Particular attention should be paid to challenging cultural stereotypes concerning gender-based discrimination and violence, including domestic violence, rape and other forms of sexual violence;
   (b) Develop and implement measures to raise awareness among the media and the population on women’s right to access justice, in close collaboration with communities and civil society organizations. Such measures should be multidimensional and directed to girls and women, boys and men and should take account of the relevance and potential of ICTs to transform cultural and social stereotypes;
   (c) Support and involve media bodies and people working with ICTs in an ongoing public dialogue about women’s human rights in general and within the context of access to justice in particular; and
   (d) Take steps to promote a culture and a social environment whereby justice-seeking by
women is viewed as both legitimate and acceptable rather than as cause for additional discrimination and/or stigmatization.

E. **Legal aid and public defense**

36. A crucial element in guaranteeing that justice systems are economically accessible to women is the provision of free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law.

37. The Committee recommends that States parties:

(a) Institutionalize systems of legal aid and public defense that are accessible, sustainable and responsive to the needs of women; and ensure that these services are provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings, including alternative dispute resolution mechanisms and restorative justice processes. Ensure unhindered access to legal aid and public defense providers to all relevant documentation and other information including witness statements;

(b) Ensure that legal aid and public defense providers are competent, gender-sensitive, respect confidentiality and are granted adequate time to defend their clients;

(c) Conduct information and awareness-raising programmes for women about the existence of legal aid and public defense and the conditions for obtaining them. Information and communications technology should be used effectively to facilitate such programmes;

(d) Develop partnerships with competent non-governmental providers of legal aid and/or train paralegals to provide women with information and assistance in navigating judicial and quasi-judicial processes and traditional justice systems; and

(e) In cases of family conflicts or when the woman lacks equal access to the family income, means testing eligibility for legal aid and public defense should be based on the real income or disposable assets of the woman.

F. **Resources**

38. Highly qualified human resources combined with adequate technical and financial resources are essential to ensure justice, availability, accessibility, good-quality, accountability of justice systems and provision of remedies for victims.

39. The Committee recommends that States parties:

(a) Provide adequate budgetary and technical assistance and allocate highly qualified human resources to all parts of justice systems, including specialized judicial, quasi-judicial and administrative bodies, alternative dispute resolution mechanisms, national human rights institutions and ombuds offices; and

(b) Seek support from external sources, such as UN specialized agencies, the international community and civil society, when national resources are limited, while ensuring that, in the medium and long term, adequate State resources are allocated to the justice systems to ensure their sustainability.

III. **Recommendations for specific areas of law**

40. Institutions and judicial arrangements are diverse all around the world, therefore some elements placed under one field of law in one country may be treated else where in an other country. For
instance, definition of discrimination may be in the Constitution or not, protection orders may appear under family law and/or criminal law; asylum and refugee issues may be dealt with by administrative courts or by quasi-judicial bodies. State parties are asked to consider the following paragraphs in this light.

A. Constitutional law

41. The Committee has observed that, in practice, States parties that have adopted constitutional guarantees relating to substantive equality between men and women and incorporated international human rights law, including the Convention, into their national legal orders are better equipped to secure gender equality in access to justice. Under Articles 2(a) and 15 of the Convention, States parties are to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation, including through the establishment of competent national tribunals and other public institutions, and to take measures to ensure the realization of the principle in all areas of public and private life as well as in all fields of law.

42. The Committee recommends that States parties:
   (a) Provide explicit constitutional protection for formal and substantive equality and non-discrimination in the public and private spheres, including all matters of personal status, family, marriage and inheritance law, and across all areas of law;
   (b) When provisions of international law do not directly apply, fully incorporate international human rights law into their constitutional and legislative frameworks in order to effectively guarantee women’s access to justice; and
   (c) Create the structures necessary to ensure the availability and accessibility of judicial review and monitoring mechanisms to oversee the implementation of all fundamental rights, including the principle of substantive gender equality.

B. Civil law

43. In some communities, women are unable to approach justice systems without the assistance of a male relative and social norms hinder their ability to exercise autonomy outside the household. Article 15 of the Convention provides that women and men are to be equal before the law and that States parties must accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. Women’s access to civil law procedures and remedies includes those in the fields of contracts, private employment, personal injury, consumer protection, inheritance, land and property rights.

44. The Committee recommends that States parties:
   (a) Eliminate all gender-based barriers to access to civil law, such as the requirement that women obtain permission from judicial or administrative authorities or family members before beginning legal action, or obtaining documents relating to identity or title to property;
   (b) Enforce the provisions set out in Article 15(3) of the Convention that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void; and
   (c) Adopt positive measures to ensure that the freedom of women to enter into contracts and other private law agreements is enforced.
C. Family law

45. Inequality in the family underlines all other aspects of discrimination against women and is often justified in the name of ideology, tradition and culture. The Committee has repeatedly emphasized the need for family laws and the mechanisms that apply them to comply with the principle of equality enshrined in Articles 2, 15 and 16 of the Convention.

46. The Committee recommends that States parties:

(a) Adopt written family codes or personal status laws that provide for equal access to justice between spouses or partners irrespective of their religious or ethnic identity or community, in accordance with the Convention and the Committee’s general recommendations;

(b) Consider the creation of gender-sensitive family judicial or quasi-judicial mechanisms dealing with issues such as property settlement, land rights, inheritance, dissolution of marriage and child custody within the same institutional framework; and

(c) Ensure that, in settings in which there is no unified family code and multiple family law systems exist, such as civil, indigenous, religious and customary law systems, personal status laws provide for individual choice as to the applicable family law at any stage of the relationship. State courts should review decisions of all other bodies in this regard.

D. Criminal law

47. Criminal laws are particularly important in ensuring that women are able to exercise their human rights, including their right to access to justice, on the basis of equality. States parties are obliged under Articles 2 and 15 of the Convention to ensure that women have access to the protection and remedies offered through criminal law and that they are not exposed to discrimination within the context of those mechanisms either as victims or as perpetrators of criminal acts. Some criminal codes or acts and/or criminal procedure codes discriminate against women:

a) by criminalizing forms of behaviour that are not criminalized or punished as harshly if they are performed by men,

b) by criminalizing behaviours that can only be performed by women such as abortion,

c) by failing to criminalize or to act with due diligence to prevent and provide redress for crimes that disproportionately or solely affect women, and

d) by jailing women for petty offenses and/or inability to pay bail for such offenses.

48. The Committee has also highlighted the fact that women suffer from discrimination in criminal cases owing to:

a) a lack of gender-sensitive non-custodial alternatives to detention,

b) a failure to meet the specific needs of women in detention, and

c) an absence of gender-sensitive monitoring and independent review mechanisms. The secondary victimization of women by the criminal justice system has an impact on their access to justice, owing to their heightened vulnerability to mental and physical abuse and threats during arrest, questioning and in detention.
49. Women are also disproportionately criminalized due to their situation or status, for instance women in prostitution, migrant women, women accused of adultery, lesbian, bisexual, transgender women and inter-sex persons, women who undergo abortion or women belonging to other discriminated groups.

50. The Committee notes that many countries have critical shortages of trained police and legal and forensic staff capable of dealing with the requirements of criminal investigations.

51. The Committee recommends that States parties:

(a) Exercise due diligence to prevent, investigate, punish and provide reparation for all crimes committed against women, whether such crimes were perpetrated by State or non-State actors;

(b) Ensure that the statutory limitation is in conformity with the interest of the victims;

(c) Take effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities. Consider establishing specialized gender units within law enforcement, penal and prosecution systems;

(d) Take appropriate measures to create supportive environments that encourage women to claim their rights, report crimes committed against them and actively participate in criminal justice processes; and take measures to prevent retaliation against women seeking recourse in justice. Consultations with women’s groups and civil society organizations should be sought to develop legislation, policies and programmes in this area;

(e) Take measures, including adoption of legislation, to protect women against internet crimes and misdemeanors;

(f) Refrain from conditioning the provision of support and assistance to women, including the granting of residency permits, upon cooperation with judicial authorities in cases of trafficking in human beings and organized crime;

(g) Use a confidential and gender-sensitive approach to avoid stigmatization during all legal proceedings, including secondary victimization in cases of violence, during questioning, evidence collection and other procedures related to the investigation;

(h) Review rules of evidence and their implementation especially in cases of Violence Against Women. Measures must be adopted, having due regard to the fair trial rights of victims and defendants in criminal proceedings, to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes;

(i) Improve their criminal justice response to domestic violence, what can be done through recording of emergency calls, taking photographic evidence of destruction of property as well as signs of violence; and reports from doctors or social workers, which can show how violence, even if committed without witnesses, has material effects on the victims’ physical, mental and social well-being;

(j) Take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner;

(k) Develop protocols for police and health care providers for the collection and preservation of
forensic evidence in cases of Violence Against Women; and train sufficient numbers of police and legal and forensic staff to competently conduct criminal investigations;

(l) Abolish discriminatory criminalization, and review and monitor all criminal procedures to ensure that they do not directly or indirectly discriminate against women; decriminalize forms of behaviour that are not criminalized or punished as harshly if they are performed by men; decriminalize behaviours that can only be performed by women such as abortion; and/or act with due diligence to prevent and provide redress for crimes that disproportionately or solely affect women, whether such acts were perpetrated by State or non-State actors;

(m) Closely monitor sentencing procedures and eliminate any discrimination against women in the penalties provided for particular crimes and misdemeanors and in eligibility for parole or early release from detention;

(n) Ensure that mechanisms are in place to monitor places of detention; pay special attention to the situation of women prisoners; and apply international guidance and standards on the treatment of women in detention;

(o) Keep accurate data and statistics regarding the number of women in each place of detention, the reasons for their detention, the length of time that they have been held, whether they are pregnant, or accompanied by a baby or child, their access to legal, health and social services and their eligibility for and use of available case review processes, non-custodial alternatives and training possibilities; and

(p) Use preventive detention as a last resort and for as short time as possible, and avoid preventive or after trial detention, for petty offenses, and for inability to pay bail for such offenses.

E. Administrative, social and labour law

52. In accordance with Articles 2 and 15 of the Convention, the availability and accessibility of judicial and quasi-judicial mechanisms and remedies under administrative, social and labour law should be guaranteed to women on the basis of equality. The subject areas that tend to fall within the ambit of administrative, social and labour law and are of particular importance for women include: (a) health services, (b) social security entitlements, (c) labour relations, including equal remuneration, (d) equal opportunities to be hired and promoted, (e) equal remuneration for civil servants, (f) housing and land zoning, (g) grants, subsidies and scholarships, (h) compensation funds, (i) governance of Internet resources and policy, as well as (j) migration and asylum.

53. The Committee recommends that States parties:

(a) Ensure that independent review in accordance with international standards is available for all decisions by administrative bodies;

(b) Ensure that a decision rejecting an application is reasoned and that the claimant is able to appeal against it to a competent body, and suspend the effect of any prior administrative decisions pending further review by a judicial court. This is of particular importance in the area of asylum and migration law, where appellants may be deported before having the chance to have their cases heard; and

(c) Use administrative detention only exceptionally, as a last resort, for a limited time, when necessary and reasonable in the individual case, proportionate to a legitimate purpose, and in accordance with national law and international standards. Ensure that all appropriate measures,
including effective legal aid and procedures are in place to enable women to challenge the legality of their detention. Ensure regular reviews of such detention, in the presence of the detainee. Ensure that conditions of administrative detention comply with relevant international standards for the protection of the rights of women deprived of their liberty.

IV. Recommendations for specific mechanisms

A. Specialized judicial and quasi-judicial systems, and international and regional justice systems

54. Other specialized judicial and quasi-judicial mechanisms, including labour, land claims, electoral and military courts, inspectorates and administrative bodies also have obligations to comply with international standards of independence, impartiality and efficiency and the provisions of international human rights law, including Articles 2, 5(a) and 15 of the Convention.

55. Transitional and post-conflict situations may result in increased challenges for women seeking to assert their right to access to justice. In its general recommendation No. 30, the Committee highlighted the specific obligations of States parties in connection with access to justice for women in such situations.

56. The Committee recommends that States parties:

(a) Take all appropriate steps to ensure that any specialized judicial and quasi-judicial mechanisms are available and accessible to women and exercise their mandate under the same requirements as the regular courts;

(b) Provide for independent monitoring and review of the decisions of specialized judicial and quasi-judicial mechanisms;

(c) Put in place programmes, policies and strategies to facilitate and guarantee the equal participation of women in those specialized judicial and quasi-judicial mechanisms at all levels;

(d) Implement the recommendations on women’s access to justice in transitional and post-conflict situations that are set out in paragraph 81 of general recommendation No. 30, taking a comprehensive, inclusive and participatory approach to transitional justice mechanisms; and

(e) Ensure the implementation of international instruments and decisions from international and regional justice systems related to women’s rights, and establish monitoring mechanisms for the implementation of international law.

B. Alternative dispute resolution processes

57. Many jurisdictions have adopted mandatory or optional systems for the mediation, conciliation, arbitration, collaborative resolutions of disputes, facilitation and interest-based negotiation. This applies in particular in the areas of family law, domestic violence, juvenile justice and labour law. Alternative dispute resolution processes are sometimes referred to as informal justice which are linked to but function outside formal court litigation processes. Informal alternative dispute resolution processes also include non-formal indigenous courts, as well as chieftancy based alternative dispute resolution where chiefs and other community leaders resolve interpersonal disputes including divorce, child custody and land disputes. While such processes may provide greater flexibility and reduce costs and delays for women seeking justice, they may also lead
to further violations of their rights and impunity for perpetrators due to the fact that these often operate with patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies.

58. The Committee recommends that States parties:

(a) Inform women of their rights to use mediation, conciliation, arbitration and collaborative resolution of dispute processes;

(b) Guarantee that alternative dispute settlement procedures do not restrict access by women to judicial and other remedies in all areas of law, and does not lead to further violation of their rights; and

(c) Ensure that cases of Violence Against Women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures.

C. National human rights institutions and ombuds offices

59. The development of national human rights institutions and ombuds offices may open up further possibilities for women to gain access to justice.

60. The Committee recommends that States parties:

(a) Take steps to: (i) provide adequate resources for the creation and sustainable operation of independent national human rights institutions in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and (ii) ensure that the composition and activities of those institutions are gender sensitive;

(b) Provide national human rights institutions with a broad mandate and the authority to consider complaints regarding women’s human rights;

(c) Facilitate women’s access to individual petition processes within ombuds offices and national human rights institutions on a basis of equality and provide the possibility for women to lodge claims involving multiple and intersecting forms of discrimination; and

(d) Provide national human rights institutions and ombuds offices with adequate resources and support to conduct research.

D. Plural justice systems

61. The Committee notes that State laws, regulations, procedures and decisions can sometimes coexist within one State party with religious, customary, indigenous or community laws and practices. This results in the existence of plural justice systems. There are therefore multiple sources of law that may be formally recognized as part of the national legal order or operate without an explicit legal basis. States parties have obligations under Articles 2, 5 (a) and 15 of the Convention and under other international human rights instruments to ensure that women’s rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems.

62. The presence of plural justice systems can in itself limit women’s access to justice by perpetuating and reinforcing discriminatory social norms. In many contexts, the availability of multiple
avenues for gaining access to justice within plural justice systems notwithstanding, women are unable to effectively exercise a choice of forum. The Committee has observed that, in some States parties in which systems of family and/or personal law based on customs, religion or community norms coexist alongside civil law systems, individual women may not be as familiar with both systems and/or at liberty to decide which regime applies to them.

63. The Committee has observed a range of models through which practices embedded in plural justice systems could be harmonized with the Convention in order to minimize conflict of laws and guarantee that women have access to justice. They include the adoption of legislation that clearly defines the relationship between existing plural justice systems, the creation of State review mechanisms and the formal recognition and codification of religious, customary, indigenous, community and other systems. Joint efforts by States parties and non-State actors will be necessary to examine ways in which plural justice systems can work together to reinforce protection for women’s rights.

64. The Committee recommends that, in cooperation with non-State actors, States parties:

(a) Take immediate steps, including capacity-building and training programmes on the Convention and women’s rights for the providers of justice, to ensure that religious, customary, indigenous and community justice systems harmonize their norms, procedures and practices with the human rights standards enshrined in the Convention and other international human rights instruments;

(b) Enact legislation to regulate the relationships between the different mechanisms of plural justice systems in order to reduce potential conflict;

(c) Provide safeguards against violations of women’s human rights by enabling review by State courts or administrative bodies of the activities of all components of plural justice systems, with special attention to village courts and traditional courts;

(d) Ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard;

(e) Ensure the availability of legal aid services for women to enable them to claim their rights within the various plural justice systems by engaging qualified local support staff to provide that assistance;

(f) Ensure the equal participation of women in the bodies established to monitor, evaluate and report on the operations of plural justice systems at all levels; and

(g) Foster constructive dialogue and formalize links between plural justice systems, including through the adoption of procedures for sharing information among them.

V. Withdrawal of reservations to the Convention

65. Many countries have made reservations to: (a) Article 2 c indicating that States parties undertake 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 (Article 2 (c)); (b) Article 5 indicating that States Parties shall 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 the inferiority or the superiority of either of the sexes.
on stereotyped roles for men and women (Article 5(a)); and (c) Article 15 indicating that States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

66. In view of the fundamental importance of women’s access to justice, the Committee recommends that State parties withdraw their reservations to the Convention, in particular to art. 2, 15 and 16.

VI. Ratification of the Optional Protocol to the Convention

67. The Optional Protocol to the Convention creates an additional international legal mechanism to enable women to bring complaints in relation to alleged violations of the rights set forth in the Convention and to enable the Committee to conduct inquiries into alleged grave or systematic violations of the rights set forth in the Convention, thereby reinforcing women’s right to access to justice. Through its decisions on individual communications issued under the Optional Protocol, the Committee has produced noteworthy jurisprudence in relation to women’s access to justice, including in relation to Violence Against Women, women in detention, health and employment.

68. The Committee recommends that States parties:

(a) Ratify the Optional Protocol; and

(b) Conduct and encourage the creation and dissemination of outreach and educational programmes, resources and activities in various languages and formats to inform women, civil society organizations and institutions of the procedures available for furthering women’s access to justice through the Optional Protocol.
Annex 6: Selected Regional Human Rights Instruments

**Annex 6A: AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (THE BANJUL CHARTER)**


**Preamble**


Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a “preliminary draft on an African Charter on Human and Peoples’ Rights providing *inter alia* for the establishment of bodies to promote and protect human and peoples’ rights”;

Considering the Charter of the Organization of African Unity, which stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples”;

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of people’s rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone; Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, Zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex. Language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples’ rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;
Firmly convinced of their duty to promote and protect human and people’s rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:-

**Part I: Rights and Duties**

**Chapter I: Human and Peoples’ Rights**

**Article 1**

The Member States of the Organization of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

**Article 2**

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

**Article 3**

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

**Article 4**

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

**Article 5**

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

**Article 6**

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

**Article 7**

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable 
offence at the time it was committed. No penalty may be inflicted for an offence for which no 
provision was made at the time it was committed. Punishment is personal and can be imposed 
only on the offender.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, 
subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an 
association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be 
subject only to necessary restrictions provided for by law in particular those enacted in the interest of 
national security, the safety, health, ethics and rights and freedoms of others.

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders 
of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his 
country. This right may only be subject to restrictions, provided for by law for the protection of 
national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other 
countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only 
be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is 
aimed at national, racial, ethnic or religious groups.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either 
directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

**Article 14**

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

**Article 15**

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

**Article 16**

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

**Article 17**

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

**Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

**Article 19**

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.
Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.
Article 24

All peoples shall have the right to a general satisfactory environment favorable to their development.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Chapter II: Duties

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members
of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral wellbeing of society;

8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Part II: Measures of Safeguard

Chapter I: Establishment and Organization of the African Commission on Human and Peoples’ Rights

Article 30

An African Commission on Human and Peoples’ Rights, hereinafter called “the Commission”, shall be established within the Organization of African Unity to promote human and peoples’ rights and ensure their protection in Africa.

Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples’ rights; particular consideration being given to persons having legal experience.

2. The members of the Commission shall serve in their personal capacity.

The Commission shall not include more than one national of the same state.

Article 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter.

Article 34

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States party to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.

