

PROMOTING ACCESS TO JUSTICE AND HUMAN RIGHTS

Paralegal Training Manual

Bundibugyo District Uganda



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For more information please contact our Communications Department in the United States at + 1 202 822 4600.

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Global Rights is an international human rights capacity building organization that works side by side with local activists in Africa, Asia, and Latin America to challenge injustice and amplify new voices within the global discourse.

We focus on strategies that are essential to promoting, protecting, and fulfilling human rights such as: documenting and exposing violations, conducting community education and mobilization, advocating legal and policy reform, using the courts on behalf of disadvantaged populations, and engaging the international community, including the United Nations and regional bodies.

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Foreword

Global Rights is a human rights organisation that partners with local activists to challenge injustice, amplify new voices within the global discourse and create just societies through proven strategies. To this end, Global Rights is dedicated to civil society capacity building in the field of human rights in a number of areas including three core programmes of Access to Justice; Women's Rights and Gender Equality, and Ethnic and Racial Equality. In Uganda, Global Rights will work with local partners to promote access to justice and human rights in Bundibugyo district.

Access to justice is a fundamental human right that is guaranteed by the Universal Declaration of Human Rights (1948) and other international treaties and rules to which the Government of Uganda is signatory. In observance of its international obligations, Uganda provides guarantees for access to justice in its 1995 Constitution.¹

Human rights abuses and constraints to accessing justice negatively affect many residents in Bundibugyo district. The most pressing human rights concerns are violence against women including domestic violence, sexual abuse of children (defilement), neglect of children by their parents, and disputes related to land ownership, including women's access to property. Through a legal needs assessment that was undertaken in Bundibugyo in May 2010, the local community also expressed limited knowledge of what rights were guaranteed to them by law, what remedies were available for violations of those rights, and lack of confidence in the institutions responsible for providing remedies for violations of human rights and law.

This Training Manual has been developed to provide civil society leaders in Bundibugyo district with legal information and practical skills that will enable them to select and train local residents to provide paralegal assistance to their neighbours in relation to the specific legal needs identified by the community. The provision of paralegal services is intended to increase rights awareness on the part of local residents as well as their ability to vindicate those rights through access to institutions responsible for ensuring justice.

The Training Manual is intended to be a practical and flexible instructional training document. Each module can stand alone and be used in whole or part, depending on the target training audience and can be adapted to specific situations depending on the needs of trainees. The terms 'Trainer' and 'Facilitator' are used interchangeably but mean the same thing.

The training manual has adopted a learning methodology targeted to addressing the needs of adult learners so as to sustain their motivation, strength and alertness in training. It utilizes a learning process that enables trainees to incorporate and extrapolate from their life and daily experience in addition to theory. It poses problems rather than merely giving answers. This means that learners are allowed to make a critical analysis of their own circumstances and come up with workable solutions.

¹ See Articles 42, 50, 126, 127 and 128 of the 1995 Constitution of the Republic of Uganda.

This training approach focuses on the process as much as the content because this largely determines the degree to which people's perceptions, attitudes, values, beliefs and practices will change. In-depth analysis and reflection on issues is key in the learning and attitude-change process. It is not about how many topics one has covered over a certain period. Rather, it is about the extent to which people become familiar with issues under discussion in each particular module.

This Manual is a guiding document for paralegals trained under this programme. The Manual provides reference notes at the back to guide the trainers and give further information on the modules handled. Paralegals trained by Global Rights through this manual will have to abide by the Code of Conduct attached to this manual.

We thank the district leaders and local authorities as well as the people of Bundibugyo district who facilitated the process of identifying the legal needs of the district, which have formed the focus of the training content. We hope that this publication and the trainings that will arise out of it will lead to increased access to justice for local residents and enhanced observance of law and human rights by local institutions in Bundibugyo district.

The Training Manual was developed by Ms. Zahara Nampewo, a legal consultant specially contracted for this process.

Mary E. McClymont
Executive Director
Washington, D.C.

Donald Rukare
Uganda Country Director
Kampala, Uganda

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Acronyms

Art	- Article
CAT	- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBO	- Community Based Organization
CDO	- Community Development Officer
CEDAW	- The Convention on Elimination of all Forms of Discrimination against Women
CERD	- Convention on the Elimination of All Forms of Racial Discrimination
CRC	- Convention on the Rights of the Child
DPP	- Directorate of Public Prosecutions
FCPU	- Family and Child Protection Unit
ICCPR	- International Covenant on Civil and Political Rights
ICESCR	- International Covenant on Economic, Social and Cultural Rights
JLOS	- Justice Law and Order Sector
LC	- Local Council
LCCs	- Local Council Courts
MCA	- Magistrate Courts Act
NGO	- Non Governmental Organization
RTA	- Registration of Titles Act
Sec	- Section
UDHR	- Universal Declaration of Human Rights
UPE	- Universal Primary Education



Module One

The Role of a Paralegal

Content

- Unit 1** Who is a Paralegal?
- Unit 2** Qualities and Skills required of a Good Paralegal
- Unit 3** Useful Tips for Paralegals
- Unit 4** The Paralegal Code of Conduct

The Role of a Paralegal

Learning Objectives

To create an understanding of the concept of a Paralegal

To identify the role of a Paralegal in the community

To create an understanding of who can be a paralegal and the required qualities and qualifications of a Paralegal

To differentiate the role of a Paralegal from other community practitioners

To highlight key responsibilities of a Global Rights Trained paralegal as outlined in the Code of Conduct

Tools

Reference Notes

Unit 1 Who is a Paralegal?

A Paralegal is a community-based person who provides advice and assistance to persons in the community on matters of law and human rights affecting their lives. He/she is a person who has been trained in basic law and human rights. A Paralegal is not a lawyer and cannot practice law. Paralegals, however respond to problems that afflict disadvantaged individuals in accessing legal services for problems such as family matters, child support and maintenance, and land matters.

The need for Paralegals is borne out of the fact that lawyers are not able to adequately provide legal services to rural and urban poor populations in the whole country. Further, their geographical distribution is such that the majority of them can only be found in big towns. There are also other issues like language barriers and long distance that make lawyers inaccessible to the ordinary person. This therefore makes the role of a paralegal very crucial. Paralegals are viewed as critical for Bundibugyo where many problems affect access to justice. Paralegals trained by Global Rights through this manual will have to abide by the Code of conduct attached to this manual.

Role of a Paralegal Worker in the Community

- 1. Education:** To teach people in the community about their legal rights, how they can protect their rights, seek legal advice, and how they can resolve their problems and disputes.
- 2. Provision of Legal aid:** To provide immediate legal advice to people in the community on their legal predicaments and how to approach institutions for redress such as police and courts.

3. **Networking:** Paralegals are expected to network with existing legal establishments in society. They establish contacts with other organizations, groups, and individuals such as probation officers, church groups, local leaders, civil society and politicians so as to mobilize support to solve problems in the community.
4. **Referral:** Paralegals are supposed to make appropriate referrals of cases beyond their capacity to persons such as lawyers and government officers to assist parties with their challenges.
5. **Mediation, Counseling and Conciliation:** Paralegals may be involved in conflict resolution where appropriate as mediators or conciliators in the community to help members solve problems amicably. Paralegals trained as counselors help community members overcome social conflict e.g., if a husband and wife have marital problems, neglect of parental duties, child marriages, family conflicts and succession matters.
6. **Court Accompaniment:** Paralegals may be helpful in assisting people to draft relevant court documents, accompanying parties to court or other institutions to offer moral support, assist, and directing them as regards presentation, procedure and language of court.
7. **Mobilisation:** Paralegals mobilize community members for collective action to solve problems within the community.

Unit 2 Qualities and Skills Required of a Good Paralegal

A paralegal can be any person trained and qualified as such. This may include but is not limited to local community leaders, youth, social workers, civil servants, teachers, representatives of specific disadvantaged groups, health workers, development workers and community activists.

Qualities of a good paralegal

- **Integrity and respect for ethics:** A good paralegal should be highly reliable with high moral standing in his/her community
- **Excellent communication skills:** Since Paralegals are involved in teaching the community and counseling individuals, a good paralegal should have very good communication skills
- **Commitment:** To provide support to the needy and persons seeking justice

Skills required of a good paralegal worker

- **Interviewing skills:** This helps to enable the paralegal to get an exact picture of a complainant's problem. A good interviewer is respectful, courteous, a good listener, able to ask relevant questions targeted at getting accurate information, does not stereotype the interviewee and has the ability to make a good summary of the facts/story.
- **Counseling and mediation skills:** This helps the paralegal to provide direction or advice on decisions or courses of action that a person may need, as well as to intervene in the settling of disputes.
- **Record keeping and reporting:** This helps the paralegal to monitor and document the entire process of intervention for future reference; as well as for accuracy and credibility when making referrals.
- **Letter writing skills:** Paralegals should have adequate written language skills as they often have to write complaint letters or petitions to facilitate cases.
- **Listening skills:** This will help the paralegal get the most accurate information from a complainant that later is drawn from to build a case or grounds of the conflicts.

Difference between Paralegals and other Community Practitioners

Paralegals are usually a link between the community and legal practitioners i.e., lawyers / advocates. They bring cases to lawyers that would otherwise remain unknown and the victim unrepresented. The Paralegal tells lawyers or legal offices about changes and developments on legal predicaments in the community. They do not represent people in court but merely assist them to access justice by offering advice on available legal options and relevant institutions, drafting of documents and preparation and support to witnesses.

Paralegals may also work with other community practitioners such as Probation and Social Welfare officers, Community Development Officers (CDOs), medical and health workers and other such officials to ensure that individual problems are addressed by those responsible for remedies. They make referrals, mediate conflicts and provide social support and counseling.

Unit 3 Useful Tips for Paralegals

Quick Tips on Letter Writing

Do the following when writing a letter as one way of assisting the people in your community;

1. In the first paragraph you should identify yourself

2. Identify the issue and how you are connected with it – are you the victim, or acting or another's behalf
3. Include any relevant information that you believe is important
4. Be sure to include the following information if it is applicable to the situation: The date/time of the issue, location, name of person on duty, what the problem was
5. Stick with the facts and avoid putting emotions into your letter
6. State what you would like done to resolve the situation e.g apology or compensation
7. Thank the reader for his/her time
8. Include your contact information - telephone number/e-mail address after your printed name
9. Include photocopies of any relevant documents and enclose them with your letter.
10. Be sure to keep a copy of the letter for yourself

Quick Tips on Mediation

1. Start by making the parties comfortable and explain the rules
2. Listen to both parties
3. Take notes (show you care), and summarize the relevant information
4. Help the parties to define / frame the issue(s) of contention
5. Do not judge the parties
6. Give objective information to help guide the process and where need be, create doubts in parties original positions, thus helping parties to generate new ideas and see things differently.
7. Ensure that the stronger party does not manipulate the process
8. S.O.F.T.E.N.
 - **S**mile
 - **O**pen
 - **F**orward Leaning
 - **T**ouch
 - **E**ye contact
 - **N**od

DO NOT:

- Interrupt
- Change the topic
- Blame
- Lecture
- Preach
- Moralize
- Ignore
- Belittle
- Deny
- Give advice

Quick Tips on Counseling

1. Ensure that there is privacy and confidentiality and that others will not hear the discussion between you and your client
2. Listen attentively and patiently and let the client explore various aspects of their life and feelings
3. Where necessary, encourage the expression of feelings
4. Do not judge or exploit your client in any way
5. Identify the problem and try to perceive it from the client's point of view
6. Discuss different choices or options to solve the problem
7. Where necessary, assist your client to decide the best option, but do not take that decision for them

Unit 4 The Paralegal Code of Conduct

Global Rights has developed a Code of Conduct to guide the work of paralegals trained with this manual. This Code of Conduct is a set of standards describing the behavior expected of the paralegals. It is an integral part of the way paralegals need to work on a day to day basis in Bundibugyo. It is based on the best practices of community-based paralegals in Uganda as well as on the values and principles of Global Rights and the paralegals' host organizations.

It is the responsibility of each paralegal trained under this manual and who will work to promote access to justice and human rights in Bundibugyo to follow the code consistently and appropriately, and to help others to do the same. Those who violate the code will be subject to disciplinary action.

The Code requires the following to be respected:

- **Civility:** Acting in a courteous and civil manner to all those being served, as well as other civil society partners and representatives of government
- **Respect:** Treating all persons s/he works with, with dignity and respect
- **Independence:** Being impartial and independent when doing her / his work
- **Competence:** Only taking on cases that one has the competence to handle

A paralegal is not a lawyer and should not claim to be one or to indicate that s/he can handle legal representation in courts of law.

The work of paralegals may include but not be limited to the following:

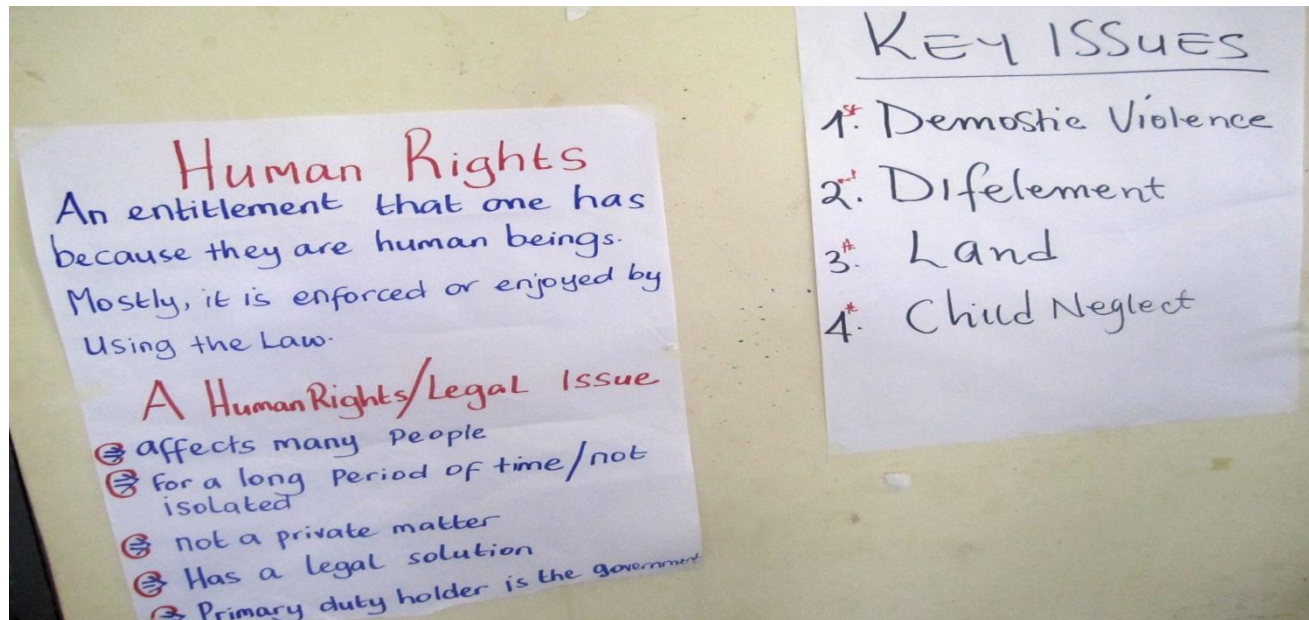
- a. Paralegal advice and referral
- b. Fact Finding and case follow up with relevant authorities
- c. Legal research, analysis and application of law to relevant facts
- d. Drafting of simple documents that community members will need in court
- e. Alternative Dispute Resolution (Negotiation and Mediation)
- f. Community sensitization and training on human rights and the law

The Code includes the following principles and values:

- **Dishonesty and Fraud:** Paralegals shall not take part in any dishonesty, fraud or crime and shall reveal the same to relevant authorities
- **Confidentiality:** Hold in strict confidentiality all information that concerns cases of persons that s/he is working with, and shall not disclose this information except when authorized by the client or required by law to do so
- **Undertakings:** Fulfill every undertaking given, and shall not give an undertaking that cannot be fulfilled
- **Discrimination:** Not discriminate and refuse to take on a case on any discriminatory grounds
- **Outside Interests:** Not allow other work to jeopardize her / his integrity and competence
- **Payment:** Never charge fees or accept any money from clients for services rendered, even when this money is offered voluntarily, because paralegal work is free
- **Officer of Justice:** Encourage public respect for administration of justice and never act to delay or deny justice or engage in acts that destroy public confidence in justice institutions
- **Collaborate and Consult:** Work together with other paralegals and consult Global Rights and other relevant authorities so as to maintain relations and improve the quality of their work
- **Accountability:** Be accountable for her / his own actions. Global Rights shall not take responsibility for the incompetence or inappropriate actions of a paralegal

It is required that paralegals meet all appropriate standards of legitimacy and integrity at all times and to be conscious of and uphold the name and reputation of their host organization and Global Rights at all times.

The Code of Conduct is in force at all times when a person is still working as a paralegal. It only ceases to apply when one stops working as a paralegal.



