



Gender Transformation & Empowerment

## DUTY BEARERS HANDBOOK ON VIOLENCE AGAINST WOMEN/GIRLS AND WOMEN'S LAND RIGHTS



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# DUTY BEARERS HANDBOOK ON VIOLENCE AGAINST WOMEN/GIRLS AND WOMEN'S LAND RIGHTS

March 2015

## ACKNOWLEDGEMENT

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The Uganda Women's Network (UWONET) is indebted to individuals and institutions that made contributions towards the development and production of this Handbook. Special recognition is made of OXFAM for the financial support towards the development of this Handbook.

We also thank Government of Uganda particularly local government officials, representative of Justice, Law and Order Sector (JLOS) institutions, and Civil Society Organizations for providing the information necessary for the development of this Handbook. We acknowledge with thanks the consultant for the invaluable technical support and leadership provided in developing this Handbook.

It is our hope that this Handbook will be a useful reference guide and a resource to duty bearers ranging from individuals, institutions, leaders, and communities in fostering local activism, women leadership and land rights in Northern and North Eastern Uganda.

## PREFACE

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The Duty Bearer's Handbook has been designed by Uganda Women's Network (UWONET) with support from OXFAM as a tool for safeguarding women's land rights and addressing Violence Against Women and Girls (VAW/G). The Handbook will inform UWONET's capacity building component through a project she is currently implementing which focuses on fostering Local Activism and Women's Leadership to address Violence Against Women and Girls (VAW/G), and to advance women's land rights in Northern and North Eastern Uganda.

The content of this Handbook draws from UWONET's Training Manual on Fostering Local Activism and Women's Leadership published in August 2014, and comprises of three (3) main chapters. Related materials that were readily accessed were referred to, adapted and acknowledged as a means towards contributing to on-going efforts towards the advancement of women's land rights and in addressing VAW/G. It is intended as a reference guide for duty bearers mandated under key legislation to address VAW/G and women's land rights.

The Handbook was developed in a participatory manner through consultations with, and contributions from Government of Uganda, local government partners, representatives of Justice, Law and Order Sector (JLOS) institutions such as Courts of Law and the Uganda Police Force, and Civil Society partners working on women's land rights and VAW/G.

We hope this Toolkit eases the work of duty bearers by providing them with a reference tool for enhancing access to land justice for women and in addressing VAW/G.

Rita Aciro-Lakor

Executive Director

UWONET

## STRUCTURE OF THE MANUAL

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This Handbook comprises of three (3) chapters. Chapter one covers VAW/G, including definitions of key concepts, identifies duty bearers, their roles and responsibilities as well as procedures in addressing VAW/G. Chapter two focuses on women's land rights, roles and responsibilities of duty bearers in strengthening women's land justice through formal mechanisms. Informal land justice will be addressed in chapter three of this Handbook with drawing examples unique to the *Karamoja, Lango* and *Acholi* sub regions on land management and administration and how it impacts on women's land rights. All three chapters of the Handbook makes reference to relevant legislation and procedures for addressing VAW/G and enforcing women's rights.

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## ABBREVIATIONS

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|               |                                  |
|---------------|----------------------------------|
| <b>FGM</b>    | Female Genital Mutilation        |
| <b>GBV</b>    | Gender Based Violence            |
| <b>LC</b>     | Local Concil                     |
| <b>LCC</b>    | Local Council Court              |
| <b>SGBV</b>   | Sexual Gender Based Violence     |
| <b>UWONET</b> | Uganda Women's Network           |
| <b>VAW/G</b>  | Violence Against Women and Girls |

## LEGAL SOURCES

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### International

- ➔ Beijing Platform for Action, 1995
- ➔ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- ➔ Convention on Elimination of all Forms of Discrimination against Women (CEDAW), 1979
- ➔ Convention on the Rights of the Child, 1989
- ➔ Declaration on the Elimination of Violence Against Women, 1993
- ➔ International Covenant on Civil and Political Rights, 1966
- ➔ International Covenant on Economic, Social and Cultural Rights, 1966
- ➔ United Nations Security Council Resolutions: (UNSCR) 1820, 1325, 2000 and 2008).
- ➔ Universal Declaration of Human Rights (UDHR), 1948

### Regional

- ➔ Goma Declaration of the States of the Great Lakes Region
- ➔ Protocol to the African Charter and People's Rights on the Rights of Women in Africa, 2005
- ➔ The African Charter on the Rights and Welfare of the Child, 1999

### National

- ➔ 1995 Constitution of the Republic of Uganda
- ➔ Children Act Chapter 59
- ➔ Domestic Violence Act, 2010
- ➔ Land Act, 1998
- ➔ Land Amendment Act, 2000, 2004, 2008, 2010
- ➔ Local Council Courts Act, 2006
- ➔ Mortgage Act, No 8 of 2009

- ➡ National Land Policy, 2013
- ➡ Penal Code Act Chapter 120, 1950
- ➡ Police Act Chapter 303
- ➡ Prevention and Prohibition of Torture Act, 2012
- ➡ Prevention of Trafficking in Persons Act, 2009
- ➡ Prohibition of Female Genital Mutilation Act, 2010
- ➡ The Institution of Traditional or Cultural leaders Act No 6 of 2011

# CHAPTER ONE:

## VIOLENCE AGAINST WOMEN AND GIRLS

---

This chapter discusses the legal and policy framework on addressing Violence Against Women and Girls (VAW/G) at the international, regional and national levels. It defines VAW/G, its forms, perpetrators, situations where VAW/G may occur, causes as well as consequences. Risk and protective factors against VAW/G are also included. VAW/G duty bearers as provided for under the various legislations are included and are classified in the formal mechanisms which include; Local Council officials, Local Council Courts (LCCs), police officials, medical personnel, Magistrates Courts, Probation and Social Welfare, and Community Development Officers. VAW/G duty bearers in the informal sector majorly cover traditional/cultural leaders as well as religious and other opinion leaders.

### 1.2 Legal and Policy Framework on Addressing VAW/G

Uganda has signed and ratified a number of Conventions and Treaties at the international and regional levels that require her to take necessary measure to address and fight VAW/G. Many of these commitments have been translated in Uganda's 1995 Constitution under the Bill of Rights. Government of Uganda is therefore mandated to eradicate VAW/G and to create effective legal mechanisms to protect women and girls who experience VAW/G. A brief synopsis of key instruments at the international, regional and national levels addressing VAW/G is provided below. All these laws speak to non-discrimination on the basis of sex and reinforce inclusion of both sexes in the enjoyment of rights and freedoms.

### 1.3 International Conventions and Policies on VAW/G

➤ **Universal Declaration of Human Rights (UDHR), 1948** [Article 2] provides that *"everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

- ***International Covenant on Civil and Political Rights (ICCPR), 1966*** calls on each State Party to the undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. States party are also mandated to undertake necessary steps, in accordance with its constitutional processes to adopt laws or other measures to give effect to the rights recognized in the ICCPR. [Article].
- ***International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966*** guarantees that the rights 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 and call upon state parties to undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights. [Article 2 and 3].
- ***Convention on Elimination of all Forms of Discrimination against Women (CEDAW), 1979*** defines discrimination against women as 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 the basis of equality between men and women, of human rights or fundamental freedoms in the political, economic, social, cultural, civil or any other field."* [Article 1].
- ***Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984*** requires state parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. [Article 2].
- ***Beijing Platform for Action, 1995*** requires states to take integrated measures to prevent and eliminate violence against women. It further provides for studying the causes and consequences of VAW, and the effectiveness of preventive

measures. Elimination of trafficking in women and assisting victims of violence due to prostitution and trafficking are also stipulated. [Strategic objective D.1., 2. & 3].