Article 35

1. The Secretary General of the Organization of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates;

2. The Secretary General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

Article 36

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.
Article 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

Article 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

1. In case of death or resignation of a member of the Commission the Chairman of the Commission shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organization of African Unity, who shall then declare the seat vacant.

3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.

Article 40

Every member of the Commission shall be in office until the date his successor assumes office.

Article 41

The Secretary General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services.

Article 42

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.

2. The Commission shall lay down its rules of procedure.

3. Seven members shall form the quorum.

4. In case of an equality of votes, the Chairman shall have a casting vote.

5. The Secretary General may attend the meetings of the Commission. He shall not participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

Article 43

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities.
The Gender Bench Book 2016

Article 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organization of African Unity.

Chapter II - Mandate of the Commission

Article 45

The functions of the Commission shall be:

1. To promote Human and Peoples’ Rights and in particular:-
   (a) To collect documents, undertake studies and researches on African problems in the field of human and peoples’ rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples’ rights, and should the case arise, give its views or make recommendations to Governments.
   (b) To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African Governments may base their legislations.
   (c) Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples’ rights.

2. Ensure the protection of human and peoples’ rights under conditions laid down by the present Charter.

3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Chapter III -- Procedure of the Commission

Article 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

Communication from States

Article 47

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating
to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

Article 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

Article 49

Notwithstanding the provisions of 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

Article 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

Article 51

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

Article 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples’ Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

Article 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

Article 54

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.
Other Communications

Article 55
1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.

2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56
1. Communications relating to human and peoples’ rights referred to in 55 received by the Commission, shall be considered if they:

3. Indicate their authors even if the latter request anonymity,

4. Are compatible with the Charter of the Organization of African Unity or with the present Charter,

5. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,

6. Are not based exclusively on news discriminated through the mass media,

7. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,

8. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and

9. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

Article 57
Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

Article 58
1. When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples’ rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.

2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.

3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.
Article 59

1. All measures taken within the provisions of the present Charter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

Chapter IV -- Applicable Principles

Article 60

The Commission shall draw inspiration from international law on human and peoples’ rights, particularly from the provisions of various African instruments on human and peoples’ rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples’ rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people’s rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

Article 62

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

Article 63

1. The present Charter shall be open to signature, ratification or adherence of the member states of the Organization of African Unity.

2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organization of African Unity.

3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the member states of the Organization of African Unity.

Part III: General Provisions

Article 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

Article 65
For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of its instrument of ratification or adherence.

Article 66
Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

Article 67
The Secretary General of the Organization of African Unity shall inform member states of the Organization of the deposit of each instrument of ratification or adherence.

Article 68
The present Charter may be amended if a State party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

Adopted by the eighteenth Assembly of Heads of State and Government June 1981 – Nairobi, Kenya
Annex 6B: THE GOMA DECLARATION ON ERADICATING SEXUAL VIOLENCE AND ENDING IMPUNITY IN THE GREAT LAKES REGION

- GOMA, 18TH JUNE 2008 –

We, the participants from different government ministries and departments of the Member States of the International Conference on the Great Lakes Region (ICGLR) together with civil society organizations, religious and traditional leaders, international non-governmental organizations, development partners and the United Nations (UN) agencies attending the High Level Regional Consultation on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region held at IHUSI Hotel, Goma, Democratic Republic of the Congo (DRC), from the 16th to 18th June 2008,

Having listened to the testimonies from the field by representatives of civil society organizations, women organizations, and traditional and religious leaders, as well as presentations from representatives of the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Conference on the Great Lakes Region (ICGLR), and the Vice- Governor of Goma, DRC, the United Nations Mission in DRC (MONUC), the Deputy Commander of the 8th Military Region of North Kivu, and having viewed documentaries on the horrifying stories of sexual violence and exploitation of women and children,


Convinced that the ICGLR Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children and the ICGLR Project on Prevention and Fight Against Sexual Exploitation, Abuse and Gender-Based Violence and Assistance to the Victims provide efficient and adequate framework for the prevention and fight against SGBV, and the prosecution and punishment of the perpetrators of sexual violence in the Great Lakes Region,

Aware of the conditions that breed sexual violence and impunity, such as persistent wars, insecurity, harmful cultural practices, discrimination, corruption and inadequate legal systems in some countries of the Great Lakes Region,
Aware that the percentage of victims, in particular child victims, of sexual violence is alarmingly increasing in some countries of the Great Lakes Region,

Deeply concerned by the pandemic of SGBV and violations of the human rights of prominently women and children, and pervasive impunity in the Great Lakes Region for cases related to sexual violence and exploitation,

Bearing in mind the responsibility of the State to protect its citizens from human rights violations, including SGBV,

Aware that SGBV represents a threat to national and regional peace and security, and the propagation of HIV/AIDS,

Acknowledging the cost of SGBV on the economic and sustainable development of the countries of the Great Lakes Region,

Aware that SGBV is not only related to crisis situations and war,

Aware that SGBV is not only committed by armed elements but increasingly by civilians as well,

Convinced that the situation in the Great Lake Region is very complex and special and that all survivors despite their social, political status including the Internally Displaced Persons (IDPs) and refugees need protection, justice and rehabilitation,

Aware that the proliferation of small arms and light weapons has exacerbated the problem of SGBV in the region,

Determined to work with and influence our respective governments and organizations to contribute to the eradication of all forms of gender-based violence, in particular sexual violence, and to take appropriate measures for empowerment and equal representation of women and girls,

Convinced that the struggle to end SGBV entails a combined effort of men, women, boys and girls, and all state institutions,

**Recommend as follows:**

**At the national level:**

1- Member States to allocate funds from the national budget to projects related to the prevention of SGBV and assistance to survivors, strengthening of institutions working on SGBV,

2- Member States to strengthen their judicial systems through training the judiciary in SGBV issues, revising discriminatory laws, simplifying procedures for lodging complaints, providing free legal services to victims, fighting corruption and the trivialization of sexual violence cases,

3- Member States to ensure that during trial of SGBV cases criminal procedural guarantees of effective prosecution, confidentiality, closed court proceedings and protection of victims and witnesses are taken into account,

4- Member States to strengthen medical structures in order to facilitate the provision of medical certificates that are necessary for timely hearing of SGBV cases,
5- Member States to support mobile, legal clinics and medical centres to facilitate free access to medical, legal and psycho-social services,

6- Member States to create a vetting mechanism to screen out candidates for official positions in the army, police or other security services who have a past record of human rights abuses including SGBV,

7- Member States to ensure that all the actors, human rights activists and local NGOs fighting for the advancement of women’s rights, including fighting against SGBV, are protected and able to work in safety and security and also to create an environment that encourages their work,

8- Member States to decentralize services at the grassroots levels for SGBV victims and their families so that they can receive free legal and medical assistance, including the morning-after-pills, counseling to overcome trauma, and socio-economic assistance, including food, shelter, ARV, and other HIV/AIDS infection and STD related assistance,

9- Member States to ensure that specific and sufficient medical kits for all victims, especially children, are made available in all health facilities,

10- Member States to ensure special training for all the actors in relation to the specific needs of minors, particularly very young girls and boys victims of sexual violence, in medical care, trauma management and legal assistance,

11- Member States to train police, army, prisons, medical personnel, and social workers in trauma management and sensitivity to victims in handling sexual violence cases,

12- Member states to provide specialized and professional training for police, prosecutorial and judicial staff on gathering evidence (including forensic evidence) and prosecutorial guarantees on cases of sexual violence.

13- Member states to establish protection mechanism for victims and witnesses, who are willing to testify in courts against alleged perpetrators,

14- Member States to undertake sustained public awareness, targeting women, men girls, boys and the community on their rights and responsibilities and on programmes of assistance available to victims of SGBV in languages and formats that are accessible to the people at the grass roots and to civil societies,

15- Member States to put in place a national media strategy for sustainable use of electronic and print media especially radios, newspapers, television and community/traditional based means to expose the atrocities of sexual violence, and facilitate the sensitization and fight against SGBV,

16- Develop and implement programmes for behavioral change and rehabilitation of imprisoned perpetrators of sexual violence in accordance with juvenile justice procedures for child perpetrators,

17- Member States to establish a Committee for the Protection of Women and Children from sexual violence to ensure follow up, dissemination and implementation of the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children,

18- Member States to establish a Reparation Fund to assist victims of SGBV and put in place a Reparation Commission to handle sexual violence claims,
19- Enact and when necessary amend laws to conform to the ICGLR Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children,

20- Strengthen or set up Gender Desks or Special Units at all prisons, police and military units with both male and female police and military officers trained to handle SGBV, with functions of securization, prevention and effective prosecution of SGBV cases,

21- Strengthen or set up Child Protection Units at all police and military stations, and have Child Protection Focal Points in all stages of the civilian and military justice system,

22- Systematize data collection to strengthen the evidence base on the extent of SGBV and experiences of women, girls and young boys, as well as existing social, political, economic and legal measures in place,

23- Member States should not grant amnesty, pardon or grant conditional release to the perpetrators of SGBV, and a maximum sentence should be imposed in all cases,

24- Member States to support the implementation of gender equality program aiming to transform the relationship between women and men in a sustainable and equitable manner, involving traditional and religious leaders, as well as women leaders at the grass-root level,

25- Member States to include prevention of SGBV in the curricula of schools and other learning institutions to enable young boys and girls to grow in a more conscious and sensitive environment,

26- Member States to put in place effective measures to stop the proliferation of small arms and light weapons within the countries in the region,

27- Member States to ensure that DDR processes facilitate access to girls, boys and women associated with armed groups so as to promote responsiveness to children and women in the reintegration programmes,

28- Member States to ensure that all girls and women abducted and kept as wives/sex slaves are released and reunified with their families,

29- Member states to initiate economic support for the benefit of SGBV and other vulnerable survivors.

At the regional level:

30- Follow up with a view to speeding up the process of stabilization and peace consolidation in the Great Lakes Region through disarmament, demobilization and reintegration of illegal armed groups in the region in conformity with agreements such as the Nairobi Communiqué (2007) and the Goma Act d’Engagement (2008),

31- Urge those Member States that have not done so, to ratify the Pact on Security, Stability and Development in the Great Lakes Region,

32- Member States to domesticate the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children by reforming the Penal Codes to provide stiff punishment for crimes related to SGBV,

33- Member States to review discriminatory laws and provisions incompatible with effective implementation of the Protocol,
34- Member States to engage themselves and ensure cooperation in criminal matters related to SGBV,

35- Pursuant to Article 6.8 of the Protocol, Member States to create a regional facility, under the Special Fund for Reconstruction and Development, to prevent SGBV and assist survivors specifically in the area of training, legal assistance, medical treatment, rehabilitation and reintegration of survivors of sexual violence, including the perpetrators of SGBV,

36- Pursuant to Article 6.9 of the Protocol, Member States to put in place a special regional facility for training and sensitizing judicial officers, police and military units, social workers, medical officers and all others who handle SGBV issues,

37- Member States to facilitate high level consultations on the fight against SGBV for high ranking military and police officials of the Great Lakes Region,

38- With the assistance of the United Nations, Member States to facilitate regional consultations on the fight against SGBV for traditional, religious and women leaders,

39- Member States to take measures to stop child trafficking and child prostitution in the Great Lakes Region by specifically addressing cross border regional networks that facilitate child trafficking,

40- Member States to put in place legislative and policy mechanisms to respond to vulnerabilities of children born out of rape and to women with pregnancy from rape by giving the opportunity to those who want to keep the pregnancy to benefit from maternal assistance and to those who do not, to be allowed to abort,

At the international level (Development partners and United Nations):

41- To provide financial and technical assistance to strengthen legal, judicial and medical response capacities to eradicate SGBV and end impunity in line with the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children and other international and regional instruments,

42- Mobilize international political and financial support for the implementation of the Pact on Security, Stability and Development in the Great Lakes Region and its related Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children,

43- Promote the harmonization of international initiatives on SGBV in relation to national and regional contexts,

44- Provide financial resources and technical capacities to the Conference Secretariat of the International Conference of the Great Lakes Region (ICGLR) to facilitate the coordination, implementation, monitoring and evaluation of the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children and the ICGLR Project on Prevention and Fight Against Sexual Exploitation, Abuse and Gender-Based Violence and Assistance to the Victims,

45- The United Nations and peacekeeping missions to assist governments to have sustainable legal, policy and institutional mechanisms and human resources to ensure continuity in the fight against SGBV,
46- Ensure the deployment of an adequate peacekeeping force and the enforcement of their protection mandate,

47- Establish specialized processes for SGBV in national judicial system and within transitional justice mechanisms to expedite prosecution of alleged perpetrators.

48- Support the coordination, monitoring and evaluation of responses to SGBV at national, regional and international levels

49- Support the strengthening of national, regional and international judicial systems to help ensure all suspected perpetrators of sexual violence are brought before justice and that judicial decisions and relevant sentences are executed.

50- Support and train peacekeeping forces in handling SGBV and other related cases

Done at IHUSI Hotel, Goma, DRC 18th June 2008

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Annex 6C: SOLEMN DECLARATION ON GENDER EQUALITY IN AFRICA

We, the Heads of State and Government of Member States of the African Union, meeting in the Third Ordinary Session of our Assembly in Addis Ababa, Ethiopia, from 6-8 July 2004:


Standing by our Decision on gender parity taken at the Inaugural Session of the AU Assembly of Heads of State and Government in July 2002 in Durban, South Africa implemented during the Second Ordinary Session of the Assembly in Maputo, Mozambique, 2003 through the election of five female and five male Commissioners;

Noting with satisfaction that our Decision on gender parity is a historic achievement that does not yet exist in any other continent or regional organizations;

Re-affirming our commitment to continue, expand and accelerate efforts to promote gender equality at all levels;

Determined to build on the progress that we have achieved in addressing issues of major concern to the women of Africa;

Taking cognizance of the landmark decision to adopt the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa during the Second Ordinary Session of the Assembly in Maputo, Mozambique, 2003;

Noting the decision of the Chairperson of the African Union Commission to transform the African Women’s Committee on Peace and Development (AWCPD) into the African Union Women’s Committee (AUWC), which will be located in the Gender Directorate and serve as an Advisory Body to the Chairperson on Gender and Development;

Recognizing that major challenges and obstacles to gender equality still remain and require concerted and collective leadership and efforts from all of us including networks working on gender and development;
Deeply concerned about the status of women and the negative impacts on women of issues such as the high incidence of HIV/AIDS among girls and women, conflict, poverty, harmful traditional practices, high population of refugee women and internally displaced women, Violence Against Women, women’s exclusion from politics and decision-making, and illiteracy, limited access of girls to education;

Aware of the policies and programmes we have put in place to curb the spread of HIV/AIDS pandemic as well as the current challenges in this campaign;

Concerned that, while women and children bear the brunt of conflicts and internal displacement, including rapes and killings, they are largely excluded from conflict prevention, peace-negotiation, and peace-building processes in spite of African women’s experience in peace-building;

Aware of the fact that low levels of women’s representation in social, economic and political decision-making structures and feminisation of poverty impact negatively on women’s ability to derive full benefit from the economies of their countries and the democratization process;

Aware of the digital divide between the North and the South, men and women and the role of information telecommunication technologies (ICTS) in the advancement of the gender issue as stated in the e-gender Forum Declaration of Tunis, May 2004 in preparation for the World Summit on Information Society (WSIS) 2005;

**HEREBY AGREE TO:**

1. Accelerate the implementation of gender specific economic, social, and legal measures aimed at combating the HIV/AIDS pandemic and effectively implement both Abuja and Maputo Declarations on Malaria, HIV/AIDS, Tuberculosis and Other Related Infectious Disease. More specifically we will ensure that treatment and social services are available to women at the local level making it more responsive to the needs of families that are providing care; enact legislation to end discrimination against women living with HIV/AIDS and for the protection and care for people living with HIV/AIDS, particularly women; increase budgetary allocations in these sectors so as to alleviate women’s burden of care;

2. Ensure the full and effective participation and representation of women in peace process including the prevention, resolution, management of conflicts and post- conflict reconstruction in Africa as stipulated in UN Resolution 1325 (2000) and to also appoint women as Special Envoys and Special Representatives of the African Union;

3. Launch, within the next one year, a campaign for systematic prohibition of the recruitment of child soldiers and abuse of girl children as wives and sex slaves in violation of their Rights as enshrined in the African Charter on Rights of the Child;

4. Initiate, launch and engage within two years sustained public campaigns against gender based violence as well as the problem of trafficking in women and girls; Reinforce legal mechanisms that will protect women at the national level and end impunity of crimes committed against women in a manner that will change and positively alter the attitude and behaviour of the African society;

5. Expand and Promote the gender parity principle that we have adopted regarding the Commission of the African Union to all the other organs of the African Union, including its NEPAD
programme, to the Regional Economic Communities, and to the national and local levels in collaboration with political parties and the National parliaments in our countries;

6. Ensure the active promotion and protection of all human rights for women and girls including the right to development by raising awareness or by legislation where necessary;

7. Actively promote the implementation of legislation to guarantee women’s land, property and inheritance rights including their rights to housing;

8. Take specific measures to ensure the education of girls and literacy of women, especially in the rural areas, to achieve the goal of “Education for All” (EFA);

9. Undertake to Sign and ratify the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa by the end of 2004 and to support the launching of public campaigns aimed at ensuring its entry into force by 2005 and usher in an era of domesticating and implementing the Protocol as well as other national, regional and international instruments on gender equality by all States Parties;

10. Establish AIDS Watch Africa as a unit within the Office of the Chairperson of the Commission who should render annual report on HIV/AIDS situation in the continent during annual Summits; and promote the local production of anti-retroviral drugs in our countries;

11. Accept to establish an African Trust Fund for Women for the purpose of building the capacity of African women and further request the African Union Commission to work out the modalities for the operationalisation of the Fund with special focus on women in both urban and rural areas;

12. Commit ourselves to report annually on progress made in terms of gender mainstreaming and to support and champion all issues raised in this Declaration, both at the national and regional levels, and regularly provide each other with updates on progress made during our Ordinary Sessions;

13. We request the chairperson of the African Union Commission to submit, for our consideration, an annual report, during our ordinary sessions, on measures taken to implement the principle of gender equality and gender mainstreaming, and all issues raised in this Declaration both at the national and regional levels.
Annex 6D: PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (MAPUTO PROTOCOL)

The States Parties to this Protocol,


CONSIDERING that Article 2 of the African Charter on Human and Peoples’ Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

FURTHER CONSIDERING that Article 18 of the African Charter on Human and Peoples’ Rights calls on all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

NOTING that Articles 60 and 61 of the African Charter on Human and Peoples’ Rights recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples’ rights as being important reference points for the application and interpretation of the African Charter;

RECALLING that women’s rights have been recognized and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

NOTING that women’s rights and women’s essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;


REAFFIRMING the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa’s Development, relevant Declarations,
Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa’s development;

**FURTHER NOTING** that the African Platform for Action and the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all Member States of the United Nations, which have made a solemn commitment to implement them, to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based Violence Against Women;

**RECOGNISING** the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy;

**BEARING IN MIND** related Resolutions, Declarations, Recommendations, Decisions, Conventions and other Regional and Sub-Regional Instruments aimed at eliminating all forms of discrimination and at promoting equality between women and men;

**CONCERNED** that despite the ratification of the African Charter on Human and Peoples’ Rights and other international human rights instruments by the majority of States Parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices;

**FIRMLY CONVINCED** that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated;

**DETERMINED** to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights;

**HAVE AGREED AS FOLLOWS:**

**Article 1**

**Definitions**

For the purpose of the present Protocol:

a) “African Charter” means the African Charter on Human and Peoples’ Rights;

b) “African Commission” means the African Commission on Human and Peoples’ Rights;

c) “Assembly” means the Assembly of Heads of State and Government of the African Union;

d) “AU” means the African Union;

e) “Constitutive Act” means the Constitutive Act of the African Union;

f) “Discrimination against women” means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;

g) “Harmful Practices” means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
h) “NEPAD” means the New Partnership for Africa’s Development established by the Assembly;
i) “States Parties” means the States Parties to this Protocol;
j) “Violence Against Women” means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war;
k) “Women” mean persons of female gender, including girls.

Article 2

Elimination of Discrimination against Women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
   a) Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
   b) Enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
   c) Integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
   d) Take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
   e) Support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

2. States Parties shall 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.

Article 3

Right to Dignity

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.