Module Two

Introduction to Human Rights in Uganda

Content

- Unit 1** Understanding Human Rights
- Unit 2** Human Rights in Uganda
- Unit 3** Access to Justice as a Human Right

Introduction to Human Rights in Uganda

Learning Objectives

Ensure that participants know what human rights are, and how to identify human rights violations

Assist participants to understand how legal problems experienced in their district can be viewed through the principles and characteristics of human rights

Explain to participants the context of human rights in Uganda and in Bundibugyo district

Explain national human rights institutions/remedies and how Uganda's human rights provisions fit into the international scheme

Ensure that participants understand access to justice in the context of human rights

Tools

Constitution of Uganda

International Human Rights Instruments

Reference Notes

Unit 1 Understanding Human Rights

What are Human Rights?

Human rights are fundamental rights and freedoms to which all human beings are entitled. They are inherent basic values without which people cannot live in dignity. They are guaranteed equally to each individual person without distinction of race, nationality, membership in a particular social group, or any other distinction. Human rights emphasize the fact that all human beings are born free and equal in dignity and rights.

Human rights are guaranteed by national laws and international instruments and are enforceable through national and international institutions and proceedings.

Some of the most important characteristics of human rights are the following:

- They are guaranteed and legally protected through international, regional and national laws. They focus on the dignity of the human being
- They protect individuals and groups
- They obligate states and state actors
- They are not given and cannot be waived/taken away
- They are equal and interdependent
- They are universal

While individuals and groups are protected by human rights, it is the conduct of states which is regulated. As such, human rights law obliges governments to do some things and prevents them from doing others.

Where are Human Rights Found?

Human rights guaranteed to citizens of Uganda are found in *United Nations (UN)* and the *African Commission on Human and Peoples' Rights* treaties signed and ratified by Uganda as well as the Uganda Constitution. Human rights principles are further expressed and implemented through Uganda's laws.

United Nations

Human rights such as the right to life and the right to be free of inhuman treatment were first cataloged by the United Nations in the *Universal Declaration of Human Rights (UDHR)* in 1948. Since then, the freedoms recognized as human rights have been expanded through numerous United Nations treaties (types of international laws), many of which Uganda has agreed to abide by as a member state of the United Nations through its signature and ratification of these documents.

African Commission on Human and People's Rights

The African Charter on Human and People's Rights, which Uganda signed and ratified as a member state of the African Commission on Human and People's Rights guarantees many of the same human rights provided by international human rights treaties. In accordance with **Article 62** of the African Charter on Human and Peoples' Rights, States Parties to the Charter are required to submit every two years, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the Charter. The Charter establishes a Commission on Human and Peoples' Rights which is charged with ensuring the promotion and protection of peoples' rights throughout the African Continent. It also establishes a Court which complements the protective mandate of the Commission by issuing binding decisions and ordering specific remedies.

When a state breaches a human right, this is termed as a '**human right violation.**' Human rights law demands that effective remedies be available for victims of human rights violations. A remedy involves a victim's access to appropriate authorities to have his / her case heard, as well as the actual relief or redress that s/he can receive.

Unit 2 Human Rights in Ugandan Law

The Human Rights guaranteed by Uganda to its citizens are found in **Chapter 4** of the Uganda Constitution (1995) including fundamental human rights and freedoms such as:

- Article 21 – Equality and Freedom from Discrimination
- Article 22 – Right to Life
- Article 23 – Protection of Personal Liberty
- Article 24 – Freedom from Torture
- Article 26 – Right to Property
- Article 28 – Right to a Fair Hearing

Article 30 – Right to Education
Article 31 – Rights of the Family
Article 33 – Rights of Women
Article 34 – Rights of Children
Article 36 – Protection of Minorities

In its Constitution, Uganda has also agreed to respect the human rights of its citizens in accordance with obligations that it has undertaken as parties to international and regional human rights treaties including the following ratified in the year indicated:

- International Covenant on Economic, Social and Cultural Rights – 1987
- International Covenant on Civil and Political Rights – 1995
- Convention on the Elimination of All Forms of Racial Discrimination – 1986
- Convention on the Elimination of All Forms of Discrimination against Women – 1985
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 1986
- Convention on the Rights of the Child – 1990
- African Charter on Human and Peoples’ Rights – 1986

Local citizens in Bundibugyo identified a number of human rights violations within the community, the most common being domestic violence, sexual abuse of children (defilement), neglect of children by their parents, and disputes related to land ownership. These problems directly implicate human rights protected by the Constitution of Uganda and which are further regulated by law. Several United Nations treaties also provide the foundation for these specific human rights problems discussed in other modules of this manual. For instance, domestic violence is a violation of **Articles 21, 32 and 33** of the constitution which protects all persons from discrimination on the ground of sex. Domestic violence is also prohibited through the *Domestic Violence Act*, which is a domestication of the CEDAW. Other examples include **Article 26** of the constitution which protects rights to property which includes land, while **Article 34** protects children from neglect and sexual abuse.

Unit 3 Access to Justice as a Human Right and Remedy for Rights Violations

In order to protect human rights, access to legal remedies – also known as “**Access to Justice**” - is key.

Access to justice means the ability for an individual to make a case and receive a decision/solution/remedy in a court of law or other relevant institution of justice in conformity with human rights standards.

Access to justice rests upon four principles:

- **Availability / Accessibility:** To all citizens in a meaningful and effective way according to the needs of the people
- **Transparency:** This entails legal information understandable and available to all through a variety of channels for distributing cases, laws, regulations, procedures, filings, etc.
- **Efficiency:** Includes systematic functioning of judicial processes and services
- **Strong institutional capacity:** Includes enhanced human resource skills and knowledge, data-collection and performance evaluation of justice institutions

Hence, access to justice and the right to a fair trial are some of the most important basic human rights without which it is not possible to realize many of the other human rights. The right to a fair trial includes the right to have a legal dispute decided and enforced by an independent and impartial decision maker within a reasonable time. This is guaranteed under **Article 28** of the constitution. Through trial, human rights violations may be punished, and victims compensated. Further, **Article 50** of the constitution allows persons whose rights have been breached to seek redress from the courts or institutions such as the *Uganda Human Rights Commission*, thus allowing the right to an effective remedy.

Why is Access to Justice Important for Bundibugyo?

- Marginalised groups such as children and women often fall victim to human rights violations and they need to have additional protection because of their vulnerability.
- Crime and illegality are likely to have a greater impact on poor and disadvantaged peoples, such as those in Bundibugyo, and as a result, it is harder for them to obtain redress. Justice systems can provide remedies which will minimize or redress the impact of this – e.g. by clarifying land agreements and titles, punishing perpetrators through enforcement of penal measures and compensating victims.
- Justice mechanisms can be used as tools to protect human rights by ensuring, for instance, proper land agreements and dispute resolution mechanisms, access to education by girls, or protection of women from domestic violence.
- Fair and effective justice systems are a good way of reducing human rights violations because punishments given through the justice system can deter people from committing further injustices, or from taking justice into their own hands through illegal or violent means.

It is therefore clear that a lack of enjoyment of access to justice affects the enjoyment of human rights generally. Without access to justice, it will be extremely difficult for all to enjoy their rights in Bundibugyo district. As such, paralegals need to ensure that all institutions responsible for justice follow the four principles of access to justice and that

people are made aware of their constitutional rights to access justice and remedies for human rights violations through the law.

The Government of Uganda is legally obliged as the key duty bearer to respect, protect, promote and fulfill basic rights. This obligation calls for a number of strategies including the establishment of functioning institutions and systems that facilitate the enjoyment of these rights. Institutions such as the Uganda Police, Local Council Courts, Probation and Social Welfare Officers as well as relevant ministries such as the Ministry of Education, Ministry of Health, and Ministry of Justice are important in the protection of rights of the citizens of Uganda.

In Bundibugyo district, the Local Government is responsible for protecting rights of the local community. Human rights violations such as domestic violence, child neglect and defilement should be reported to the police as well as the Probation and Social Welfare Officer, while the District Education officer should be informed of all children who are not in school. The government under programmes such as Universal Primary Education (UPE) and basic health care services ensures that all its citizens enjoy their rights.

Other offices which are important for the respect and promotion of human rights

- Inspectorate of Government / Ombudsman
- International human rights non-governmental organizations (NGOs)
- Local NGOs
- Community-based organizations
- The media
- Professional associations (such as lawyers' or doctors' associations)
- Trade unions
- Religious organizations, and
- Academic institutions

Module Three

Law and Administration of Justice

Content

Unit 1 Sources of Law in Uganda

Unit 2 The Judiciary

Unit 3 The Role and Function of the Police

Unit 4 The Role and Function of the Prisons

Law and Administration of Justice

Learning Objectives

Highlight the structures and procedures of law and justice in Uganda

Ensure that participants distinguish the roles and responsibilities of the institutions working in the area of justice in Uganda

Clearly explain the relationships between these institutions and the procedures through which cases may be referred within them.

Tools

National Laws

Reference Notes

Unit 1 Sources of Law in Uganda

Laws are rules and principles that are commonly agreed to by a society or community and which are then written down and enforced.

The function of law is:

- To regulate how society is governed
- To protect public and social order
- To help in the amicable resolution of disputes
- To facilitate orderly change
- To enhance justice and protect the weak

Laws Applicable

The Judicature Act, 1996 **Chapter 13** of the Laws of Uganda provides the types of laws directly applicable in Uganda and these include:

Statutory or Written Law: This includes the Constitution as well as Statutes /Acts of Parliament and Statutory Instruments adopted by the Parliament of Uganda since independence in 1962.

Case Law: These are the reported decisions of selected courts which make new interpretations of the law and, therefore, can be cited as precedents. It is the body of law created by judges' written opinions and it is binding on lower courts.

Common Law: This is a branch of law that was inherited when Uganda became a British colony. It comprises many of the laws that were in force in Britain at the time.

Customary Law: These are the norms and traditions applicable in Uganda on the basis of long usage and acceptability. However, customary law cannot be enforced if it conflicts with statutory, written, or case law.

A number of institutions in Uganda are responsible for the enforcement of law and human rights. This Training Manual will focus on courts, police, and prisons.

Unit 2 The Judiciary

One of the main institutions in any legal system is its judiciary. Courts are places where disputes are settled and justice is administered. The Judiciary is an independent organ of government entrusted to administer justice, settle disputes and offer redress to aggrieved persons through courts of judicature.

The functions of the Judiciary are:

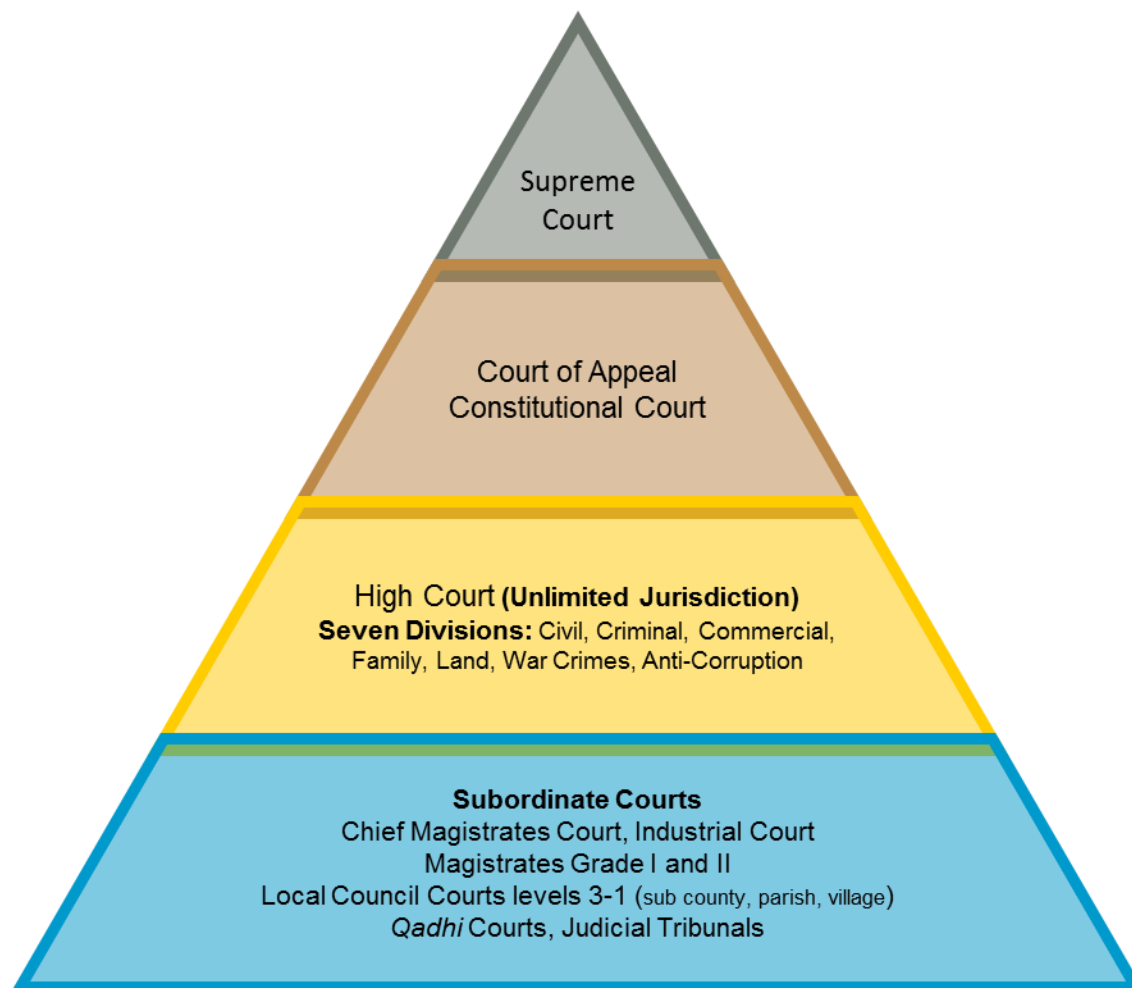
1. To adjudicate civil and criminal cases
2. To interpret the Constitution and the laws
3. To promote human rights

In adjudicating courts should act in accordance with the following principles:

- Justice shall be done to all irrespective of their social or economic status
- Justice shall not be delayed
- Adequate compensation shall be awarded to victims of wrongs
- Reconciliation between parties shall be promoted
- Substantive justice shall be administered to all without undue regard to technicalities

Article 126 (1) of the constitution of Uganda provides that judicial power is derived from the people and shall be exercised by the courts established under the constitution. Through its judgments, the judiciary restates and clarifies the scope of the constitution and other written law, common law, equity and custom. It helps to protect the rights that are provided for under the constitution.

Uganda's judiciary is composed of different levels of courts, each with a specific function. The pyramid below illustrates the structure of the court system in Uganda:



Subordinate Courts

Given the issues of concern in Bundibugyo District, this Training Manual focuses on the following subordinate courts: *Local Council Courts* and *Magistrate's Court*. In addition, the constitution provides for the establishment of *Qadhi Courts*, which are tribunals that handle aspects of marriage, divorce, inheritance of property and guardianship under Islamic Law. However, these courts have yet to be set up.

Local Council Courts

Local Council Courts (LCCs) are very important for access to justice in local communities such as Bundibugyo district. LCCs were established through the Local Council Courts Act 2006 and provide an alternative to the procedurally complex, less accessible and expensive formal courts especially for the majority of the rural poor. These courts are at the lowest rank of the judicial hierarchy.

Local Council Courts are found at village, parish, and sub-county level and are therefore geographically spread throughout Uganda. Each court has an executive committee which is duly constituted into a court when it is sitting with not less than five members. The courts are mandated to hear cases originating within their area of jurisdiction, including family disputes, land cases and assaults. The language of the court is that which is widely spoken in that particular area but the court proceedings should be recorded in English. That is why it is important that members of the community with high moral standing and a good grasp of English be selected on the courts. Anybody of 18 years who resides in that area and with these qualifications can be a member of an LCC court. However, s/he should not be a member of Parliament or a statutory body. Members to these courts are elected through universal adult suffrage.

The types of cases handled by LCCs include:

- Debts
- Contracts
- Assault and battery
- Conversion
- Damage to property
- Trespass
- Disputes in respect of land held under customary law
- Disputes concerning marriage, marital status, separation, divorce or parentage of children
- Disputes relating to the identification of a customary heir
- Customary bailment
- Offences committed by children involving affray, common assault, theft, criminal trespass and malicious damage to property

Domestic violence under the Domestic Violence Act 2010

LCCs provide the best opportunity for building synergies between the informal and formal justice systems because appeals from LCC decisions go to magistrate courts which are part of the formal system, and, if the appeal involves a substantial question of law or appears to have caused a substantial miscarriage of justice, to the High Court.

LCCs are important for access to justice of local people because of their comparative advantage in relation to other courts on grounds of speed, low cost, simplicity, accessibility and focus on reconciliation. There is high community confidence in them. This can be seen from the types of relief that they offer which include reconciliation, declaration, compensation, restitution, apology and an order for payment of costs (Sec 13 Local Council Courts Act, 2006). LC courts should not sit after dusk, or handle cases pending before other courts.

Despite the role played by LCCs, they do have limitations.