- ➔ **Declaration on the Elimination of Violence Against Women, 1993** states that *"VAW 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 1]. It further asserts that states have an obligation to *"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."* (Article 4–c).
- ➔ **Convention on the Rights of the Child, 1989** States Parties shall respect and ensure the rights to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. [Article 2]
- ➔ **United Nations Security Council Resolutions: (UNSCR) 1325, 2000** addresses the impact of war on women, and women's contributions to conflict resolution and sustainable peace.
- ➔ **UNSCR 1820, 2008** provides for the elimination of 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.

## 1.4 Regional Laws and Policies on VAW/G

***Protocol to the African Charter and People's Rights on the Rights of Women in Africa, 2005*** article 1 defines "VAW" as 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." Articles 2 and 5 provide for the elimination of discrimination against women and harmful practices.

➔ ***The African Charter on the Rights and Welfare of the Child, 1999*** article 3 recognizes and guarantees the enjoyment of rights and freedoms for all children. Article 21 and 27 provide for the protection against harmful social and cultural practices and sexual exploitation.

➔ ***Goma Declaration of the States of the Great Lakes Region, 2008*** on eradicating sexual violence and ending impunity in the Great Lakes Region.

## 1.5 National Laws addressing VAW/G

➔ ***1995 Constitution of the Republic of Uganda provisions on VAW/G include;***

- i. ***Human dignity*** article 24 provides that "everyone has inherent dignity and the right to have their dignity respected and protected. Women shall be accorded full and equal dignity of the person with men (article 33 (1).
- ii. ***Prohibition of torture and degrading treatment***—article 24 stipulates that "no person shall be subject to torture or to inhumane or degrading treatment.
- iii. ***Right to Life***—article 22 "no person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court".

- iv. *Right to equal treatment and non-discrimination*—article 21 of the Constitution provides for the right to equal treatment for all men and women.
  - v. *Repugnant customs*—article 2 (2) makes all cultures that are in contravention with the Constitution null and void.
- ➔ **Penal Code Act, 1950 Chapter 120**—prescribes crimes and punishments in Uganda.
  - ➔ **Domestic Violence Act, 2010**—aims to provide protection and relief to victims of domestic violence and punishment for those who commit crimes of domestic violence.
  - ➔ **Prevention of Trafficking in Persons Act, 2009**—creates the offence of trafficking in persons and provides for the prosecution and punishment of offenders, prevention of the vice of trafficking in persons and protection of the victims of trafficking.
  - ➔ **Prohibition of Female Genital Mutilation Act, 2010**—provides 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 provides for other related matters.
  - ➔ **Police Act Chapter 303** stipulates the structure, organization and functions of the police.
  - ➔ **Children Act Chapter 59** provides for the care, protection and maintenance of children.
  - ➔ **Local Council Courts Act 2006** established Local Council Courts (LCC) for the administration of justice at the local level and define the jurisdiction, powers and procedures of LCC courts.
  - ➔ **Prevention and Prohibition of Torture Act, 2012** defines, prohibits and criminalizes torture [sections 2, 3, & 4].

## 1.6 Defining Violence Against Women and Girls

Sexual violence, Gender Based Violence (GBV), VAW/G and Sexual Gender Based Violence (SGBV) are terms that are often used interchangeably. All terms relate to the violation of fundamental human rights that

perpetuate sex–stereotyped roles which deny human dignity and the self–determination of an individual and hamper human development.

VAW/G is defined as *“any act of gender–based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”*. [United Nations].

VAW/G is one of the most systematic and widespread human rights violations, rooted in gendered social structures rather than individual and random acts which cuts across age, socio–economic, educational and geographic boundaries. Its effects are far reaching on all societies; and is a major obstacle to ending gender inequality and discrimination globally.

The Domestic Violence Act, 2010 defines **Domestic Violence** any act or omission of a perpetrator which;

- ➔ Harms, injures or endangers the mental or physical health, safety, life, limb or well–being of the survivor including that which causes physical, sexual, emotional, verbal, psychological and economic abuse.
- ➔ Harasses<sup>1</sup>, harms, injures or endangers the survivor with a view of coercing him or her or any other relative to meet any unlawful demand for any property or valuable security.
- ➔ Has the effect of threatening the survivor or his/her relative by act mentioned above.
- ➔ Injures or causes physical or mental harm to the victim. [Section 2].

## Forms of VAW/G

VAW/G manifests in many forms that may be more common in specific settings and regions which include; physical, sexual, emotional and economic forms. The Domestic Violence Act 2010 under section 2

<sup>1</sup> The Domestic Violence Act defines **harassment** as engaging in a pattern of conduct that includes fear of harm, annoyance and aggravation with the intention of inducing fear in a person—including repeatedly watching or loitering outside or near where the survivor resides, works, or carries on business or studies. Harassment also includes making repeatedly abusive telephone calls, sending and delivering offensive or abusive messages and following, pursuing or accosting the survivor with the intention of inducing fear, harm, annoyance or aggravation to the survivor. [Section 2]

provides forms of physical, sexual, emotional and economic VAW/G to include the following;

| Form of VAW/G       | Examples of the form of VAW/G                                                                                                                                                                                                                                                                        |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Physical Abuse      | <ul style="list-style-type: none"> <li>➔ Hitting, slapping, shoving, grabbing, pinching, biting, hair pulling.</li> <li>➔ Denying a partner medical care or forcing alcohol and/or drug use upon him or her.</li> </ul>                                                                              |
| Sexual Abuse        | <ul style="list-style-type: none"> <li>➔ Coercing or attempting to coerce any sexual contact or behavior without consent.</li> <li>➔ Marital rape, attacks on sexual parts of the body, forcing sex after physical violence has occurred, or treating one in a sexually demeaning manner.</li> </ul> |
| Emotional Abuse     | <ul style="list-style-type: none"> <li>➔ Undermining an individual's sense of self-worth and/or self-esteem is abusive.</li> <li>➔ Constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with his or her children.</li> </ul>                                |
| Economic Abuse      | <ul style="list-style-type: none"> <li>➔ Making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or engagement in employment.</li> </ul>                 |
| Psychological Abuse | <ul style="list-style-type: none"> <li>➔ Causing fear by intimidation<sup>1</sup>; threatening physical harm to self, partner, children, or partner's family or friends.</li> <li>➔ Destruction of property; and forcing isolation from family, friends, or school and/or work.</li> </ul>           |

There are universally common forms of VAW/G, those that are prevalent forms and VAW/G forms that often remain undocumented are included below as;

| Patterns of universally common forms of VAW/G                                                                                                                                                                    | Prevalent forms of VAW/G                                                                                                                                                                                                      | Less documented forms of VAW/G                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>➔ Domestic and intimate partner violence</li> <li>➔ Sexual violence (including rape)</li> <li>➔ Sexual harassment</li> <li>➔ Emotional/ psychological violence</li> </ul> | <ul style="list-style-type: none"> <li>➔ Sexual exploitation</li> <li>➔ Sexual trafficking</li> <li>➔ Harmful practices, such as Female Genital Mutilation/ Cutting (FGM/C),</li> <li>➔ Forced and child marriage.</li> </ul> | <ul style="list-style-type: none"> <li>➔ Crimes committed in the name of "honor"</li> <li>➔ Femicide</li> <li>➔ Prenatal sex selection</li> <li>➔ Female infanticide</li> <li>➔ Economic abuse</li> </ul> |
| <ul style="list-style-type: none"> <li>➔ Sexual violence as a tactic of warfare and in the aftermath of emergencies</li> </ul>                                                                                   |                                                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>➔ Political violence</li> <li>➔ Elder abuse</li> <li>➔ Dowry-related violence</li> <li>➔ Acid-throwing</li> </ul>                                                  |

### Who are most vulnerable to VAW/G

- ➔ Members of racial, ethnic and sexual minorities
- ➔ HIV-positive women/girls
- ➔ Migrants and undocumented workers
- ➔ Physical and mentally impaired

- ➔ Women and girl in detention facilities.
- ➔ Those affected by armed conflict or in emergency settings.