2. Every woman shall have the right to respect as a person and to the free development of her personality.

3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Article 4

The Rights to Life, Integrity and Security of the Person

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

2. States Parties shall take appropriate and effective measures to:
   A) enact and enforce laws to prohibit all forms of Violence Against Women including unwanted or forced sex whether the violence takes place in private or public;
   b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of Violence Against Women;
   c) identify the causes and consequences of Violence Against Women and take appropriate measures to prevent and eliminate such violence;
   d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of Violence Against Women;
   e) punish the perpetrators of Violence Against Women and implement programmes for the rehabilitation of women victims;
   f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of Violence Against Women;
   g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
   h) prohibit all medical or scientific experiments on women without their informed consent;
   i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating Violence Against Women;
   j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
   k) Ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and those women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.
Article 5
Elimination of Harmful Practices

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:-

a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;

b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;

c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;

d) Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

Article 6
Marriage

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

a) no marriage shall take place without the free and full consent of both parties;

b) the minimum age of marriage for women shall be 18 years;

c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;

d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognized;

e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;

f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband’s surname;

g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;

h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;

i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7

Separation, Divorce and Annulment of Marriage

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

a) separation, divorce or annulment of a marriage shall be effected by judicial order;
b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage;
c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;
d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 8

Access to Justice and Equal Protection before the Law

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

a) effective access by women to judicial and legal services, including legal aid;
b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;
c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;
d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
e) that women are represented equally in the judiciary and law enforcement organs;
f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

Article 9

Right to Participation in the Political and Decision-Making Process

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
   a) women participate without any discrimination in all elections;
   b) women are represented equally at all levels with men in all electoral processes;
c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.

2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

Article 10
Right to Peace

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

2. States Parties shall take all appropriate measures to ensure the increased participation of women:
   a) in programmes of education for peace and a culture of peace;
   b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;
   c) in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;
   d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;
   e) in all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.

3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

Article 11
Protection of Women in Armed Conflicts

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.

2. States Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.

3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.
Article 12

Right to Education and Training

1. States Parties shall take all appropriate measures to:-
   a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
   b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;
   c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;
   d) provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;
   e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.

2. States Parties shall take specific positive action to:
   a) promote literacy among women;
   b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;
   c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

Article 13

Economic and Social Welfare Rights

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:-

a) promote equality of access to employment;
   b) promote the right to equal remuneration for jobs of equal value for women and men;
   c) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;
   d) Guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognized and guaranteed by conventions, laws and regulations in force;
   e) create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;
   f) establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it;
g) introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;
h) take the necessary measures to recognise the economic value of the work of women in the home;
i) guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors;
j) ensure the equal application of taxation laws to women and men;
k) recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;
l) recognise that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;
m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

Article 14

Health and Reproductive Rights

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
   a) the right to control their fertility;
   b) the right to decide whether to have children, the number of children and the spacing of children;
   c) the right to choose any method of contraception;
   d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
   e) the right to be informed on one’s health status and on the health status of one’s partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
   g) the right to have family planning education.

2. States Parties shall take all appropriate measures to:
   a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
   b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
   c) protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.
Article 15
Right to Food Security
States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;

b) establish adequate systems of supply and storage to ensure food security.

Article 16
Right to Adequate Housing
Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.

Article 17
Right to Positive Cultural Context
1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.

2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

Article 18
Right to a Healthy and Sustainable Environment
1. Women shall have the right to live in a healthy and sustainable environment.

2. States Parties shall take all appropriate measures to:
   a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
   b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women’s access to, and participation in their control;
   c) protect and enable the development of women’s indigenous knowledge systems;
   d) regulate the management, processing, storage and disposal of domestic waste;
   e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.
Article 19

Right to Sustainable Development

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

a) introduce the gender perspective in the national development planning procedures;
b) Ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
c) promote women’s access to and control over productive resources such as land and guarantee their right to property;
d) promote women’s access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

Article 20

Widows’ Rights

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

a) that widows are not subjected to inhuman, humiliating or degrading treatment;
b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.

Article 21

Right to Inheritance

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents’ properties.

Article 22

Special Protection of Elderly Women

The States Parties undertake to:-

a) provide protection to elderly women and take specific measures commensurate with their
physical, economic and social needs as well as their access to employment and professional training;

b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

Article 23

Special Protection of Women with Disabilities

The States Parties undertake to:-

a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;

b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

Article 24

Special Protection of Women in Distress

The States Parties undertake to:-

a) ensure the protection of poor women and women heads of families including women from marginalised population groups and provide an environment suitable to their condition and their special physical, economic and social needs;

b) ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

Article 25

Remedies

States Parties shall undertake to:-

a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated;

b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

Article 26

Implementation and Monitoring

1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognized.

2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognized.
Article 27

Interpretation

The African Court on Human and Peoples’ Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

Article 28

Signature, Ratification and Accession

1. This Protocol shall be open for signature, ratification and accession by the States Parties, in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the AU.

Article 29

Entry into Force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.

2. For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.

3. The Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

Article 30

Amendment and Revision

1. Any State Party may submit proposals for the amendment or revision of this Protocol.

2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.

3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this Article.

4. Amendments or revision shall be adopted by the Assembly by a simple majority.

5. The amendment shall come into force for each State Party, which has accepted it thirty (30) days after the Chairperson of the Commission of the AU has received notice of the acceptance.

Article 31

Status of the Present Protocol

None of the provisions of the present Protocol shall affect more favourable provisions for the realisation
of the rights of women contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties.

Article 32

Transitional Provisions

Pending the establishment of the African Court on Human and Peoples’ Rights, the African Commission on Human and Peoples’ Rights shall be seized with matters of interpretation arising from the application and implementation of this Protocol.

Adopted by the 2nd Ordinary Session of the Assembly of the Union

Maputo, 11 July 2003
ANNEX 7A: THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT, 2010

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

Section 1. Interpretation.

PART II - THE OFFENCE OF FEMALE GENITAL MUTILATION

2. Offence of female genital mutilation.
3. Aggravated female genital mutilation.
4. Carrying out female genital mutilation on oneself.
5. Attempt to carry out female genital mutilation.
6. Procuring female genital mutilation.
7. Participation in events leading to female genital mutilation.
8. Parents, guardians, husband or a person having authority or control.
9. Consent of the victim.
10. Culture and religion not a defence to female genital mutilation.
11. Protection of females who have not undergone female genital mutilation.
12. Protection of persons whose wives, daughters or relatives have not undergone female genital mutilation.

PART III - COURT ORDERS AND JURISDICTION

15. Extra-territorial jurisdiction.

PART IV - DUTY TO REPORT

17. Regulations.

PART V - MISCELLANEOUS PROVISIONS

SCHEDULE CURRENCY POINT

THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT, 2010

An Act to provide for the prohibition of female genital mutilation, the offences, prosecution and punishment of offenders and the protection of victims as well as girls and women under threat of female genital mutilation and to provide for other related matters.
DATE OF ASSENT: 17th March, 2010. Date of Commencement: 9th April, 2010. BE IT ENACTED by Parliament as follows:

PART I - PRELIMINARY

1. Interpretation.

In this Act, unless the context otherwise requires -

“currency point” has the value assigned to it in the Schedule to this Act; “disability” means a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

“female genital mutilation” refers to all procedures involving partial or total removal of the external female genitalia for non-therapeutic reasons;

“health worker” means a person qualified in the promotion of health, the prevention of disease and the care of the sick and who is registered and enrolled under the Medical and Dental Practitioners Act, the Nurses and Midwives Act and the Allied Health Professionals Act;

“Minister” means the Minister responsible for social development;

“person in authority” means a person having power and control over other people because of his or her knowledge and official position; and includes a person who exercises religious, political, economic or social authority.

PART II - THE OFFENCE OF FEMALE GENITAL MUTILATION

2. Offence of Female Genital Mutilation.

A person who carries out female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding ten years.

3. Aggravated Female Genital Mutilation.

(1) A person commits the offence of aggravated female genital mutilation where - (a) death occurs as a result of female genital mutilation;

(b) the offender is a parent, guardian or person having authority or control over the victim;

(c) the victim suffers disability;

(d) the victim is infected with HIV as a result of the act of female genital mutilation; or

(e) female genital mutilation is done by a health worker.

(2) A person who commits the offence of aggravated female genital mutilation is liable on conviction to life imprisonment.

4. Carrying out female genital mutilation on oneself.

A person who carries out female genital mutilation on herself commits an offence and is liable on conviction to imprisonment not exceeding ten years.
5. **Attempt to carry out female genital mutilation.**

A person who attempts to carry out female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding five years.

6. **Procuring, aiding, abetting, e.t.c. female genital mutilation.**

A person who procures, counsels, aids, abets, induces, coerces, threatens or under false pretence carries out female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding five years.

7. **Participation in events leading to female genital mutilation.**

A person who participates in any event leading to female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding five years.

8. **Parents, guardians, husband or a person having authority or control.**

Where the offender in sections 5, 6 or 7 is a parent, guardian, husband or a person having authority or control over the victim, the offender is liable on conviction to imprisonment not exceeding eight years.

9. **Consent of the victim to female genital mutilation.**

Consent of the victim to female genital mutilation shall not be a defence under this Act.

10. **Culture and religion not a defence to female genital mutilation.**

Any culture, custom, ritual, tradition, religion or any other non-therapeutic reason shall not be a defence under this Act.

11. **Protection of females who have not undergone female genital mutilation.**

A person who discriminates against or stigmatizes a female who has not undergone female genital mutilation from engaging or participating in any economic, social, political or other activities in the community commits an offence and is liable on conviction to imprisonment not exceeding five years.

12. **Protection of persons whose wives, daughters or relatives have not undergone female genital mutilation.**

A person who discriminates against or stigmatizes another person whose wife, daughter or relative has not undergone female genital mutilation from engaging or participating in any economic, political, social or other activities in the community commits an offence and is liable on conviction to imprisonment not exceeding five years.

**PART III - COURT ORDERS AND JURISDICTION**

13. **Compensation.**

(1) Where a person is convicted of an offence under this Act, the court may, in addition to the punishment provided there, order such person to pay by way of compensation to
the victim, such sum as in the opinion of the court is just, having regard to the injuries suffered by the victim, medical and other expenses.

(2) The order referred to in subsection (1) shall be deemed to be a decree under the Civil Procedure Act, and shall be executed in the manner provided there under.


(1) A magistrate’s court may, if satisfied that a girl or woman is likely to undergo female genital mutilation, upon application by any person, issue a protection order.

(2) Where the protection order is issued in respect of a child, the Family and Children Court may issue appropriate orders for the child as it deems necessary.

15. Extra-territorial jurisdiction.

This Act shall apply to offences under this Act committed outside Uganda where the girl or woman upon whom the offence is committed is ordinarily resident in Uganda.


(1) A person, who knows that a person has committed or intends to commit an offence under this Act, shall report the matter to Police or other authority for appropriate action.

(2) A person who knowing that a person has committed or intends to commit an offence under this Act, does not report to the Police or other person in authority within twenty four hours of having such knowledge, commits an offence and is liable on conviction to a fine not exceeding twelve currency points or imprisonment not exceeding six months or both.

(3) A person who threatens, harms or in any way inhibits a person who is reporting or about to report an offence under this Act commits an offence and is liable on conviction to a fine of twelve currency points or imprisonment not exceeding six months or both.

PART V - MISCELLANEOUS PROVISIONS

17. Regulations.

(1) The Minister may, by statutory instrument, make regulations for the effective implementation of this Act

(2) Regulations made under this section shall be laid before Parliament for information.

A currency point is equal to twenty thousand Uganda Shillings.

Cross References

Allied Health Professionals Act, Cap. 268

Civil Procedure Act, Cap. 71

Medical and Dental Practitioners Act, Cap. 272

Nurses and Midwives Act, Cap. 274
**Annex 7B:** THE PROHIBITION OF FEMALE GENITAL MUTILATION REGULATIONS, 2013.

(Under section 17 of The Prohibition of Female Genital Mutilation Act, 2010, Act No.5 of 2010)

**IN EXERCISE** of the powers conferred upon the Minister responsible for social development by section 17 of the Prohibition of Female Genital Mutilation Act, 2010, Act No.5 of 2010, these Regulations are made this 27th day of February, 2013.

**PART I - PRELIMINARY**

1. **Title.**

   These Regulations may be cited as The Prohibition of Female Genital Mutilation Regulations, 2013.

2. **Interpretation.**

   In these regulations, unless the context otherwise requires-
   
   “**Act**” means The Prohibition of Female Genital Mutilation Act, 2010, Act No.5 of 2010;
   
   “**authorised officer**” means a police officer, local council officer or probation and social welfare officer;
   
   “**authority**” includes-
   
   (i) a local council official at any level of local Government;
   
   (ii) a probation and social welfare officer; or
   
   (iii) a community development officer;
   
   “**currency point**” has the value assigned to it in the Schedule 1
   
   “**chosen place**” means a place which in the Opinion of the authorised officer will be safe to protect a girl or woman from the danger of undergoing female genital mutilation,
   
   “**female genital mutilation tools**” means any material ‘that can be used to carry out female genital mutilation and includes knives, cutters and millet flour;
   
   “**health worker**” means a person qualified in the promotion of health, the prevention of disease and the care of the sick and who is registered and enrolled under the Medical and Dental Practitioners Act, the Nurses and Midwives Act and the Allied Health Professionals Act;
   
   “**informant**” means a person who gives information to a police officer or any other person in authority about commission of an offence or intention to commit an offence under the Act or these Regulations;
   
   “**victimization**” includes intimidation, threat, harassment, persecution, abuse or any other form of ill treatment towards a person;
   
   “**warrant**” means a search warrant or an arrest warrant.
PART II - REPORTING ACTS OF FEMALE GENITAL MUTILATION


It is the duty of the victim or any other person to report an offence relating to female genital mutilation to the Police or any other authority for appropriate action in accordance with Part IV of the Act.

4. Suspicion that a girl or woman is likely to undergo female genital mutilation.

(1) A local council official, probation and social welfare official or any other person who suspects that a girl or woman is about to undergo female genital mutilation shall inform the police.

(2) A police officer upon information, may without a warrant enter any place, facility, house or structure for the removal and protection of a girl or woman where it is suspected that a girl or woman is about to undergo female genital mutilation.

(3) An officer proceeding under sub regulation (2) shall record in writing the grounds for effecting the arrest which shall be attached to the application for the protection order in Form B in Schedule 1.


(1) A person who suspects that a girl or woman intends or has carried out female genital mutilation on herself shall report the matter to a health worker or any person in authority.

(2) A health worker, local council officer or any other person in authority who receives the report, shall forward the report to the police.

(3) The police, upon receipt of a report in sub regulations (1) and (4) shall cause the detention of the suspect victim for purposes of medical examination by a health worker.

(5) A health worker who examines the suspect under sub regulation (6) shall use Form D of the Schedule 2 to these Regulations.

(7) Where, after a medical examination has been carried out, it is established that the suspect is a victim of female genital mutilation, the examining officer shall hand the victim over to the police.

6. Protection of an informant:

(1) A person or authority to whom matters relating to female genital mutilation offences are reported, shall not disclose the identity of the informant.

(2) A person or authority who discloses the identity of an informant commits an offence and shall on conviction be liable to a fine not exceeding twenty-five currency points or one year’s imprisonment or both.

(3) An informant whose identity is disclosed within the meaning of this regulation shall be accorded protection similar to that given to a witness who testifies in a court.
7. Victimisation of an informant.

A person who either by himself or herself or through another person victimises an informant for making a disclosure commits an offence and is liable on conviction to imprisonment not exceeding twenty-five currency points or one year’s imprisonment or both.

8. Participation in events leading to female genital mutilation.

For purpose of section 7 of the Act, participation in events leading to female genital mutilation include the following-

(a) singing along with a girl or woman who is about to undergo female genital mutilation;
(b) offering a gift or present to a girl or woman who is about to undergo female genital mutilation;
(c) counseling and abetting a girl or woman who is about to undergo female genital mutilation;
(d) accepting an invitation to a female genital mutilation function; or
(e) participating in any other act which condones or abets female genital mutilation.

PART III - DISCRIMINATION RELATED TO FEMALE GENITAL MUTILATION

9. Discrimination against a person who has not undergone female genital mutilation.

For purpose of section 11 of the Act, discrimination against a female who has not undergone female genital mutilation includes-

(a) prohibiting the female from attending a son’s initiation ceremony;
(b) failing to accord proper funeral rites to the female upon death;
(c) denying the female from attending a son’s marriage ceremony;
(d) overt and derogatory name calling to the female;
(e) denying the female from depositing or collecting food from the granary;
(f) denying the female from going to the Kraal or milking cows; or
(g) preventing the female from attending or contributing to a talk during a meeting.

10. Discrimination against a person whose relative has not undergone female genital mutilation.

For purposes of Sections 11 and 12 of the Act, discrimination against a person who has not undergone female genital mutilation includes-

(a) denying the person from attending or performing a ceremony in a family setting and or community; (b) denying the person from attending or talking, or participating in any form of meeting; or
(c) any other act that may amount to discriminating such relative.

PART IV - INVESTIGATION

11. Searching a place, house, or other facility without a warrant.
(1) A police officer above the rank of a sergeant, who has reasonable grounds to believe that anything necessary for the purpose of an investigation into a female genital mutilation offence may be found in any place and that the evidence cannot in his or her opinion be otherwise obtained without undue delay, may, without a warrant enter into that place, search or cause search to be made for that evidence.

(2) The provisions of the Magistrates Courts Act on search warrants shall so far as may be applicable, apply to a search under this regulation.

12. Seizure and retention of exhibits by police.

(1) A police officer under regulation 11 may seize any item found in the place, house or any other facility if he or she has reasonable grounds to believe that-

(a) the item might be used as an exhibit in relation to an offence which he or she is investigating; and

(b) it is necessary to seize that thing in order to prevent it from being concealed, lost, tampered with or destroyed.

(2) Where an item is seized under subsection (1), the police officer responsible for the seizure shall proceed in the manner prescribed under the Police Act.

(3) Exhibits taken under this regulation shall be handled in the manner prescribed in the Magistrate Courts’ Act, the Criminal Procedure Code Act and any other relevant law.

13. Testing of a victim of female genital mutilation for HIV.

(1) Where, within the meaning of the Act or these Regulations, a girl or woman is confirmed as having undergone female genital mutilation, she shall be screened for HIV infection twice at an interval of three months.

(2) A health worker shall issue a medical report in the event that a girl or woman is screened under sub-regulation (1) and is confirmed to be infected with HIV.

PART V - TRIAL

14. Evidence in cases of self-mutilation

Where a person charged with self-female genital mutilation opts to exercises her right to keep silent at a trial, the prosecution shall rely on the:-

(a) medical examination report; or

(b) testimony of a police officer who handled the investigations.

15. Death as a result of female genital mutilation.

(1) Death shall be presumed to have occurred from female genital mutilation where such death occurs from female genital mutilation related complications within one year and one day from the date when the act of female genital mutilation was carried out on the deceased.

(2) A person shall be deemed to have caused the death of a victim of female genital mutilation although his or her act is not the immediate or sole cause of death if the person inflicts bodily injury related to genital mutilation on a girl or woman in consequence of which that girl or woman undergoes surgical or medical treatment which causes death.
(3) A report of a health worker and a post mortem report shall suffice to establish that death occurred as a result of female genital mutilation or complications related thereto.


A person who suffers a disability as a result of female genital mutilation shall undergo rehabilitation including, counseling or treatment as the health worker may deem fit, at the expense of the perpetrator’s estate.

PART VI - PROTECTION OF LIKELY VICTIMS

17. Protection order.

(1) A girl or woman who is likely to undergo female genital mutilation or any person may apply for a protection order in accordance with section 14 of the Act.

(2) Where a person is making the application on behalf of a girl or woman who is likely to undergo female genital mutilation, the person shall state the reasons for bringing the application.

(3) An Application for a Protection Order shall be in Form B in the schedule 2 to these Regulations.

(4) The Court shall after being satisfied with the grounds of the application in sub regulation (2) issue a protection order in form C of the Schedule 2 to these Regulations.

18. Interim protection order.

(1) Where a girl or woman is removed or protected under regulation (5), the authorized officer shall issue an interim protection order in form A in the Schedule 2 to these Regulations specifying the chosen place in which the girl or woman shall be placed for protection.

