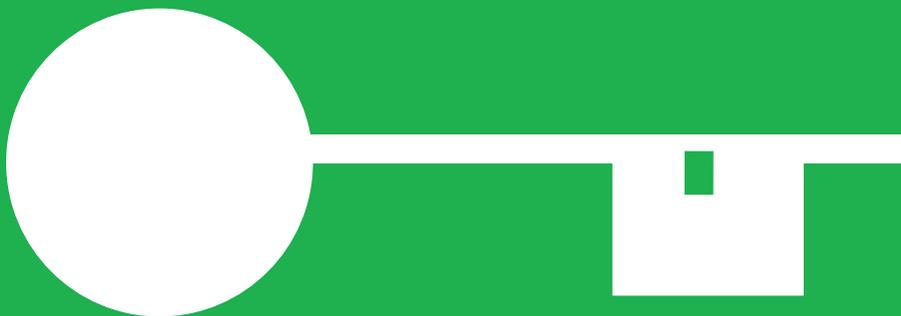


KNOWING THE LAW: ACCESS TO JUSTICE FOR WOMEN AND GIRLS

2017



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APPRECIATION

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FOREWORD

Women and girls across the world, rich and poor, have encountered violation of their rights in the economic, social and political spheres of their lives. The violations have robbed women and girls their dignity and limited their opportunities to develop and enjoy their fundamental human rights. According to WHO (2016), 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or sexual violence by a non-partner in their lifetime. 30% of women who have been in a relationship report to have experienced some form of physical and/or sexual violence by their partners in their lifetime.

The Uganda government has responded positively through enacting laws that protect women and girls from violations, in addition to being a signatory to a number of international and regional treaties such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the Maputo Protocol and the Sustainable Development Goals (SDGs). The Ugandan Government has also enacted national laws, policies and launched programmes aimed at promoting women's rights and gender equality. Although these achievements have been made, a lot still need to be done for the protection of women and girls rights and achieve gender equality.

This publication developed by Action for Development is intended to sensitise and create a critical mass of citizens who are aware and



appreciate the legal framework on prevention of VAW/G so that they champion women and girls rights. It is also important that women and girls are aware of their rights as enshrined in the different legal documents if they are access to justice. Efforts must be to ensure such legislation is enforced, monitored and adequate resources allocated for their implementation.

This publication supplements other existing ones that are used as a tools to help Ugandans especially those at the local level to understand the basic legal framework that protects women and girls against violations of their rights and increase their awareness on entitlement to justice.

We also hope you find this publication very resourceful.

A handwritten signature in black ink, appearing to read 'Regina Bafaki'.

Regina Bafaki
Executive Director



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ABBREVIATIONS

ACFODE	Action for Development
CEDAW	Convention on Elimination of all Forms of Discrimination against Women
DVA	Domestic Violence Act
FGM	Female Genital Mutilation
GBV	Gender Based Violence
LC	Local Council
UNCA	Uganda National Children's Authority
VAW/G	Violence against Women and Girls



INTRODUCTION

1. BACKGROUND

Action for Development (ACFODE) is an indigenous, voluntary, non-partisan, non-governmental women's interest organisation that was formed on November 19, 1985. Its founders were motivated by the desire to spearhead gender advocacy. In this regard, ACFODE **envisions a just society where gender equality is a reality**. The organisation's mission is **to empower women and influence legislation and policy for gender equality in Uganda**.

ACFODE being an organization that advocates for gender equality, women and girls rights in Uganda recognizes that all citizens (men and women) need to understand their rights and laws that protect them in order to live a socially, politically and economically stable life. A number of laws and policies have been put in place by the Government of Uganda to prevent VAW/G, and promote women's social, political and economic empowerment. The Constitution of the Republic of Uganda, 1995 is the supreme law and provides for the promotion and protection of women's rights.

However, the laws enacted have not been effectively disseminated among rural communities across the country. This has caused challenges to rural women since they have limited information about the legal framework that protects their rights. Therefore the women have not been able to adequately access justice and some of the duty bearers are also not familiar with the laws and hence cannot support these women accordingly. It's necessary that women and girls are aware of their entitlement to justice under the international and national legislation hence the purpose of this publication.



2. STRUCTURE OF THE PUBLICATION

This publication contains three sections which provide a lay out of the legal framework on VAW/G. This includes;

- Definition and forms of VAW/G.
- International and Regional Instruments on Gender Equality and elimination VAW/G.
- National Legal Framework on Gender Equality and elimination of VAW/G.



SECTION I

1.1 Definition of Violence against Women and Girls (VAW/G):

VAW/G is any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

1.2 Forms of VAW/G:

Physical violence: An act or omission of a perpetrator which harms, injures, harasses, and endangers the health, safety and life of the victim.

Sexual violence: Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.