### Perpetrators of VAW/G

- ➔ A perpetrator means a person who is alleged to commit an actual or threatened act of domestic violence/VAW/G.
- ➔ The perpetrators of violence may include;
- ➔ State/government officials and their agents
- ➔ Family members (including husbands).
- ➔ Friends.
- ➔ Work colleagues and business partners.
- ➔ Intimate partners.
- ➔ Other familiar individuals.
- ➔ Strangers.

### Where does VAW/G occur

VAW/G takes place in various public and private settings including;

- ➔ Home.
- ➔ Within the community, such as in and around schools, on streets or other open spaces (e.g. markets, public transportation).
- ➔ At places of work (e.g. offices, farms and factories).
- ➔ State-run or custodial institutions, such as prison, police, health and social welfare facilities.
- ➔ Refugee and displaced persons camps and areas related to armed conflict, such as military compounds or bases, are also often sites of violence.

### Causes of VAW/G

- ➔ **Gender inequality and discrimination** are root causes of VAW/G influenced by the historical and structural power imbalances between

women and men which exist in varying degrees across all communities in the world.

- ➔ ***Inequalities between men and women***—VAW/G are related to the lack of power and control, as well as to the social norms that prescribe men and women's roles in society and condone abuse. Inequalities between men and women cut across public and private spheres of life, and across social, economic, cultural, and political rights; and are manifested in restrictions and limitations on women's freedoms, choices and opportunities. These inequalities can increase women's and girls' risks of abuse, violent relationships and exploitation, for example, due to economic dependency and limited survival and income-earning options, or discrimination under the law as it relates to marriage, divorce, and child custody rights.
- ➔ ***Violence against women and girls*** is not only a consequence of gender inequality, but reinforces women's low status in society and the multiple disparities between women and men.

### Risk Factors of VAW/G

There are a variety of factors at the individual, relationship, community and society (including the institutional/state) levels that intersect to increase the risk of violence for women and girls. These factors, represented in the ecological/environmental model, include:

- ➔ ***Witnessing or experiencing abuse as a child*** (associated with future perpetration of violence for boys and experiencing violence for girls).
- ➔ ***Substance (including alcohol) abuse*** (associated with increased incidences of violence).
- ➔ ***Women's membership*** in marginalized or excluded groups.
- ➔ ***Low levels of education*** (for boys associated with perpetrating violence in the future and for girls, experiencing violence).
- ➔ ***Limited economic opportunities*** (an aggravating factor for unemployed or underemployed men associated with perpetrating violence; and as a risk factor for women and girls, including of

domestic abuse, child and forced marriage, and sexual exploitation and trafficking).

- ➔ **The presence of economic, educational and employment disparities** between men and women in an intimate relationship.
- ➔ **Conflict and tension** within an intimate partner relationship or marriage.
- ➔ **Women's insecure access to and control over** property and land rights.
- ➔ **Male control** over decision-making and assets.
- ➔ **Attitudes and practices** that reinforce female subordination and tolerate male violence (e.g. Dowry, bride price, child marriage).
- ➔ **Lack of safe spaces for women and girls**, which can be physical or virtual meeting spaces that allow free expression and communication; a place to develop friendships and social networks, engage with mentors and seek advice from a supportive environment.
- ➔ **Normalized use of violence** within the family or society to address conflict.
- ➔ **A limited legislative and policy framework** for preventing and responding to violence.
- ➔ **Lack of punishment** (impunity) for perpetrators of violence.
- ➔ **Low levels of awareness among service providers**, law enforcement and judicial actors.

### Protective Factors from VAW/G

The protective factors that can reduce women and girls' risk of violence, include:

- ➔ Completion of secondary education for girls (and boys).
- ➔ Delaying age of marriage to 18.
- ➔ Women's economic autonomy and access to skills training, credit and employment.
- ➔ Social norms that promote gender equality.

- ➔ Quality response services (judicial, security/protection, social and medical) staffed with knowledgeable, skilled and trained personnel
- ➔ Availability of safe spaces or shelters.
- ➔ Access to support groups.
- ➔ Enactment and implementation of legislation and policies to address VAW/G.

### Consequences of VAW/G

There are multiple consequences of violence, having immediate and short-term to inter-generational effects. The consequences of violence impacts at the individual level (for survivors, perpetrators and others affected by violence), as well as within the family, community and wider society, which translate into costs at the national level.

### Individual and Community Consequences and Costs of VAW/G

Consequence and costs due to VAW/G—beyond the intangible suffering and impacts on quality of life and well-being—include costs to the survivor and her family in terms of health (mental and physical), employment and finances, and the effects it has on children.

- ➔ **Immediate injuries** such as fractures and hemorrhaging and long-term physical conditions (e.g. gastrointestinal, central nervous system disorders, chronic pain).
- ➔ **Mental illnesses**, such as depression, anxiety, post-traumatic stress disorder, attempted suicide.
- ➔ **Sexual and reproductive health problems**, such as sexually transmitted infections (including HIV), and other chronic conditions; sexual dysfunction; unintended/unwanted pregnancies and unsafe abortion; risks to maternal and fetal health (especially in cases of abuse during pregnancy).
- ➔ **Substance abuse** (including alcohol).
- ➔ **Poor social functioning skills** and social isolation and marginalization.

- ➔ **Death** for both women and their children (from neglect, injury, pregnancy-related risks, homicide, suicide and/or HIV and AIDS-related).
- ➔ **Lost workdays**, lower productivity and lower income.
- ➔ **Overall reduced or lost** educational, employment, social or political participation opportunities.
- ➔ **Expenditures** (at the level of individual, family and public sector budgets) on medical, protection, judicial and social services.
- ➔ **Child witnesses of violence** are more likely to have emotional and behavioral problems, perform poorly in school and be at risk of perpetrating or experiencing violence in the future.
- ➔ Businesses and employers can **incur financial losses** on account of absences due to the health consequences inhibiting the survivor from working; incarceration of the perpetrator; and expenses related to additional security measures that might be needed in the workplace.

### 1.3. VAW/G Duty Bearers

Generally VAW/G duty bearers are mandated to protect and respond to cases raised by survivors of VAW/G by investigating the survivor's complaints, counseling them, summoning the perpetrator to court, ensuring medical treatment for the survivor, advising the survivors on the right to apply for relief and lodging criminal complaints in courts of law. Duty bearers in the formal and informal mechanisms are included below.

- ➔ The most critical responses to VAW/G include providing psychosocial support; counselling and medical help to survivors of VAW/G. Following which a survivor should be provided with relevant information of the available remedies to enable them decide what option they would like to take.

#### 1.3.1 Psychosocial support

Often survivors of VAW/G will greatly benefit from social supports, psychological first aid and clinical mental health interventions. Confidential, survivor-centered services and supports need to be made accessible to

all those who may need and want them for example Action Aid's GBV Shelters/Centers.

A wide range of interventions are indicated: there is a need for both community-focused interventions and person-focused interventions.

➔ **Community-focused interventions** promote self-help and improve the recovery environment.