(2) The interim protection order issued in sub regulation (2) shall be issued in accordance with section 14 of the Act and shall be valid for a period of fourteen days.

PART VII - OFFICERS

19. Obstruction of investigation.

A person who obstructs a police officer or any authorised officer while investigating or inquiring into an attempt or commission of female genital mutilation commits an offence and on conviction shall be liable to a fine not exceeding one hundred currency points or imprisonment for four years or both.

20. Presence of a person within the vicinity where female genital mutilation is likely to take place.

A person who is found within the vicinity where female genital mutilation is likely to take place or is taking place, and who is in possession of female genital mutilation tools commits an offence within the meaning of section 5 of the Act.


A person found in possession of body parts, clothing and other apparel from a victim of female genital mutilation commits an offence and shall on conviction be liable to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.
22. Procuring female genital mutilation.

A person who, by any means, directly or indirectly-

(a) procures, persuades, attempts to procure or persuade a girl or woman to undergo female genital mutilation;

(b) aids, abets or is accessory to female genital mutilation or

(c) having reason to believe a girl or woman has undergone female genital mutilation harbours or aids in concealing the act, commits an offence and on conviction shall be liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding five years or both.

PART VIII - MISCELLANEOUS

23. Payment of compensation.

Where Court orders payment of compensation to a victim of female genital mutilation under Section 13 of the Act, such compensation shall be paid-

(a) to the victim;

(b) to the parent, guardian or caretaker of the victim in trust for the victim where-

(i) the victim is a minor; and

(ii) the parent, guardian or caretaker has not participated in the act of female genital mutilation; -or

(c) to the probation and social welfare officer in trust for the victim where the parent or guardian of the victim is the offender under the Act.


(1) A health worker shall assess and record injuries suffered by a victim of female genital mutilation to ascertain the degree of disability or loss of body parts by the victim.

(2) The Court shall, while awarding damages under section 13 of the Act be guided by sub regulation (1) above.

Schedule 1

Currency Point: A currency point is equal to twenty thousand Uganda shillings

Schedule 2

Form A

THE PROHIBITION OF FEMALE GENITAL MUTILATION REGULATIONS, 2013

INTERIM PROTECTION ORDER

Whereas it has come to my knowledge that Ms. ………………………..of ……………….. is a person suspected of being in danger of undergoing female genital mutilation, and whereas I am satisfied that it is necessary that Ms…………….. should be placed under care and protection until proceedings can be taken under section 14 of the Prohibition of Female Genital Mutilation Act, I order that Ms
shall be removed and delivered to…………………… who is authorised to receive and accommodate her for a period not exceeding 14 days from the date of this order.

Dated this, ……………..day of ……………..20…………

------------------------------------------------------------------------------------------------------------------

Authorised Officer

Form B

Republic of Uganda

THE PROHIBITION OF FEMALE GENITAL MUTILATION ACT, 2010, ACT No.5 OF 2010

THE PROHIBITION OF FEMALE GENITAL MUTILATION REGULATION, 2013

Protection Order

Regulation 17

Under section 14

APPLICATION FOR PROTECTION ORDER

In the Magistrates Court at. .................................................................

In the matter of……………………………………………………… (name of victim), a girl! woman in danger of undergoing female genital mutilation

And

In the matter of an application for a protection order:

I…………………………………… (name of applicant), being……………………………. (state relationship to person for whom order is sought) apply for a protection order on the following grounds:-

..........................................................................................................................

..........................................................................................................................

Date this……………….. day of ……………………………..20 …………

...........................................................

Applicant
Annex 7C: THE DOMESTIC VIOLENCE ACT, 2010

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

Section
1. Commencement.
2. Interpretation.
3. Domestic relationships.

PART II - CONTROL OF DOMESTIC VIOLENCE.

5. Consent not a defence in domestic violence.
7. Duties of police officers.
8. Duties of a practitioner.
10. Application for a protection order.
11. Issue of interim protection order.
12. Issue of protection order.
13. Contents of protection order.
14. Application for variation, revocation or discharge of orders.
15. Issue of copies of orders.
18. Appeals.
19. Regulations.
20. Amendment of Schedules.

SCHEDULES

FIRST SCHEDULE - Currency Point

SECOND SCHEDULE - Guiding Principles for Determining Compensation

THIRD SCHEDULE - Forms

THE DOMESTIC VIOLENCE ACT 2010.

AN ACT to provide for the protection and relief of victims of domestic violence; to provide for the punishment of perpetrators of domestic violence; to provide for the procedure and guidelines to be
followed by the court in relation to the protection and compensation of victims of domestic violence; to provide for the jurisdiction of court; to provide for the enforcement of orders made by the court; to empower the family and children court to handle cases of domestic violence and for related matters.


Date of Commencement: See Section 1.

BE IT ENACTED by Parliament as follows:

PART I - PRELIMINARY

1. Commencement.

This Act shall come into force on a date appointed by the Minister by statutory instrument.

2. Interpretation.

In this Act, unless the context otherwise requires -

“court” means a magistrates court, a local council court or a family and children court;

“currency point” means the value of a currency point specified in the First Schedule;

“domestic violence” constitutes any act or omission of a perpetrator which -

(a) harms, injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the victim or tends to do so and includes causing physical abuse, sexual abuse, emotional, verbal and psychological abuse and economic abuse;

(b) harasses, harms, injures or endangers the victim with a view to coercing him or her or any other person related to him or her to meet any unlawful demand for any property or valuable security;

(c) has the effect of threatening the victim or any person related to the victim by any conduct mentioned in paragraph (a) or (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the victim;

“economic abuse” includes -

(a) deprivation of all or any economic or financial resources to which the victim is entitled under any law or custom, whether payable under an order of a court or otherwise or which the victim requires out of necessity including, but not limited to -

(i) Household necessities for the victim and his or her children, if any; (ii) Property, jointly or separately owned by the victim; or

(iii) Payment of rent related to the shared household and maintenance;

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

“emotional, verbal and psychological abuse” means a pattern of degrading or humiliating conduct towards a victim, including but not limited to -

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

“harass” means engaging in a pattern of conduct that induces fear of harm, annoyance and aggravation with the intention of inducing fear in a person including -

(a) repeatedly watching or loitering outside of or near the building where the victim resides, works, carries on business, studies or happens to be;
(b) repeatedly making abusive telephone calls or causing another person to make abusive telephone calls to the victim, whether or not a conversation ensues;
(c) repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail, telephone text messages or similar objects to the victim; or
(d) repeatedly following, pursuing or accosting the victim with the intention of inducing fear, harm, annoyance or aggravation to the victim; “intimidation” means uttering a threat or causing a victim to receive a threat, which induces fear;

“Minister” means the Minister responsible for Gender, Labour and Social Development;

“perpetrator” means a person who is alleged to commit an actual or threatened act of domestic violence;

“physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb, or health or which impairs the health or development of the victim; and includes assault, criminal intimidation and criminal force;

“practitioner” means a person registered under section 21 of the Medical and Dental Practitioners Act to practice medicine, surgery or dentistry and includes a clinical officer;

“protection order” means a court order prohibiting domestic violence, restricting a person from harassing or threatening another person or restraining a person from contacting or approaching another person;

“sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of another person;
3. **Domestic relationships.**

(1) A domestic relationship means a family relationship, a relationship similar to a family relationship or a relationship in a domestic setting that exists or existed between a victim and a perpetrator and includes a relationship where -

(a) the victim is or has been married to the perpetrator;
(b) the perpetrator and the victim are family members related by consanguinity, affinity or kinship;
(c) the perpetrator and the victim share or shared the same residence;
(d) the victim is employed by the perpetrator as a domestic worker or house servant and the victim does or does not reside with the perpetrator;
(e) the victim is an employer of the perpetrator and does or does not reside with the perpetrator; or
(f) the victim is or was in a relationship determined by the court to be a domestic relationship.

(2) A court shall, in making a determination under subsection (1)(f), have regard to -

(a) the legal nature of the relationship;
(b) the amount of time the persons spend together;
(c) the place where the time is ordinarily spent;
(d) the manner in which that time is spent; and
(e) other than in the case of paragraph (a), the duration of the relationship.

4. **Prohibition of domestic violence.**

(1) A person in a domestic relationship shall not engage in domestic violence.

(2) A person in a domestic relationship who engages in domestic violence commits an offence and is liable on conviction to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or to both.

(3) The court may, in addition to imposing a fine or imprisonment, order the offender in a case of domestic violence to pay compensation to the victim of an amount determined by the court.

(4) In determining the compensation under subsection (3), the court shall be guided by the principles in the Second Schedule.

5. **Consent not a defence in domestic violence.**

The consent of the victim shall not be a defence to a charge of domestic violence under this Act.

6. **Proceedings in local council courts.**

(1) A complaint of domestic violence may be made to a local council court where the victim or perpetrator resides.

(2) Upon receipt of a complaint, the court shall make a record of the complaint and proceed to hear the matter in the manner prescribed under the Local Council Courts Act, 2006.
(3) In recording a case of domestic violence, the local council court shall record the following matters:

(a) the name, sex, age, tribe, religion and disability, if any and the occupation and marital status of both the victim and perpetrator;

(b) the name, sex, age, tribe, religion and disability, if any and occupation of the victim’s representative if any, and the capacity in which the complaint is made;

(c) the usual place of residence of the victim and the perpetrator; (d) the names, sex and ages of the children of the victim and the perpetrator, if any;

(e) the nature of the alleged domestic violence;

(f) the date or time frame of the alleged domestic violence;

(g) whether it is the first time of reporting by the victim or his or her representative, or how many times the matter has been previously reported; and

(h) any attempts to settle the matter out of court.

(4) The details regarding the manner of hearing cases of domestic violence by a local council court shall be prescribed by regulations made under this Act.

(5) A local council court may, in the exercise of its jurisdiction under this section, make any of the following orders for the victim or against the perpetrator:

(a) caution;

(b) apology to the victim;

(c) counselling;

(d) community service;

(e) a fine not exceeding twenty five currency points;

(f) compensation;

(g) reconciliation;

(h) declaration;

(i) restitution;

(j) attachment and sale; or

(k) any other order provided for under the Local Council Courts Act, 2006.

(6) The local council court shall make a written referral to the police and the magistrates court where:

(a) the perpetrator is a second or repeat offender;

(b) in the opinion of the court, taking into account all the circumstances of the case, the perpetrator is likely to inflict further harm on the victim; and

(c) in the opinion of the court, the degree and nature of the violence warrants the involvement of the police and the court.

(7) In all complaints of domestic violence, the local council court shall inquire into and establish whether there are children involved in the domestic relationship.
(8) Where it is established that there is a child in the domestic relationship in respect of which a complaint is made, the local council court shall make a written order to the Probation and Social Welfare Officer to make an inquiry and take any necessary action regarding the welfare of the child in accordance with the provisions of the Children Act.

(9) Where a member of the local council court or the executive committee of a local government council has reason to believe that there is an act of domestic violence within his or her jurisdiction and a complaint has not been lodged by any person, the member shall notify the Probation and Social Welfare Officer, requesting him or her to make inquiries and take further action.

(10) The local council court shall treat all cases of domestic violence as matters of urgency and shall hear the cases as soon as possible and in any case, not later than forty eight hours after the filing of the complaint.

(11) For the purposes of this section, local council courts may hear cases of domestic violence on days which are not ordinarily working days.

(12) A victim or perpetrator who is not satisfied with the decision of the local council court may appeal against the decision in the manner provided for under Part X of the Local Council Courts Act, 2006.

7. **Duties of police officers.**

   (1) Notwithstanding section 6, a complaint may be made to a police officer. (2) A police officer to whom a complaint of domestic violence is made or who investigates the complaint shall -

   (a) assist the victim, including giving assistance or advice in obtaining shelter;

   (b) where signs of physical or sexual abuse are evident, ensure that the victim undergoes a medical examination and receives medical treatment;

   (c) advise the victim of the right to apply for relief under this Act and the right to lodge a criminal complaint; and

   (d) offer procedural guidance and any assistance as may be necessary to ensure the well being of the victim, the victim’s representative and other witnesses.

   (3) A police officer may record a statement by the victim or the victim’s representative on the nature of the domestic violence.

   (4) Where a victim or victim’s representative desires, the statement on the nature of domestic violence shall be taken by a police officer of the same sex as that of the victim.

8. **Duties of a practitioner.**

   A practitioner who reasonably suspects that a person under his or her care is a victim of domestic violence shall assist the victim in the following manner -

   (a) offer the requisite medical assistance to the victim;

   (b) accurately document the visit of the victim;

   (c) inform the victim of options available within the judicial system to the victim; or

   (d) make himself or herself available to testify in court regarding the case where necessary.
   (1) Every magistrates court may hear and determine a matter of domestic violence under this Act.
   (2) The Court may, in the exercise of its jurisdiction under subsection (1), issue a protection order.
   (3) In hearing matters of domestic violence, the magistrates court shall apply the procedure prescribed by the Family and Children Court Rules.

10. Application for a protection order.
   (1) A victim or the representative of a victim may apply to a magistrates court for a protection order.
   (2) The application for a protection order shall be supported by an affidavit and any reports or documents to be relied upon shall be attached to the application.
   (3) The application shall be in Form 1 specified in the Third Schedule.
   (4) The court shall, on receiving an application under this section, issue summons to the respondent directing him or her to appear in court on the date named in the summons in Form 2 specified in the Third Schedule.
   (5) An application for a protection order shall be heard by the court within forty eight hours after the filing of the application.
   (6) An application may be brought outside ordinary court hours or on a day which is not an ordinary court day, where the court is satisfied that the victim may suffer undue hardship if the application in not dealt with immediately.

11. Issue of interim protection order.
   (1) The court shall issue an interim protection order, where the court is satisfied that, prima facie -
      (a) the perpetrator has committed, is committing or is threatening to commit an act of domestic violence; and
      (b) it is necessary or desirable to issue an immediate order to protect the victim from harm or discomfort or inconvenience, as a result of such domestic violence.
   (2) An interim protection order may, where appropriate, contain any direction, prohibition or award.
   (3) An interim order shall specify a hearing date for the application for a protection order.
   (4) The maximum duration for an interim order is three months, but the court may prescribe a lesser period.
   (5) The court shall serve the victim or the victim’s representative with a certified copy of an interim protection order or forward the order to the person responsible at the police station nominated by the victim or the victim’s representative.
   (6) An application for a protection order shall not in any way bar criminal proceedings against a perpetrator.
Where appropriate, the court may, in addition to any other remedy provided for under this Act, order that the victim and the perpetrator and any other affected member of the family be subjected to counselling, mediation or any other intervention that the court deems fit.

12. Issue of protection order.

(1) On the hearing date specified in an interim protection order, the court may issue a protection order where the court is satisfied that an act of domestic violence has been committed, is threatened or is being committed by the perpetrator.

(2) A protection order may be issued ex parte if the court is satisfied that the perpetrator has been served with notice of the application for the order.

(3) A protection order shall be served upon the respondent immediately, but not later than forty eight hours.

(4) The court shall supply a certified copy of a protection order issued under subsection (1) to:-
   (a) the victim or the victim’s representative; and
   (b) the responsible person at the police station nominated by the victim or the victim’s representative.

13. Contents of protection order.

(1) A protection order may, where appropriate -
   (a) prohibit the perpetrator from committing or enlisting the help of another person to commit an act of domestic violence;
   (b) direct the perpetrator to stay away from the premises or place where the victim resides or any part of the premises, if the prohibition is in the best interest of the victim;
   (c) prohibit the perpetrator from entering or approaching any place or premises where the victim works, frequents, attends or any part of the premises or place;
   (d) direct the perpetrator to pay maintenance in respect of the victim’s needs or the needs of any child or dependent of the perpetrator, including necessaries;
   (e) award the temporary custody of any child or dependent of the perpetrator to any person or institution and regulate rights of access by the perpetrator to the child or dependant;
   (f) direct the perpetrator to afford the victim or any child or dependent of the victim, access to their place of residence and use of the facilities associated with it;
   (g) direct the perpetrator to do or omit to do any act or thing which the court considers necessary or desirable for the wellbeing of the victim or any child or dependant of the victim.

(2) The court may in issuing a protection order, where it considers it expedient to do so, issue an order to the perpetrator to vacate the matrimonial home or other home.

(3) An order to vacate premises may only be issued by the court after consideration of a social report prepared by the social welfare officer.

(4) A protection order shall remain in force until it is varied or revoked by a competent court.
14. Application for variation, revocation or discharge of orders.
   (1) A court may vary, revoke or discharge an interim protection order or a protection order on an application on notice by a complainant or respondent.
   (2) Where an application is made under this section for the variation, revocation or discharge of an interim protection order or protection order, the court shall fix a hearing date as soon as practical but not later than thirty days after the filing of the application, except where there are special circumstances.
   (3) Where the court is satisfied that good cause has been shown, it may vary, revoke or discharge any interim protection order or protection order or it may extend the order.
   (4) The court shall give notice to interested parties of any revocation, variation or extension granted under this section.
   (5) An application under this section shall be in Form 3 specified in the Third Schedule.

15. Issue of copies of orders.
   A victim, a victim’s representative or a police officer may apply to the court for a certified copy of an interim protection order or a protection order, if the copy which was previously issued is lost or destroyed.

   (1) Where the perpetrator breaches any term or condition of an interim protection order or a protection order, the victim or the victim’s representative may apply to court for a remedy.
   (2) An application made under subsection (1) shall be accompanied by one or more affidavits made by a person or persons who can depose to the facts alleged.
   (3) The application under subsection (2) shall be in Form 4 specified in the Third Schedule.
   (4) A person who fails to comply with the terms and conditions of an order commits an offence and is liable on conviction to a fine not exceeding forty-eight currency points or imprisonment not exceeding two years or to both.
   (5) Notwithstanding subsection (4), the court may give any other remedy as it considers fit.

   (1) Notwithstanding anything in this Act, a family and children court may hear and determine a matter of domestic violence under this Act, whether or not it involves a child.
   (2) For the avoidance of doubt, a family and children court may issue an interim protection order or a protection order in the same manner as a magistrates court.
   (3) In hearing matters of domestic violence, the family and children court shall apply the procedure prescribed by the Family and Children Court Rules, subject to the necessary modifications.
   (4) For the avoidance of doubt, the Rules Committee may make rules for the practice and procedure of the family and children court in the exercise of its jurisdiction under this section.
   (5) Pending the making of rules of court under this section to regulate the exercise by the
family and children court of the jurisdiction conferred upon it by this section, sections 11 to 16 of this Act, shall, with necessary modifications apply to the family and children court.

(6) Subject to any rules of court made under this section, Forms 5, 6, 7 and 8 specified in the Third Schedule shall apply as appropriate to proceedings of the family and children court.

PART III - MISCELLANEOUS

18. Appeals.

The procedure for appeals under this Act shall, with the necessary modifications, be that provided for in the Local Council Courts Act, 2006, the Civil Procedure Act and the Magistrates Courts Act.

19. Regulations.

The Minister may make regulations for the better carrying into effect of the provisions of this Act.

20. Amendment of Schedules.

(1) The Minister may, by statutory instrument with the approval of the Cabinet, amend the First Schedule.

(2) The Minister may, by statutory instrument, amend the Second and Third Schedules.

SCHEDULES.

Sections 2, 20(1)

CURRENCY POINT: A currency point is equivalent to twenty thousand Shillings.

Section 4(4), 20(2)

GUIDING PRINCIPLES FOR DETERMINING COMPENSATION

1. The court may, in determining a claim for compensation, take into account -

   (a) the pain and suffering of the victim and the nature and extent of the physical or mental injury suffered;
   
   (b) the cost of medical treatment for the injuries suffered by the victim; (c) any loss of earnings arising from the domestic violence;
   
   (d) the amount or value of the property taken, destroyed or damaged;
   
   (e) the necessary and reasonable expenses incurred by or on behalf of the applicant, where the applicant is compelled to separate or be separated from the perpetrator due to the domestic violence, including -
   
   (i) accommodation costs;
   
   (ii) transport costs; and
   
   (iii) meals.
2. Where the court finds it necessary, the court may make an order or referral for mediation and counselling of the parties by the appropriate person or authority.