Challenges faced by Local Council Courts

- Conflicts with the traditional dispute resolution system
- Little adherence by LCCs to principles of human rights, ethics, principles of natural justice such as letting both sides be heard, and gender sensitivity. Few women are allowed to sit on these courts, and even when they do, they may not be allowed to speak during proceedings
- LCCs are more visible and strong in the more urbanized areas of Bundibugyo but may not be as effective or operational in the deeper rural areas
- LCC officials have little knowledge of the law, and often work in contravention of it. They also minimally use other law enforcement agencies such as the police
- Poor work methods especially in record keeping and accountability
- LCCs emphasize payment of fees for services as opposed to the original concept of free services and voluntarism. They charge varying fees at the discretion of court officials for the different cases handled
- At the same time, they do not apply a common standard of justice and this is potentially influenced by political affiliations

Paralegals can assist persons before LCC courts by helping to analyse facts and putting together a good case. However, it should be remembered that lawyers are not allowed before the courts because simple dispute mechanisms are utilized. As such, the paralegal

should assist a client to understand her /his case in the simplest terms, and to clarify on the possible remedies that are provided under the LCC Act. Paralegals should also raise awareness of the courts, their functions and powers so that people are not deceived to pay irrelevant fees.

Magistrate Courts

Magistrate's Courts handle the bulk of civil and criminal cases in Uganda. There are three levels of Magistrates courts:

Chief Magistrate

This court handles serious cases such as defilement. It also handles appeals from lower courts.

Magistrate Grade I

Handles appeals from Local Council Courts.

Magistrate Grade II

Found at the county level and currently being phased out, also functions as the Family and Children's Court and which can handle cases involving children such as those on domestic violence and child neglect. The court handles both civil and criminal cases.

The decisions of these courts are subject to review by the High Court.

Superior Courts

The Supreme Court, the Court of Appeal and the High Court are Uganda's superior courts. Judges are appointed from among lawyers by the President on recommendation of the Judicial Service Commission and approval of Parliament. The system for appointing judges has proved of central importance in guaranteeing the independence of the Judiciary coupled with factors like security of tenure.

High Court

The High Court of Uganda is the third court of record in order of hierarchy and can try any case of any value or crime of any magnitude. Appeals from all Magistrates Courts go to the High Court, which is headed by the Principal Judge who is responsible for the administration of the court and has supervisory powers over Magistrate's courts.

The High Court has seven Divisions including the Civil Division, Family Division, Land Division, and the Criminal Division. Most of the business of the High Court is conducted at its headquarters in Kampala. However, with the decentralization of the High Court, its services are now obtained at its circuits at Fort Portal, Gulu, Jinja, Masaka, Mbale, Arua, Mbarara and Nakawa.

Court of Appeal / Constitutional Court

The Court Appeal has a dual function. First it serves as the court of appeal for challenged decisions of the High Court. Appeals are handled by a single judge, however, parties can request that single-judge decisions be reconsidered by a bench of three judges.

Second, it serves as a Constitutional Court when it is requested to hear constitutional cases. When deciding cases as a Constitutional Court it sits with a bench of five justices.

Most cases decided by the Court of Appeal can be appealed to the Supreme Court.

Supreme Court

The Supreme Court is the highest court in Uganda and its decisions form precedents that all lower courts are required to follow. For purposes of cases likely to be addressed by paralegals, it only decides cases in which the decisions by lower courts are appealed or challenged.

In all of the mentioned courts, aggrieved persons need to file court documents known as pleadings which make out a case justifying why they need to be heard in the court. Following the acceptance of these documents in court, an aggrieved party working through a lawyer or paralegal follows up on the date when the court will be heard in court.

Exercise

14 yr old Kalembi was attending primary school in Karuguto. She loved her school and she respected her teachers. She was an intelligent and smart girl. When she was about to begin revision work for her end of term examinations, she innocently asked her class teacher Mr. Hengi if she could see her past test papers. "Conveniently," Kalembi's teacher, forgot the papers, even after being asked more than three times. When it suited him, he told the girl to "come and get them from his home" after class.

In innocence, Kalembi followed instructions and went to her teacher's home. There she found him listening to music. After being asked to "take a seat," Kalembi was told she needed to go and get her test papers from another room. Unfortunately, she followed instructions again to gather her papers from the other room. When Kalembi went to the other room she was shocked to find her teacher Mr. Hengi naked. She turned to go back but "Teacher" was standing in her way blocking her from passing as he began to tell her that she was pretty and that he wanted to marry her. He raped her thereafter.

The rape occurred in Karuguto sub county in the district of Bundibugyo. Kalembi's parents would like to file a suit against Hengi. Advise them on what court to use.

Hints

The Family and Children Court handles cases concerning children. Otherwise, a case of defilement such as this would have to be handled by the Chief Magistrate Court. There is a Family and Children court but no chief magistrate court in Bundibugyo, so a case such as the above would have to be handled in nearby Fort Portal.

Unit 3 The Role and Function of the Police

The Police is defined as: *"the department of government which is concerned with the maintenance of public order and safety and enforcement of the law."* The police is also described as: *"The civil force to which is entrusted the duty of maintaining public order, enforcing regulations for the prevention of breaches of the law and detecting crime."* In a democratic society, the police serve to protect, rather than impede freedoms. The very purpose of the police is to provide a safe, orderly environment in which these freedoms can be exercised.

The existence of the Uganda Police Force is legitimised and established by **Article 212** of the constitution which provides as follows: *"there shall be a police force to be known as the Uganda police force and such other police forces in Uganda as parliament may by law prescribe."*

Article 212 of the Uganda Constitution spells out the role of the Uganda Police which includes:

- To protect life and property;
- To preserve law and order;
- To prevent and detect crime, and;
- To cooperate with the civilian authority and other security organs established under the Constitution.

The roles and functions of the police are further expounded in *the Police Act (Cap. 330)*. The Police Act empowers police to investigate cases and make necessary arrests, detain for a minimum period and produce a suspect in court. The mandate of the police includes: detection of crime; arrest of suspects; investigation; searches; prevention of crime; prosecution of offenders; protection of life and property, and preservation of law and order.

Ideally, each district should have a police station whilst each village should have a police post. However, this is not the case, especially with the increasing number of new districts. At the top level, the police force is divided into directorates such as that of Criminal Investigations, Community Policing, Child and Family Protection Unit, Anti-Terrorism Unit, the Mobile Police Patrol Unit, Rapid Response Unit as well as Legal. At the district and local level, these units are represented by individual officers working in those departments. Cases should be reported to the police post or station nearest to where a crime is committed. The police officers will guide the victims on which department is appropriate for handling what type of cases. For instance, most criminal cases would be handled under the Criminal Investigations Department whilst child neglect cases would be handled by the Family and Child Protection Unit.

On reporting a criminal case to police, a file is opened up and investigations begin. Once these are concluded, the file is sent to the Directorate of Public Prosecutions (DPP) to analyze the evidence and sanction the case for further action in a court of law. After a file is

sanctioned, the matter becomes the responsibility of court and the government has the responsibility to appoint a prosecutor to make a case for the victim. Prosecutors are government lawyers and paralegals may work directly with them to ensure that a matter is successfully concluded.

The Police and Access to Justice

In all criminal matters that affect the human rights of people, the police are normally the first entry point within the formal criminal justice system that an offender, victim, or complainant would get to before they encounter other actors.

Challenges faced by the Police in Bundibugyo

- Poor facilitation e.g. few police vehicles
- Limited police presence – few police officers for the district
- Limited appreciation by the public of the role of the police. Many people in Bundibugyo do not know that the police are supposed to enforce law and order, and to protect their rights. People think they have a right to resist police arrest. This in turn affects public confidence in the police as evidenced through high incidents of mob justice.

Unit 4 The Role and Function of the Prisons

What are Prisons?

Prisons are institutions where persons are confined while on trial or for punishment following conviction of a crime in violation of the rights of others. There are no separate prisons for convicts as well as persons on remand. While the Constitution guarantees the right to personal liberty, this right can be permissibly denied during detention on reasonable suspicion of having committed an offense or imprisonment after having been convicted of committing offences punishable under the law. In addition to punishment for individual offenders, imprisonment can provide satisfaction to victims that the harm to them has been punished. It can also serve to deter the commission of other violations.

The Uganda Prison Service derives its mandate from the 1995 Constitution of the Republic of Uganda and *the Prisons Act, 2006 Cap 304*. **Article 215** provides for a prison service which is to be known as the Uganda Prison Service and further dictates the form in which prison services shall be operated. The Uganda Prisons Service has the core responsibility of

providing safe custody for accused persons in conflict with the law and enabling rehabilitation and reform of such persons to become law abiding citizens.

The roles and functions of prisons are further expounded in the Prisons Act. **Section 3** spells out the key objective of UPS as being *"to contribute to the protection of all members of society by providing reasonable, safe, secure and humane custody and rehabilitation of offenders in accordance with universally accepted standards."*

Section 5 provides the functions of Uganda Prison Service to include:

- (i) To ensure that every person detained legally in a prison is kept in humane safe custody produced in court when required until lawfully discharged or removed from prison
- (ii) To facilitate the social rehabilitation and reformation of prisons through specific training and educational programmes
- (iii) To facilitate the re-integration of prisoners into their communities
- (iv) To ensure performance by prisoners into their communities
- (v) To ensure performance by prisoners of work reasonably necessary for the effective management of prisons

Key Officers in Prisons

Officer in Charge: Head of a prison facility

Reception Officer: Responsible for receiving prisoners into the prison facility and ensuring the safe keeping of their property

Warders: Officers in charge of the day to day welfare of prisoners such as food, medication, transport to court

The role of prisons is one that has not been clearly grasped by many communities given the closed culture that most African prison services adopted from colonial times and which have continued to operate. The broad emphasis of prisons is on custody (safety and security) as opposed to rehabilitation (correction). This has in a way succeeded in isolating the entire institution from the communities it is meant to work with. This is no exception in the case of Bundibugyo where prisons there are perceived with considerable suspicion.

Prisons are important for paralegals. As part of general human rights work, paralegals should monitor the conditions of prisons to ensure that no violations occur. Violations include poor sanitation, inadequate food, refusal for prisoners to receive visitors or see their lawyers, detention of children with adults, and over working of the inmates. Paralegals must also ensure that all persons on trial or those who have been convicted are kept in properly gazetted prisons and not in safe houses or at police stations.

Despite the important role that prisons play, they face a number of challenges.

Challenges faced by the Prisons in Bundibugyo

- Poor facilitation e.g. the prison has no vehicle to transport prisoners to court for hearings
- Few and poorly facilitated prison staff
- Limited appreciation by the public of the role of the prison
- Lack of facilities for detaining women
- No remand home
- Prisons remain largely for safety and security with little focus on rehabilitation and promotion of human rights

Paralegals need to sensitize people about the role of prisons in their community. This will do away with the intrigue that these institutions often face. The paralegals should inform the community that one can only go to prison after being properly arrested and charged by a court of law with a recognizable offence.



Module Four

Domestic Violence

Content

- Unit 1** Defining Domestic Violence
- Unit 2** Factors that perpetuate Violence against Women
- Unit 3** Laws applicable to Domestic Violence
- Unit 4** Prevention and Redress for victims of Domestic Violence

Domestic Violence

Learning Objectives

To explain to participants the meaning of domestic violence and the laws applicable

To highlight the forms of domestic violence

To highlight possible causes and effects of domestic violence

To empower the users with knowledge on prevention and redress for victims of domestic violence under the Domestic Violence Act 2010

Tools

National Laws

National Crime statistics

Buzz Groups

Case Studies

Role Plays

Field Trip

Introduction

Domestic violence has long been condoned in Uganda. It is faced by both women and men. While the vast majority of cases go unreported, men are even more hesitant than women to report and as such, of the reported cases of domestic violence most are reported by women. An unacceptably high number of Ugandan women (more than 78 per cent) continue to experience domestic violence, mostly at the hands of men. It is telling that despite under reporting, the Police Crime Report for 2009 shows an increase in deaths resulting from domestic violence, from 137 in 2008 to 165 in 2009. Even when domestic violence is reported to the police, few prosecutions are undertaken and perpetrators convicted especially because many people do not know the law and processes for police and court. Consistent with its international obligations, Uganda adopted new legislation in 2010 to provide expanded tools for combating domestic violence in addition to existing criminal penalties. It is therefore pertinent that local people know of these changes in order to be able to follow up cases of domestic violence.

Unit 1 Defining Domestic Violence

Trainer notes

- Using buzz groups ask participants to define the term domestic violence
- Note key elements on flip chart as participants make their presentations
- Use standard definitions to summarize and emphasize key elements of the terms

According to the *Domestic Violence Act*, domestic violence occurs in the domestic sphere, which mainly includes the home although it can extend to other social circles that include a family relationship or where the perpetrator and victim share the same house. It consists of: physical violence such as battering, beating, punching, choking, slapping, shoving, kicking; psychological and emotional abuse including verbal abuse, intimidation, servitude, eviction, destruction of personal property, threats, accusation, humiliation, isolation, control and desertion; and insulting the modesty and integrity of one's body.

Domestic violence breaches the following rights:

- The right to Life
- Equal rights during marriage
- Security of person
- The right to health
- The right to protection from inhuman and degrading treatment
- The right of personal dignity and integrity

Unit 2 Factors that perpetuate Violence against Women

Trainer notes

- Divide the participants into groups of 4 or 5.
- Using a case study, ask participants to identify factors that perpetuate violence against women and the consequences of violence against women.
- During plenary discuss other factors not identified and included in the case study and allow participants to share their individual and community myths surrounding violence against women e.g. the local stereotype in Bundibugyo which holds that '*women listen from their buttocks while men listen with their ears*'.

Case study A

Joyce is a casual labourer and farmer. She cultivates food for home subsistence and sale from which she earns 3,000/- per month. She is partially sighted while the husband is physically handicapped in the arms and foot.

Joyce complains of gender violence perpetrated by her husband ranging from physical harm due to beating, verbal harassment and over-burdening in terms of household labor and income provision for the family. Her husband is a habitual heavy drunkard and whenever he returns home, he abuses and assaults her and her children. Joyce is scared of her husband. Whenever he consumes alcohol, he threatens to kill her. Joyce has reported the matter to the village council court, which has not taken action because the chairman is related to her husband. They have instead advised her to forgive him on grounds that if she is divorced, her children would suffer and die. And if she reported the matter to the police, the husband would sell the little piece of land they have so as to afford the expenses involved in having a case in a court of law.

Case study B

Elizabeth was severely beaten by her husband every night. She tried to talk about the abuse to the local council chairman, police, to her family, and to her husband's family, but nothing worked. Most of them told her that it was a private affair, that she should work it out with her husband. She thought of leaving her husband, but her husband threatened to kill the children if she left and she had no way to support them if she ran away with them. She was near despair. She thought of killing herself to end the suffering and save the lives of her children. Then one day she found out about a counselor she could talk to. Each week Elizabeth talked for one hour with the counselor about her suffering and somehow, even though the beatings continued, she regained the will to live, to look for a way to end her suffering and to improve her life and the lives of her children.

Case study C

23 year old Maria was 36 weeks pregnant when her husband Yusuf kicked and punched her until she was almost unconscious at her parents' home. Upon arrival at the hospital, her parents told the doctor that Maria had abdominal pains caused by an accident. They could never tell the truth. To speak about domestic violence was not accepted in their culture. Maria had multiple fractures to her ribs and severe internal bleeding. She and the baby died two hours later.

Use the notes below to answer the questions raised by the case study.

Social Context of Violence

Violence against women is influenced by social attitudes and values which see men as naturally superior to women and make it a man's right and responsibility to control women's behavior. What is considered acceptable behavior is determined by the man and society and failure by the women to comply with the socially acceptable behavior leads to violence.

Causes of / Factors that perpetuate Domestic Violence include the following:

- **Poverty and Loss of earnings:** The frustration of the inability to "make ends meet" increases conflicts in the home
- **Battered childhood:** A person brought up in an environment where violence is either taught, by example, or accepted as "normal" will imprint upon a child's psyche. Bundibugyo for example, was affected by armed conflict and many people grew up in disturbed childhoods.
- **Drug and/or alcohol abuse:** May be a precursor to domestic violence because it leads to out-of-control behaviour.
- **Polygamy:** Polygamous unions are common in Bundibugyo and these may lead to limited earnings and jealousy amongst the wives, thus resulting in domestic violence.
- **Legal factors:** Shortcomings in the legal regime such as lack of knowledge or enforcement of the law translate into women being victims of violence and continuing to suffer in silence with no recourse to effective remedies while the perpetrators often go away unpunished due to the absence of deterrents. There is also inaccessibility to justice institutions in Bundibugyo, with only one functional court out of the five which are supposed to be had by the district.
- **Culture and attitude towards violence: Some cultures applaud violence against women:** Patriarchal cultural value systems dictate that sexual and domestic violence matters should not be discussed in the public sphere. Through this therefore, victims tend to lack moral support to initiate criminal proceedings against perpetrators.