➔ **Person-focused interventions** include coordination of care (e.g. case management), psychological first aid, linking individuals with livelihood opportunities, and clinical mental health care interventions. Prevention initiatives addressing the broader protection environment for survivors and those at risk should include addressing social norms that reinforce violent masculinities.<sup>2</sup>

Counseling primarily aims at assisting the victim to deal positively with the violence she has experienced. Ideally, counseling should be done by a professional counselor equipped with counseling skills and quite knowledgeable on women's rights as provided for in the law. However counselling can be provided by any person who can reassure the survivor including; family members, friends, local leaders and/or religious leaders.

In counseling a non-directive approach should be employed by the duty bearer. This is a survivor centered method of counseling. It gives very minimal directions and instructions. This method provides a warm permissive atmosphere in which the survivor feels free to discuss her problems frankly.

### 1.3.2 Free Legal advice/aid

Free legal advice/aid is given to GBV/VAW/G survivors in order to ensure justice and protection of their human rights. Legal advice provides the survivor with the various legal options they have in protecting their rights and the implications of each option. However the final decision on what course of action to adopt is that of the survivor. It is important

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<sup>2</sup> Mental health and psychosocial support for conflict-related sexual violence: 10 myths, World Health Organization (WHO/RHR/HRP/12.17), 2012.

that survivors of GBV decide for themselves, so that they can take responsibility for their decisions.

## **1.4 Roles of Duty Bearers and Formal Mechanisms for Addressing VAW/G**

The Constitution of the Republic of Uganda, and Domestic Violence Act of 2010 define duty bearers in addressing VAW/G as; Local Council (LC) officials, Local Council Courts (LCCs), Police Officers, medical/health officers, Magistrate Courts, Probation and Social Welfare Officers, Community Development Officers and other support groups. This section of the Handbook therefore identifies the different VAW/G duty bearers and their roles in addressing VAW/G.

### **1.4.1. Local Council officials and Local Council Courts**

- ➔ The Children's Act under section 10 mandates Local Council (LC) officials from the village to district level to safeguard children and promote reconciliation between parents and children.
- ➔ LC officials are also the first point of contact for community members because of their proximity and for that reason are very important duty bearers in addressing VAW/G/. In responding to survivors of GBV/VAW/G, the following support services are rendered by the Local Council officials and/or a local council court;

### **1.4.2. Roles of Local Council Official(s) in addressing VAW/G**

- ➔ Counseling; let the survivor know you will invite her alleged abuser for a meeting.
- ➔ As an LC leader find out what other support the survivor has around her (friends, relatives, neighbors, pastors etc).
- ➔ An LC official informs the survivor of the various options she has available but allows her to decide for herself.
- ➔ Respect the survivors' confidentiality. If available, give the survivor a list of referral sites available.
- ➔ Accompany the survivor to the police station.
- ➔ Ensure that the abuse is reported immediately at the police station and that the survivor has accessed medical help.

- ➡ Participate in any meeting that could be called between both parties at the station.
- ➡ Follow up with the investigating Police Officer to ensure that the matter is treated diligently.
- ➡ Act as a witness in court most especially when the victim is a child.

### 1.4.3. Roles of Local Council Courts (LCCs) in addressing VAW/G

LCCs are established at every village, parish, town, division and sub county level [Section 3 of the Local Council Courts Act of 2006]. A complaint of VAW/G may be made to an LCC where the survivor or perpetrator resides [Section 6 Domestic Violence Act]. Upon receipt of the complaint the LCC shall;

- ➡ Record the complaint including particulars of the victim, her representative, the perpetrator.
- ➡ Hear the matter and make the following orders (depending on the nature of the case); caution, and apology to the survivor, community service, and fine not exceeding twenty five currency points, compensation, reconciliation, declaration, restitution, attachment or sale.
- ➡ Make a referral to police and the Magistrate's Court when the perpetrator is; a second or repeat offender, likely to inflict further harm to the survivor and where the degree and nature of the VAW/G warrants involvement of the police and court.
- ➡ Inquire whether there are children involved in the domestic/family relationship<sup>3</sup>. Where there is a child involved the LCC writes an order to the Probation and Social Welfare Officer to make an inquiry and take necessary action regarding welfare of the child.
- ➡ LCCs treat cases of VAW/G as matters of urgency (including handling VAW/G cases on days which are not ordinarily working days like

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3 **Domestic Relationship**—Refers to a family relationship, a relationship similar to a family relationship or one in a domestic setting that exists or existed between the survivor and a perpetrator. This includes a relationship where the survivor and perpetrator are married, are family members, shared the same residence, employed by the perpetrator (Section 3 Domestic Violence Act)

weekends and public holidays), and shall hear the cases as soon as possible not later than 48 hours after filing the complaint.

## **1.5 Police Officials**

1995 Constitution Article 212 of the 1995 Constitution, the Uganda Police Force Act Chapter 303 Section 4, and the Domestic Violence Act Section 7 provides for the roles of police officers in addressing VAW/G. Every Police Station has a Child and Family Protection Unit/desk that handles VAW/G related issues.

Police officers are generally mandated to;

- i. Protect life, property and other rights of an individual.
- ii. Preserve law and order.
- iii. Prevent and detect crime, and to.
- iv. Cooperate with the civil authority and other security organs established under the Constitution and with the population generally.

### **1.5.1. Roles of a Police Officer in addressing VAW/G**

Police officers act on complaints of VAW/G that are reported to them, and while investigating the complaint they;

- ➔ Assist the survivor and advice on obtaining a shelter or safe place available in the community such as GBV shelters.
- ➔ Ensure a survivor undergoes medical examination and receives medical treatment where signs of physical or sexual abuse are evident.
- ➔ Advise the survivor of the available remedies including the right to apply for relief and to lodge a criminal complaint.
- ➔ Offer guidance on procedure involved including the need to collect evidence of the violence in the form of pictures, medical reports, taken immediately the act occurs.
- ➔ Provide any assistance necessary to ensure the well-being of the survivor, their representative and witnesses.
- ➔ Record the statement by the survivor or her representative on the nature of domestic violence. The survivor or her representative can

choose that the statement of the nature of VAW/G is taken by a police officer of the same sex.

- ➔ Conduct investigations in relation to the complaint involving inviting the perpetrator or make an arrest, and detain the perpetrator.
- ➔ **NOTE:** Investigation may take few hours, weeks, months or years depending on the gravity of the violence or attack and the consequences of such assault such as murder and whether the perpetrator is apprehended.
- ➔ On concluding investigations a survivor may file the case in a court of law. Court proceedings usually take long and can be intimidating for a survivor therefore they need to be constantly informed and updated on the progress of their case. Share contacts of legal aid service providers in the community who can represent the survivor in court of law.

### 1.5.2. Medical/Health Officers

Health Officer(s) refer to persons registered to practice medicine, surgery or dentistry and includes a clinical officer [Section 2 of the Domestic Violence Act].

### 1.5.3. Roles of health officers in addressing VAW/G

Section 8 of the Domestic Violence Act provides that a health officer who suspects a person under his or her care to be a survivor of VAW/G shall assist the survivor by;

- ➔ Offering her with the required medical assistance.
- ➔ Accurately documenting the visit and findings of medical examinations conducted.
- ➔ Informing the survivor of the options available with the justice system.
- ➔ Making him or herself available to testify in court regarding the case.