FORMS

Form 1: APPLICATION FOR INTERIM PROTECTION ORDER/PROTECTION ORDER*

THE REPUBLIC OF UGANDA

THE DOMESTIC VIOLENCE ACT

Application for Interim Protection Order/Protection Order*

In the Magistrates Court at ………………………….. In the matter of ………………………….(name of victim), a ……………………………. (state nature of victim e.g. adult, child, person of unsound mind); and In the matter of an application for interim protection order/protection order*

I, …………………………..(name of applicant), being ……………. (state relationship to person against whom order is sought) apply for interim protection order/protection order* on the following grounds:

Date Applicant *Delete as appropriate

Section 10(4)

Form 2: SUMMONSES IN CHAMBERS

THE DOMESTIC VIOLENCE ACT

Summons in Chambers

…………………………………………………………….Applicant

versus

…………………………………………………………… Respondent

To: …………………………………………………… (name, description and place of residence)

Whereas: ………………………………. has instituted proceedings for interim protection order/protection order*, you are summoned to appear in the chambers of ……………… in person or by an advocate duly instructed on the ………….. day of …….., 20…… , at … o’clock in the………. noon, to answer to the claim.

Take notice that in default of your appearance on the day above-mentioned, the application shall be heard and determined, and such order as is deemed fit will be rendered in your absence.

Given under my hand and the seal of this court on the …………… day of …….., 20…… .

Magistrate Section 14(5)
Form 3 APPLICATION FOR VARIATION, REVOCATION OR DISCHARGE OF ORDERS

THE DOMESTIC VIOLENCE ACT

Application for Variation, Revocation or Discharge of Orders

In the Magistrates Court at

In the matter of (name of victim), a (state nature of victim, e.g., adult, child, person of unsound mind, type of disability);

And

In the matter of an interim protection order/protection order* issued against .......................................................... on the day of ............................................... 20 ...........

I, .......................................... (name of applicant), being .......................................... (state relationship to person against whom order was issued) apply for ............... (variation/revocation/discharge*) of the order on the following grounds:

Date Applicant

*Delete as appropriate

Form 4: APPLICATION FOR ENFORCEMENT OF ORDER THE DOMESTIC VIOLENCE ACT

Application for Enforcement of Order

In the Magistrates Court at

In the matter of .......................................... (name of victim), a .......................................... (state nature victim e.g. adult, child, person of unsound mind, type of disability);

And

In the matter of an Order for interim protection order/protection order* issued against (state name of person against whom order was issued) on the day of , 20

I, .......................................... (name of applicant), bein .......................................... (state relationship to person against whom order was issued) apply for enforcement of the interim protection order/protection order* on the grounds that:

Date Applicant

*Delete as appropriate
THE DOMESTIC VIOLENCE ACT

Application for Interim Protection Order/Protection Order*

In the Family and Children Court at ........................................................................................................

In the matter of (name of victim), a.............. (state nature of victim e.g. adult, child, person of unsound mind, type of disability)

and

In the matter of an application for interim protection order/protection order* I, ..........................................

........ (name of applicant), being .............................(state relationship to person against whom order is sought) apply for interim protection order/protection order* on the following grounds:

Date Applicant

*Delete as appropriate Section 17(6)

Form 6: THE DOMESTIC VIOLENCE ACT

Summons in Chambers

Applicant .................................................................................................................................

vs

Respondent ............................................................................................................................

To: .................................................................................................................. (Name, description and place of residence)

Whereas .......................................... has instituted proceedings for interim protection order/protection order*, you are summoned to appear in the chambers of in person or by an advocate duly instructed on the ................................. day of ................................., 20 ..........., at o’clock in the noon, to answer to the claim.

Take notice that, in default of your appearance on the day above-mentioned, the application shall be heard and determined, and such order as is deemed fit will be rendered in your absence.

Given under my hand and the seal of this court on the ................. Day of ................................., 20 .......

Magistrate*

Delete as appropriate Section 17(6)
Form 7: THE DOMESTIC VIOLENCE ACT

Application for Variation, Revocation or Discharge* of Orders ..........................................................

In the Family and Children Court at .......................................... In the matter of ......................... ........... (name of victim), a (state nature of victim e.g. adult, child, person of unsound mind, type of disability)

and

In the matter of an Order for interim protection order/protection order* issued against .................. (state name of person against whom order was issued) on the ........ day of ................................., 20 .......

I, .............................................. (name of applicant), being (state relationship to person against whom order was issued) apply for (variation, revocation or discharge) of the order on the following grounds:

Date: .............................................. Applicant: ..............................................

*Delete as appropriate Section 17(6)

Form 8: THE DOMESTIC VIOLENCE ACT APPLICATION FOR ENFORCEMENT OF ORDER

In the Family and Children Court at .......................................... In the matter of ..................................

........ (name of victim), a .......................................... (state nature of victim e.g. adult, child, person of unsound mind, type of disability)

And

In the matter of an Order for interim protection order/protection order* issued against .................. (state name of person against whom order was issued) on the day of .................................

........., 20

I, ................................................. (name of applicant), being ......................................... (state relationship to person against whom order was issued) apply for enforcement of the interim interim protection order/protection order* on the grounds that:-

Date ............................................................ Applicant..........................................................

*Delete as appropriate

Children Act, Cap. 59
Civil Procedure Act, Cap. 71
Family and Children Court Rules, S.I. 59-2
Magistrates Courts Act, Cap. 16.
Medical and Dental Practitioners Act, Cap. 272

THE DOMESTIC VIOLENCE REGULATIONS, 2011

ARRANGEMENT OF REGULATIONS

Regulation

PART I-PRELIMINARY.

1. Title.
2. Interpretation.

PART II-LODGING COMPLAINTS.

3. Lodging complaints.
4. Complaints made on behalf of the victim.

PART III - COMPLAINTS TO THE LOCAL COUNCIL COURTS.

5. Form of complaint.
6. Particulars of a complaint to local council courts.
7. Jurisdiction of local council courts.
8. Service of a complaint on the respondent.
10. Mode of service.
11. Proof of service.
12. Mediation and counselling.
13. Hearing of complaints.
15. Decisions of court.
17. Inquiry report on matters involving children.
18. Referral of matters.
19. Fees.

SCHEDULE

Forms,

Form 1: Particulars of complaint to the local council court.
Form 2: Hearing notice.
Form 3: Witness summons.
Form 4: Order for inquiry into welfare of children.
Form 5: Local council court referral form.
Form 6: Protection order.
Form 7: Application for extension of protection order
Form 8: Order to discharge, vary, revoke a protection order.
Form 9: Notice of breach of a protection order;
Form 10: Notice to show cause why a warrant of arrest should not issue.

STATUTORY INSTRUMENTS
2011 No. 59
The Domestic Violence Regulations, 2011

I EXERCISE of the powers conferred on the Minister responsible for gender, labour and social development by section 19 of the Domestic Violence Act, 2010, Act No.3 of 2010, these Regulations are made this 6th day of July, 2011.

PART I-PRELIMINARY

1. Title.

These Regulations may be cited as the Domestic Violence Regulations, 2011.

2. Interpretation.

In these regulations, unless the context otherwise requires-

“Act” means the Domestic Violence Act, Act No.3 of 2010;

“appropriate person or Authority” includes religious leaders, traditional leaders, clan leaders and family heads;

“in camera” means to hold court proceedings in private with the exclusion of the general public other than persons authorised by Court; dangerous weapon” means an object or device which if adopted for offensive purposes may cause injury or death;

“Loco Parentis” means a person in the position of a parent;

“matrimonial home” means a principal residence for married persons;

“other home” means a place of residence for persons in a domestic relationship who are not married persons;

“service provider” means a governmental or nongovernmental organisation, company or institution whose objectives include the protection of the rights of victims of violence;
“shelter” means a privately or publicly operated residential facility providing victims of domestic violence with temporary refuge, lodging, food and other services including counselling and medical assistance.

PART II - LODGING COMPLAINTS.

3. Lodging complaints.
   A victim of domestic violence or a person making a complaint on behalf of the victim may lodge a complaint to the-
   (a) chairperson, secretary or any other official appointed by the local council court for the purpose of receiving domestic violence complaints;
   (b) police; or
   (c) magistrate.

4. Complaints made on behalf of the victim.
   Where a complaint is made on behalf of the victim, it shall set out the following-
   (a) reason why the application is made on behalf of the complainant;
   (b) the grounds on which the person believes that domestic violence has been committed, is imminent or in progress;
   (c) the occupation of the person; and
   (d) capacity in which the person, brings the application.

PART III - COMPLAINTS TO THE LOCAL COUNCIL COURTS.

5. Form of complaint.
   (1) A complaint to the local council court may be oral or written.
   (2) Where an oral complaint is made the person receiving it shall reduce it into writing and read the complaint to the complainant who shall sign it and the person who has received the complaint shall counter sign it.
   (3) Where the complainant is unable to sign the complaint, he or she shall affix a thumb mark or acknowledge authenticity of the recorded a complaint in any other way possible and the person who has received the complaint shall counter sign it.

6. Particulars of a complaint to local council courts.
   A complaint lodged in the local council courts under regulation 3 shall contain the particulars set out in Form 1 of the Schedule to these Regulations.

7. Jurisdiction of local council courts.
   The local council courts shall have jurisdiction for the trial and determination of the following domestic violence matters-
   (a) cases and matters of a civil nature as provided under regulation 26 (2) of the Local Council Courts Regulations, namely;
      (i) debts;
      (ii) contracts;
(iii) assault or assault and battery;
(iv) conversion;
(v) damage to property; and
(vi) trespass.

(b) Notwithstanding sub regulation (a), the court shall only handle matters provided under sub paragraphs (i) to (v) of sub regulation (a).

(c) criminal matters involving children, namely;
   (i) common assault, under section 235 of the Penal Code Act;
   (ii) assault causing actual bodily harm under section 236 of the Penal Code Act;
   (iii) theft, under section 254 of the Penal Code Act;
   (iv) criminal trespass, under section 302 of the Penal Code Act; and
   (v) malicious damage to property, under section 335 of the Penal Code Act.

(d) any other matter that may amount to domestic violence within the jurisdiction of the local council courts.

8. **Service of a complaint on the respondent.**

Upon the filing of a complaint, the chairperson or vice chairperson of the local council executive shall cause a copy of the complaint to be served on the respondent.

9. **Service of a hearing notice.**

   (1) The chairperson shall cause a hearing notice to be served on the complainant and the respondent requiring them to attend the court at the time and place specified in the hearing notice for the hearing of the case.

   (2) The hearing notice shall be in Form 2 of the Schedule.

   (3) The chairperson may cause the complainant or respondent to be informed orally that he or she is required to attend court at a specified date and time.

   (4) A person who orally informs the complainant or respondent shall be accompanied by a witness for the purposes of verifying that the parties were informed.

10. **Mode of service.**

   (1) The service of summons, notices or any other document required to be served under these Regulations shall be made by delivering to the person named in the document a duplicate of a signed and stamped copy of the document.

   (2) Where there is more than one respondent, service shall be made on each respondent.

   (3) Where the complainant or respondent has failed to effect personal service of the summons, notice or any other document in theft manner provided under sub regulation (1), he or she may seek permission from the chairperson to effect substituted service within 24 hours in the following ways-

      (a) by leaving the duplicate for him or her with an adult member of the complainant or respondent’s family or with any other adult person ordinarily residing with the complainant or respondent; or
(b) by affixing the duplicate on a conspicuous part of the house or homestead in which the person ordinarily resides, and service shall be deemed to have been duly effected,

11. **Proof of service**

(1) A person served with a notice, summons or other document shall acknowledge receipt by signing on the copy of the notice, summons or other document.

(2) Where a person served cannot read or write, he or she shall acknowledge receipt by affixing a thumb mark on the document.

(3) The process server shall return the original document to the court stating how he or she served the copy, the circumstances under which service was done, and the name and address of the person, if any, who witnessed the service of the documents.

12. **Mediation and counselling.**

(1) Where court finds it necessary, it may refer the parties for mediation and counselling to an appropriate person or authority.

(2) The mediation or counselling referred to in sub regulation (1) shall be done within 5 days after receiving the reference.

(3) The reference for mediation shall be in Form 5 of the Schedule.

(4) The mediator shall record the outcome of the mediation in writing which he or she shall sign and cause the parties to affix their signatures or thumb mark or acknowledge authenticity in any other way possible.

(5) Where the parties reach an agreement through mediation, court shall record the terms of the agreement and issue a consent order.

(6) Where the parties partially reach agreement, the court shall issue a consent order in respect of the partial agreement and proceed to hear the outstanding issues of the complaint on merit.

(7) Where the mediation process under sub regulation (1) fails, the court shall proceed to hear the complaint on its merits.

13. **Hearing of complaints.**

(1) The court shall hear domestic violence cases in public, except where the sensitivity of the matter requires that it be heard in camera.

(2) A member of court who has any interest in the proceedings, or any other matter which falls to be considered by the court, shall, as soon as the relevant facts come to his or her knowledge, disclose the nature of his or her interest in the matter.

(3) A disclosure made under sub regulation (2) shall be recorded in the record of proceedings.

(4) A member who makes a disclosure under sub regulation (2) shall not-

   (a) be present during any deliberation of the court with respect to that matter; or

   (b) take part in any decision of the court with respect to that matter.
(5) Where a party to the complaint objects to the presence of a member of the court and court finds reasonable grounds for the objection, sub regulation (4) shall apply to that member as if that member had made a disclosure under sub regulation (2).


(1) A party to a matter shall make oral presentations to the court in person or by a representative.

(2) The complainant shall state his or her case first, and call witnesses he or she may wish to rely on and he or she and his or her witnesses may be questioned by the other party or the court on any aspect of the evidence given.

(3) When the complainant closes his or her case, the respondent shall state his or her defence in the matter and call witnesses he or she may wish to rely on and he or she and his or her witnesses may be questioned by the other party or the court on any aspect of the evidence given.

(4) Where necessary, the court shall visit the place where the matter arose and make notes.

(5) Court shall issue witness summons in Form 3 of the Schedule.

(6) At the hearing, court shall make a record of the proceedings by writing the evidence of the parties and each of their witnesses.

(7) The record of the proceedings shall be signed by the secretary and the chairperson and where possible members of the court present during the proceedings.

(8) The proceedings shall be heard expeditiously.

(9) Notwithstanding the procedure under this regulation the court shall, in conducting the hearing, be as informal as possible and offer guidance to the parties.

15. Decisions of court.

All decisions of court shall be reached by consensus and where it is not by the majority, except that where there is an equality of votes, the chairperson shall have a casting vote.


(1) Where on the day fixed for hearing-

   (a) the complainant or his or her representative does not appear but the respondent appears, the court shall if satisfied that the hearing notice has been duly served upon the complainant, ask the respondent whether he or she admits the complaint and where the respondent admits the complaint, the court may give judgment against him or her on such part of the complaint as he or she admits and where the respondent does not admit the complaint, the court may dismiss the complaint;

   (b) the complainant appears but the respondent does not appear, the Court may, if satisfied that the hearing notice has been duly served upon him or her proceed to hear the evidence of the complainant and his or her witnesses if any and if satisfied that the complainant has established his or her complaint in whole or in part, shall give judgement for the complainant accordingly; or

   (c) neither party appears the court may dismiss the complaint.
(2) Where a complaint is dismissed, the court may reinstate the complaint where the complainant shows sufficient cause for his or her nonappearance.

(3) A party against whom judgement has been given under sub regulation (a) and (b) may request court either orally or in writing within 7 days from the date of judgment to set aside the judgement that was given in his or her absence.

(4) The court shall set aside the judgement if it is satisfied that the party has given sufficient cause for his or her nonappearance.

17. Inquiry report on matters involving children.

(1) Where a child is involved in a matter before the court, the court shall make a written Order in Form 4 of the Schedule to the Probation and Social Welfare Officer to make an inquiry and take any necessary action regarding the welfare of the child.

(2) The Probation and Social Welfare Officer shall within seven days after receiving the order, submit a report to Court on the findings and action taken or to be taken.

18. Referral of matters.

A written referral by the local council court to the police or magistrates court under section 6(6) of the Act shall be in Form 5 of the Schedule.

19. Fees.

(1) The fees payable under this part shall be those prescribed under the third schedule of the Local Council Courts Regulations, 2007.

(2) The court may under special circumstances exempt a person from paying the fees if the court is satisfied that the complainant has no means of raising the fees.


Where these Regulations are silent on any procedural matter before the local council courts, the Local Council Courts Regulations, 2007 shall apply.

PART IV-COMPLAINTS TO THE POLICE.


(1) A complaint to the police may be oral or written but where an oral complaint is made, the police officer receiving it shall reduce it into writing and shall read the statement to the complainant who shall sign it or thumb mark it or acknowledge authenticity of the recorded complaint in any other way possible.

(2) A police officer who has recorded the complaint shall counter sign it.

(3) Whenever a complaint of domestic violence is lodged the police shall respond immediately.

22. Particulars of a complaint to police.

(1) A police officer receiving the complaint shall record the following particulars-

(a) name, age, sex, tribe, nationality, occupation and physical address of the victim and perpetrator;
(b) nature of the violence;
(c) relationship of the victim with the perpetrator;
(d) the place of the incident;
(e) the time and date of the incident;
(f) name, age and sex of the children involved, if any;
(g) whether the victim has previously suffered violence by the same perpetrator;
(h) whether the victim has previously filed a complaint and if yes, where;
(i) particulars of previous action taken against the perpetrator, if any; and
(j) names of witnesses and other particulars, if any.

(2) Where the victim of violence is a child the Police Officer shall record the statement in the presence of a parent or person in loco parentis.

(3) Where the parent or person in loco parentis is the perpetrator, the statement shall be recorded in the presence of any of the following-
   (a) victim’s representative;
   (b) probation and social welfare officer of the area where the domestic violence took place;
   (c) the secretary responsible for children affairs of the area where the domestic violence took place; or
   (d) where possible, a police officer of the same sex as the child.

(4) Where a police officer is satisfied that there is imminent danger of further violence against the victim, he or she shall refer the victim to the nearest shelter or recommend an alternative place of temporary abode.

(5) The police shall at all material times maintain and keep a list of all available shelters and service providers of other related services.

(6) The Inspector General of Police shall issue guidelines from time to time on the handling of domestic violence complaints.

(7) The Minister responsible for gender and social development shall develop guidelines for the operationalisation and management of shelters.

23. Medical care to complainant.

(1) Where the complainant requires medical care, the police officer shall assist the complainant to obtain medical treatment and shall ensure that a medical examination form PF3 is filled and returned to the police.

(2) A police officer handling a domestic violence case shall respect the confidentiality of the complainant.

(3) A police officer who contravenes sub regulation (2) is liable to disciplinary action under the Police Act.
PART V - COMPLAINTS IN MAGISTRATES' COURTS.

A complaint to the magistrates’ courts shall be instituted in the manner prescribed by the laws relating to proceedings in the Magistrates’ Courts.

24. Jurisdiction.
A complainant may lodge a complaint in the magistrates’ court where-
(a) the complainant or respondent resides;
(b) the cause of action arose in whole or in part; or
(c) in the case of a dispute over immovable property, where the property is situated.

Where a suit has been duly instituted, service of documents shall be in the manner prescribed by the laws governing civil proceedings in magistrates’ courts.

27. Service outside jurisdiction.
A document which is required to be served in connection with the matter may be sent for service in another magisterial area to a court having jurisdiction in that area.

28. Mediation and counselling.
(1) Where court finds it necessary, it may refer the parties for mediation and counselling to an appropriate person or authority.
(2) The mediator shall make a report of the outcome of the mediation in writing which he or she shall sign and cause the parties to affix their signatures or thumb mark or acknowledge authenticity in any other way possible.
(3) The mediation or counselling referred to in sub regulation (1) shall be concluded within 5 days after receiving the reference and the mediator shall submit a duly authenticated copy of the report to court after concluding the mediation or counselling.
(4) Where the parties reach an agreement through mediation or counselling, court shall record the terms of the agreement and issue a consent order.
(5) Where the parties partially reach an agreement, the court shall make a consent order to the extent of the partial agreement and proceed to hear the matter in respect of what has not been agreed upon.
(6) Where the mediation or counselling process under sub regulation (1) fails, the court shall proceed to hear the complaint on merit.