Effects of Domestic Violence include:

- **Poor maternal health:** Abused women are at higher risk of miscarriages, stillbirths, and infant deaths
- **Emotional stress** in the form of anxiety disorders and panic attacks, chronic depression, eating disorders, drug and alcohol dependence and sexual dysfunction.
- **Extreme cases can lead to suicide attempts and death** either at their own hands or those of their abusers
- **Distortion of infant development:** When children cannot depend on their parents or caregivers for emotional support and practical support, their development can be seriously delayed or permanently distorted

Wind up the session by drawing trainees' attention to the need to deconstruct these myths and develop shared beliefs around violence against women.

Unit 3 National Laws Applicable to Domestic Violence

Uganda adopted legislation specifically addressing the problem of domestic violence in 2010. Domestic violence can also be addressed under the long existing Penal Code.

Domestic Violence Act 2010

In 2010, Uganda adopted its first ever law specifically addressing the scourge of domestic violence. The law defines the crime of domestic violence, provides criminal sanctions for those convicted, and provides civil remedies for the protection and relief of victims. Domestic violence is any act by an offender which:

- Harms or endangers the health, safety, life, limb or well- being whether mental or physical of the victim – physical or mental injury
- Harasses,² harms or endangers the victim with a view to coercing him or her or any other person related to him or her to meet any unlawful demand for any property or valuable security – denial of economic or financial resources
- Has the effect of threatening the victim or any person related to the victim by harming, or endangering their health, safety, life, limb or well being

A victim is a person in a domestic relationship (usually a family relationship) with the offender.

Through its adoption of the Domestic Violence Act, Uganda fulfilled its obligation under the *United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)* to adopt legal measures to protect women from violence and abuse, including rape and other sexual assault. The convention requires states to refrain from engaging in any act or practice of discrimination against women and to inter alia adopt legislation against gender discrimination and eliminate cultural and customary practices that stereotype women. The Domestic Violence Act is also consistent with Uganda's obligation under the *Protocol of the African Charter on the Rights of Women in Africa, 2003*, which echoes CEDAW by prohibiting all forms of discrimination against women. The Protocol provides for strong protections against gender-based violence and incorporates elimination of violence under the scope of women's rights to life, integrity and security of the person and the right to dignity. The Protocol obligates states to adopt and enforce legislative and other measures to guarantee women's rights, including the punishment of sexual harassment in the workplace.

Penal Code Act

Until the enactment of the Domestic Violence Act, the only redress that could be sought in respect of domestic violence was under the Penal Code Act. Now cases may be brought

² Harassment includes conduct that induces fear of harm such as repeatedly watching, or repeatedly making abusive telephone calls.

under both laws and an offender who commits domestic violence may be charged under either the Penal Code or the Domestic Violence Act which is more specific. The offences under which a case of domestic violence can be brought include wounding, causing grievous harm and assaults causing actual bodily harm.

Unit 4 Prevention and Redress for Victims of Domestic Violence

Victims of domestic violence have several avenues for seeking legal protection provided by the Domestic Violence Law and the Penal Code Act. Victims can seek both civil and criminal remedies. Depending on the type of remedies sought, the institutions involved may differ. For instance a case of defilement may be handled by the Family and Children Court because the victim is a child, while a similar case of sexual assault involving an adult would have to go to the Chief Magistrate Court.

Civil Remedies under the Domestic Violence Act

A victim of domestic violence can file a complaint with the Local Council Court, which is mandated by the Domestic Violence Law to try cases and which provides victims with remedies. This would be in line with the civil cases such as assault occurring in the domestic perspective that can be handled by these courts. If the LCC cannot handle the case, the LCC officials may advise the victim to follow it up with the police, the Family and Children court or Magistrate Court and may through a letter forward the case to the relevant institution. Paralegals may also assist the victim to direct the case. Remedies available under the Act include money damages, divorce or separation order, or a protection order, which stops a perpetrator from stalking or even harassing the victim. The application for a protection order should be heard by the court within 48 hours after it has been filed. The court shall issue summons directing a perpetrator to appear before it on a given date. In case a victim is not satisfied with the decision of the court which handled the matter, whether it be the Local Council Court, Magistrate Court or family and Children Court, s/he can appeal the decision to a higher court.

Criminal sanctions under the Domestic Violence Act and/or Penal Code Act

Victims can also report domestic violence to the police. The police will assist to investigate the matter, carry out any arrests and push the matter to courts for further justice. The officer In charge at the police station is required to record a statement of the victim or victim's representative on the nature of domestic violence and summon the alleged offender after the complaint has been lodged. Following this, cases of domestic violence may be handled in Magistrate Courts or the Family and Children's Court. The role of the victim in this case would involve appearing and testifying in the court. If need be, s/he may get a protection order to stop the perpetrator or his family from threatening her.

A person found guilty of committing domestic violence can be ordered to pay a fine of nine hundred sixty thousand Uganda Shillings (960,000 Ushs) or serve a sentence of imprisonment for not more than two years.

Where it is established that there is a child in the domestic relationship, the court is required to issue a written order to the Probation and Social Welfare Officer to take any necessary action regarding the welfare of the child in accordance with the provisions of the Children Act. Upon the issuance of a protection order, the court may issue an order to the perpetrator to vacate the matrimonial home or other home. The protection order remains in force until it is varied or revoked by a competent court.

Despite these provisions however, police are usually reluctant to pursue justice for victims of domestic violence citing the purported non interference belief that marriage or relation affairs are not for public knowledge.

- Interviewing the Victim – establish facts of the case and details of the victim
- Advising the victim on the available legal options and where s/he can seek justice. If this is at police, the victim should be directed to the Family and Child Protection Unit of the Police
- Accompany the victim to report to the police
- Escort victim to police and assist victim in making a complaint
- Identifying witnesses and encouraging them to follow up the case with the police
- Advising the victim where s/he can seek alternative shelter
- Where the case involves physical or sexual violence, helping the victim to undergo a medical examination
- Following up the progress of the case at police and court
- Raising the community's awareness on domestic violence by sensitizing on the law and procedures of justice and **emphasizing the following facts:**
 1. *Consent to acts of domestic violence by the victim does not constitute defence in courts of law or make the act of violence right or justifiable.*
 2. *Cases of violence must be reported even when victims are reluctant or even where the responses from the police are not immediately positive*
 3. *Abusive behavior through domestic violence of one person to another is never acceptable, whether it is coming from a man or a woman. Everyone deserves to feel valued, respected, and safe*
 4. *All community members have a duty to ensure that women's rights and freedoms are respected, and that violations are reported. Therefore, everyone has a duty to report cases of domestic violence in their area.*

The Role of the Paralegal in assisting victims of domestic violence

As such, Paralegals must sensitize people on what amounts to domestic violence and where they may report cases. The paralegals must also be vigilant in following up and monitoring cases of violence that have been reported to the police.

Trainer notes

Arrange a field trip for the trainees to the police or courts to allow them to share experiences on handling of cases of domestic violence and getting to know relevant officers in these institutions who can be of assistance.





Module Five

Child Neglect

Content

Unit 1 Children and Neglect

Unit 2 Laws Applicable to Child Neglect

Child Neglect

Learning Objectives

To enable users to understand what child neglect is and the laws applicable

To provide users with information on the legal responsibility towards children

To identify duty bearers with regard to child neglect

To highlight the role of community and community leaders in the prevention of child neglect and use of the Family and Children's Court

Tools

National Laws

Reference Notes

Unit 1 Children and Neglect

Who is a child?

According to the *Constitution of Uganda and Children Act cap 59*, a child is a person below the age of 18 years. The Children Act is the key law relating to maintenance of children. The provisions of the Children Act are majorly premised on the UN *Convention on the Rights of the Child (CRC)* which was ratified by Uganda in 1990.

Child neglect is a common form of child abuse when caretakers fail to provide adequate emotional and physical care including adequate food, clothing, shelter, supervision and medical care for a child. Caretakers of a child are under an obligation to provide adequate supervision, care, guidance and protection to keep children from physical or mental harm. This obligation further requires that a child should not be left in a position of authority or be left alone in situations beyond his or her ability to handle.

At the same time, each child must be looked at individually to make sure s/he is physically and emotionally able to handle the given responsibility. Child neglect can have a serious effect on a child's physical, mental and emotional development. For babies and very young children, it can even be life-threatening.

Trainer notes

Ask participants to list the most common form of child abuse in Bundibugyo.

What are the signs of child neglect?

Observable Indicators

- dirty skin
- offensive body odor
- unwashed, uncombed hair
- tattered, under or oversized *and* unclean clothing
- dressed in clothing that is inappropriate to weather or situation
- frequently left unsupervised or alone for periods of time

Indicators of Poor Health

- drowsiness, easily fatigued
- puffiness under the eyes
- frequent untreated upper respiratory infections
- itching, scratching, long existing skin eruptions
- frequent diarrhea
- bruises, lacerations or cuts that are infected
- untreated illnesses
- physical complaints not responded to by parent

Indicators in Infants and Toddlers

- listlessness
- poor responsiveness
- does not often smile, cry, laugh, play, relate to others
- lacks interest, curiosity
- rocks, bangs head, sucks hair, thumb, finger
- tears at body
- is overly self-stimulating, self-comforting
- does not turn to parent for help or comfort
- hospitalization for failure to thrive - regresses upon return to home
- unduly over or under active for no apparent purpose

Indicators in Children

- cries easily when hurt even slightly
- comes to school without breakfast
- has no lunch
- needs dental care, glasses
- falls asleep in class
- often seems in a dream world
- comes to school early, does not want to go home
- depression and sees self as failure
- troublesome at school
- difficulty in learning and does no homework, refuses to try
- destroys completed written work
- destroys books, assignments and learning aids
- is withdrawn, overactive, under-active and/or lethargic (depressed)
- is cruel to classmates
- lies, steals from classmates, school

- breaks objects or damages school property
- frequently absent or late for school

Indicators with Parents and Family

- promises but does not follow up on recommendations
- fails to keep appointments and/or refuses help from school or other resources
- abuses alcohol or other drugs
- lifestyle of relative isolation from relatives, friends
- history of abuse or neglect as a child
- disorganized, chaotic home life
- history of chronic illness
- gives impression of resignation and feeling that nothing makes much difference anyway
- failure to provide supervision of children (This is the most frequent cause of child death and should not be minimized)

Children with a history of neglect are at risk of developing psychiatric problems. Victims of child neglect also suffer from different types of physical health problems later in life such as chronic head, abdominal, pelvic, or muscular pain with no identifiable reason.

Unit 2 Laws applicable to Child Neglect

Child neglect is a crime under the laws of Uganda. It is prohibited by the Constitution, *Children's Act* **cap 59** and *Penal Code Act* **cap 120. Article 34** of the constitution of Uganda provides that no child shall be deprived by any person of medical treatment, education or any other social or economic benefit and children are entitled to be protected from social or economic exploitation.

As a means to enforce these rights of children, **Section 157** of the Penal Code Act creates an offence by any parent, guardian or other person having the lawful care or charge of any child of tender years and being able to maintain such child, willfully and without lawful or reasonable cause deserts or neglects the child and leaves it without means or support.

The Children Act stipulates the rights and responsibilities of children as well as parental responsibilities. The law states that a child is entitled to live with his or her parents or guardians and that every parent is responsible for his or her child. Where the natural parents of a child are deceased, parental responsibility may be passed on to relatives of either parent or by way of a care order to the warden of an approved home or to a foster parent.

According to **Section 5** of the Children Act, any person having custody of a child shall protect her/him from neglect and is under a duty to maintain the child. The duty to maintain a child involves giving a child the right to:

1. Education and guidance
2. Immunization

3. Adequate diet
4. Clothing
5. Shelter
6. Medical attention
7. Protection from discrimination, violence, abuse and neglect

Remedies

Those seeking to improve the situation of neglected children and/or punish the parent engaging in neglect should consider the availability and usefulness of both civil and criminal remedies.

Civil remedies as well as the institutions responsible for acting in response to allegations of child neglect are outlined in the Children Act. According to **Section 10** of the Children Act, local authorities including local governments and local councils are under a general duty to safeguard and promote the welfare of children in their area. This duty includes providing assistance and accommodation for any child in need within its jurisdiction who appears to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge. The local council must designate one of its members to serve as the Secretary for Children Affairs.

Section 11 of the Children Act obligates every member of the community to report cases of infringement of a child's right to the local council of the area for action and also to report to the local government council any parent, person having custody of the child or guardian who fails in their duty to provide the child with necessities of life. Where a child's parents neglect to provide for him or her redress can be sought from either administrative or judicial bodies.

Local Government Council/Secretary of Children Affairs

- Any person may report the matter to the Secretary for Children Affairs in his Local Council who may summon the parent / guardian for a discussion and decision of the matter.
- The Secretary may bring the matter to the Local Government Council to act on its mandate to provide assistance and accommodation
- Any person may report the matter to the Probation and Social Welfare officer at the district headquarters who will highlight it to the Local Government Council

Family and Children Court (Magistrates Court)

- Through individual action, a concerned party may make an application for a maintenance order in the Family and Children Court against the child's parents. A maintenance order may be made during a subsisting marriage or even during separation of the child's parents
- If the parents are found guilty of neglecting their child, the court may make a supervision or care order and place the child under the supervision of the Probation Officer
- The court may further make an exclusion order prohibiting a named person from having contact with the neglected child

- Other remedies for neglected children include placement in foster homes or even adoption

The Family and Child Protection Unit (FCPU) of the Police

The Family and Child Protection Unit is an important mechanism to use in the protection of children. It is the one used in the initiation of criminal matters such as defilement. A matter may be reported to this unit by any concerned person just as the case with any matter at a police station. The officer in charge of this unit will follow up and ensure that relevant evidence is gathered for prosecution of perpetrators. Paralegals have the duty to work hand in hand with any of these offices for the protection of children in their area from neglect. Paralegals must also advise the victim's family to seek alternative solutions in case they are not receiving adequate assistance from any institution.

Challenges of Enforcement of the Law against Child Neglect

- Very high poverty levels
- High number of orphans and other vulnerable children due to factors such as HIV and armed conflict
- Limited legal and institutional structures to address the problem especially in rural areas and to deal with increasing practices such as child trafficking
- Cultural attitudes which emphasize non interference in private family matters as well as custody of children to the father who may not necessarily be the better parent to care and maintain especially young children
- Polygamous tendencies of most Ugandan men leading to high number of children that cannot be well taken care of
- General poor access to social services especially for vulnerable children such as those with disabilities
- Lack of access to justice
- Slow and tedious process of adoption for non Ugandans who may want to adopt and raise Ugandan children
- Most people are employed in the informal sector and it is difficult for courts to enforce attachment orders on salaries of parents



Module Six

Defilement

Content

Unit 1 Defining Defilement

Unit 2 Redress for Defilement

Defilement

Learning Objectives

To highlight the laws applicable to defilement

To highlight the challenges to successful prosecution of cases of defilement

To equip users with skills on how to help victims of defilement

Tools

National Laws

Case Studies

Reference Notes

Introduction

Defilement is an offence against morality. It is the leading reported form of abuse against children in Bundibugyo District. It is alarming that most of the perpetrators are usually people close to the children, a majority of them being close relatives. Unfortunately, many cases of defilement go unresolved or are handled by the Local Council Courts, which do not have the legal mandate to handle these cases. As such, the cases are frequently mishandled and inappropriate punishments meted out. Often, the perpetrators escape sanction while the victims remain disturbed and mistreated. In the villages, most defilement cases are solved through mutual understanding between the parents or guardians of the victim and the suspect. In most cases, fines like goats, hens, cows and cash are paid. The offender is also, sometimes, asked to marry a girl where as a result of defilement, she has conceived a child.

Unit 1 Defining Defilement**Definition**

Under Penal Code Act, **Section 129**, the prohibited crime of defilement is committed when a person (over the age of 12) performs a sexual act with another who is below the age of eighteen years. The law also prohibits any attempt to perform a sexual act with a person under eighteen years of age. According to the law, a sexual act constituting defilement includes any contact with the sexual organ, mouth or anus of a child. This contact may be through the perpetrator's sexual organ, his / her tongue, lips, finger etc, or even a stick.

There are different levels of defilement: simple and aggravated.

Simple defilement occurs where only the key elements of defilement are present – any sexual contact with a child below 18 years.

Aggravated defilement occurs where:

- A child is below 14 years
- The offender is HIV positive
- The offender is a parent, guardian or person in a position of authority, such as guardian, parent, teacher, LC official
- The child has a disability
- The offender is a serial offender: Has committed the offence before

Under the law a person charged with defilement is obliged to undergo a medical examination as to determine their Human Immunodeficiency Virus (HIV) status.

Uganda's prohibition of child sexual abuse through its defilement statute is one means by which it fulfils its human rights obligation as a signatory to the United Nations Convention on the Rights of the Child (CRC). Articles 34 and 35 require that states protect their children from all forms of sexual exploitation and sexual abuse, including outlawing the coercion of a child to perform unlawful sexual activity. Also, Article 19 (1) of the CRC requires that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

Defilement violates the following rights of a child

- The right of personal dignity and integrity
- The right to security of person
- The right to health

Unit 2 Redress for Defilement

A victim (or his/her parents or guardians) should report child sexual abuse or defilement to the police. Police should always be the first reference point for legal redress for victims in cases of defilement.