## 1.6 Courts of Law

Judicial officials refer to Judges, Court Registrars and Magistrates. Other Court officials include State Attorney/Prosecutors, Court Clerks, and Secretaries. The hierarchy of Court of Judicature in Uganda includes;

- ➔ Supreme Court.
- ➔ Court of Appeal/Constitutional Court.
- ➔ High Court (including divisions of the High Court (land, civil, criminal, commercial, family, anti-corruption and war crimes), Tribunals and specialized courts such as the Industrial Court.
- ➔ Chief Magistrates' Court.
- ➔ Magistrate Grade One Courts.
- ➔ Magistrate Grade Two Courts.

All these courts are guided by the jurisdiction on the nature of cases they can handle. When deciding on cases of VAW/G, Magistrates Courts need to exercise a degree of empathy and sensitivity.

### **1.6.1. Roles of Magistrates Courts in addressing VAW/G**

- ➔ Magistrates Courts have the jurisdiction to hear and determine domestic violence/VAW/G cases [Section 9, Domestic Violence Act]. Other courts such as the High Court, Court of Appeal and Supreme Courts may also hear and determine cases of domestic violence/VAW/G on appeal or depending on the gravity of the offence.
- ➔ Magistrates Courts may issue a protection order<sup>4</sup>. Note: Procedures prescribed in the Family and Children Court Rules are applied in hearing cases of domestic violence/VAW/G which include; holding the proceedings in camera or private and in an informal manner.

## **1.7 Community Development Officers**

Community Development Officers (CDOs) play a vital role in the prevention and response to GBV/VAW/G in the communities. The Domestic Violence Act looks at CDOs as a community support group as it mandates them to;

- ➔ Offer counseling to the survivors of GBV.
- ➔ Listen to the complaint and reconcile the two parties where need arises.
- ➔ Refer the survivor to the police for further investigation.
- ➔ Advise the survivor to seek legal support.

4 A protection order—prohibits violence, restricts a person from being harassed or threatened by another person or restraining a person from contacting or approaching another person [Section 2, Domestic Violence Act 2010]

- ➔ Refer the survivor to the health center or hospital for medical support.
- ➔ Inform the survivor of her rights to apply for relief.
- ➔ Convey the importance of filing a police complaint to the survivor.
- ➔ Ask about the survivor's safety.
- ➔ Refer the survivor to non-governmental organizations and social agencies for further help.

### 1.7.1 Probation and Social Welfare Office

The Probation and Social Welfare Office is a sector of the community-based services department, whose functions are geared towards the improvement of the welfare and rights of children, their protection and development.

#### Roles of the Probation and Social Welfare Office in addressing VAW/G

- ➔ Where a child is involved in the domestic relationship, the Probation and Social Welfare Officer acting on the advice of an LCC makes an inquiry and take necessary action regarding welfare of the child.
- ➔ The Probation and Social Welfare Officer may be notified by the LCC or an executive committee of a local government council to make further inquiries and take action if they believe that there is domestic violence in his or her jurisdiction that has not been lodged by any person.

### 1.8 Roles of Duty Bearers and Informal Mechanisms for Addressing VAW/G

Duty bearers in the informal sector that can address VAW/G in communities include traditional/cultural leaders and religious leaders. These two categories of community leaders are often respected in the community and can therefore play a vital role in addressing VAW/G. Uganda's Constitution allows for the development and incorporation in aspects of Uganda life cultural and customary values which are consistent with the rights and freedoms, human dignity, democracy and with the Constitution [1995 Constitution *Cultural Objectives* XXIV and Section 3

Institution of Traditional or Cultural leaders Act No 6 of 2011]. Therefore traditional and cultural practices that are repugnant to the Constitution are null and void.

### 1.8.1 Traditional/Cultural Leaders

A traditional or cultural leader derives their allegiance from the fact of birth or descent in accordance with the customs, traditions, usage or consent of the people he/she leads<sup>5</sup>. Some of the traditional/cultural institutions in Uganda include the following; *Ker Kwaro Acholi, Ker Alur, Obukama bwa Bunyoro, Buruuli Chieftdom, Obwakyabazinga bwa Busoga, Obwakamuswaga bwa Kooki, Lango Chieftdom, Obusinga bwa Rwenzururu, Obwakabaka bwa Buganda, Teso Chieftdom, Tieng Adhola Chieftdom, Obukama bwaTooro and Inzu ya Masaaba*.

### 1.8.2 Role of Traditional/ Cultural leaders in addressing VAW/G

The roles of traditional leaders vary from one region of the country to another but they generally range from the '*cultural*' (performing cultural rites, reinforcing or modifying cultural practices, upholding cultural values—e.g. integrity and accountability, being custodians of tradition, among others) to development-related and political roles (which involve community mobilization, resolving conflicts, and promoting government programs).

- ➡ Traditional/cultural leaders play an important role in defining attitudes, making decisions, and in making responses to change in their communities. They uphold and promote cultural norms, and provide security, leadership and mediate over disputes including those VAW/G cases.
- ➡ They are also the fountain of the clan's history and are responsible for its documentation (including the recording of its norms, rules and regulations); they protect clan assets and heritage sites of the community and support kinsmen.
- ➡ Traditional leaders may be a first point of contact by a survivor of VAW/G and in such case they counselling survivor and can mediate

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<sup>5</sup> The Institution of Traditional or Cultural leaders Act No 6 of 2011

between the parties depending on the nature of the case. In cases of VAW/G that are associated to resources for instance land, since traditional leaders administer customary land they can help in settling land disputes that arise among occupants on the land under its control. Some of the disputes that may be mediated by traditional and cultural leaders include boundary disputes, succession wrangles between family members and attempted eviction of *lawful* and *bonafide* occupants.

- ➔ Traditional and cultural leaders can also be called upon as witnesses in respect of VAW/G cases.

### 1.8.3. Religious Leaders and other support groups

Religious and opinion leaders in our community play a vital role in addressing VAW/G. At the national level the Inter Religious Council of Uganda comprises of Catholic Church in Uganda, Uganda Muslim Supreme Council, Church of Uganda, Uganda Orthodox Church and Seventh Day Adventist Church Uganda Union. The Council's main areas of intervention include; Peace, National reconciliation and emergencies, Gender Based Violence (GBV) Prevention and human rights and governance. The Council also implements program on HIV/AIDS, Care and treatment, Orphans and Vulnerable Children (OVC), HIV Prevention and Psychosocial support. Other religious leaders could include, pastors of Pentecostal churches.

### 1.8.4 Role of Religious Leaders in addressing VAW/G

Religious leaders can support survivors and communities in combating VAW/G by;

- ➔ Creating multi-religious support groups for survivors of VAW/G.
- ➔ Advocating for enactment and enforcement of laws to protect community members.
- ➔ Creating multi-religious centers where people can receive help/ legal assistance.
- ➔ Training multi-religious paralegals to give free advice to victims.
- ➔ Sensitizing communities on VAW/G and related issues.

- ➔ Conducting multi-religious seminars, specifically targeting men from different religions and including topics such as the effects and consequences of VAW/G.
- ➔ Providing shelter and counseling services to survivors of VAW/G at existing religious structures.
- ➔ Providing information VAW/G based on religious scriptures and teachings.<sup>6</sup>

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6 USAID Health Policy Initiative, Task Order 1. The Role of Religious Leaders in Addressing Gender Based Violence and HIV, 2009 available at [http://www.healthpolicyinitiative.com/Publications/Documents/867\\_1\\_The\\_Role\\_of\\_Religious\\_Communities\\_in\\_Addressing\\_GBV\\_and\\_HIV\\_FINAL\\_9\\_24\\_09\\_acc.pdf](http://www.healthpolicyinitiative.com/Publications/Documents/867_1_The_Role_of_Religious_Communities_in_Addressing_GBV_and_HIV_FINAL_9_24_09_acc.pdf)

## CHAPTER TWO: DUTY BEARERS IN ADVANCING WOMEN'S LAND JUSTICE

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### 2.1 Women's Land Rights

The 1995 Constitution of the Republic of Uganda provides that *“every person has a right to own property either individually or in association with others”* and this included owning land [Article 26(1)]. The 1995 Constitution and the Land Act offer protection to land rights in a number of ways to different categories of individuals, institutions and communities. This chapter will address the protection of women's land rights citing relevant legal provisions, and the different ways in which these rights can be enforced and protected.