29. Procedure in civil cases.
(1) Unless otherwise provided in the Act or in these Regulations, proceedings shall be conducted in accordance with the practice and procedure governing civil proceedings in the magistrates’ courts.
(2) All proceedings in the magistrate’s court shall be public except that the court shall have discretion to hear matters in camera depending on the circumstances of each case.
(3) The court may when conducting proceedings depart from any strict rule of practice or procedure, if it considers that departure from that practice or procedure would ensure that substantive justice is done.

30. Application for a protection order.

(1) The procedure for an application for a protection order shall be as prescribed under section 10 of the Act.

(2) An application for a protection order shall be in Forms 1 or 5 of the third Schedule to the Act.

(3) In granting a protection order, the court may consider-

(a) Whether it is necessary for the protection of the applicant, a child or family property;

(b) whether the behavior in respect of which the application is made appears to be trivial when viewed in isolation or forms of a pattern of behavior in respect of which the applicant a child of the applicant’s family or family property need protection; or

(c) any other circumstances that may be relevant.

31. Power of court to impose obligations in a protection order.

The court has the power to impose on either party obligations regarding the discharge of rent, loan repayments or other expenses where it is just and reasonable to do so taking into account the financial resources and obligations of either party.

32. Power of court in case of suspicion of mental illness.

Where court suspects that a perpetrator has a mental health problem or where a perpetrator, in his or her defence, alleges that he or she suffers from a mental health problem, the court shall refer him or her for mental examination in the manner prescribed under the Mental Treatment Act, Cap 279.

33. Order for vacating a matrimonial home or other home.

(1) The order to vacate the matrimonial home or other home shall be made in exceptional circumstances which include-

(a) where the perpetrator threatens to kill the victim; or

(b) where the perpetrator has attempted to kill the victim.

(2) Notwithstanding sub regulation (1), a protection order requiring a perpetrator to vacate a matrimonial home or other home shall be based on evidence before court and a report of the probation and social welfare officer and in particular the following circumstances-

(a) the respective housing needs of the parties and the children, if any;

(b) the financial resources of either party;

(c) the likely effect of the order on the health, safety and welfare of the parties and the children if any; and

(d) where the court considers it in the interest of justice to do so.
(3) The court shall have a duty to make an order where it appears likely that the applicant, a child or any other person shall suffer significant harm if an order is not made.

(4) The report prepared by the Probation and Social Welfare Officer shall contain the following information-
   (a) place of residence of the victim and perpetrator;
   (b) whether the couple lives in a rented home or not and if so, the party responsible for the payment of rent;
   (c) whether the applicant is employed and has the capacity to pay the rent;
   (d) the reasonable accommodation needs of all persons who may be affected by the order; and
   (e) the best interests of children of the applicant’s family, if any.

(5) Where an order to vacate the matrimonial home or other home is granted the court shall as soon as possible serve a copy on-
   (a) the officer in charge of the police station nearest to where the complainant resides; and
   (b) the local council 1 chairperson of the area in which the complainant resides.

34. Service of a protection order.
   (1) A protection order issued under sections 11 and 12 of the Act shall be in Form 6 of the Schedule to these Regulations.

   (2) The court shall as soon as is reasonably possible, serve a protection order on the following-
       (a) the perpetrator and the complainant;
       (b) the responsible local authorities in the area where-
           (i) the matter arose;
           (ii) the perpetrator resides; and
           (iii) the complainant resides.

   (3) The mode of service of documents prescribed under the Civil Procedure Rules shall apply to service of a protection order.

35. Registration of protection orders.
    Where a complainant in whose favour a protection order has been issued changes residence, he or she shall register the order with the local authority or police in that area of residence.

36. Variation, revocation or discharge of a protection order.
   (1) An application for variation, revocation or discharge of a protection order under section 14 of the Act shall be in Form 3 or 7 in the Third Schedule to the Act.

   (2) An application for extension of a protection order shall be in Form 7 of the Schedule to these Regulations.

   (3) Where court has fixed a hearing of the application under sub regulation (1), notice shall be given to the parties in Form 2 in the Schedule to these Regulations.
(4) Where a Magistrate’s Court varies, revokes, or discharges a protection order, it shall issue notice of the revocation; extension or variation order granted to the parties in Form 8 of the Schedule.

37. **Notice for breach of a protection order.**

Where a person breaches a protection order, the party affected may give notice of the breach to the court which issued the protection order in Form 9 of the Schedule.

38. **Notice to perpetrator to show cause.**

(1) Where court has received a notice of breach of a protection order under regulation 36, it shall issue a notice to the perpetrator to show cause why he or she should not be arrested.

(2) The notice to show cause shall be in Form 10 of the Schedule.

(3) Where the perpetrator fails to show cause for the breach of the protection order or where the court is not satisfied with the perpetrator’s reason for breach, court shall issue an order for arrest of the perpetrator.

(4) Where court is satisfied with the reasons for the perpetrator’s breach of the protection order, court shall dismiss the application or make any other orders it may deem appropriate.

39. **Procedure in criminal matters.**

(1) The procedure in domestic violence cases of a criminal nature shall be governed by the laws governing criminal proceedings in magistrates’ courts.

(2) In pursuance of a speedy hearing, the court shall as a matter of priority place criminal cases involving a domestic violence offence on the cause list as soon as they are received.

40. **Witness statements.**

(1) Where a witness intends to rely on a statement he or she shall cause the statement to be filed with the pleadings and served on the other party except that leave of court may be sought to file the statements during the proceedings, in any case not later than the close of the party’s case.

(2) Where a party is served with a statement in sub regulation (1) he or she shall make a reply to the statement and shall file it in court and cause it to be served on the other party.

(3) A party to the proceedings shall have a right to cross examine the witnesses in respect of a statement filed under sub regulation (1) and (2).

41. **Bail in domestic violence cases.**

The court in considering the grant of bail for persons accused of domestic violence may place appropriate restrictions to prevent re-occurrence of violence.

42. **Publication on matter before court.**

(1) A person shall not publish information on any matter before court which may prejudice the public on the outcome of the matter.

(2) The court if satisfied that it is in the interests of justice, may make an order that information relating to proceedings on domestic violence whether on going or concluded, shall not be
published except that an order shall not be made in respect of the publication of a bonafide law report.

(3) Where a person contravenes sub regulation (1) and (2) he or she commits an offence and is liable on conviction to a fine of fifty currency points or imprisonment not exceeding 2 years or both.

43. Order for seizure of dangerous weapons.

(1) The Court may on an application by any person, make an order for the seizure of any dangerous weapon which is in the possession or under the control of the perpetrator where the court is satisfied on the evidence placed before it that the dangerous weapon has been used or is likely to be used in domestic violence.

(2) The application for this order may be made orally or in writing.

(3) Notwithstanding sub regulation (1), the court may refer a matter involving a dangerous weapon in the possession or under the control of the perpetrator to the police for seizure and custody.

44. Admissible evidence.

(1) Notwithstanding anything contained in any other law, the following evidence is admissible in domestic violence proceedings-

(a) previous convictions as far as it pertains to acts of violence be it domestic or otherwise;

(b) records of previous protection orders granted to or against any of the parties;

(c) report of acts of violence be it domestic or otherwise reported to the police or any other authority;

(d) formal warnings issued by the police;

(e) variations or cancellations of protection orders; or

(f) court records on matters arising out of the same or related facts.

45. Fees.

The fees payable in this part shall be determined in accordance with the rules and practice governing payment of fees in the magistrates’ courts.

PART VI-DUTIES OF THE PRACTITIONER.

46. Duties of a practitioner.

(1) Where a practitioner provides medical services to a patient who is a victim of domestic violence he or she shall-

(a) inquire into the circumstances of the matter;

(b) examine the victim in privacy unless the victim requests for a person, to be present;

(c) carry out the mental examination of the victim indicating the mental state and where necessary refer for psychiatric attention;
(d) carry out a medical examination detailing the location, size and the likely cause of the injuries;
(e) make a record of the examination of the victim;
(f) ensure confidentiality;
(g) advise the victim to report the matter to the police;
(h) complete P F 3 immediately after examination and submit it to the police;
(i) refer the victim to an institution offering psycho social support; and
(j) in the case of a child victim, make a report to a law enforcement agency in the jurisdiction in which the injury took place.

(2) A practitioner shall prepare and send within two working days the report referred to under sub regulation 1 (j) to the police, which shall include the victims particulars and injuries.

(3) Where death has occurred, a practitioner shall upon request by any person or authority, examine the deceased and make a detailed report of the injuries found on or in the body, the probable cause of the injuries and the link between the injuries and the death, if any.

(4) In any court proceedings physician - patient privileges do not apply to the information required to be reported.

(5) A practitioner who reports a known or suspected instance of domestic violence shall not be held civilly or criminally liable for breach of confidentiality.

(6) The Minister responsible for health shall issue guidelines for practitioners in handling domestic violence cases.

SCHEDULE

Regulation 6

FORM I

PARTICULARS OF COMPLAINT TO THE LOCAL COUNCIL COURT

Date of Complaint: ..................................................

Complaint to the Local Council Court of: ..........................................................

1. Particulars of Victim

Name ..........................................................................................................

Sex .............................. Age ............................. Nationality .................................

Religion ................................. Disability (if any) ................................................

Tribe .............................. occupation ............................. Marital status .................

Physical Address .......................... ..........................................................
2. **Particulars of the perpetrator**

   Name ............................................................................................................

   Sex ........................................... Age ....................... Nationality .............................

   Religion ........................................... Disability (if any) ..........................

   Tribe ........................................ occupation ................................ Marital status ...........................

   Physical Address ........................................ ..........................................................

   Relationship of the perpetrator(s) with the victim ....................................................

3. **Persons affected by Domestic Violence**

   3.1  **Particulars of Persons affected by Domestic Violence**

<table>
<thead>
<tr>
<th>No</th>
<th>Name</th>
<th>Age</th>
<th>Sex</th>
<th>Disability (if any)</th>
<th>Relationship with complainant</th>
<th>How are these persons affected</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

   **Particulars of the victim’s representative (if applicable)**

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Surname</td>
</tr>
<tr>
<td>Other names</td>
</tr>
<tr>
<td>Date of birth</td>
</tr>
<tr>
<td>Physical address</td>
</tr>
<tr>
<td>Telephone number</td>
</tr>
<tr>
<td>Occupation</td>
</tr>
<tr>
<td>Capacity in which the complaint is made</td>
</tr>
<tr>
<td>State reason(s) why the complaint is made on behalf of the complaint</td>
</tr>
</tbody>
</table>

5. **Particulars of the Complaint**

   Date of the incident: ...........................................................

   Time of the incident: ...........................................................

   Place of the incident: ...........................................................

   Details of the incident: ...........................................................

   Whether dangerous weapons were used, if so, state the weapon: ..........................

   What injuries were sustained: ........................................................................
Whether medical treatment was obtained, and if so where?: ...........................................................

**Witnesses (if any)**

1: .....................................................................................................................................................

2:: ......................................................................................................................................................

Number of times of the occurrence: ................................................................................................

Number of times the incident has been previously reported: ........................................................

Where and when previous incidents were reported: .....................................................................

To whom previous incidents were reported: ..................................................................................

Number of attempts to settle the matter out of court: ..................................................................

Signature of victim I his or her representative: ............................................................................

Date: ..............................................................................................................................................

**Form 2**

**HEARING NOTICE**

Regulations 9 (2) and 36(3)

In the ....................................................... Court held at ...........................................................

Case No ...................................................... of 20 ..................

......................................................................................................................................................

**Complainant**

Versus

......................................................................................................................................................

**Respondent**

TO: ..............................................................................................................................................

......................................................................................................................................................

Whereas the above named complainant has instituted a suit against you,

......................................................................................................................................................

You are hereby required to appear in this court on the ............. day of ................. am/pm and to bring your witnesses with you.
If no appearance is made by you or a person authorised by law to act for you, the case may be heard and decided in your absence.

Dated this…………… day of ……………………..20 ……………………………… .

.................................................................

Chairperson/ Magistrate

FORM 4

Regulation 17

ORDER FOR INQUIRY INTO THE WELFARE OF CHILDREN

The Republic of Uganda

In the Local Council Court of .

Held at .

In the matter between

Applicant:................................................................................................ .

And

Respondent:............................................................................................. .

Whereas the applicant has filed a complaint against the respondent and whereas it has come to the knowledge of this court that this matter involves children, court hereby orders as follows;

1. That the probation and social welfare officer makes an inquiry into the welfare of the children; and

2. That the probation and social welfare officer, within seven days, submits a copy of his findings and action taken or to be taken, to this court.

.................................................................

Chairperson

Form 5

Regulation 12(3) and 18

LOCAL COUNCIL COURT REFERAL FORM

TO: (Mediator*|Probation and Social Welfare Officer*|Police*|Magistrates’ Court*) Particulars of the victim

Nature of complaint:............................................................................................. .

(as detailed in the complaint attached)
Reason(s) for referral

I ..................................................................................................................................................

Time within which report required:............................................................................................

Date:........................................................................................................................................

Name:........................................................................................................................................

Signature:.....................................................................................................................................

* Delete whichever is not applicable

FORM 6

Regulation 34

PROTECTION ORDER

The Republic of Uganda

In the Magistrates’ Court of:........................................................................................................

Held at:........................................................................................................................................

Application No. of:....................................................................................................................

In the matter between

Applicant:......................................................................................................................................

and

Respondent:...................................................................................................................................

1. Particulars of Respondent

   Physical address:.....................................................................................................................

   Work Address:.........................................................................................................................

   Occupation:.............................................................................................................................

2. Particulars of application

Whereas the applicant has applied for a protection order against the respondent and whereas an interim protection order/protection order was not issued*/ issued *, After consideration of the application the court now orders as follows;

   I.  *That the application for a protection order is dismissed; or

   II. *That an interim protection order is granted; and the respondent is ordered-

       b.  *Not to commit the following acts of domestic violence

       c.  *Not to enlist the help of another person to commit the act of domestic violence specified above
d. *Not to enter the shared residence at...  .

e. *Not to enter the following parts of the shared residence ...........................................................

f. * Not to enter the complainant’s residence at ..................................................................................

* Not to enter the complainants place of employment at ..................................................................

g. * Not to prevent the complainant or any child who ordinarily live(s) or lived in. the shared

residence at ................................................ from entering or remaining in the shared

residence or any part thereof.

h. * Not to commit any of the following acts, to wit

To make rent or loan payments in the sum of shs ................................................................. per month/

annum.

4. **Additional Orders**

4.1 **IT IS FURTHER ORDERED THAT** a police officer accompanies the applicant to the

following residence in order to assist with arrangements regarding the collection of personal

property i.e

4.1.1 A member of the Police Force at ..........................................................

seizes the following dangerous weapons in the possession of the respondent i.e.

4.1.2 The respondent is ordered not to have contact with the following ..................................

4.1.3 The respondent is allowed contact with the children ..........................................................

.................................. on the following conditions  .

4.2 A warrant will be issued upon noncompliance by the respondent with the conditions of the

protection order as stated above.

4.3 A copy of this order is hereby forwarded to the ......................................................... Police

Station.

Given under my hand and the Seal of Court this day of ................................ 20 ......................

Magistrate

*Delete whichever is not applicable
Form 7
Regulation 36(2)

APPLICATION FOR EXTENSION OF THE PROTECTION ORDER

Case number .............................................................................................................. .

In the Magistrates Court of ............................................ Holden at ..............................................

In the matter of (name of victim), a ........................................................ (state whether the victim is
an adult, child, person of unsound mind, person with disability.)

And

In the matter of a protection order issued against ..........................................................
........ on the day of ................................................. 20 ................................................. .

1. ................................................. (name of applicant) being ................................................
. (state relationship to person against whom the order was issued, apply for extension of
the protection order on the following grounds;

Dated this ........... day of ..................... 20............... at. ...........................................

Applicant

Form 8
Regulation 36(4)

ORDER TO DISCHARGE, VARY, REVOKE A PROTECTION ORDER

In the Magistrates’ Court of ...............................................................

Held at. ....................................................................................................................

In the matter between

Applicant: ..............................................................................................................

and

Respondent ..............................................................................................................

Application No of .............................................. Arising from ..............................................

Application No ............................................................ of ......................................................  .

Order against .............................................. .............................................................. .

Issued on the .............................................. of .............................................. 20 ............... .
The order is hereby varied *, revoked * or discharged * as follows ............................................................ (state the nature of variation, revocation or discharge) on the following grounds.

Given under my hand and the Seal of Court this ........... day of ....................... 20 ..............

........................................................................

Magistrate

Form 9

Regulation 37

NOTICE FOR BREACH OF A PROTECTION ORDER

Case number ..............................................

In the Magistrates Court of .............................................. Holden at .......................................................

In the matter of ............................................................................ (name of victim), a .................
(state whether the victim is an adult, child, person of unsound mind, disability.)

And

In the matter of a protection order issued against .............................................. on the day .............. of .............................................. 20 ................. .

I .............................................. ...................................(applicant) being the person in favour of whom the order was passed, do notify court of the breach of the said order.

Nature of the breach ..............................................................................................................................

Dated this ............. day of .............................................. 20 .......... At ..........................................

..................................................................................

Applicant

*Delete whichever is not applicable
Form 10

Regulation 38(2)

NOTICE TO SHOW CAUSE WHY A WARRANT OF ARREST SHOULD NOT ISSUE

In the Magistrates’ Court of ........................................................................................................

Held at ........................................................................................................................................

Application No. .............................................. of .................................................................

In the matter between

Applicant. ..................................................................................................................................

And

Respondent ................................................................................................................................

To: ............................................................................................................................................

Whereas .............................................. has notified this court about breach of Protection Order issued on .............................................. you are hereby required to appear before this court on the .....................

day of .............................................. 20 ................ at ......................... o’clock to show cause why a warrant of arrest should not be issued against you for breach of the said protection order.

Given under my hand and the Seal of Court this ……. day of ...................................... 20 ................

.............................................. Magistrate
Annex 7E: ACTS

SUPPLEMENT No. 6

3rd October, 2009.

ACTS SUPPLEMENT

to The Uganda Gazette No. 52 Volume CII dated 23rd October, 2009.

Act 7 Prevention of Trafficking In Persons Act 2009


Section.

ARRANGEMENT OF SECTIONS.

PART I - PRELIMINARY

1. Commencement
2. Interpretation

PART II - TRAFFICKING IN PERSONS

3. Offence of Trafficking in Persons
4. Aggravated Trafficking in Persons
5. Trafficking in children
6. Engaging the Labour or Services of a Victim of trafficking
7. Promoting Trafficking in Persons
8. Offences Related to Trafficking in Persons
9. Failure to Disclose Conviction
10. Duty to Report Trafficking in Persons

PART III - PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

11. Non Discrimination of Victims of Trafficking in Persons
12. Protection, Assistance and Support for Victims of Trafficking in Persons
13. Confidentiality
14. Repatriation of Victims of Trafficking in Persons
15. Restitution
16. Compensation
17. Absence of Victims and Court Awards.

PART IV - JURISDICTION

18. Jurisdiction
PART V - PREVENTION OF TRAFFICKING IN PERSONS OFFICE

21. Designation of Prevention of Trafficking in Persons Office

PART VI - MISCELLANEOUS PROVISIONS

22. Confiscation and Forfeiture of Proceeds of Trafficking

23. Regulations

SCHEDULE Currency Point

THE PREVENTION OF TRAFFICKING IN PERSONS ACT, 2009

An Act to provide for the prohibition of trafficking in persons, creation of offences, prosecution and punishment of offenders, prevention of the vice of trafficking in persons, protection of victims of trafficking in persons, and other related matters.


Date of Commencement: 23rd October, 2009.

BE IT ENACTED by Parliament as follows:

PART I - PRELIMINARY.

1. Commencement.

This Act shall come into force upon publication in the Gazette.