Emotional violence: An act or set of actions that directly impair a woman's psychological integrity.

Economic violence: Denying and controlling a woman's access to resources, including time, money, transportation, food or clothing.



SECTION II

2.1 International and Regional Instruments on Gender Equality and elimination Violence Against Women Children

2.1.1 *The Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*

The purpose of the CEDAW is to overcome barriers to discrimination against women in the areas of marriage and family relations, including property and inheritance; civil and political rights; including suffrage and political representation; education; employment and health care. Uganda adopted the CEDAW in 1985. Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations. In this publication, we highlight some of the articles in the convention;

Article 3: States shall take all appropriate measures to ensure the full development and advancement of women so as to guarantee them the enjoyment of human rights and fundamental freedoms on a basis of equality with men;

Article 5: States shall take appropriate measures to eliminate stereotyping, prejudices and discriminatory cultural practices;

Article 7: States shall ensure that women have equal rights with men to vote, hold public office and participate in civil society;

Article 10: States shall ensure that women have equal rights with men in education, including equal access to schools, vocational training, curricula and educational resources;

Article 14: States shall take all appropriate measures to eliminate discrimination against women in rural areas so that they can participate in and benefit from health care, education, social



security, development planning etc equally with men;

2.1.2 The African Charter on the Rights and Welfare of the Child

According to the Charter, a child means every human being below the age of 18 years. Article 3 of the African Charter on the Rights and Welfare of the Child emphasizes that every child shall be entitled to the enjoyment of their rights and freedoms (survival and development, name and nationality, freedom of expression, freedom of association, right to privacy, leisure, education and health services) irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status. The Charter further stresses in Article 15 that every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development. Article 17 of the Charter reaffirms that every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others. Article 21 calls upon State Parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular; Child marriage of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory. Article 27 of the Charter also calls upon State Parties to protect the child from all forms of sexual exploitation and sexual abuse.

2.1.3 The Maputo Protocol

The Maputo Protocol, guarantees comprehensive rights to women including the right to take part in the political process, to social and



political equality with men, improved autonomy in their reproductive health decisions, and an end to female genital mutilation. In this publication, we highlight some of the articles in the Maputo Protocol;

Article 2: States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.

Article 5: 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.

Article 6: States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.

Article 7: 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.

Article 8: Women and men are equal before the law and shall have the right to equal protection and benefit of the law.

Article 9: 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.

Article 14: States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted.

Article 21: 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. Women and men shall have the right to inherit, in equitable shares, their parents' properties.



SECTION III

3.1 National Legal Framework on Gender Equality and elimination of Gender Based Violence

3.1.1 *The Constitution of the Republic of Uganda 1995*

The Constitution is the supreme law of Uganda and provides for the following in relation to promoting equality and reducing discrimination;

Chapter 4 Section 20 (1): Guarantees that all persons are equal before the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection under the law.

Chapter 4 Section 21 (2): Prohibits discrimination against any person on grounds of sex, race, religion, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Chapter 4 Section 33 on the rights of women specifies:

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



Chapter 4 Section 34 on the rights of children specifies:

- (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.

Chapter 4 Section 35 on the rights of persons with disabilities specifies:

- (1) Persons with disabilities have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realize their full mental and physical potential.
- (2) Parliament shall enact laws appropriate for the protection of persons with disabilities.

3.1.2 The National Policy on Elimination of Gender Based Violence in Uganda (2016)

The GBV policy seeks to progressively reduce incidences of GBV by 15% in the first five years through comprehensive interventions



aimed at changing attitudes, providing holistic services and creating an enabling environment for stakeholder accountability and zero tolerance.

The main goal of the GBV policy is to eliminate GBV from all societies in the country.

Policy objectives:

- i. To reduce the prevalence of Gender Based Violence and foster a zero tolerance environment.
- ii. To promote comprehensive care and support services to survivors/victims of Gender Based Violence.
- iii. To provide a framework for ensuring accountability and elimination of impunity for Gender Based Violence.

Guiding principles of the GBV policy:

Human Rights Based Approach: The policy shall promote and protect the rights of all women, men, girls and boys to live in a society free of gender based violations.

Gender Equality: The policy prescribes interventions to address the underlying causes on GBV which emanate from unequal power relations between men and women.

Survivor Centered Approach: All interventions to implement the GBV policy shall ensure confidentiality, privacy and respect of the survivors/victims.

Delivery of timely services: All duty bearers along the referral pathway are obliged to ensure easy and timely access to services by the survivors/victims.

Effective participation: The policy seeks to institute positive cultural values and practices for addressing GBV, as well as establishing appropriate community structures to enhance community



participation, support and response.

Male involvement: The involvement of males as partners will be promoted, specifically to enable them explore the power relations between men and women; encourage reporting of GBV cases and collaboration with other stakeholders in combating violence.