- ➔ Over half of Ugandans' households consider agriculture to be the single most important source of their livelihood and as such land is a critical resource.
- ➔ Investment is attached to land, so secure land rights are critical to economic growth, poverty reduction and sustainable natural resource management.
- ➔ When women have secure property rights—including rights in the land they cultivate—they gain improved status which leads to greater influence over household decisions.
- ➔ Globally, women comprise a bigger percentage of the agricultural labor force yet they are less likely to own, have access to or control land than men.
- ➔ Land and property laws do not discriminate against women it is the enforcement of these laws that remains challenging coupled with limited levels of awareness, and deep rooted patriarchal traditional attitudes.

- ➔ Security of women's land rights therefore enhances their potential as household agricultural producers and as household care givers.<sup>7</sup>

## 2.2 Provisions on women's property/land rights

- ➔ **Equality with men before the law:** The 1995 Constitution guarantees women a right to equal treatment with men in political, economic and social activities [Article 33].
- ➔ **Prohibition of discriminatory customs:** The Constitution also prohibits customs, laws, cultures and traditions that undermine the dignity welfare and interest of women. This applies to customs that prevent women from acquiring land especially under customary tenure system, which is governed by customary law.
- ➔ **Rights of women, children and persons with a disability regarding customary land:** *"Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, except that a decision which denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void."*[Section 27 Land Act]
- ➔ **Spousal consent on dealing on family Land:** The law further restricts any dealings in land (selling, mortgaging, leasing, and donating) by providing for the requirement of spousal consent for any transaction on **family land**<sup>8</sup> and this applies to all the tenure systems in land administration. The consent must be written before any undertaking is done and without it the transactions are deemed null and void.

7 Landesa Rural Development Institute, Issue Brief: Land Rights and Agricultural Productivity, April 2012 also available at <http://www.landesa.org/wp-content/uploads/Landesa-issue-brief-on-land-rights-and-agricultural-productivity.pdf>

8 "Family land" is land where the family normally resides and derives sustenance and is treated as family land according to the norms, culture, customs, traditions or religion of the family [Section 38 A Land Act].

➔ ***Women's participation in land administration and management:***

The institutions for land administration and management require representation of women as a means of protecting women/girls' interests and rights and ensures inclusion and protection of women's land rights. One of the five members of Uganda Land Commission must be a woman, one third of the District Land Boards' composition must be women, at least one of the members to the Area Land Committee (ALC) should be a woman and ALCs are required to protect the interests of women, children and PWDs.

➔ ***Women's land rights at and in marriage, during marriage and at its dissolution:***

A man and a woman have a right to marry and shall have equal rights at and in marriage, during marriage and at its dissolution [Article 31]. This is the basis for the rights of parties in a marriage which include women's rights on land. The five forms of marriages that are recognized in Uganda are; church marriage, Muslim marriage, civil marriage, Hindu marriage and customary marriage. The law therefore makes provision for the protection of such rights through various laws relating to land rights. All these forms of marriage give equal rights to the parties in the marriage which include access to, ownership, acquisition and inheritance of land.

➔ Marriage therefore automatically grants a spouse interest/right in the land. However, under customary marriages, how these rights and interests are enjoyed differs from culture to culture. In *Acholi* and *Lango* for instance, a woman married under customary law has rights to use and till the land for the benefit of the family.

➔ ***Women property/land rights upon separation and divorce:***

A spouse loses their rights on land where they acquired the interest by virtue of the marriage, upon separation and divorce. For example; In *Acholi* and *Lango* among others, land rights of women are lost when; one leaves the clan/family by remarrying, upon divorce, and separation. These rights are regained when the woman returns to the family/clan. In *Acholi*, a marriage will bring the right to customary land. However, those rights are lost once one remarries, separates and

does not return or divorces the man. **Note:** Customs and practices differ from community to community.

- ➔ **Women's Property/Land Rights in the event of death:** Parties to a valid marriage are entitled to inherit property including land of another upon death. Therefore a husband or wife is entitled to inherit the property of the other in the event of death of one spouse. However, where spouses separate as members of the same household, a living spouse does not take interest in the deceased spouse's estate. In some customs in Uganda where a woman separates from her husband while he is still alive, she loses her rights/interest in the property including land, and cannot claim an interest upon his death.

## 2.3 Protecting Women's Property/Land Rights

**Lodging a Caveat:** A *caveat* is an instrument that operates as security to protect the unregistered interests/claims of the *caveator's* to land. This is done through an application to the Registrar of Titles and before any registration on the Title can be made, notice must be issued to the *caveator*.

## 2.4 Children's Land Rights

- ➔ The Constitution states that a child is a person below the age of eighteen (18) years.
- ➔ Children under eighteen (18) years do not have capacity to enter into a contract and therefore cannot own property including land in their individual capacity.
- ➔ Property including land can be held in trust for children by their guardians or parents, until they attain the age of majority which is eighteen (18) years.
- ➔ Some communities in Uganda through their customary practices have upheld a similar position such as; the *Acholi, Langi* and *Iteso* ethnic groups which have adopted this system of trusteeship to protect the rights of children on land.
- ➔ Although the children may not own the land, they have rights over the land and may use it for several purposes such as farming, grazing, and other economic activities.

- ➡ They also have a right to inherit the land in case of death of one or both of their parents.

## 2.5 Duty Bearers and Formal Mechanisms for advancing women's land justice

There are four types of land tenure systems in Uganda that is Customary, Freehold, *Mailo* and Leasehold. Land can be held in private or publicly i.e. land held by government in trust of the citizens. Transactions on land include through sale, mortgage, license and lease.<sup>9</sup> The legal and policy framework establishes institutions, which are mandated to administer and manage land in Uganda. These institutions are at the central level, district and sub county levels.

### 2.5.1 Ministry of Lands, Housing and Urban Development (MLHUD)

The Ministry is responsible for providing policy direction, national standards and coordination of all matters related to lands, housing and urban development in Uganda. The Ministry comprises of three (3) directorates which include;

### 2.5.2 Ministry Zonal Offices

This is a technical office under the Land Information System, located at the pilot project areas of Kampala, Wakiso, Jinja, Mukono, Mbarara and Masaka. It comprises the offices of survey, land administration, land valuation, land registration and physical planning.

### 2.5.3 Uganda Land Commission (ULC)

- ➡ It is established under the Constitution, headed by a Chairperson and consists of five members one of whom must be a woman who are appointed by the president and approved by parliament [Article 238].
- ➡ At least two of the members must be have qualification and experience in land matters.
- ➡ The secretary to the Commission is appointed by the President and is not a member of the Commission. He/she must have knowledge and

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<sup>9</sup> UWONET Training Manual on fostering local activism and women's leadership,: Addressing violence against women and girls and advancing women's land rights in Northern Uganda and North Eastern Uganda, 2014 page 19

experience in land matters and is required to conduct correspondences of the Commission, keep records and seal of the Commission.