Thereafter victims and their parents/guardians should ensure that the offender is charged and that the case is heard by the Chief Magistrate's Court (**Sec 6** Penal Code Amendment Act). Notably, in many indigenous communities defilement is often mistakenly tried by Local Council Courts.

Where a person is convicted of defilement, the court may in addition to any sentence imposed on the offender order that the offender also pay compensation to the victim for any physical, sexual and psychological harm caused by the offence. The amount of compensation shall be determined by the court which shall take into account the extent of harm suffered by the victim, the degree of force used by the offender and expenses incurred by the victim as a result, including medical expenses.

Any person whose conviction for committing aggravated defilement is sustained by the High Court can suffer the death penalty. Any person convicted of attempted aggravated defilement can be sentenced to imprisonment for life.

How may a Paralegal assist a victim of defilement?

- Encourage her / him to tell someone – parent / guardian, friend
- Assist the victim to inform the parent or guardian
- Offer the victim (and parents/guardians) information about options available within the legal system
- Assist the victim to report the matter to police
- Ensure that relevant evidence is obtained for the case. Evidence takes many forms and may include police statements, victim testimonies in court (oral or written statements, treatment notes and exhibits (e.g. clothing of the victim), photographs of injuries, scans and x-rays, laboratory tests, swabs from wounds and vagina, anus and mouth, oral testimonies of what the health worker observed in treating the patient, other documentary evidence that is well written and can be understood by lay people who are not knowledgeable in health matters. Evidence must be relevant to the matter being discussed
- Ensure that critical evidence is not lost in the process, such as taking a bath before having a medical examination
- Identify witnesses and encourage them to make their statements at the police
- Accurately document the facts of the case for your own follow up e.g status of crime scene, state of the victim
- Escort the victim to the health centre for medical examination and ensure that the health worker fills in Police Form 3 which records all relevant medical evidence.
- Advise the health worker to also carry out a medical examination of the suspect so as to link her / him them to the crime

Questions for Discussion

Is it still an offence of defilement even where a child consented to have sexual intercourse with, or married an adult?

Trainer Notes

Consent of the child to sex is not a defence. A child under the age of 18 years cannot legally consent to sexual intercourse. It is also not a defence that the suspect marries the child as a result of the defilement.

Child marriages are illegal and constitute a crime. The legal age of consent for marriage is 18 years.

Ask participants why it is important to report cases of Defilement

Possible Answers:

- To bring perpetrators of defilement to justice
- To restore self worth and allow for emotional recovery of the victim
- To protect against further defilement through deterrence
- To protect against unwanted pregnancy and contracting of HIV when the matter is quickly attended to by a health worker

A proper medical examination is necessary to obtain evidence for successful prosecution of defilement cases. Such an examination should involve the checking of:

- The anus, the mouth and the vagina of the victim
- The HIV status of the offender and the victim
- The age of the victim to determine whether s/he is under 18 years.



Module Seven

Children in Conflict with the Law

Content

Unit 1 Understanding Juvenile Justice

Unit 2 Juvenile Justice in Uganda

Children in Conflict with the Law

Learning Objectives

To explain to participants the meaning of juvenile justice and the laws applicable
To highlight the different rights that apply to children in conflict with the law

Tools

International human rights instruments
National laws

Introduction

Given the vulnerability and limited responsibility of children, it is important that even when children commit crimes that their specially recognized status and rights are respected in line with Ugandan law and the United Nations Convention on the Rights of the Child.

Unit 1 Understanding Juvenile Justice

What is Juvenile Justice?

Juvenile justice is commonly understood as a notion of fairness or justness in dealing with child offenders through laws. The Juvenile Justice System is a body of law and institutions set up to protect and help children in conflict with the law, otherwise known as juveniles or child offenders/delinquents. It was initially established to protect children from the influences of adult prisoners, divert youthful offenders from the criminal courts and to encourage rehabilitation based on the juvenile's needs. The juvenile justice system is enforced through special statutory procedures involving civil/quasi criminal or criminal proceedings.

Laws applicable to Juvenile Justice

Children are to be afforded all of the human rights guarantees provided to adult offenders. However in addition children are entitled to special rights because of their status as children.

Articles 37 and 40 of the *UN Convention on the Rights of the Child* set minimum guarantees for children in conflict with the law. Art 37 states that children shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. Further, that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment

of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

Article 40 allows the following guarantees for juveniles:

- To be presumed innocent until proven guilty according to law;
- To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;
- To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance..."

In the administration of juvenile justice, states have to apply systematically the general principles contained in the CRC. These include;

- Non-discrimination (art. 2)
- Best interests of the child (art. 3)
- The right to life, survival and development (art. 6)
- The right to be heard (art. 12)
- Dignity (art. 40 (1))

The CRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law: These include:

- Treatment that is consistent with the child's sense of dignity and worth.
- Treatment that reinforces the child's respect for the human rights and freedoms of others.
- Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.
- Respect for the dignity of the child and the prohibition of all forms of violence in the treatment of children in conflict with the law

According to **Article 17** of the *African Charter on the Rights and Welfare of the Child*, **Article 17**, states shall ensure that every child accused of infringing the penal law shall be afforded legal and other appropriate assistance in the preparation and presentation of his defense.

Unit 2 Juvenile Justice in Uganda

The Constitution of the Republic of Uganda, in **Article 32 (1)** obligates the state to take affirmative action in favor of groups marginalized on the basis of age, among others. Part X of the Children Act **Cap 59** deals with children charged with offences. The Penal Code also contains some provisions specific to children.

In Uganda, children in conflict with the law are principally the responsibility of the Ministry of Gender, Labour and Social development. The officer responsible is the Commissioner for Youth and Children. Detained children are placed in one of the four remand homes in Fort Portal, Gulu, Mbale or Naguru. In addition, the Kampiringisa National Rehabilitation Centre detains sentenced children from the whole of Uganda. Children from Bundibugyo are taken to Fort Portal which is the nearest town.

Consistent with **Article 40(3)** of the UN Child Rights Convention, there is a Children Act which provides for procedures on juvenile justice. The Act is a domestication of UN Child Rights Convention and provides for local guarantees of the provisions of the international instrument.

In Uganda, there are three levels of courts that can administer juvenile justice. These are Local Council Courts, Family and Children Courts and the High court. The Family and Children Court (FCC) is established under the Children Act for every administrative district presided over by a magistrate. The FCC has jurisdiction to hear and determine most criminal charges against a child, except capital ones which are forwarded to the High Court.

The central thrust of the Children's Act is that children in conflict with the law, whose offences are not serious, should wherever possible be dealt with and assisted in their communities by Local Council Courts, rather than being taken to the Family and Children Court at the district or sub-county level. The Children Act makes the procedures of the FCC friendly and non-stigmatizing to children. The courts are supposed to be held in camera, to be as informal as possible and non-adversarial in nature, and the child offender has a right to legal representation.³ Names are not published and the people in court do not wear uniforms.

However, Local Council Courts play a key role in juvenile justice. One of the main reasons why the work of the Local Council Courts in handling children in conflict with the law could be characterized as a good practice is because it involves the community. It supports the recognition of the paramount importance of parents, families and the communities in the socialization and upbringing of children. It also is commendable as it assists in the earliest reunification of children with their families and communities. The Local Councils have been able to use alternative punishments like compensation, apology and restitution. This has in return helped increase the acceptability of non-custodial sentences among surrounding communities.

Local Council Courts are also superior to other institutions in dealing with children in conflict with the law because of the benefits in the use of local language, use of alternative punishments, speed and accessibility. The courts operate in an informal manner, which makes the proceedings non-intimidating for the child involved. They could also be convened any time, which offers some degree of flexibility.

To add on to the above, there are **Family and Child Protection Units (FCPU)**s within most police stations. These units ensure that children are not detained with adults, sensitize

³ Section 16(2)

the community, children and families as to what constitutes child abuse, and provide training. Probation and Social Welfare officers are supposed to be in place in all districts to cater to welfare of children. There are also **Community Development Officers (CDOs)** based at the sub-county level who play a significant role in the reintegration of children in conflict with the law.

Discussion Questions

- Ask participants whether children can commit an offence
- Record responses on flip chart
- Emphasize the following:

1. Children under 12 cannot commit an offence (**Section 88** Children Act).
2. Children above 12 years can commit an offence such as defilement. However, they are handled as juveniles under the Children Act (Sec 129A Penal Code Amendment Act 2007) with the aim of rehabilitating them
3. Where a child has been charged, s/he may be released on bail on the child's own recognisance without the need for sureties (**Section 90** Children Act)
4. Where a child is not released on bail, s/he may be committed into custody in a remand home (**Section 91** Children Act)
5. Children charged with criminal offences shall be handled by a Family and Children Court except in cases where an offence is punishable by death, or where a child is jointly charged with an adult (**Section 93**). However, children cannot be sentenced to death even when convicted of an offence that attracts that punishment.
6. Where a child is detained, s/he shall be in a special centre designated for that purpose with the purpose of rehabilitating that child. Children cannot be detained with adults. (**Section 89(8)** Children Act). Further, a female child shall, while in custody be under the care of a woman officer
7. In line with the welfare principle under **Section 3** of the Children Act, it is good practice that juvenile court proceedings be conducted in closed sessions (not open to the public)

Orders of the Family and Children Court include (Sec 94):

- Absolute discharge
- Caution
- Conditional discharge for not more than twelve months
- Binding the child over to be of good behavior for a maximum of twelve months
- Compensation, restitution or fine, taking into consideration the means of the child
- Detention for a maximum of three months for a child under sixteen years of age and a maximum of twelve months for a child above sixteen years of age and in the case of an offence punishable by death, three years in respect of any child

The challenges to juvenile justice in Bundibugyo include the following:

- Lack of awareness of the law on juvenile justice which results in the mishandling of juveniles and violation of their rights e.g. undertaking open proceedings in court rather than *in camera* (i.e., in a confidential proceeding)
- Handling of child cases in courts other than the Family and Children courts
- Even when juveniles are handled by Family and Children courts which are headed by Magistrate Grade II these lay magistrates are often unaware of new procedures for handling children
- Habitual child offenders and frequent cases of jumping bail
- Poor birth registration culture where it is hard to tell the age of a child
- Lack of detention centers / remand home for child offenders in Bundibugyo district
- Poor conditions at remand homes - overcrowded rooms, food and clothing shortages, poor health conditions, and the illegal transfer of children to adult prisons
- Poor facilitation of institutions handling child offenders – Police, prisons, courts and probation
- Limited opportunities for access to justice and legal aid for most child offenders

Paralegals therefore have a role to play in sensitizing people on juvenile justice and children's rights and to support institutions working with children in conflict with the law.



Module Eight

Land Rights

Content

Unit 1 Laws Applicable to Land in Uganda

Unit 2 Features of Land in Bundibugyo

Unit 3 Women's Rights to Land

Land Rights

Learning Objectives

To highlight the forms of land tenure in Uganda and laws applicable

To highlight the problems of land ownership in Bundibugyo

To illuminate issues of gender connected to land use and ownership in Bundibugyo

To identify the possible course of actions in case of infringement of one's rights

Tools

National Laws

Reference Notes

Case studies

Introduction

Land is an important factor in the lives of many people in Uganda. It is the biggest asset for most and is a key factor of production. It is linked to rural livelihoods such as those in Bundibugyo in a number of ways; it is important for life, food, housing and health. It is central for status, identity and is a source of cash for consumption. As such access, control and management of land is an important human rights and social justice issue. This is particularly evident in areas such as Bundibugyo where control of land remains an important incident of social domination.

Unit 1 Laws applicable to Land in Uganda

Laws that deal with land rights in Uganda include the 1995 Constitution, *the Land Act cap 227*, *the Land (Amendment) Act 2004*, *the Land (Amendment) Act 2010* and the *Registration of Titles Act cap 230*. These laws also provide for the nature, procedure and forms of land ownership rights as well as redress in cases where the rights are or have been infringed.

Under **Article 237 (1)**, the Constitution vests land in Uganda in the citizens of Uganda. This means that it is Ugandans who should decide how to utilize their land and what laws should apply to land ownership.

Article 26 further guarantees the fundamental right of every person to own property individually or in association with others, in addition to protecting the right of every person not to be deprived of personal property without compensation. This article provides the major premise under which land in Uganda is owned and held.

In terms of land administration and institutions, the Constitution under **Articles 238 – 240** establishes land management institutions - the Uganda Land Commission and the District Land Boards. It also prescribes the functions for each of these institutions. There is a district land board for each district to deal with all matters connected with land in that district, such as registration and transfer, as well as dispute resolution. However, to date the land Boards are not functional and their powers are now vested in the magistrate courts.

Article 237 (3) of the Constitution recognises four ways of holding land otherwise known as land tenure systems in Uganda only some of which involve ownership. Paralegals need to understand these forms of land tenure in order to properly advise persons because each form may have different procedures for seeking remedies in case of violations.

The types of land tenure include:

Leasehold: A lease is created either by contract or operation of law. Under a contractual agreement, one person namely the landlord (lessor) grants another person namely the tenant (lessee) exclusive possession of land usually for a specified period and usually in return for a specified amount of rent which may be for a sum known as a premium or for both rent and a premium. However it may be in return for services. Non citizens of Uganda are only allowed to acquire land rights through the leasehold form of tenure. People in Bundibugyo may hold public land on leasehold.

Freehold: Holders of land held under this form of tenure have full rights of ownership derived from the Constitution and law; it involves holding registered land for an indefinite time or for a shorter period, which may be fixed by a condition. The holder is free to exercise full powers of ownership such as using and developing the land for any lawful purpose; entering into any transaction in connection with the land; as well as disposing of the land to any person by will or through inheritance.

Mailo: It involves holding registered land with no time restrictions. This type of land holding separates occupancy from ownership often with landlords and tenants and also allows for separation of ownership of land from ownership of developments on land made by a lawful or *bona fide* occupant. Subject to the customary and statutory rights of lawful or *bona fide* occupants; the holder is free to exercise full powers of ownership of the land, such as using and developing the land for any lawful purpose; entering into any transaction connection with the land; as well as disposing of the land to any person through inheritance.

Customary: Under this tenure, land is owned according to practices and systems of a particular cultural group i.e., customary management regulations. The Land Act defines the incidents of customary land tenure to include its territorial or clan nature, existence of rules and regulations governing community, family and individual access to land, and perpetual ownership of land. Customary tenure entails ownership of land in perpetuity and the process of owning customary land can be as cheap as being born into the system. **Article 237(4)** of the constitution empowers all Ugandan citizens owning land under customary tenure to acquire certificates of customary ownership in respect of their land. The certificate of customary ownership is deemed to be conclusive evidence of the customary rights and interests endorsed thereon. The Act also provides that customary land tenure may be

converted to freehold by individuals, families or communities on application to a district land board.

The principle underlying customary tenure is that land is God given and should be used by all and left for the future generation. Therefore customary land is generally understood not to be for sale as contrasted to titled land which is perceived as a commodity for sale and ownership is individualized. Since customary land is normally held communally, it is difficult to develop or sell as no one has the mandate to take full responsibility for it.

The great disadvantage of customary tenure is that it tends to emphasize cultural values which are not always fair to everyone, especially women. Land users are not encouraged to make long-term investments in the land; nor can they take good care of the land as they would have done if they had clear titles to it. Land held under customary land tenure especially for communal use tends to suffer from neglect and consequent degradation, and may even be taken over by outsiders.

It should however be noted that in order to change customary land to titled land, the process is expensive, long and tedious. This is not unexpected especially since the map and titling registries are centralized in Entebbe and Kampala, which are far away from Bundibugyo. Very few people in Uganda today, those in Bundibugyo notwithstanding, can afford a title.

Land Ownership

There are several ways that individuals or associations can own land in Uganda.

Ownership by Registration

This is acquired by virtue of registration under any of the four different systems of tenure under the Registration of Titles Act. The owner of land holds a duplicate certificate of title based on the white page that is kept with the registry in the Ministry of Lands and Environment. An owner of registered land has absolute ownership rights on the land in question. Land titles are the only legal documents that give the holder full private ownership of a piece of land.

Communal Land Ownership

Communal land is held by a specific community or group of people recognizing individual rights in that land and regulating its use and management. It is owned communally. Under customary tenure, a family is recognized as a legal person represented by the head of the family. The family/ individual therefore has access and user rights to this land but the actual ownership lies with the Communal Land Association.

Ownership through Tenancy by Occupancy

Security of occupancy was created under the 1995 Constitution and consequently *the Land Act Cap 227* to protect the occupants of registered land from unfair or unlawful eviction. Under this mode of ownership, one does not have full ownership rights since the land is actually owned by someone else. Types of this occupancy include;

Lawful Occupant

Occupies land by virtue of the repealed *Busuulu and Envujjo Law of 1928, Toro Landlord and Tenant law of 1937, Ankole Landlord and Tenant law of 1937*; or got consent from the registered owner and includes a purchaser; or occupied the land as a customary tenant but his or her tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

Bona fide Occupant

An occupant who at the time the 1995 Constitution came into force had been occupying the land and utilized it or developed it unchallenged by the registered owner or his agent for twelve years or more; or had been settled on the land by Government or an agent of Government which may include a local authority.