Multi-Sectoral Approach: The policy shall promote multi-sectoral collaboration among different actors to ensure effective and efficient service delivery to survivors/victims including legal redress, health care and psychological support.

3.1.3 The Children's (Amendment) Act (2016)

The Children's (Amendment) Act strengthens the institutional mechanism for the promotion of the rights of children through the establishment of the Uganda National Children's Authority (UNCA).

The law streamlines the provisions of Guardianship, Adoption and Inter-country adoption. The law provides legal guardianship to be granted strictly to Ugandan nationals and repeals legal guardianship for foreigners.

The amendment reduces the amount of time required for fostering before adoption from 36 to 12 months. All child care institutions will be approved by the Minister for Gender, Labour and Social Development after careful assessment and ascertaining that the institution meets all requirements as stipulated by the Government. The law emphasizes protection of children from all forms of violence, proposing that corporal punishment is outlawed in all settings including schools, homes and the community.

3.1.4 Domestic Violence Act (2010)

Provides for protection and relief of victims of domestic violence;



remedies for the punishment of perpetrators of domestic violence; provides for procedures and guidelines to be followed by court in relation to protection and compensation of victims of domestic violence; provides for the jurisdiction of court including the issue of protection orders and provide for enforcement of orders made by the court; provides for empowering the family and children's court to handle cases of domestic violence, provides for the protection and relief of victims of domestic violence and establishes the nature of punishment for perpetrators. The DVA (2010) applies to women, men, boys and girls who report cases of domestic violence to the duty bearers.

A domestic relationship means a family relationship in a domestic setting that exists or existed between the victim and perpetrator. Such relationships include; a blood relative, spouse to the perpetrator, people who share a house and people employed in the house such as servants, house girls/ shamba boys. When a person in the community is faced with domestic violence, they may seek redress or remedies or a solution by reporting to; The Local Council, The Police and The Court.

3.1.4.1 Duties of the Local Council (LC)

- Receives and records a complaint.
- Makes judgment for the perpetrator including Caution or a warning, Apology to the victim, Counseling, Community service, and fine not exceeding twenty five currency points. In Uganda 1 currency point is equivalent to UGX: 20,000. (This means 25 x 20,000 = 500,000 as fine) and Compensation of the victim, reconciliation.
- The LC Court may also make a written referral to the police or any magistrate court to handle the case.

3.1.4.2 Duties of the Police

- Records a statement by the survivor or their representative basing on the nature of violence. This statement must be taken



by a police officer of the same sex as that of the survivor.

- The complaint of the survivor should be taken in writing and offered immediately to the crime section of the police station which carries out investigation.
- Where the survivor is in need of medical attention or examination, the survivor should be referred for medical treatment.
- The police officer should assist the survivor with advice in obtaining shelter and also offer guidance and assistance to ensure the wellbeing of the victim, their representative and other witnesses.

3.1.4.3 Duties of the Magistrates Court

- May give a protection order limited for a period of time or it may grant a permanent one. This is an order that stops the perpetrator of domestic violence not to be around near the victim's place or residence or work place.
- The Court in making a sentence in relation to domestic violence it shall consider among others; nature of the relationship (if the parties are married, if the victim is or has been married to the perpetrator, if the perpetrator and the victim are family members related by marriage, affinity or kinship, if the perpetrator and the victim share or shared the same residence or house, if the victim is employed by the perpetrator as a domestic worker or house helper even if the victim does or does not reside with the perpetrator, if the victim is an employer of the perpetrator and does or does not stay with the perpetrator and if the victim is or was in a relationship determined by the Court to be a domestic relationship.
- A person who engages in domestic violence commits an offence and can be convicted to a fine not exceeding 48 currency points or imprisonment not exceeding two years or to both. Even if the victim consents or agrees to the crime or to acts of domestic violence committed against him or her, the perpetrator cannot say that the victim agreed.



3.1.4.4 Duties of a health practitioner

- Provides psychosocial support to the survivor.
- Takes a Complete History and performs a Physical Examination.
- Perform the Tests and Treatments as Indicated. The following tests may be indicated to establish pre-existing conditions: syphilis blood test, pregnancy test and HIV test.
- Provide Emergency Contraception, if Appropriate, Along with Comprehensive Counseling.
- Provide Follow-up Medical Care. Inform the survivor of the available options in the judicial system.
- Make the survivor available to testify in court.

3.1.5 Female Genital Mutilation Act (2010)

The FGM Act provides for the prohibition of female genital mutilation, prosecution and punishment of offenders and the protection of victims as well as girls and women under threat of female genital mutilation. Section 2 of the FGM Act affirms that a person who carries out female genital mutilation commits an offence and is liable on conviction to imprisonment not exceeding ten years. Section 7 of the Act draws attention to those who participate in events of FGM; 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. Consent of the victim to female genital mutilation is not considered as defense and neither is culture, custom, ritual, tradition and religion as noted in section 9 and 10 of the Act. Under section 16 of the Act, all citizens are called upon to report FGM or will otherwise pay a fine not exceeding twelve currency points (equivalent to 240,000/=) or imprisonment not exceeding six months or both.