- ➔ The Commission's tenure of office is five years and is eligible for re-appointment.
- ➔ Its major function is to hold and manage land which is owned or acquired by the Government of Uganda e.g. Embassies and Missions abroad and to pay property rates to all qualified urban councils and to collect nontax revenue from government properties (land) which are rented out.
- ➔ The Commission can grant leases to applicants for the land they hold and manage.

#### **2.5.4 District Land Board (DLB)**

- ➔ Every district is required to have a DLB [Article 240]
- ➔ It has a minimum of five (5) members with a Chairperson and at least one (1) member representing Municipal Council, Urban Council and each County in the district.
- ➔ The Board is appointed by the District Council on the recommendation of the District Executive Committee and are approved by the Ministry of Lands.
- ➔ At least one third of the members shall be women and at least one (1) member should have knowledge and experience in land matters.
- ➔ Those appointed hold office for five (5) years and are eligible for re-appointment for another five years.
- ➔ The Secretary is appointed by the District Service Commission and is a Public Officer.
- ➔ DLBs hold and allocate land which is not owned by anyone in the district, facilitate recording, registering and transferring of rights or claims in land.
- ➔ In regard to compensation and valuation, the Board makes and keeps a list of rates payable in respect of crops, and buildings of a non-permanent nature, and revises the rates every year.

- ➔ DLBs are independent of the ULC and from influence by any person or authority in the performance of its functions.
- ➔ DLBs deal with all other matters connected with land in the district in accordance with the laws.

### **2.5.5 District Land Office (DLO)**

- ➔ The Land Act requires each district to have a Land Office.
- ➔ The District Land Office provides technical services (through its own staff or external consultants) to the public in the district including surveys, planning, land administration procedures, and valuations for properties/compensation rates.
- ➔ Its functions include providing technical guidance to the DLB and other district authorities advising them on issues they may not be able to address.
- ➔ It advises the Board and other district authorities on issues relating to land in the district.
- ➔ The Land Office keeps custody of all land records in the district which include; land files, cadastral sheets etc.
- ➔ The District Land Office also provides technical advice for formation of Communal Land Associations by owners of communal land held under customary land tenure system.
- ➔ The Land Office consists of the District Land Officer, District Surveyor, Registrar of Titles, District Physical Planner and the District Valuer.
- ➔ The Physical planner ensures that there is harmony in various interests in land use and caters for important social development activities.
- ➔ The Surveyor works with the DLB and ALC in determining boundaries and size of land.

### **2.5.6 District Council (DC)**

- ➔ A Council is the highest political authority within the area of jurisdiction of a local government and has legislative and executive powers.
- ➔ The Executive Committee recommends to the Council persons to be appointed as members of the Districts Land Boards and Area Land Committees.

- ➔ District Council on the recommendation of the District Executive Committee has powers to remove a member of the Board for inability to perform the functions of his/her office arising from infirmity of body or mind; misbehavior or misconduct; incompetence; absenting himself or herself from meeting of the Board for six (6) consecutive time without reasonable cause.
- ➔ The Committee shall be paid a remuneration determined by the District Council on the recommendation of the District Executive Committee.

### **2.5.7 Recorder**

- ➔ The office of the Recorder is established at each sub county, each gazetted area and each division in the case of a city, who shall be answerable to the Board.
- ➔ The Recorder assists in issuing CCOs and Certificates of Occupancy.
- ➔ Keeps register of Customary Ownership and Certificates of Occupancy and records all dealings in customary land.
- ➔ The Recorder should be a: Sub-County Chief, Town Clerk (in Town Councils or gazetted Urban areas), or Assistant Town Clerk (for Divisions of Municipalities).

### **2.5.8 Area Land Committee (ALC)**

- ➔ The District Council at the Sub-County or Division level appoints Area Land Committees.
- ➔ Area Land Committees consist of a Chairperson and four (4) other persons who serve on a part time basis.
- ➔ All members of the Committee should be thirty (30) years of age or over, and the Chairperson should be able to speak and read English.
- ➔ At least one (1) of the four (4) members of the Area Land Committee should be a woman, and at least one (1) member should have knowledge and experience in land matters.
- ➔ Members hold office for three (3) years and can be re-elected for one (1) more term.

- ➔ Their roles include; determining, verifying and marking boundaries of customary land within in their parishes, and advising DLBs in matters relating to land, including ascertaining land rights.
- ➔ They make recommendations to DLBs on the suitability of the applicant to be registered after establishing that there are no disputes over land.
- ➔ They also facilitate acquisition of Certificate of Customary Ownership and Certificate of Occupancy.

## **2.6 Other Duty Bearers that deal with women's land rights**

There are a number of institutions that deal with land matters as a result of presidential directives, policy, and/or administrative procedure and practice. They include the Office of the Resident City/District Commissioner, and the Police Land Protection Unit.

### **2.6.1 State House Directorate on Land Matters**

- ➔ The State House under the Office of the President formed a Directorate on Land.
- ➔ Although this office is not provided for under the law, the Directorate hears and determines disputes through mediation amongst parties in disagreement.

### **2.6.2 The Resident City/ District Commissioners (RCC/RDC)**

Resident District Commissioners (RDCs) usually get involved in land matters that could involve evictions or demolitions resulting into hostility and/or violence. Nonetheless, complainants resort to them as mediators to solve land disputes.

- ➔ Article 203 of the Constitution gives the President power to appoint Resident District Commissioners (RDCs).
- ➔ The RDC/RCC has a mandate to monitor Government funded projects, policies, and to implement local administration.
- ➔ They may also carry out other functions as may be prescribed by the President or Parliament.
- ➔ They chair Security Committees at city or district level—including land which is increasingly becoming a security issue.

**Note:** RDC/RCC should not interfere in on-going court cases and they do not determine land ownership.

### 2.6.3 Police Land Protection Unit

- ➔ The Unit was formed to handle fraudulent or false land transactions.
- ➔ It has the Investigation Group—it probes and prosecutes offenders who have committed land fraud and related crimes. The Land Protection Group—acts to stop illegal evictions, it sensitizes the community on land issues and handles enforcement of court orders.
- ➔ The Unit works with; MLHUD, Administrator General's Office, Presidential Land Task Force, CBOs and NGOs.
- ➔ Each police station is required to have a land desk.

### 2.6.4 Courts of Law

- ➔ Courts settle land disputes brought before them. There are different levels of courts in Uganda that handle land disputes and each court has separate powers/jurisdiction.
- ➔ Courts power/jurisdiction may be determined according to the value of the land/property, location of the property and the type of land tenure system.
- ➔ Unregistered land cases start from the Local Council Court II, to the Local Council Court III, Chief Magistrate Court, High Court and Court of Appeal. The highest court of land matters is the Supreme Court. Local Council Courts (LCCs) are very important for access to justice in local communities. LCCs are not procedurally complex and they are accessible both geographically and financially.

## CHAPTER THREE: DUTY BEARERS AND INFORMAL MECHANISMS FOR ENFORCING WOMEN'S LAND JUSTICE

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The Land Act gives traditional or cultural institutions the authority to determine disputes over customary tenure acting as mediators between persons who are in dispute. In addition, the Land Act provides for the appointment of two (2) or more mediators in each district. Therefore informal institutions or bodies which include; traditional and cultural institutions who administer land on behalf of communities and are instrumental in enforcing women's land justice. Their mandate is derived from the customs, norms and practices that govern particular communities or entities which vary from region to region or even community to community. Different communities and regions have different institutions for managing land for instance *Ker Kwaro Acholi*, and the *Lango Cultural Foundation* in Northern Uganda and *Karamoja*.