A *bona fide* occupant also includes people resettled on land under Government resettlement schemes. Where the occupant is resettled on registered land, s/he may be enabled to acquire registrable interests on the land. A registered owner of such land is supposed to receive compensation within five years of coming into force of the 1995 Constitution.

Security of tenure shall not be jeopardized by the lack of a Certificate of Occupancy by the occupant.

Where any violations or issues of land ownership arise, paralegals may direct these matters to the two most instrumental persons in registration of land right interests. These are:

1. **The Registrar of Titles:** who is in charge of processing and effecting transfer and registration of land interests on registered and registrable land. The office of the Registrar of Titles issues the Duplicate Certificate of Title to the land in question and keeps the white page upon which the Duplicate Certificate of Title is drawn.
2. **The Recorder:** who is responsible for keeping records relating to customary certificates of ownership and certificates of occupancy on behalf of the District Land Board.

The two named institutions could be able to assist paralegals handle problems related to land use and ownership in Bundibugyo. These institutions have their headquarters at the Registry of Lands in Kampala city. However, every district has a land office which is in charge of handling land matters at the lower level before the papers are sent for final processing in Kampala. It is only in Kampala that land titles may be issued.

Unit 2 Features of Land in Bundibugyo

Trainer notes

Ask participants to list key features / challenges to land holding in Bundibugyo. Some of these include:

- Land is primarily held under customary land ownership and more than 50% of this land is unregistered with most owners having no documentation to indicate ownership to the land
- Laws governing customary tenure remain unwritten and differ from community to community
- Frequent unlawful evictions from land. This may happen when persons graze their cattle on one's land and eventually turn them off it, or when others steal and eventually push the true owners of it
- Encroaching on gazetted land which is reserved for natural parks or game reserves
- Unequal and uneven distribution of land access and ownership
- Tenure insecurity and uncertainty of land rights
- Unclear procedures for use of land by internally displaced persons and refugees
- Unclear procedures and structures for resolution of disputes and the linkage between the formal and the informal / traditional justice systems
- Women and children are the most vulnerable in regard to problems of land use and ownership and although women are by far the main contributors (70%) to the cultivation of fields, they are generally denied land ownership. It is not uncommon that widows and their children are left without the capacity to make a living because the family of the deceased takes land away from them

Paralegals should raise awareness of land law and rights of persons under the various types of land tenureship.

At the same time, paralegals must encourage persons to register their land and to seek proper dispute resolution mechanisms rather than taking the law into their own hands.

Unit 3 Women's Rights to Land

Case Study A

'I was cooking sweet potatoes; he poured the food down and put the sauce pans on the vehicle. He took all the things we had in the house. I was left high and dry! And yet we had been married for 41 years! Later, I learnt that he had sold the piece of land!' says Sera.

Sera is a 69 year old woman living in Bundibugyo District. She and her husband had fifteen children, four of whom are dead. Sera is a small-holder farmer. She grows maize, beans, millet, potatoes and cassava mainly for home consumption. She has one goat, and three local chickens. She has no income and depends wholly on her working children for provision of basic domestic necessities. Sera recounts that her ex-husband, a policeman, worked in different parts of Uganda until 1983 when he retired. "After his retirement, we bought land which we lived on for over 23 years. I improved the land quite a lot. I planted trees, coffee, beans, maize and bananas. During this time, my husband used to stay at home because he was too sick to work". "Later, he became a bible teacher at a nearby church but this job was not enough to keep the family and Sera had to continue working. Later, Sera learnt that her husband had sold the piece of land which they had bought at only 2 million shillings. Imagine 8 acres of land for only 2 million! Worse still, the people who bought the land cut down all the trees and the bananas, beans, maize and groundnuts which Sera had worked so hard to plant".

"My husband vowed on our wedding day that I have given you all that I have", says Sera. I have handed this problem to God. It is too much for me. It pricks my heart to remember this land which I worked so hard for. I can neither eat nor sleep and I have become very thin.

Trainer notes

- Discuss this case study
- What is the relevant law for assisting women who encounter problems with land rights?
- What are Sera's remedies?
- How may a paralegal assist a woman such as Sera with this land dispute?

Use the Legal provisions below to help you answer these questions;

The Constitution guarantees freedom from discrimination and provides that all persons are equal under the law. Further, the Constitution provides for the right of any persons aged eighteen years and above to marry; and for such person to have equal rights at marriage, during and at its dissolution. The law allows for married people or even those in any other

partnership to hold land jointly as co-owners either as joint owners or as tenants in common. However, the ownership and control of land and its resources is not equal. Very few women own land and in fact, there is need to enhance women's control over land; not only based on the important role they play in agricultural production but as an inherent right to equal rights and opportunities as provided for in the Constitution among the fundamental human rights (**Article 33**).

Consent on Family Land Transactions

The Land Act in **Section 39** provides for restrictions on dealings or transactions concerning family land with the consent of a spouse in occupation. It is provided that no person shall sell, exchange, transfer, pledge, mortgage, or lease any family land except with written consent of his or her spouse. The consent to be given by the spouse must be given in writing by free will prior to the transaction. All registrars of titles and recorders in the case of customary land and tenancy by occupancy are barred from registering any transaction for which spousal consent is required but not given.

Therefore, through the law and with knowledge of human rights, paralegals may assist women with their land problems through the following ways:

1. Lodging a Caveat

If a person has evidence that his or her land rights have been infringed, s/he may lodge a caveat on the certificate of title or certificate of occupancy or certificate of customary ownership in respect of the land in question with the Registrar of Titles or Recorder. A *caveat* is a written document filed at the Land registry notifying any interested parties about any pending issues on a said piece of land and prohibiting them from dealing with the land without notice to the owner or the person who lodges the caveat. This is intended to maintain the status quo and ensure that no one deals with the land without proper authorization. Following this, a case may be heard in court clarifying the issues in contention.

2. Lodging a complaint with Court/ Land Tribunal

A complainant may lodge a written complaint to a court presided over by a Magistrate Grade I or a Chief Magistrate seeking a remedy for infringement of one's land rights. The Land Amendment Act 2010 gives a registered owner the right to apply to court for an eviction order against a lawful or *bona fide* occupant who fails to pay the annual nominal ground rent.

In cases of land held under customary tenure, the complaint may be lodged with the area Local Council Court. This is done through the writing of a letter of complaint to a court and instituting a civil case against a perpetrator. The letter should state relevant facts of the case and seek remedies as provided under the Land Act. These remedies could include eviction from the land, fines and/or compensation.

Module Nine

How to Conduct a Training

Content

- Unit 1** Community Approaches and Mobilizing for Training
- Unit 2** Initial Steps to Training
- Unit 3** Training Methodologies
- Unit 4** Logistical Arrangements for Training
- Unit 5** Evaluating a Training

Preparing for Training

Learning Objectives

To familiarize participants with introductory and opening formalities of a training
To generate an environment that is conducive to adult learning and is learner centered
To create a participatory learning environment for enhanced experience sharing.

Tools

Lecture Notes

Introduction

It is imperative that a trainer prepares thoroughly for the training sessions to ensure productivity. Preparation includes psychological, technical, material as well as administrative. Make sure that you have the right venue that is well ventilated and generally comfortable both to participants as well as the facilitator. Prepare your own session plan as well as additional views on a separate notebook to avoid direct reference from the manual during training, an act that can easily distract smooth communication.

Be ready to be challenged with questions and opinions from trainees – they are not challenging you personally. Remember therefore to bounce back such issues to the floor before you express your views. At the same time, avoid a domineering attitude both by yourself as well as participants. Proper preparation for training helps the trainer to be psychologically ready to facilitate the training process. Lack of preparation creates fear in a trainer.

Training the Trainers

Participants in training courses, in this case future trainers, should be selected on the understanding that their responsibilities will continue after completion of the training exercise. Each will be charged with conducting his/her own training, either individually or in a group, as well as disseminating the efforts of the training within his / her local community. In this way, the impact of such courses is multiplied as the information imparted is disseminated throughout various audiences. Accordingly, in addition to substantive content, the courses should include training methodology and capacity-building components, such as lessons and materials designed to impart training skills to participants / trainees.

Unit 1 Community Approach and Mobilizing for Training

Much of the training envisioned under this Training Manual is community based. It is therefore very important that facilitators know the key elements in entering and mobilizing the community. There are common issues affecting access to justice and enjoyment of human rights in Bundibugyo such as domestic violence, child neglect, defilement and land rights. In this regard, facilitators should ensure that these common issues are given critical

focus during the training but may need to vary the training content on other human rights aspects depending on the needs of the target group.

Steps in community entry and mobilization

1. Secondary research

Once a training is scheduled for a particular locality, the training team should share information and documents if possible that they already have on the community, discuss any of their own experience working in the areas as well as review information which may be available from other personnel and agencies. The team may also wish to invite other persons who are knowledgeable of the area or community.

2. Preliminary Visits to the Community

About two weeks before the trainer/s start the training program in a community; they should inform the village and the local leaders and seek permission to carry out the training. The visit with the community leaders should focus on the following:

- Introducing the purpose of the training to the community leaders.
- Explaining how the community will benefit from the training.
- Using the community leaders to analyze the issues in their community as a way of verifying the findings from the initial secondary research. This will act as your baseline for that particular community.
- Identifying and ranking problems, strengths, weaknesses, opportunities and threats in the community in regard to identified problems.
- Using the community leaders to identify possible solutions to the identified problems.

Community mobilization

This is the process of persuading key members of the target community to participate in a training activity. Careful selection and invitation must be made of persons who hold power within the community and can therefore act as agents of change as well as easily pass on the knowledge gained to other members of their community.

Unit 2 Initial Steps to Training

Setting the Training Aims and Objectives

The aim and objectives of training should be related to the intended outcome. The facilitator has to define the objectives of the training. In this case the general aim and objectives of the training are to provide knowledge and skills to train others to provide paralegal services in response to identified community needs.

Knowing your Target Group

After setting the training objectives, the trainer should find out the following about the group members in order to adequately tailor the training content to suit their needs:

- Level of education background
- Age, occupation and social/economic status
- Language spoken/ (preferred)
- What the group members already know, feel and think about what the facilitator plans to discuss

The information on the chosen group members helps the facilitator to decide:

- The language to use during the training
- How much information to share and which training methods to employ
- How much and what to expect from the participants
- It also helps him/her to use a common approach during the training

Content

The content is the subject matter to be discussed during the training. The relationship between the objectives and the content should always be kept in mind. Each topic chosen should contribute to the achievement of the ultimate aim of the whole training. For instance, the content for training of paralegals to carry out community awareness should vary from that of paralegals intended to undertake court accompaniment.

Timetable

It is important for the facilitator to arrange the topics of each session in such a way that there is a flow of information from one topic to the next. The arrangement should provide a logical sequence so that the learning process unfolds in a clear and simple manner. The facilitator should begin with what the participants know, and then move to what they do not know i.e., from the known to the unknown. It should be from simple to more difficult topics.

The amount of material to be covered determines the amount of time to be allocated to each topic. The facilitator should always discuss a little material at a time so that he/she does not overload the participants with a lot of information. This helps to avoid confusion of the participants, and to hold their attention. The facilitator should (where possible) allow the participants more time based on their interests, knowledge and experiences. The facilitator should conduct the workshop at the participants' pace of understanding and he/she should make sure that everyone understands what is happening.

Identifying the materials and resources needed

These are the items required to conduct the training and the facilitator must have all of them ready before the training. They include audio/visual equipment, stationery for participants, visual aids such as posters and graphs, etc.

Prior to the training he/she therefore has to:

1. Identify all the materials and equipment required for the training. The required materials depend on the training methodology adopted, the available resources and the existing facilities. The facilitator should always take into account that some materials and facilities may not be available everywhere, for example, some areas may not have electricity and therefore using a video may not be possible.
2. Assemble and test the equipment needed before training starts to ensure that it is in proper working conditions for example a projector, flip charts, manila paper, markers etc.
3. Practice and learn how to use the equipment that he/she may not be familiar with before training.
4. Prepare handouts and other reference materials. These should be distributed to the participants at the appropriate time during the training workshop. The handouts should be simple in a language which the participants understand.
5. Secure stationery, black or white boards, writing materials, etc. to use in the training.
6. Arrange in advance all the demonstration materials such as posters, graphs, etc. It should be noted that visual aids are extremely important in the learning process.

Opening activities, ice breaking and energizers

When participants first arrive for the training they are usually anxious and reserved; opening activities are designed to help participants to relax, speak freely and participate actively during the training. They are used at the beginning of the workshop to encourage participants to interact freely with one another as well as with the facilitator. They may be used at different times during the workshop or training session to stimulate the minds of participants and to re- energize and relax participants as the training progresses. Energizers are short (not more than five minutes) activities designed to enhance the atmosphere and quality of interaction in a group during training events. They encourage the participants to participate less as individuals but more as collaborative partners. Energizer activities should be used at various intervals during and between training sessions to keep the participants alert and active as well as relaxed throughout the duration of the training.

Examples of energizers

Song

1. Let the group choose a popular song familiar to all or at least the majority of the group members.
2. Ask one person to volunteer and lead the song.
3. Ask the rest of the participants to sing along.

4. In between the verses the choir leader may chant:

Are we together?

Are we together?

Suggestions for good songs:

Patriotic *mchaka mchaka songs*

Football team slogans

Note:

- The rules of ice breaking and energizer activities should be explained clearly to the participants.
- The facilitator should assess the type of group (age, experience, mood) she/he is working with as well as be sensitive to factors such as disabilities of individual group members, before selecting an appropriate ice breaking or energizer activity.
- The facilitator should also take into consideration the learning activity that the participants are involved in or learning activity that will follow the icebreaker or energizer game.
- All participants and facilitators should be encouraged to take part in opening and energizer activities, but no one should be forced to do so.

Part of ice breaking is setting down the fears and expectations of the workshop.

- Invite each participant to write down, on two separate cards, one expectation and one fear for the workshop.
- Participants should then place both cards on a board at the front of the room and one member of the group should read the cards aloud to the group.
- A general discussion can follow summarizing common fears, concerns, and areas where participants express the need for more knowledge.
- The facilitator summarizes the expectations and concerns and links them to the objective of the workshop.

This time should also be used to set down common ground rules. These can include but not be limited to:

- Start on time, end on time
- No smoking or receiving phone calls in the workshop room
- Do not interrupt while others are speaking
- Everyone should try to listen as well as speak
- Maintain confidentiality of what is shared, no gossiping
- Show respect for others, and other's experiences
- Do not make personal attacks
- Do not judge others
- Be aware of language difficulties i.e., speak slowly if needed

Unit 3 Training Methodology

The training methodology refers to the training methods/techniques chosen by the trainer to facilitate the learning process. This manual recommends that wherever it is suitable and appropriate, a participatory approach should be adopted to conduct each training session.

Selecting the Methodology

Facilitators may use a variety of training methods according to the needs and category of the target group as well as the training environment. It is important however for the facilitator to maintain the use of participatory approaches because adults learn better when they are involved in the discussions, activities and demonstrations.

However when selecting a particular training method or technique, the following should be taken into account:

1. The facilitator's own ability and experience to use the method or technique effectively
2. The characteristics of the learners. This refers to the number of learners, their age ranges, as well as their experiences in relation to the subject
3. Time and space available
4. Whether the method/technique chosen provides opportunities for learners to keep track of their progress
5. The circumstances under which the learning takes place

Training methods and techniques

This manual provides a range of training methods, which the facilitator can choose from. These are summarized below.

Case Study

The case study is a detailed account of an event or series of related events that may be presented to an audience orally, in form of a story, film/video or in a combination of all these forms. Where the case study being used is taken from a real life situation, the names of people and places must be changed to protect the privacy of those concerned. The group members are given the case study and are asked to analyze all aspects of the situation presented and to offer solutions to any problems identified. The case study should allow participants to reflect on their experiences and consider various interpretations of situations.

The following questions may be useful in the analysis of the case study:

- What human rights issue has been violated?
- Does it happen often in Bundibugyo?
- What laws / rights are implicated in the problem?
- What authority is responsible for resolving this problem?
- How can you as a member of the community assist in resolving this problem?

Question and Answer (Q & A) Sessions

The participants ask questions and the facilitator answers, or the teacher may ask questions to ensure that the participants have all understood. Participants may also offer answers and comments. This may be at the end of the session or at agreed intervals. The objective is to clarify issues that may still be unclear, or to alleviate concerns that may have risen in the process of training and learning. The facilitator should ensure that during the Q & A sessions, the participants respect each other's questions and listen attentively.

Role Plays

A role play involves the acting out of real-life or imaginary situations, conditions, or circumstances, by members of a learning group for the purpose of reliving the experiences of human rights issues affecting the local communities in Bundibugyo. In most cases, there is no provided script; actors are given an opportunity to make up a script as they rehearse their role-plays. After the performance, the participants should discuss the implications of the role-play in relation to the topic. Organizing a role-play requires a large space. The seating should be arranged so that every member of the group can see the action. Costumes are not necessary. It has both advantages and disadvantages that the facilitator should bear in mind all the time.