3.1.6 The Land Act (2010)

The Act provides for a joint ownership of the matrimonial home and property, and prohibits either the husband or the wife from selling



of matrimonial property without the consent of the other and the children. As proposed by the new section 32(a) of the Act, a lawful or bona fide¹ occupant shall not be evicted except where such eviction order has been given by court (Grade 1 or Chief Magistrate) and only for nonpayment of ground rent. Under sec 92, it is prescribed that a person who attempts to evict, evicts or participates in the eviction of a lawful or bona fide occupant from registered land without an order of eviction, commits an offence and is liable to imprisonment not exceeding 7 years and court may further order the convict to pay compensation or damages or make an order of restitution in favor of the evictee. Under Section 38 of the land (amendment) acct 2004, a spouse or any person shall not sell, exchange or transfer, pledge, mortgage, or enter into any other transaction in respect of family land except with prior consent of his spouse.

3.1.7 Prevention of Trafficking in Persons Act (2009)

The Act prohibits the relocation of human persons for purposes of slavery or other forceful activity; the following sections of the Act provide different measures to be undertaken for offenses of trafficking in persons. Sections 7, 8 and 9 indicate that any person who knowingly uses or allows to be used for the purpose of exploitation, attempts to traffic in persons, conspires with another person to do an act of trafficking in persons, recruits a person below 16 years in any form of employment for the purposes of exploitation, introduces or matches any person to another for purposes of sexual exploitation 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. Under section 16 of the Act, the court may in

1 A person who, before the coming into force of the Constitution had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more or has been settled on land by Government or agent of Government, which may include a local authority.



addition to any other punishment order that person who commits an offense of trafficking to pay compensation to the victim for Physical injury, Emotional distress, Pain and suffering, Loss or damage and any other damage that the court may deem fit.

3.1.8 The Penal Code Act (1950)

This law gives penal provisions and punishment for offences against morality including rape, defilement, sexual assault, and indecent assault, supplying drugs for and procuring of abortion, detention with sexual intent among others. The new amendment to this law prohibits child to child sex and further includes both male and females as perpetrator and survivors of defilement.

Section 123 and 124: Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape. A person convicted of rape is liable to suffer death. Any person who attempts to commit rape commits a felony and is liable to imprisonment for life with or without corporal punishment (section 125). Any person who unlawfully and indecently assaults any woman or girl commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment (section 128).

3.1.8.1 Amendment of section 129 of the Act on Defilement of persons under eighteen years of age

- (1) Any person, who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.
- (2) Any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction, liable to imprisonment not



exceeding eighteen years.

- (3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.
- (4) The circumstances referred to in subsection (3) are as follows;
 - a) where the person against whom the offence is committed is below the age of fourteen years;
 - b) where the offender is infected with the Human Immunodeficiency Virus (HIV);
 - c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed;
 - d) where the victim of the offence is a person with a disability; or
 - e) Where the offender is a serial offender.
- (5) Any person, who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in subsection (4), commits an offence and is liable on conviction, to imprisonment for life.
- (6) Where a person is charged with the offence under this section that person shall undergo a medical examination as to his or her Human Immuno Deficiency Virus (HIV) Status.

3.1.8.2 Payment of Compensation to Victims of Defilement

Where a person is convicted of defilement or aggravated defilement, the Court may, in addition to any sentence imposed on the perpetrator, order that the victim of the offence be paid compensation by the perpetrator for any physical, sexual and psychological harm caused to the victim by the offence. The amount of compensation shall be determined by the Court and the Court shall take into account the extent of harm suffered by the victim of the offence, the degree of force used by the perpetrator and medical and other expenses



incurred by the victim as a result of the offence.

The amount of compensation shall be determined by the court and the court shall take in to account the extent of harm suffered by the victim of the offence, the degree of force used by the perpetrator and medical and other expenses incurred by the victim as a result of the offence.

3.1.9 The Succession Act (1906)

The Succession Act provides the law on how to deal with the matters of the deceased. When there is no will left by the dead person, the law describes which persons (section 23) may receive how much property. Husband or wife/wives is allowed to receive property of the deceased if and only if there exists a legally recognized marriage at the time of death. The husband and wife must have been living together for at least six months before the death. If there is more than one wife, the wives equally share the portion the law allocates to the spouse. Property of the estate of the deceased is distributed as follows:

Customary heir = 01%

Spouse/Spouses = 15%

Biological children = 75%

Dependents = 09%

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