2. Interpretation.

In this Act, unless the context otherwise requires -

(a) “child” means a person below the age of 18 years;

(b) “debt bondage” means the status or condition arising from a pledge by the debtor of his or her personal services or labour, or those of a person under his or her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied towards the liquidation of the debt;

(c) “currency point” has the value specified in the Schedule to this Act;

(d) “exploitation” includes at a minimum, sexual exploitation, forced marriage, child marriage, forced labor, harmful child labour, use of a child in armed conflict, use of a person in illegal activities, debt bondage, slavery or practices similar to slavery or servitude, human sacrifice, the removal of organs or body parts for sale or for purposes of witchcraft, harmful rituals or practices;

(e) “forced labour” means all work or service which is exacted from any person under the threat of any penalty and for which the said person has not offered him/herself voluntarily;
“Gazette” means the Uganda Gazette, and includes any supplement of that Gazette;

“human sacrifice” means the killing, mutilation, removal of organs or body parts of a person for sale or for purpose of witchcraft, rituals or any harmful human practices;

“Minister” means the Minister in charge of Internal Affairs; (i) “prostitution” means the activities of a “prostitute” as defined in the Penal Code Act – “a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain”;

public office means an office in the public service;

“public officer” means a person holding or acting in any public office;

public service means service in a civil capacity of government or local government;

“pornography” means any representation, through publication, exhibition, cinematography, indecent show, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities, or any representation of the sexual parts of a person for primarily sexual excitement;

“sex tourism” means a program organized by travel and tourism – related establishments or individuals, which consists of tourism packages or activities, utilizing and offering escort and sexual services and practices offered for any persons as part of work recreation;

“sexual exploitation” means the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials, or the use of a person for sexual intercourse or other lascivious conduct;

“slavery” is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised;

“slave trade” includes all acts involved in the capture, acquisition or disposal of a person with the view to selling or exchanging him or her and with the intention of reducing him or her to slavery;

“trafficking in persons” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

“victim of trafficking” includes a person who is being or has been trafficked as per the definition of Trafficking in Persons provided under this Act.

PART II - TRAFFICKING IN PERSONS

3. Offence of trafficking in persons.

1) A person who:-

(a) recruits, transports, transfers, harbours or receives a person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;
(b) recruits, hires, maintains, confines, transports, transfers, harbours or receives a person or facilitates the aforementioned acts through force or other forms of coercion for the purpose of engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, death bondage, forced or arranged marriage; commits an offence and is liable to imprisonment for fifteen years.

(2) Notwithstanding the provisions of subsection (1), where the offender is a legal person, it shall be liable to a fine of one thousand currency points, and temporary or permanent closure, deregistration, dissolution, or disqualification from practice of certain activities.

(3) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall constitute “trafficking in persons” even if this does not involve any of the means set forth in subsection (1) of this Section.

(4) The consent of the victim of trafficking or if a child, the consent of his or her parents or guardian to the acts of exploitation shall not be relevant.


(a) A person commits the offence of aggravated trafficking where - (a) the victim of trafficking is a child;

(b) adoption, guardianship, fostering and other orders in relation to children is undertaken for the purpose of exploitation;

(c) the offence is committed by a syndicate, or on large scale;

(d) the offender is an organization engaged in the activities of organizing, directing or protecting the vulnerable persons in society;

(e) the offender is engaged in organizing or directing another person or persons to commit the offence;

(f) the offence is committed by a close relative or a person having the parental care, authority or control over the victim or any other person;

(g) the offence is committed by a public officer;

(h) the offence is committed by military personnel or law enforcement officer;

(i) where the person organizes, facilitates or makes preparations for the kidnapping, abduction, buying, selling, vending, bringing from or sending to, receiving, detaining or confining of a person for purposes of harmful rituals or practices, human sacrifice, removal of any body part or organ, or any other act related to witchcraft;

(j) the victim dies, becomes a person of unsound mind, suffers mutilation, gets infected with HIV/ AIDS or any other life threatening illness; and shall be liable to imprisonment for life.

5. Trafficking in children

A person who -

(a) does any act referred to under Section 3 in relation to a child; (b) uses a child in any armed conflict;
(c) removes any part, organ or tissue from the body of a child for purposes of human sacrifice;
(d) uses a child in the commission of a crime; (e) abandons a child outside the country;
(f) uses a child or any body part of a child in witchcraft, rituals and related practices; commits an offence of aggravated trafficking in children and may be liable to suffer death.

6. **Engaging the Labour or Services of a Victim of Trafficking in Persons.**

A person who while knowing or having reason to believe that a person is a victim of trafficking, engages the labour or services of that victim in that status, commits an offence and is liable to imprisonment for ten years.

7. **Promoting Trafficking in Persons.**

Any person who -

(a) knowingly leases or subleases, uses or allows to be used any house, building or establishment for the purpose of exploitation;
(b) produces, prints, issues or distributes, any document or information of any Government agency, which relates to immigration, for purposes of trafficking;
(c) tampers with, or falsifies any government or government agency’s document or information relating to the immigration regulations or requirements;
(d) utters or aids any person to utter any false document relating to immigration for the purpose of facilitating that person’s entry or stay in Uganda, or exit from the country;
(e) gives or facilitates the giving of false information to any authority for the purpose of enabling the entry, stay in Uganda, or exit from the country of any person;
(f) advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet of any pornographic or other material intended or likely to facilitate trafficking in persons;
(g) in any way engages in the selling or buying of persons;
(h) recruits, transports, transfers, harbours or receives a child for any purpose without authority of the parent or guardian of such a child; except that this provision shall not apply where the recruitment, transportation, transfer, harbouring or receipt is done lawfully, in good faith and in the best interests of the child;
(i) abandons a child in circumstances likely to cause fear, isolation, injury, pain or other harm; or to facilitate the trafficking of that child; commits an offence and is liable on conviction to a fine not exceeding one hundred and twenty currency points or to imprisonment for five years, or both such imprisonment and fine, and on subsequent conviction for the same offence, is liable to imprisonment of seven years without the option of a fine.

8. **Offences Related to Trafficking in Persons.**

A person who -

(a) attempts to traffic in persons;
(b) conspires with another person to do an act of trafficking in persons;
(c) recruits, transports, transfers, harbours, provides or receives a person for domestic or overseas employment or training or apprenticeship with the intention of trafficking;
(d) recruits a person below 16 years in any form of employment for the purposes of exploitation;
(e) introduces or matches any person to another for purposes of sexual exploitation;
(f) confiscates, conceals, or destroys a passport, travel documents, or other personal documents or belongings of a person for the purpose of unlawfully denying that person freedom of movement, or access to any public services;
(g) adopts or facilitates the adoption of a person for illicit purposes; commits an offence and is liable on conviction to imprisonment for five years or a fine of one hundred and twenty currency points or to both such imprisonment and fine, and on subsequent conviction for the same offence, is liable to imprisonment of seven years without the option of a fine.

9. Failure to Disclose Conviction.

A person who, having been convicted of a trafficking offence under this Act fails to disclose that conviction -

(a) when applying for employment which places him or her in a position of authority or care of children; or
(b) when offering or agreeing to take care of or supervise children, commits an offence and is liable on conviction to a fine, not exceeding three thousand currency points or to a term of imprisonment not exceeding three years or both.


(1) Every member of the community, who knows that any person has committed or intends to commit an offence under this part of the Act, shall report the matter to the police or other authority for appropriate action.

(2) A person who knowing or having reason to believe that a person has committed or intends to commit an offence and does not report to police or other relevant authority, commits an offence and is liable to a fine of five thousand currency points or imprisonment for six months.

PART III - PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

11. Non Discrimination of Victims of Trafficking in Persons.

(1) Measures for the protection, assistance and support to victims of trafficking in persons shall be interpreted and applied in a way that is not discriminatory to persons on the basis of race, religion, belief, age, family status, culture, language, nationality or gender.

(2) Any person who applies the measures for protection, assistance and support of victims in a discriminatory manner commits an offence and is liable to a fine of five hundred currency points or imprisonment for six months.

(1) A victim of trafficking shall be legally recognized as such and shall not be penalized for any crime committed as a direct result of his or her trafficking.

(2) A victim of trafficking shall be informed in a language that he or she understands about the different stages of any proceedings and about her/his rights and duties.

(3) A victim of trafficking shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the proceedings.

(4) The institution of a criminal charge arising from acts of trafficking in persons shall not affect the rights of a victim to pursue a civil case for damages.

(5) A person instituting proceedings under this section shall be exempted from payment of any filing fees required under civil procedure laws.

(6) A victim of trafficking in persons will be accorded the available health and social services, medical care, counseling and psychological assistance, on a confidential basis and with full respect of his/her privacy, in a language she/he understands.

(7) A victim of trafficking shall be considered for provision of safe and appropriate accommodation and material assistance, where necessary and possible.

(8) Public officers and any other person involved in the detection, investigation, prosecution or trial of offences under this Act shall whenever necessary, refer victims to appropriate organizations and institutions for assistance and support.

(9) The protection, assistance and support to children shall be provided in accordance with their special needs, especially with regard to accommodation, education and care.

(10) A victim of trafficking shall be entitled to information on the nature of protection, assistance and support he or she is entitled to and the possibilities of assistance and support.

(11) The protection, assistance and support subscribed in this section shall be provided by Government and other agencies.

13. Confidentiality.

(1) At any stage of the investigation or trial of an offence under this Act, law enforcement officers, prosecutors, judicial officers and medical practitioners, as well as parties to the case, shall recognize the right to privacy of the victim of trafficking.

(2) For the purpose of (1), proceedings of the court shall be conducted in camera, outside the presence of the media, in cases involving children, sexual exploitation, and other cases where the court considers this appropriate.

(3) Any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry, or any person utilizing trimedia facilities or information technology who publishes or causes publicity of the names and personal circumstances or any other information tending to establish the victim’s identity without authority, commits an offence and is liable to a fine of two hundred and fifty currency points.
14. **Repatriation of Victims of Trafficking In Persons.**

(1) The Minister in cooperation with the appropriate government agencies shall be responsible for the facilitation of repatriation of victims of trafficking in persons to and from Uganda.

(2) Where the repatriation of a Ugandan victim is likely to expose the victim to greater risks or to compromise his or her safety, the Minister may through the relevant office negotiate with the host government for the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect the victim.

(3) Where the repatriation of a foreign victim is likely to expose the victim to greater risks, to compromise his or her safety, or where presence of the victim is necessary for court proceedings, the Minister may facilitate the extension of appropriate residency permits, work permits and maintenance as may be necessary to protect, assist and support the victim.

(4) On getting notice of a victim of trafficking in persons in a foreign country, the minister shall verify whether the victim is a citizen or a permanent resident of Uganda and shall; where a victim is proved to be a Ugandan or a permanent resident without proper documentation, issue the relevant documents and other relevant authorization to facilitate the repatriation of the victim to or from Uganda.

15. **Restitution.**

Where a person is convicted of trafficking in persons under this Act, the court shall in addition to any other punishment, order that person to pay restitution to the victim or other person or organization which may have incurred expenses on the victim’s behalf for -

(a) Costs of medical and psychological treatment;
(b) costs of physical and occupational therapy and rehabilitation;
(c) costs of necessary transportation, temporary housing and child care;
(d) costs of re-integration in society; and
(e) any other costs that the court may deem fit.

16. **Compensation.**

Where a person is convicted of trafficking in persons under this Act, the court may in addition to any other punishment order that person to pay compensation to the victim for -

(a) Physical injury;
(b) Emotional distress; (c) Pain and suffering; (d) Loss or damage;
(e) Any other damage that the court may deem fit.

17. **Absence of Victims and Court Awards.**

The return of the victim to his or her country, or other absence of the victim from the jurisdiction shall not prejudice the victim’s right to receive restitution or compensation.
PART IV - JURISDICTION

18. Jurisdiction.

A case under this Act shall be tried where the offence was committed, or where any of its components occurred, or where the trafficked person actually resided at the time of the commission of the offence.


This Act shall apply to offences committed outside Uganda where -

(1) A person who, while being a citizen of, or permanently residing in Uganda, commits an act outside Uganda, which act would constitute an offence had it been committed in Uganda.

(2) The victim was a citizen of Uganda at the time of commission of the offence.

(3) The offence was committed partly inside and partly outside Uganda.

(4) A substantial proportion of the effects of the offence have occurred or taken place within the territory of Uganda.

Provided that -

(a) no proceedings shall be instituted under this section without the written consent of the Attorney General;

(b) if the consent of the Attorney General is received under (a) proceedings may be instituted in any appropriate court and such court shall have jurisdiction to try the matter as if the offence or offences had been committed within its jurisdiction;

(c) a person shall not be tried for an offence under this section if that person has been acquitted or convicted of the same offence in another country.

20. Extradition.

A person charged with an offence under this Act shall be liable to extradition under the existing Extradition laws.

PART V - PREVENTION OF TRAFFICKING IN PERSONS OFFICE


(1) The Minister shall designate an office to be responsible for the coordination, monitoring and overseeing the implementation of this Act.

(2) The designated office shall have the following functions - (a) to formulate a comprehensive and integrated program to prevent and suppress trafficking in persons;

(b) to prepare an annual National Plan of Action on Prohibition of Trafficking in Persons taking into account activities on prevention, prosecution, and protection;

(c) to develop measures and policies to protect, assist and support victims of trafficking, taking particular consideration of the age, gender and special needs of victims of trafficking in persons;
(d) to establish a data bank on cases of trafficking in persons and conduct continuing research and study on the pattern and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;

(e) to engage in consultation, coordination, cooperation and advocacy with governmental and Non-Governmental Organizations, among other entities, to advance the objects of this Act;

(f) to initiate the training and awareness of government personnel, law enforcement officials and the public, particularly among risk groups and communities, of the dangers of trafficking and protections that are available for victims of trafficking;

(g) to propose rules and regulations to the Minister as may be necessary for effective implementation of this Act;

(h) to carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under this Act.

PART VI - MISCELLANEOUS PROVISIONS

22. Confiscation and Forfeiture of Proceeds of Trafficking.

(1) In addition to any penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture of all the established proceeds and properties derived from the commission of the crime.

(2) Where the proceeds and properties derived from the offence have been destroyed, diminished in value or otherwise rendered worthless by an act or omission, directly or indirectly of the offender or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds or property.

(3) All awards of damages and costs of proceedings under this Act shall be paid directly by the offender, and where the offender fails to pay the same shall be recovered like a civil debt.

23. Regulations.

The Minister may by statutory instrument make regulations to effect implementation of the provisions of this Act, and promote its objects.

SCHEDULE CURRENCY POINT

One currency point is equivalent to twenty thousand Shillings.
Annex 7F: STATUTORY INSTRUMENTS

SUPPLEMENT No. 8

17TH April, 2009

STATUTORY INSTRUMENTS SUPPLEMENT

10 The Uganda Gazette No. 17 Volume CII dated 17th April, 2009 Printed by UPPC, Entebbe, by Order of the Government.

STATUTORY INSTRUMENTS 2009 No. 20.

The Administration of Estates (Small Estates) (Special Provisions) (Amendment of Jurisdiction of Magistrates Courts) Order, 2009 (Under section 2(6) of the Administration of Estates (Small Estates) (Special Provisions) Act, Cap. 156)

IN EXERCISE of the powers conferred upon the Minister by section 2(6) of the Administration of Estates (Small Estates) (Special Provisions) Act, this Order is made this 26th day of February, 2009.

1. Title

This Order may be cited as the Administration of Estates (Small Estates) (Special Provisions) (Amendment of Jurisdiction of Magistrates Courts) Order, 2009.

2. Amendment of jurisdiction of magistrates courts under section 2 (1) of Cap. 156

The jurisdiction of magistrates courts under section 2(1) of the Administration of Estates (Small Estates) (Special Provisions) Act in the case of grant of probate or letters of administration in respect of small estates of deceased persons is amended as follows-

(a) in the case of a Magistrate Grade I, it shall be where the total value of the estate does not exceed the maximum financial limit of the civil jurisdiction of a Magistrate Grade I under section 207 of the Magistrates Courts Act;

(b) in the case of a Chief Magistrate, it shall be where the total value does not exceed the maximum financial limit of the civil jurisdiction of the Chief Magistrate under section 207 of the Magistrates Courts Act.

HON (DR) E. KHIDDU MAKUBUYA, M.P
Attorney General and Minister Of Justice and Constitutional Affairs.
STATUTORY INSTRUMENTS
SUPPLEMENT No.8  17th April, 2009

STATUTORY INSTRUMENTS SUPPLEMENT


STATUTORY INSTRUMENTS 2009 No. 21.
(Under section 8 of the Administration of Estates (Small Estates) (Special Provisions) Act, Cap,156)

IN EXERCISE of the powers conferred upon the Minister responsible for justice by section 8 of the Administration of Estates (Small Estates) (Special Provisions) Act, Cap.156 and in consultation with the Chief Justice these Rules are made this 26th day of February, 2009.1. Title

These Rules may be cited as the Administration of Estates (Small Estates) (Special Provisions) (Probate and Administration) (Amendment) Rules, 2009.

2. Amendment of S.I.156-1

The Administration of Estates (Small Estates) (Special Provisions) (Probate and Administration) Rules are amended, in rule 3, by inserting immediately after sub rule (5) the following-

“(6) The magistrate shall, before making a grant of probate or letters of administration, satisfy himself or herself that the deceased person to whose estate the application relates had at the time of his or her death, a fixed place of abode within the jurisdiction of the court.

(7) In all cases a magistrate may, if he or she thinks proper-
(a) examine the petitioner in person, upon oath or solemn affirmation;
(b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be; and
(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to appear before the court before the grant of probate or letters of administration.

(8) A citation issued under subsection (7) shall be fixed up in a conspicuous part of the courthouse, and also in the offices of the district council, and otherwise published or made known in such manner as the court issuing it may direct. “.