The advantages of a role play:

- It provides more active participation in learning
- It draws out aspects of human behavior and relationships that may be difficult to articulate in other ways
- It has a strong impact if done well
- It deepens insight into the problems concerned and raises awareness
- It offers a variation in methods of learning
- It encourages emotional involvement from the participants
- Dramatically illustrates various aspects of an interpersonal/social problem in order that the participants may discuss it
- Makes the learning process interesting
- Provides skills and training in areas such as communication, problem solving diagnosis

The disadvantages of role play:

- When used poorly it might be a waste of time
- It takes time to analyze role-plays
- It may be irrelevant if not kept at the level of the group's analytical ability
- Some members of the group may be embarrassed if the situation acted out points or focuses on them

Taking into account the above advantages and disadvantages, the procedure and process of using role-play is outlined below.

Procedure of a role play:

- Explain the role-play/s that the participants will perform.
- The situation being acted out should be clear and simplified to enable participants in the group to analyze the events that are being acted out.

- It should have enough details in order to be understood by the audience, and the scene of action should be set out properly.
- The participants make all the decisions regarding the casting of characters, the props and script.
- The facilitator should only act as a guide and give help when asked, participants should be left to use their imaginations.
- The facilitator should make sure that participants understand that the most important thing needed for a successful role to play is imagination and enthusiasm.
- The acting ability of participants is NOT an issue of concern.

Casting of characters in role plays:

- The roles to be acted out should be carefully selected and assigned to appropriate characters.
- The individuals performing the role-plays should decide between themselves who will act which part.
- If a participant is unwilling to play a particular role he or she should not be forced to do so.

Acting out the roles:

The roles played by the various actors should be clear to the audience. The actors should maintain their characters until the end of the role-play; the role-plays should be kept short and to the point because prolonged acting may bore the audience, but above all a clear time limit should be set for this activity to respect time schedule for the whole workshop.

Brainstorming

Brainstorming is the spontaneous pouring out of ideas pertinent to an area of interest or need, which is under consideration by an individual or group of people. For a limited time (maybe 5-15 minutes), ideas are solicited and recorded without modification. The aim is to generate from the group as many ideas as possible. The ideas given do not need to be related to each other. Brainstorming may be used:

- To get as many ideas as possible from the group for subsequent discussion.
- To encourage individuals to think beyond their day to day problem.
- To encourage participation.

The procedure of brainstorming is as follows:

- The facilitator explains the process of brainstorming
- Ideas are "thrown out" by participants and the facilitator or a selected participant notes the ideas down where all can see them, preferably on a flip chart or blackboard
- The ideas are discussed to determine if they have any application to the problem at hand
- Ideas which do not pertain to the problem are eliminated in the plenary and lessons are drawn from the discussion and activity

In order for brainstorming to be effective the following should be observed:

- There are no right or wrong answers
- All information is accepted and recorded as given

- Points of clarification are allowed

Picture code

A picture code is a technique where a poster-size visual aid is used to illustrate a problem. The problem illustrated should reflect a community concern, which people feel strongly about e.g. a man beating a woman. This technique has the potential of provoking discussions over issues which may be controversial. A picture code and any other visual aid can be very effective in helping the training participants acknowledge that the problem being depicted also occurs in their community.

A picture code may be used:

- At the introduction of a topic or during the discussion of a particular subject in order to focus the attention of the group on a particular problem.
- To help the group acknowledge that the problem depicted is occurring in their own community.
- To encourage discussion and analysis of the problem depicted, and to help relate the problem to real life situations.

When using the picture code the following procedure is used:

- Place a picture in a location where all participants can see it or distribute the picture to groups of five or ten people.
- Give the group time to study and discuss the pictures

Ask the participants the following questions in this order:

1. What do you see in the picture? The facilitator should give enough time for the participants to describe what they see
2. Does it happen in your community?
3. When the participants identify the problem as one that is common in their community, ask them what causes it? Challenge the group to think of all the possible reasons for the occurrence of the problem
4. Ask the participants what problems the depicted situation causes? E.g. what are the results of child neglect – many children in conflict with the law, child trafficking, school drop outs, increased cases of defilement, street children
5. Ask the participants which rights have been violated and which laws are implicated in the problem
6. Ask them to identify the concerned authorities and possible remedies
7. Ask them what role they would play as paralegals in assisting the victims of the problem. The facilitator should encourage the group to develop a plan of action towards solving the problems themselves

Lecture or Talk

This is an oral presentation by a lecturer. It is usually one way i.e., from lecturer to participants. A lecturer should pause from time to time to allow for questions and comments. Lecturing as a method can be used by facilitators to impart some of the information on a particular topic. The lecture method if not well planned and if too long can make the training session very boring for participants. This method may be used to:

- Introduce a topic to be discussed.
- Summarize information on a topic already discussed
- Relay necessary information on or talk to the participants about a particular subject
- Inspire the audience

For a lecture/talk to be effective the following rules should be observed:

- The major points to be covered should be stated in summary form during the introduction and at the end of lecture
- The lecture should be presented in an organized manner
- The speaker should illustrate his/her points by examples drawn from the participants' experiences or from experiences similar to those of the participants.
- Participants should be encouraged to participate by giving them a chance to ask questions and to comment on different aspects of the lecture
- The facilitator may demonstrate or use teaching aids to illustrate his or her points
- The facilitator's language must be simple enough for the participants to understand. In addition, the material being presented must be at level of the participants' knowledge and understanding.
- Avoid using unnecessary professional jargon e.g., legal or medical jargon without breaking it down for the trainees
- The person giving the lecture should not ramble on and repeat him/herself. The content of a lecture should be concise and straight to the point
- The facilitator should ensure that all the participants can hear the speaker

Field Trip

A field trip is a carefully planned educational tour in which a group visits a place of interest for first hand observation and study. The participants make the tour under the guidance of a person who is well informed about the subject of study.

A field trip may be used:

- To provide firsthand experience of something that may not easily be articulated to the participants.
- To stimulate concern about the interest in real problems or difficult life situations that needs studying and observing.
- To make classroom instruction more meaningful through reinforcement with real life situations, and relate theoretical study to practical application.

For instance, useful field trips would be to the police, social welfare, land registry offices, courts, remand homes etc. for trainees to become familiar with the institutions which they will be working with in the protection of rights and enhancing justice for the local communities in Bundibugyo.

Audio/Visual Aids

An adult educator should be able to select and use any type of appropriate audio/visual aid for presentations. Verbal messages need to be, where possible, supplemented by audio/visual aids. The facilitator may for example need to record and play certain sounds to the participants to demonstrate a particular issue or idea. Visual and audio aids include:

slides, photographs, pictures, films, flip charts, graphs, maps and models as well as material on audio cassettes.

When using audio and visual aids the following must be taken into account:

- The facilitator must be very well versed with the equipment he or she chooses for teaching.
- The facilitator should check and test the equipment before the session starts.
- The facilitator must explain the audio/visual aid to the participants before using it.
- The audio/visual aid should be audible/visible to the whole class.

Unit 4 Logistical Arrangements for the Training

Organisation for the training not only includes preparation of the materials, selecting participants and choosing an appropriate training method, but also includes the arrangement of other activities that contribute to the success of the training and enhance the learning process. These activities include making arrangements for the venue, transportation, meals and refreshments and providing resource persons to assist with the training. A training workshop is most successful when conducted in a comfortable environment. The facilitator therefore has the responsibility of organising a venue and facilities conducive to the successful training of the workshop participants.

Venue

This is the place where the training activity will take place. The venue may be the training room but may also include accommodation rooms if the training is residential. In both cases the condition of the room is very important to the learning process. The participants need to be comfortable and feel at home. The venue should not have factors that distract/disturb participants. The facilitator should therefore check these facilities in advance to ensure that they are satisfactory.

Transport

This is necessary during the preparation for the training to enable organisers to move from place to place. Participants may also need transport to and from the venue, and arrangements for this have to be made. The transport needs of the participants should always be taken into consideration when selecting the venue. The venue needs to be easily accessible by the participants. If the facilitator does not have personal transport, financial provisions should be made to cater for it.

Meals and refreshments

In order to ensure a successful training, arrangements have to be made for meals and refreshments. Participants may not be able to concentrate properly if they are hungry. When drawing up the training program, the trainers should always take into account and specify the time allocated for meals and refreshments.

Resource persons

Apart from getting other people to help with logistics such as transportation and meals, other facilitators/ resource persons could be recruited to help the lead facilitator during the training workshop. This helps to avoid monotony and boredom and creates a more dynamic atmosphere.

The lead facilitator should discuss the program with the other facilitators in order to plan the training workshop properly. The facilitators present at the workshop should also monitor the progress of the training or discussion so as to handle subsequent sessions better. In case something is going wrong or has been missed, the facilitators who are not conducting the training at the time should intervene without causing embarrassment.

Final check before the beginning of the training

The facilitator should always cross check the training activities about three or more days before the training begins to ensure that everything is in place. For example the facilitator should:

- Reconfirm the availability of the resource persons by contacting them directly.
- Ensure that all logistic requirements are in place.
- Reconfirm attendance of the workshop from the participants/representatives of the participants.
- Make sure that the program guide detailing the schedule of events and the arrangements concerning accommodation, meals, coffee breaks and any other necessary details e.g., allowances is ready.

Unit 5 Evaluating a Training

What is Evaluation?

Evaluation is the process of assessing the value and effectiveness of a piece of work, in this case, a training. A successful evaluation answers whether the goal of the training was met. The information obtained from an evaluation assists the trainers to improve on future trainings.

Why do we need to measure Training Effectiveness?

1. To determine the extent to which training objectives have been achieved
2. To give insights for reviewing and adjusting a training program
3. To improve the future planning and implementing of training

Evaluating a training means continuously assessing its progress and effectiveness. As such, an evaluation may not only occur once during training. There are three stages of evaluation:

- **Pre-training evaluation:** To determine the attitude and levels of knowledge of participants at the beginning of a training
- **Formative evaluation:** To assess whether participants understand the topics during the training
- **Summative evaluation:** To assess whether the participants benefitted from the training

In evaluation, the following issues are examined:

1. What does the learner feel about the training and how did s/he react to the training program?
2. To what extent did participants improve knowledge and skills – what facts did the learner gain?
3. To what extent did participants change attitudes as a result of the training and is s/he applying the new skills in his/her daily life and work? o the necessary tasks in the organization and, if so, what results were achieved?

There are different ways of conducting a training evaluation:

- Completed participant feedback questionnaire
- Informal comments from participants
- Focus group sessions with participants

Basic Suggestions during an Evaluation

Before the Training

- Ask yourself if the selected training methods will result in the achieving the training goals

During the Training

- Ask the trainee if s/he understands the information in the training
- Periodically conduct a short assessment / test, e.g., have the trainee explain the main points of a topic being handled at was just described to him, e.g., in the lecture.
- Watch the participants as they perform the training tasks e.g counseling skills/ role plays
- Find out if the trainees are enthusiastically taking part in the training activities.

After Completion of the Training

- Give the trainees an assessment / test either orally or written to establish if they understood the key points of the training
- Interview / discuss with the trainee and compare results with the status before the training.

Annex 1

Sample Training Outline

Every trainer should begin by preparing an outline of the training program before it commences. A typical training outline would include a description of the training objectives, its methodology, a summary of the topics to be covered and a draft agenda. A sample training outline may be seen below. It should be adapted or revised to meet your particular circumstances.

Training Objectives:

To increase knowledge and skills on law, human rights and access to justice procedures for community-based paralegals, civil society leaders and the general community in Bundibugyo district in order to empower them to deal with specific legal needs identified by the community.

To increase human rights awareness on the part of local residents as well as their ability to vindicate those rights through access to institutions responsible for ensuring justice.

Training Methodology:

A practical and flexible instructional training method will be used with several modules on key legal issues specifically affecting Bundibugyo district. The accompanying training manual will encourage a learning process that enables trainees to learn from their daily experience. The methodology will allow learners to make a critical analysis of their own circumstances and come up with workable solutions.

Content of the Training:

Module 1: The Role of a Paralegal
Module 2: Introduction to Human Rights
Module 3: Law and Administration of Justice
Module 4: Domestic Violence
Module 5: Child Neglect
Module 6: Defilement
Module 7: Children in Conflict with the Law
Module 8: Land Rights
Module 9: How to Conduct a Training

Sample Agenda Outline:

Day One

Introduction of participants
The role of a paralegal
Introduction to human rights

Day Two

Continuation of discussion on human rights and the role of a paralegal
Law and administration of justice; the court structure and functions

Day Three

Domestic Violence
Child Neglect

Day Four

Defilement
Children in Conflict with the Law

Day Five

Land Rights
How to prepare for and conduct a training
Evaluation of training and wrap up

Annex 2

Code of Conduct for Paralegals

Global Rights has developed a Code of Conduct to guide the work of paralegals trained with this manual. A paralegal is a community-based person who provides advice and assistance to persons in the community on matters of law and human rights affecting their lives. He/she is a person who has been trained in basic law and human rights. A paralegal is not a lawyer and is not licensed to practice law.

In order for a paralegal to pursue his/her work, as well as the best practices of community-based paralegals and the goals of their host organization and Global Rights, s/he is obliged to sign up to and follow the following Code of Conduct. This code specifies the basis upon which paralegals do their work and may be disciplined. However, this Code cannot address every situation but is a guide that should be observed in the spirit as well as in the letter.

Civility

A Paralegal shall be professional, courteous and civil and shall act in good faith with all persons with whom s/he is working regarding her work.

Respect

The Universal Declaration of Human Rights affirms the dignity and worth of every human person. Global Rights believes that everyone can make a valuable contribution to respect and promotion of human rights. A Paralegal shall treat all persons s/he works with, with dignity and respect.

Independence

A Paralegal shall be impartial and independent when doing her / his work. S/he will not allow personal beliefs to affect the quality of work that s/he performs. When acting as a mediator, the Paralegal shall ensure that the parties understand fully that the Paralegal is not acting as a representative for either party but as one assisting to resolve the issues in dispute.

Competence

A Paralegal shall only take on cases that s/he has the competence to handle. A paralegal is not a lawyer and should not claim to be one or to indicate that s/he can handle legal representation in courts of law.

For purposes of Paralegal work, the work of paralegals may include but not be limited to the following;

- a. Legal advice and referral
- b. Fact Finding and case follow up with relevant authorities
- c. Legal research, analysis and application of law to relevant facts
- d. Drafting of simple court documents

- e. Alternative Dispute Resolution (Negotiation and Mediation)
- f. Community sensitization and training on human rights and the law

Dishonesty and Fraud

A Paralegal shall not knowingly encourage or assist any dishonesty, fraud or crime. Upon learning of the same, s/he shall report the matter to the relevant authorities. A paralegal shall never obtain information through misrepresentation.

Confidentiality

A Paralegal shall, at all times hold in strict confidentiality all information that concerns cases of persons that s/he is working with, and shall not disclose this information except when authorized by the client or required by law to do so. A Paralegal shall seek the client's consent when dealing with any information concerning the client's case.

Undertakings

A Paralegal shall fulfill every undertaking given, and shall not give an undertaking that cannot be fulfilled.

Discrimination

A Paralegal shall respect the requirements of human rights laws and shall not discriminate or refuse to take on a case on any discriminatory grounds.

Outside Interests

A Paralegal who engages in other work apart from paralegal work, shall not allow that other work or any other outside interest jeopardize her / his integrity and competence. A paralegal must act to avoid any conflict of interest and act accordingly, including withdrawal from handling a case.

Payment

Under no circumstances should a paralegal charge fees or accept any money from clients for services rendered, even when this money is offered voluntarily because paralegal work is free. When there is need for payment of any money for services such as medical examination or court fees, the payment should be made directly between the client and the relevant authority. A Paralegal should never handle any money on behalf of her / his client.

Officer of Justice

A Paralegal is an officer of justice. S/he should encourage public respect for administration of justice. S/he should never act to delay or deny justice or engage in acts that destroy public confidence in justice institutions. S/he should assist all persons in need to access justice and enjoy their human rights.

Collaborate and Consult

Paralegals are encouraged to work together and to consult with relevant authorities so as to maintain relations and improve the quality of their work. A paralegal is under duty to report any dishonesty that is done by other paralegals.

Accountability

A Paralegal is accountable for her / his own actions. Global Rights shall not take responsibility for the incompetence or inappropriate actions of a paralegal. Paralegals are hereby encouraged to adhere to this Code of Conduct as well as other professional standards.

As a paralegal, I hereby agree to respect this Code of Conduct and to abide by it at all times.

Signature: _____

Name: _____

Annex 3

Evaluation Form

1. Please complete the following by checking the column of your choice.

PLEASE RATE THE QUALITY OF THE FOLLOWING	POOR	FAIR	GOOD	VERY GOOD	EXCELLENT
Overall Content of Training					
Training Methods used					
Training Materials used in the course (too little or too much?)					
Participant / Group Activities					
Trainer Competence (give names of individual trainers)					

2. Think about what you *already knew* and what you *learned during* this training about Law, Human Rights and Access to Justice. Then evaluate your knowledge in each of the following topical areas.