### 3.1 Traditional and Cultural Institution in Northern and North Eastern Uganda

#### Ker Kwaro Acholi

- ➔ Most of the land in *Acholi* is held under customary tenure system and is managed by the traditional/cultural institution (*Ker Kwaro*) through its Ministry of Lands, Natural Resources and Physical Planning which oversees the activities of land managers to ensure peaceful transactions and usage of customary land
- ➔ The institution has land managers appointed through consensus of the community. These include *kaka* (clan), *dogola* (family head) and *won-ot* (head of household) with responsibilities to resolve land matters peacefully, and act as custodians of clan land among others.
- ➔ *Ker Kwaro Acholi* has jurisdiction over land held under the *Acholi* clan system. However, parties with individual land outside the clan system

may be assisted by the traditional institution to settle land disputes under the clan system following the norms applicable in **Acholi**.

- ➔ Matters like the rights of widows and children over land of the deceased may be settled under the **Acholi** cultural norms.<sup>10</sup>

### Lango Cultural Foundation

- ➔ Over 98% of land in **Lango** sub region just like **Acholi** sub region is held under customary land tenure and is managed in accordance with the Principles, Practices, Rights and Responsibilities (PPRRs).
- ➔ The PPRRs emphasize that their application shall not violate rights guaranteed by the Constitution of Uganda<sup>11</sup>.
- ➔ Land management is vested in different players. At family level, land is managed by the family head, at clan level, it is managed by the Clan Committees at sub-parish, parish, sub-county and county levels.
- ➔ The **Lango** Cultural Foundation is the supreme body for management of all customary land in **Lango**.
- ➔ The Constitution of the Committees, their roles, and responsibilities are spelled out in the PPRRs<sup>12</sup>. Like in **Acholi**, the **Lango** Cultural Foundation has jurisdiction over land owned under the clan system and individuals may be helped through the clan system to settle disputes.

### Functions of the Lango Cultural Foundation include to;

- ➔ Hear appeals of land cases from the Sub-Clan Committees.
- ➔ Ensure protection of grazing land, wetlands, forests, sport and playing grounds, schools, health units and places of worship among others.
- ➔ Manage inter-clan activities on land.
- ➔ Ensure land rights of widows, orphans, children and other vulnerable people.
- ➔ Inform government of customary land matters.

10 USAID Supporting Access to Justice Fostering Equity and Peace Program: Sensitization Toolkit for Traditional Leaders and Elders 2014, page 22.

11 Lango Cultural Union PPRRs 2009

12 Lango Cultural Union PPRRs 2009.

- ➡ Mediate on land matters between clans, local and central government, and investors.
- ➡ Forward unresolved matters to Courts of law.
- ➡ Be witnesses in Court procedures.
- ➡ Sensitize the *Lango* community about the PPRRs and land laws.
- ➡ Act on any requests concerning land management from government.

**Note:** The Principles, Practices, Rights and Responsibilities of the *Ker Kwaro Acholi* and the *Lango* Cultural Union have a lot in common regarding management of customary land in their respective areas. The traditional leaders therefore have an active role to play in managing land through the clan system.

Traditional/cultural institutions use family and clan elders or a neutral third person to mediate land disputes.

- ➡ These mediators are appointed on a temporary, case by case basis.
- ➡ The role of mediators is to act as neutral third parties who help parties to a land dispute to reach a mutually agreed settlement of their land problem.

### Land Ownership and management in Karamoja sub region

Land in *Karamoja* sub region is largely held communally and what ought to have been customary land was devoted to state use as gazetted areas for wildlife conservation and forestry, in addition to interests of exploration and prospecting for minerals. Given that the communities in *Karamoja* sub-region are agro-pastoralists, households did not seek access to a piece of land in a particular community or lineage on which to build shelter and plant crops, but rather access to land harboring range resources.<sup>13</sup>

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13 Margaret A. Rugadya, Herbert Kamusiime and Eddie Nsamba-Gayiiya: *TENURE IN MYSTERY: Status of Land under Wildlife, Forestry and Mining Concessions in Karamoja Region, Uganda*, 2010. Study undertaken with support from TROCAIRE Uganda and Oxfam GB in Uganda to Associates Research Uganda.

Presently customary tenure has evolved into individualized and communal sub-tenures, each with distinct characters and resource rights embedded therein for the individuals, households and the community at large.

**Communal customary land:** is distinguished by two sub-tenure types; grazing *lands and the shrine areas*. Individuals and communities are users and not owners on such land and authority on grazing land rests with elders and kraal commanders regarding resource use and regulation

- ➔ **On individualized customary tenure**—gardens or cultivation areas women (usually allocated by patriarchs to married women) generally have the following rights; user rights (both grazing and cultivation); caveat rights' on use/ reallocation thereafter, is inherited by children (both girls and boys) of the woman allocated, including daughters in law to whom she may have given use rights while alive.
- ➔ When a man gets married, his parents give him land, often (part of) the land—that his mother used to cultivate. At death, the general rule is that ownership rights to land are ideally passed on to sons.
- ➔ Secondary rights are attributed to grandsons and third rights are reckoned to the brothers of the initial male land owner. Families thus always make sure that land is not alienated from the patrilineal decent group.
- ➔ User-rights and occasionally management rights as well, can be attributed to a female spouse of the male owner, provided that she will transfer the land to sons born in marriage, whereas temporal user—and management rights are allocated to females.
- ➔ When a woman dies, her sons are the first to inherit the land their mother used to cultivate.
- ➔ In the event of marriage the wives assume controlling authority over such land, and if a husband wishes to take another wife, he has to negotiate with the senior wife for a garden and settlement area to be allotted to the new wife or if a son takes a wife while still subsisting in the same household, the mother curves out a plot for use by the daughter in-law.

- ➔ If one has only daughters, the male children of the daughters are entitled to inherit or a male child is brought in from the paternal side to inherit.
- ➔ If bride price was fully paid and the marriage fails and children are involved, then the land rights of the woman in question remain secure. However, these rights are lost if the woman in question is childless and bride price was not fully paid.
- ➔ Formal and informal land management systems operate concurrently in the management of customary tenure. As far as area land committees are concerned, the elders sit and decide, whereas the committee puts in writing the decision of the elders rather than its own decision.

### **3.2 The role of traditional/cultural leaders in advancing women's land rights**

- ➔ Traditional/cultural leaders can guide the parties on ownership rights
- ➔ Clarify any customary rights of the community on that land like access to water or right of way.
- ➔ Ensuring that land transactions are conducted within the customary principles and practices of the area which are not against the national norms, principles and practices.
- ➔ Traditional/cultural leaders assist in verification of the applicants.
- ➔ Determination of the boundaries.
- ➔ Guiding parties to ensure the land has no disputes.
- ➔ Acting as witnesses to the transaction.
- ➔ Ensuring that individuals in a land dispute are given a fair hearing.
- ➔ Representing interests of the customary landowners in their particular areas.

### **3.3 Mediator as Duty Bearer in advancing Women's Land Rights**

A mediator as referred to in the Land Act is appointed by the Land Tribunal from time to time. A mediator shall be a person who;

- ➔ Displays high moral character and proven integrity.

- ➔ Is capable and able to bring parties who are in disagreement or dispute to mutually agree or reconcile.
- ➔ Is independent and not directed or controlled by any other person.
- ➔ Believes in hearing each side, and desires to assist the parties to reconcile their differences, understand each other's point of view and be prepared to compromise to reach an agreement.
- ➔ Does not force or direct any party to the mediation to make a decision on the issue being mediated.
- ➔ The person chosen to mediate has to be someone agreed to by both parties to the dispute.

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11. (Footnotes)
12. Intimidation refers to uttering a threat or causing a victim to receive a threat inducing fear.

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