HON. (DR) E. KHIDDU MAKUBUYA, M.P
Attorney General and Minister of Justice and Constitutional Affairs.
References


Index

A

A, B and C v. Ireland :- xx, 113, 114,
Abortion :- 110, 111, 372,
access to justice :- iii, iv, xi, xxiv, xxv, 3, 4, 5, 6, 7, 10, 11, 14, 15, 16, 24, 26, 29, 30, 48, 51, 52, 53, 57, 61, 62, 63, 73, 83, 84, 89, 98, 126, 127, 129, 130, 131, 134, 138, 134, 135, 140, 149, 151, 152, 153, 157, 161, 162, 163, 164, 167, 230, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 268, 269, 272, 273, 274, 275, 277,
accumulated anger :- 55, 60,
Administration of Law :- 129,
adoption :- xii, 25, 26, 33, 37, 151, 161, 198, 203, 207, 216, 239, 248, 250, 270, 274, 362, 364,
adultery :- 7, 17, 27, 28, 30, 31, 95, 96, 270,
affirmative action :- xi, xxv, 3, 12, 13, 14, 90, 131, 156, 303,
African Union :- xv, 295, 296, 297, 298, 299,
a guardian ad litem :- 37,
Alternative Dispute Resolution :- xv, 126, 140,
Amama Mbabazi v. Yoweri Kaguta Museveni & Others :- xxii, 5,
ancestral property :- 149,
Arther Tindimwebwa & Others v. Joy Muhereza & Another :- xx, 123,
Article :- xi,
attitudes :- xxv, 56, 58, 65, 66, 82, 91, 103, 130, 152, 162, 242, 243, 244, 245, 299,
Attorney General :- xx, xxi, xxii, xxiii, 5, 8, 17, 19, 27, 28, 30, 31, 39, 41, 42, 96, 99, 100, 106, 114, 121, 122, 123, 124, 146, 149, 150, 158, 367, 369, 370,
Attorney General of Botswana v. Unity Dow :- xx, 150, 158,
B

Babumba v. Kizito :- xx, 94, 100,
Bangalore Principles :- 5, 10, 153, 154, 157, 163,
Banjul Charter :- xv, 11, 45, 47, 73, 77, 89, 108, 167, 276,
bank practice :- 92,
banks :- 92,
Barriers :- 6, 110, 129, 134,

Battered Woman Syndrome :- 54, 55, 373,
Behangana Domaro & Another v. Attorney General :- xx, 5, 19,
best interest of the child :- 34, 35, 37,
Best Kemigisa v. Mabel Komuntalexx, 97, 100,
Best practices :- 34, 35, 37, 163, 330,
Bride price :- 30, 59,
bride wealth :- 23, 58, 59, 96,
Bushoboroz Eric v. Uganda :- xx, 9, 19,

C

Care-giver :- xvii, xix
CEDAW :- iv, xi, xii, xv, xxiv, 4, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 25, 26, 27, 29, 31, 32, 33, 40, 41, 46, 47, 51, 56, 57, 63, 64, 65, 66, 68, 74, 75, 82, 84, 85, 89, 90, 99, 104, 108, 109, 112, 113, 114, 149, 167, 206, 209, 255, 265, 295, 373,
CEHURD & 3 Others. v. The Attorney General :- xx, 106,
Centre for Health, Human Rights and Development :- xv, xx, 109, 114,
Centre for Health, Human Rights and Development & Others v. Nakaseke District Local :- xx, 109, 114,
Chain-linked Initiative :- 138,
Chief Justice Bart Katureeeb :- 106,
Chief Justice of England, Sir Mathew Hale :- 58,
Chief Justice S.W.W. Wambuzi :- 131,
Chief Magistrate’s Court :- 37,
Child :- xvii, 34, 37, 41, 49, 64, 65, 66, 68, 75, 127, 228, 233, 249, 252, 264, 289, 292, 296, 298,
Christian :- 26,
citizenship :- 34, 150,
Cohabitation :- 31, 32, 372,
community service :- xxiv, 40, 127, 142, 143, 144, 145, 327,
Comparable Worth :- 78,
concept of domicile :- 29,
conflict-related SGBV :- 48,
Constitution :- xi, xxiv, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 41, 47, 52, 57, 66, 68, 77, 84, 85, 90, 91, 93, 94, 96, 99, 105, 106, 107, 108, 109, 110, 111, 114, 117, 118, 120, 121, 123, 124, 125, 126, 131, 139, 141, 150, 162, 268, 372,
contribution :- 23, 30, 31, 85, 90, 93, 95, 99, 155, 156, 210, 226,
 263, 264, 265, 266, 268, 269, 271, 273, 274, 275, 284, 289, 295, 298,
Culture :- 134, 312, 314,
cultures :- xi, 3, 14, 24, 66, 112,
customary :- iv, 16, 18, 26, 27, 30, 38, 39, 59, 91, 93, 94, 96, 98, 121, 122, 125, 126, 135, 162, 163, 208, 211, 223, 249, 251, 256, 263, 266, 269, 273, 274,
customary law :- iv, 26, 93, 94, 96, 98, 121, 122, 125, 135, 249, 269,
customs :- xi, 3, 14, 38, 66, 97, 208, 211, 244, 247, 248, 251, 252, 253, 263, 274, 277, 287,
D
Davis Wesley Tusingwire v. Attorney General :- xx, 121, 123, 146,
DEVAW :- xv, 45, 57, 64, 68, 167, 220,
Dhungana v. Nepal :- xx, 149, 158,
discriminate against women :- xi, 6, 7, 253, 263, 264, 269, 271,
Discrimination :- iii, iv, xi, xv, xvii, xxi, xxiv, 5, 10, 13, 14, 15, 18, 29, 65, 74, 76, 85, 114, 167, 206, 207, 209, 210, 216, 220, 222, 227, 228, 244, 246, 255, 256, 257, 289, 295, 298, 299, 300, 318, 359, 364, 371,
dissolution of marriage :- 28, 30, 31, 89, 95, 156, 247, 269,
District Chain-linked Committee :- xv,
Divorce :- xx, xxi, xxii, 23, 24, 28, 29, 30, 31, 34, 41, 42, 85, 86, 91, 93, 95, 96, 100, 161, 303, 372, 373,
DNM v SM :- xx, 35, 41,
Domaro & Another v. Attorney General :- xx, 5, 19,
Domestic Labour :- 75, 83,
Domestic Violence :- vi, xv, 55, 56, 57, 58, 59, 68, 152, 167, 323, 338, 351, 371,
Domestic work :- 83,
Domicile :- 29, 247,
DVA :- xv, 57, 58, 59,
E
Edita Nakiyingi v. Merekizadeki :- xx, 93, 100,
Edward Mulindwa v. Sarah Kalandu :- xx, 92,
Egan v. Canada :- xx, 12, 19,
Egyptian Initiative for Personal Rights and Interights v. Egypt :- xx, 47,
elimination of maternal and infant mortality :- 149,
Elimination of Violence against Women :- xx, 220, 221,
employment :- xxv, 17, 29, 39, 47, 73, 74, 75, 76, 79, 80, 82, 81, 77, 84, 90, 92, 124, 125, 179, 198, 199, 200, 208, 209, 210, 213, 214, 215, 243, 245, 250, 252, 260, 268, 275, 305, 306, 309, 355, 364,
Employment Act :- 68, 75, 76, 77, 78, 79, 80, 82, 85,
Environmental harassment :- 79,
Ephraim v. Pastory and Kaizingele :- xx, 97, 100,
Equality :- ii, xvii, 5, 10, 11, 13, 17, 25, 75, 82, 129, 136, 137, 151, 157, 162, 167, 221, 228, 243, 246, 295, 373,
Equal Opportunities :- xv, 14, 76, 78, 118,
equal pay :- 73, 75, 76, 77, 78, 179, 199, 279,
Executive :- xiv, xxiv, 3,
F
Family Relations :- 25, 41, 59,
Female Genital Mutilation :- xx, 66, 67, 68, 161, 167, 312, 313, 316, 321, 373,
Former Employees of GS Security Services v. G4S Security Services Ltd :- xx, 76, 86,
freedom of religion · 67,
fundamental element · 4, 256,

G

Gender · ii, iii, iv, v, xi, xiii, xiv, xv, xvi, xvii, xviii, xx, xxiv, xxx, 3, 5, 15, 17, 18, 45, 46, 57, 59, 68, 75, 14, 13, 75, 62, 94, 103, 128, 129, 130, 134, 135, 151, 152, 153, 155, 157, 162, 167, 171, 225, 228, 241, 244, 257, 289, 292, 293, 295, 312, 325, 371, 372, 373,
Gender-based violence · 46, 135, 241,
Gender-blind · xvii,
gender gaps · iv, xviii, 153,
gender-insensitive · 52, 61, 161, 258,
General Recommendation · iv, xiii, xv, xvi, xxv, 49, 77, 103, 104, 117, 125, 128, 129, 130, 134, 135, 149, 151, 152, 153, 155, 157, 162, 167, 171, 225, 228, 241, 244, 257, 289, 292, 293, 295, 312, 325, 371, 372, 373,
guardianship · 26, 27, 33, 38, 39, 117, 125, 185, 216, 248, 250, 362,

H

harmful or hazardous employment · 39,
harmful practices · 48, 65, 66, 263, 299, 300, 302,
Health · iv, xv, xvi, xvii, xix, xx, xxi, 45, 67, 80, 103, 107, 108, 109, 110, 112, 114, 170, 206, 252, 289, 306, 313, 315, 316, 371, 373,
Hindu · 26, 41,
His Worship Mr. Batema N.D.A. · 164,
HIV · xv, xvi, xxv, 49, 76, 104, 143, 226, 105, 257, 290, 291, 296, 297, 306, 313, 319, 362, 371, 373,
HIV/AIDS · xv, xvi, xxv, 49, 143, 226, 257, 290, 291, 296, 297, 306, 371, 104, 105,
Hon. Justice Dr. Winfred Nabisinde · 143,
Hon. Justice P. N. Bhagwati · 153,
Hon. Justice Twinomujuni · 59,
Hortensia Wanjiku Yawe v. Public Trustee · xx, 32, 41,
human right · 4, 6, 103, 105,
Human trafficking · xviii,
Hyde v. Hyde · xx, 26, 41,

I

ICCPR · xv, 11, 25, 41, 73, 89, 112, 127, 167, 181,
ICESCR · xv, 11, 25, 41, 73, 77, 89, 167, 197,
Informal sector · xviii,
innovative programmes · 3,
interest of women · xi, 14, 66,
International Labour Organization · xv, 74,
international law · 4, 5, 15, 67, 109, 162, 177, 181, 182, 186, 192, 197, 227, 229, 238, 241, 242, 268, 272, 280, 287,
international standards · iv, xxiv, 25, 57, 258, 260, 271, 272, 302,
In the Matter of Adoption of Mark Kakembo · xx, 38, 41,
Islamic · 26, 27, 125,

J

Jacobs v. Belgium · xx, 14, 19,
John Tom Kintu Muwanga v. Myliouse Gafabusa Kintu · xx, 85, 86, 100,
Joyce Nakacwa v. Attorney-General & Others · 109,
Joy Kiggundu v. Horace Awori · xxi, 29, 41,
judicial activism · 3, 7, 9, 149,
judicial officer · 3, 7, 17, 18, 61, 99, 119, 132, 139, 140, 157,
Judicial officers · xxiv, 18, 46, 56, 84, 131, 134, 135, 145,
judicial proceedings · xix, 184, 267,
Judicial stereotyping · 53,
judiciary · iii, iv, xi, xxiv, 5, 7, 10, 18, 82, 89, 118, 129, 130, 131, 132, 133, 149, 154, 156, 157, 161, 162, 226, 256, 259, 265, 290, 303,
Julius Rwabinumi v. Hope Bahimbisomwe · xxi, 31, 41, 93, 100,
Jurisdiction · 119, 123, 139, 151, 323, 329, 331, 337, 339, 345, 359, 367, 369,
Justice Alice Mpagi-Bahigeine · 28,
Justice Bart Katureebe · 106,
Justice Bart M. Katureebe · iii, 123,
Justice Bashaija · 124,
Justice Batema N.D.A. · v, xxv, 9, 10, 49, 50, 59, 60, 142,
Justice Centre Uganda · xv, 125,
Justice Claire L’Heureux-Dubé · 12,
Justice Duncan Gaswaga · 55,
Justice Esther Kisaakye · 106,
Justice G. M. Okello · 8,
Justice Godfrey Namundi · 94,
Justice J.B.A. Katutsi -: 97,
Justice Jotham Tumwesigye -: 30,
Justice Kanyeihamba -: 8,
Justice Kenneth Kakuru -: 122,
Justice King -: 35,
Justice, Law and Order Sector -: xii, 117, 125, 127, 372,
Justice Lugayizi -: 51,
Justice Macnaghten -: 110,
Justice Musoke Kibuuka -: 9, 123,
Justice Mwangusya -: 34, 85, 93, 95,
Justice N.P. Kimario -: 31,
Justice Ntabgoba J. -: 33,
Justice Odoki J. -: 34,
Justice Silungwe, AJ -: 35,
Justice Youds -: 55,
J v. M Ltd -: xx, 80, 86,

K
Kagga v. Kagga -: xxi, 93, 100,
Kasibante Moses v. Katongole Singh Marwana & Another -: 123,
Ker Kwaro Acoli -: 135,
Key Points -: 24, 47, 75, 90, 108,
KL v. Peru -: xxi, 112, 114,

L
Lady Justice C. Byamugisha -: 92,
land -: 5, 6, 84, 89, 91, 92, 90, 92, 97, 99, 125, 126, 128,
135, 215, 251, 268, 269, 271, 272, 297, 307, 308,
Law and Advocacy for Women in Uganda v. Attorney General -: xxi, 17, 19, 27, 39, 41, 67, 69,
Laxmi Mandal & Others v. Deen Harinagar Hospital & Others -: xxi, 109, 114,
LC v. Peru -: xxi, 113, 114,
LMR -: xxi, 112, 114,
Lord Denning -: 10,

M
Maina v. Republic -: xxi, 50, 69,
Male Primogeniture -: 93,
Maputo Protocol -: iv, 7, 10, 14, 17, 18, 29, 41, 45, 47, 65,
66, 68, 74, 85, 89, 97, 99, 105, 106, 111, 112, 114, 167, 298,
372,
marginalized -: 4, 13, 14, 75, 130, 164,
marital property -: 30, 92, 95, 251,
marriage -: 9, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 40, 45,
47, 55, 56, 58, 59, 66, 74, 82, 84, 85, 89, 91, 92, 93, 94, 95,
96, 98, 99, 103, 117, 125, 126, 139, 150, 163, 178, 188, 208,
212, 213, 215, 216, 242, 246, 247, 248, 249, 250, 251, 252,
263, 268, 269, 302, 303, 318, 360, 362,
motherhood -: 31, 58, 59, 93,
Maternal Health -: 108,
motherhood preference -: 36,
motherhood wall -: 83,
Maternity Leave -: 75, 82,
Mato Oput -: 163,
marital property -: 28, 31, 84, 85, 90, 92, 93, 95, 99,
Mbithi Mulu and Another v. Mitwa Mutunga -: xxi, 32, 41,
McCall v McCall -: xxi, 35, 41,
Mediation -: 61, 337, 341, 345,
Mfolo and Others v. Minister of Education, Bophuthatswana -: xxi, 149, 158,
Mifumi (U) Ltd and 12 others v. Attorney General and Kenneth Kakuru -: xxi, 30, 41, 96, 100,
Minister of Health v. Treatment Action Campaign -: xxi, 107, 114,
Mohamed v. Makomo -: xxi, 31, 41,
Mpirirwe v. Nsabimana -: xxi, 98, 100,
Mugabe Stephen v. Uganda -: xxi, 142, 146,
Mugisha v. Kakuru & Others -: xxi,
Muhinduka v. Kabere -: xxi, 30,
Multiple roles of women -: xviii,
Murisho & Others v. Attorney General & Another -: xxi,
Msajuma Mohamed Njopeka v. Juma Said Mkoroigororo -: xxi, 99, 100,
Mwendwa C.J -: 50,
My wife does not work -: 84,

N
Nakagwa v. Kiggundu -: xxii, 34, 42,
National Center on Domestic and Sexual Violence, USA -: 136, 137,
National gender machinery - xviii,
Negative stereotypes - 24,
Negulu Milly Eva v. Dr. Serugga Solomon - xxii, 94, 100,
Nemezi Ayiiya v. Sabina Onzia Ayiiya - xxii,
Neville and 5 others - 50, 69,
non-discrimination - xxv, 10, 11, 12, 27, 47, 67, 77, 111, 208, 238, 266, 268, 298,
non-monetary contribution of any spouse - 85,

O
Omella & Omella v. Etieng & Odeke - xxii, 98, 100,
opportunities - xvii, xviii, 3, 29, 65, 74, 82, 90, 104, 106, 134, 135, 210, 213, 215, 221, 234, 242, 243, 245, 247, 268, 271, 275, 305,

P
P and S v. Poland - xxii, 113, 114,
Paralegal Advisory Services - 127,
Parker v. Parker - xxii, 10, 19,
Paul Kaggwa v. Jackeline Muteteri - xxii, 85, 86,
Pay Equity - 75, 78,
Penal Code - xvi, 9, 17, 27, 46, 48, 49, 50, 53, 55, 57, 60, 68, 110, 112, 113, 114, 118, 340, 361,
person with a disability - 49,
Pettit v. Pettit - xxii, 91, 100,
Police Form 3A - xxiv, 53, 167, 172,
Polygamous - 24, 249,
P O v. Board of Trustees, AF and 2 Others - xxii, 80, 86,
Pregnancy - 108, 111, 371,
President of the Republic of South Africa and Another v. Hugo - xxii, 82, 86,
Prevention of Trafficking in Persons - 64, 65, 68, 167, 360, 367,
principles of equality - xxv, 11, 67, 207, 209, 249, 299,
Prohibition of Female Genital Mutilation - 66, 68, 167, 312, 316, 321,
property - xxx, 15, 23, 25, 26, 27, 28, 30, 31, 34, 35, 37, 84, 85, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99, 117, 121, 125, 126, 140, 149, 163, 176, 178, 181, 188, 198, 208, 215, 216, 247, 248, 250, 251, 252, 257, 260, 268, 269, 270, 275, 279, 280, 297, 303, 308, 324, 332, 340, 345, 346, 355, 368,
property individually acquired before marriage - 93,

Q
Quid pro quo harassment - 79,

R
rape - 9, 15, 23, 28, 49, 50, 51, 52, 53, 54, 56, 57, 58, 63, 64, 65, 104, 105, 106, 111, 112, 121, 122, 163, 221, 227, 229, 230, 243, 244, 266, 293, 304, 306,
recognizing unremunerated domestic activities - 84,
Recommendations - 14, 46, 253, 255, 267, 272, 289, 299,
Regional Coordination Committees - 138,
Re Kibiego - xxii, 94, 97, 100,
Reproductive health - 103,
Re: Prof. J. Oloka-Onyango & Others (Amicus Curiae) - xxii, 5, 19,
rights of pregnant students - 149,
R.K.B v. Turkey - xxii, 17, 19,
RR v Poland - 113,
R v. Hussein s/o Mohamed - xxii, 60, 69,
R v. R - xxii, 58, 69,

S
Samwiri Massa v. Rose Achen - xxii, 33, 42,
Sara H. Longwe v. Intercontinental Hotels - xxii, 150
Satrose Ayuma & Others v. The Registered Trustees Kenya Railways Staff Retirement Scheme - xxii, 19,
self-defence - 55, 61,
Sempiga v. Sempiga Musajjawaza - xxii, 93, 100,
Sentencing - 141, 142, 143, 145,
Sentencing Guidelines - 141, 142, 143,
Sentencing in Default of Community Service - 145,
Separation :- 28, 96, 303,
serial offender :- 49,
Sexual and Gender-Based Violence :- 45, 62, 68,
Sexual and Reproductive Health Rights :- xvi, 103,
sexual exploitation :- 39, 64, 65, 230, 233, 243, 244, 304, 360, 361, 362, 364, 365,
sexual harassment :- 75, 78, 79, 80, 81, 149, 221, 241, 243, 244, 245, 305,
sexual offences :- 46, 48, 50, 51, 52, 53, 54, 126,
Sexual violence :- 48,
Simon Kyamanywa v. Uganda :- xxii, 8, 19,
Small Claims Procedure :- xvi, 139,
Social safety nets :- xix,
sodomy :- 28,
solennisation :- 28,
solennisation of the marriage :- 28,
State Party :- 181, 182, 183, 185, 189, 191, 192, 193, 195, 197, 198, 201, 203, 204, 216, 217, 218, 219, 233, 234, 235, 236, 237, 238, 239, 240, 258, 278, 310,
Stereotyping :- 15, 16, 17, 18, 52, 56, 206, 255, 264, 265, 371,
Student Representative Council of Molepolole College of Education v. Attorney General :- xxii, 149, 158,
Succession :- 23, 29, 39, 41, 68, 93, 96, 98, 99, 161,
Survivors of SGBV :- 48,
Sustainable Development Goal :- 103,
S.W. v. The United Kingdom :- xxii, 58, 69,

T
Tanja Kreil v. Federal Republic of Germany :- xxii, 76, 86,
tender years :- 33, 36,
traditional perceptions of women :- 24,
Traditional practices :- 24,
traditions :- xi, 3, 14, 24, 66, 73, 112, 154, 253,
trafficking :- xxiii, 39, 40, 48, 64, 65, 221, 232, 233, 234, 235, 236, 237, 238, 243, 244, 257, 270, 293, 296, 301, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368,
Training :- 103, 130, 138, 151, 305,
Tysiac v. Poland :- xxiii, 113, 114,

U
UDHR :- xvi, 11, 23, 41, 57, 73, 89, 97, 99, 127, 167, 176,
Uganda Law Society v. Attorney General :- xxiii, 124,
Uganda v. Apai Stephen :- xxiii, 52, 69, 146,
Uganda v. Apio Agnes :- 142, 144, 146,
Uganda v. Kamuhanda Emmanuel :- xxiii, 55, 59, 69,
Uganda v. Kusemererwa Julius :- xxiii, 49, 69,
Uganda v. Peter Matovu :- xxiii, 51, 69,
Uganda v. Tereza Nakayima :- xxiii, 55,
Uganda v. Thomas Kwoyelo :- xxiii, 5, 19,
Uganda v. Yang :- 144, 146,
Uganda v. Yiga Hamidu and Others :- xxiii, 19,
Unremunerated Housework :- 83,

V
Van Heerden, JA :- 36,
Vishaka & Others v. the State of Rajasthan & Others :- xxiii, 80,
V. K. v. Bulgaria :- xxiii, 18, 19,

W
welfare :- xi, 3, 14, 24, 34, 35, 36, 37, 38, 66, 180, 198, 206, 210, 262, 308, 316, 317, 321, 328, 330, 333, 343, 344, 346, 353,
woman’s property :- 31, 96,
women’s rights :- iii, iv, xxiv, 3, 7, 16, 17, 46, 47, 58, 63, 90, 111, 117, 155, 162, 207, 208, 256, 259, 262, 263, 264, 266, 272, 273, 274, 291, 295, 298,
women with disabilities :- 107, 220, 258, 260, 309,