1 = No knowledge or skills	3 = Some knowledge or skills	5 = A lot of knowledge or skills
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BEFORE TRAINING					SELF-ASSESSMENT OF YOUR KNOWLEDGE AND SKILLS RELATED TO:	AFTER TRAINING				
1	2	3	4	5	Session 1: The Role of a Paralegal	1	2	3	4	5
1	2	3	4	5	Session 2: Human Rights	1	2	3	4	5
1	2	3	4	5	Session 3: Law and Administration of Justice	1	2	3	4	5
1	2	3	4	5	Session 4: Domestic Violence	1	2	3	4	5

1	2	3	4	5	Session 5: Child Neglect	1	2	3	4	5
1	2	3	4	5	Session 6: Defilement	1	2	3	4	5
1	2	3	4	5	Session 7: Children in Conflict with the Law	1	2	3	4	5
1	2	3	4	5	Session 8: Land Rights	1	2	3	4	5
1	2	3	4	5	Session 9: Preparing a Training	1	2	3	4	5

3. What are the three most important **things [or topics]** you learned during this training?

4. To what extent do **you** feel prepared to carry out future trainings yourself?

1	2	3
Not At All	Somewhat	Well
Prepared	Prepared	Prepared

5. If you do NOT feel prepared to perform future trainings on law, human rights and access to justice, please explain briefly why you do not.

6. What topics covered under the training would you like **more information** on, if any?

7. If you were given the task of redesigning this training course, what would you **change**?

8. Please share any other comments you have that would help us **strengthen** or **improve** this course.

Annex 4:

Required Training Statutes/ International Instruments

- Universal Declaration of Human Rights
 - International Covenant on Economic Social and Cultural Rights
 - International Covenant on Civil and Political Rights
 - UN Convention on the Elimination of all forms of Discrimination against Women
 - UN Convention on the Rights of the Child
 - African Charter on Human and Peoples Rights
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- Constitution of Uganda, 1995
 - Local Council Courts Act, 2006
 - Children Act Cap 59
 - Penal Code Act 120
 - Penal Code Amendment Act, 2007
 - Judicature Act Cap 13
 - Domestic Violence Act, 2010

Annex 5

Reference Notes

A. DOMESTIC VIOLENCE

Laws Applicable to Domestic violence

Domestic Violence Act 2010

This Act provides for the protection and relief of victims of domestic violence; for the punishment of perpetrators of domestic violence; procedure and guidelines to be followed by the court in relation to protection and jurisdiction of court; for the enforcement of orders made by court; and to empower the family and children court to handle cases of domestic violence and for related matters. The enactment of this Act was a land mark event in the field of advocacy for human rights and it is viewed as a ray of hope for effective redress against perpetrators of domestic violence.

Penal Code Act

Until the enactment of the Domestic Violence Act 2010, the only redress that could be sought in respect of domestic violence was physical as offences under the Penal Code Act. These offences include;

- a. Wounding and similar acts for which the offender is liable to three years imprisonment
- b. Doing grievous harm for which the offender is liable to seven years imprisonment
- c. Common assault for which the offender is liable to one year imprisonment
- d. Assaults causing actual bodily harm for the offender is liable to five years imprisonment

Despite these provisions however, police was usually reluctant to pursuing justice for victims of domestic violence citing the purported non interference belief that marriage or relation affairs are not for public knowledge. Nevertheless, the above still exist as offences under the Penal Code; and victims can always seek justice through lodging complaints with police on the same.

Understanding Domestic Violence

According to the Domestic Violence Act, domestic violence constitutes any act of an offender which

- a. Harms or endangers the health, safety, life, limb or well- being whether mental or physical of the victim
- b. Harasses, harms or endangers the victim with a view to coercing him or her or any other person related to him or her to meet any unlawful demand for any property or valuable security
- c. Has the effect of threatening the victim or any person related to the victim by harming, or endangering their health, safety, life, limb or well being

The term **harass** means engaging in a pattern of conduct that induces fear of harm, annoyance and aggravation with intention of inducing fear in a person. Such conduct may include:

- a. Repeatedly watching or loitering outside of or near the building where the victim works, resides, studies, does business or happens to be
- b. Repeatedly making abusive telephone calls or causing another person to make abusive telephone calls to the victim. It is irrelevant that no conversation ensued
- c. Repeatedly sending, delivering or causing the delivery of offensive or abusive letters, electronic mail, telephone text messages or similar objects to the victim
- d. Repeatedly following, pursuing or accosting the victim with intention of inducing fear, harm, annoyance or frustration to the victim

The Act is silent on whether domestic violence is limited to such acts as constituting in a domestic sphere. However usually domestic violence outstandingly refers to acts that are committed in a domestic relationship. Consent to acts of domestic violence by the victim does not constitute defense in courts of law.

What is a domestic relationship?

A domestic relationship means a family relationship, a relationship similar to a family relationship or a relationship in a domestic setting that exists or existed between a victim and an offender. A domestic relationship may include where:

- a. The victim is married or was married to the offender, or
- b. The two are related by consanguinity (close relation) , affinity(attraction or similarity) or kinship
- c. The victim and perpetrator share the same residence
- d. The victim is employed by the perpetrator as a domestic worker or house servant (whether the victim does or does not reside with the perpetrator
- e. The victim is an employer of the perpetrator and does or does not reside with the perpetrator or
- f. The victim is or was in a relationship determined by the court to be a domestic relationship

A victim means a person in a domestic relationship who directly or indirectly suffers threatened or actual domestic violence.

An offender means a person who is alleged to commit an actual or threatened act of domestic violence.

Forms of Domestic Violence

Domestic violence is manifested in form of physical abuse, sexual abuse, emotional abuse, economic abuse; emotional, verbal and psychological abuse.

Physical Abuse

Physical abuse means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life. This also includes assault, criminal intimidation and criminal force. Physical abuse may involve conduct such as; battering, beating, punching, choking, slapping, shoving and kicking.

Economic Abuse

Economic abuse includes deprivation of all or economic or financial resources to which the victim is entitled under any law or custom. These may include but not limited to household necessities, property jointly, or separately owned by the victim, or payment of rent related to the shared household and maintenance.

Economic abuse is also manifested through disposal of household effects or isolation of assets whether movable or immovable in which the victim has an interest or is entitled to use by virtue of domestic relationship or may be required by the victim's children or the dependants.

This form of abuse may also be through prohibiting or restricting access to resources or facilities which the victim is entitled to use or enjoy by virtue of the relationship as well as access to the shared household.

Emotional, Verbal and Psychological Abuse

This form of abuse is manifested in form of a pattern of degrading or humiliating conduct towards a victim. This nature of conduct includes:

- a. Repeated insults, ridicule or name calling
- b. Repeated threats to cause emotional pain
- c. Repeated exhibition of possessiveness or jealousy which is such as to constitute a serious invasion of the victim's privacy, liberty, integrity or security
- d. Any act or behavior that constitutes domestic violence that is committed in the presence of a minor and is likely to cause him or her injury

Sexual Abuse

Sexual abuse means any behavior of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of another person.

Sexual abuse is manifest in conduct such as but not limited to: defilement, rape, forceful bodily embrace; and forceful engagement in acts of nudity, sex trade and pimped prostitution.

B. CHILD NEGLECT

Laws Applicable to Child Neglect

Child neglect is a crime under the laws of Uganda. It is provided for under the Constitution, Children's Act cap 59 and Penal Code Act cap 120.

The Constitution

This is the supreme law of the land. It is the basis upon which the specific law on children was drafted and enacted.

Child Neglect as provided for under the Penal Code Act

Any person who being the parent, guardian or other person having the lawful care or charge of any child under 14 years and being able to maintain such child, willfully and without lawful or reasonable cause deserts the child and leaves it without means or support commits an offence.

Any person who being the parent, guardian or other person having the lawful care or charge of any child of tender years and unable to provide for itself, refuses or neglects being able to do so, to provide sufficient food, clothes, bedding and other necessities for such child so as thereby to injure the health of the child commits a crime.

Children Act

The Children Act is the specific law applicable to issues concerning children. It stipulates the rights and responsibilities of children, procedure of handling matters concerning parentage, fostering and adoption; as well as institution of a family and children's court to adjudicate upon cases involving children among many other things.

Responsibility towards Children and Role Bearers

Under the Children's Act, parental responsibility means all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child. A child is entitled to live with his parents or guardians. Every parent has responsibility for his or her child.

Where the natural parents of a child are deceased parental responsibility may be passed on to relatives of either parent or by way of a care order to the warden of an approved home or to a foster parent.

Duty to maintain a child

It is the duty of a parent, guardian or any person having custody of a child to maintain that child.

The duty to maintain a child involves giving a child the right to:

- a. Education and guidance
- b. Immunisation
- c. Adequate diet
- d. Clothing
- e. Shelter
- f. Medical attention
- g. Protection from discrimination, violence, abuse and neglect

Application for Child Order

In cases where the care of a child is uncertain, any person who has custody of a child may make an application for a maintenance order against the father or mother of the child. Such person may also be the mother or father or guardian of the child.

Support for Children by Local Authorities

Local authorities in this situation refer to the local government councils. They are existent from village to the parish level. These councils are usually organized into committees with

specific focal persons entrusted to particular issues affecting the community. These committees may at times constitute into court adjudicating upon issues as governed by the Local Council Court Act 2006.

It is the duty of every local government council from village to the district level to safeguard and promote the welfare of children within its area; and to designate one of its members to be the person responsible for welfare of children i.e. the Secretary for children Affairs. The local government council is mandated to provide assistance and accommodation for any child in need within its area of jurisdiction who appears to them requiring assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge. The local government council has to make all effort including publication through mass media to trace the parents or guardians of any lost or abandoned child or to return the child to the place where he or she ordinarily resides; or refer the matter to the probation and social welfare officer or police.

Duty to Report Child Neglect by Members of the Community

Any member of the community who can confirm that a child's rights are being infringed or that a parent or guardian or any person having custody of a child is able to but refuses or neglects to provide for the child, is required to report the matter to the local government council of that area.

Family and Children Court

The law provides for the promulgation of a Family and Children Court to hear and determine all matters concerning and applications relating to child care and protection. These courts may be found in every district and any other lower government gazette by the Chief Justice. The Court sits whenever possible in a different building from the one used by other courts and is usually presided over by a magistrate not below the grade of Magistrate Grade II.

C. LAND RIGHTS

Types of Land Ownership

The Constitution provides in Article 237 (1) that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided.

Ownership by Registration

This category of ownership refers to the owners by virtue of registration under any of the four different systems of tenure under the Registration of Titles Act. The owner of land in this case holds a duplicate certificate of title drawn based on the white page that is kept with the registry in the Ministry of Lands and Environment. Such a person is the absolute owner and has absolute rights on the land in question.

Land titles are the only legal documents that give the holder full private ownership of a piece of land.

Communal Land Ownership

The Land Act provides for the establishment and management of Communal Land Associations⁴. Communal land is that land held by a specific community or group of people recognizing individual rights in that land and regulating its use and management, it is owned communally. Communal land may be held on a certificate of customary ownership or freehold title by the managing committee on behalf of members of the Communal Land Association.

Under customary tenure, a family is recognised as a legal person represented by the head of the family. The family/ individual therefore has access and user rights to this land but the actual ownership lies with the Communal Land Association.

Ownership by Tenancy by Occupancy

Security of occupancy was created under the 1995 Constitution and consequently the Land Act Cap 227 to protect the occupants of registered land from unfair turned unlawful eviction. For avoidance of any doubt, a person occupying land by virtue of a licence received from the registered owner shall not qualify as a tenant by occupancy.

a. Lawful Occupant

This is an occupant who occupies land by virtue of the repealed Busuulu and Evujjo Law of 1928, Toro Landlord and Tenant law of 1937, Ankole Landlord and Tenant law of 1937; or got consent from the registered owner and includes a purchaser; or occupied the land as a customary tenant but his or her tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

b. Bona fide Occupant

This is an occupant who by the time the 1995 Constitution came into force had been occupying the land and utilised it or developed unchallenged by the registered owner or his agent for twelve years or more; or had been settled on the land by Government or an agent of Government which may include a local authority.

A bona fide occupant also includes people resettled on land under Government resettlement schemes. Where the occupant is resettled on registered land, he or she may be enabled to acquire registrable interests on the land. A registered owner of such land is supposed to have received compensation within five years of coming into force of the 1995 Constitution.

Security of tenure shall not be jeopardized by the lack of a Certificate of Occupancy by the occupant.

Rights and responsibilities of Tenant by Occupancy on Registered Land

A tenant by occupancy on registered land enjoys security of occupancy on the land. The tenant is required to pay an annual nominal ground rent to the registered owner as determined by the Land Board or Minister responsible. A tenant has the right to receive to

⁴ S.15 of Land Act Cap 227

receive the first option of buying the reversionary interest in the land in case the owner wishes to sell such interest.

A tenant who wishes to assign the tenancy is required to give the first option of taking assignment of the tenancy to the registered owner. Any offer of assignment or sell made on such land is supposed to be on the basis of willing buyer willing seller.

A registered owner and a tenant by occupant may mutually agree that the land occupied by the tenant be subdivided into portions; and new certificates of occupancy are issued there to.

Transfer of Interests under Tenancy by Occupancy

A tenant by occupancy is by law required to give the first option to the registered owner of the land in the event of making any assignment of the tenancy by occupancy in respect of the land in question. A transaction conducted without due regard to this requirement is considered invalid and the tenant shall forfeit the right over the land and the land shall revert to the registered owner.

A tenant by occupancy who purports to assign the tenancy by occupancy with giving the registered owner first option commits an offence and is liable on conviction to One Million Nine Hundred Two Thousand Uganda Shillings (1,920,000 Ushs) or imprisonment not exceeding four years or both.

A change of ownership of title effected by the registered owner by sale, grant and succession or otherwise shall not affect the rights or interests of the existing lawful or bona fide occupant. The subsequent owner is required to respect the existing interests.

An owner who evicts, attempts to evict, or participates in eviction of a tenant by occupancy from registered land without an order of eviction commits an offence and liable on conviction to imprisonment not exceeding seven years. Court may order the convicted to pay compensation or damages to the person evicted or make a restitution order in favour of this person.

The two most instrumental persons in registration of land rights interests are:

- a. **The Registrar of Titles:** who is in charge of processing and effecting transfer and registration of land interests on registered and registrable land. The office of the Registrar of Titles issues the Duplicate Certificate of Title to the land in question and keeps the white page upon which the Duplicate Certificate of Title is drawn
- b. **The Recorder:** who is responsible for keeping records relating to customary certificates of ownership and certificates of occupancy on behalf of the District Land Board

Gender Rights to Land Ownership

The gender concept has become an increasingly important development issue not only because of equality and social justifications concerns, but also from the economic and sustainability point of view.

The Constitution guarantees the fundamental freedoms and provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life ; and in every other respect and protection before the law.

The ownership and control of land and its resources is not equal. There is need to enhance women's control over land; not only based on the important role they play in agricultural production but as an inherent right to equal rights and opportunities as provided for in Constitution among the fundamental human rights (Article 33.)

Rights to Land under Marriage or other Partnership

The Constitution provides for the right of any persons aged eighteen years and above to marry; and that each such person has equal rights at marriage, during and at its dissolution.

The laws allows for married people or even those in any other partnership to hold land jointly as co owners either as joint owners or as tenants in common.

Under joint ownership, there is no clear definition or divisibility of shares; in the event of death, the survivor of the two takes the ultimate interest in the property.

Under ownership as tenants in common, the shares in the land are clearly defined and known although undivided and therefore in the event of death, the deceased's share is supposed to revert to his or her successors in title.

In absence of co ownership arrangements, the Land Act provides for security of occupancy on family land for the spouse not being owner of the land in question. The law gives the right of security of a spouse to occupy and use the family home during the subsistence of a marriage. According to the law, family land means land:

- a. On which the ordinary residence of the family is located
- b. On which the ordinary residence of the family and from which the family derives sustenance
- c. Which the family freely or voluntarily agrees shall be treated to qualify as ordinary residence of the family, or from which the family derives sustenance
- d. Which is treated as family land according to the norms, customs, traditions or religions of the family

Ordinary residence means the place where a person resides with some degree of continuity apart from accidental or temporary absence; and a person is ordinarily resident in a place when he or she intends to make that place his or her home for an indefinite period.

Land from which a family derives sustenance means:

- a. Land on which the family farms
- b. Land which the family treats as the principal place which provides the livelihood of the family such as collection of rental fees as a result of hire or
- c. Land which the family freely or voluntarily agrees shall be treated as the family's principal place or source of income e.g. rental houses

Any other land or property owned individually is not subject for control by one's spouse. Each spouse has exclusive rights to enjoy and deal in any way with his or her property.

Consent on Family Land Transactions

The Land Act in S. 39 provides for restrictions on dealings or transactions concerning family land with the consent of a spouse in occupation. It is provided that no person shall:

- a. Sell, exchange, transfer, pledge, mortgage, or lease any family land;
- b. Enter into a contract for the sale, exchange, transfer, pledging, mortgage or lease of family land, or
- c. Give away any family land or enter into any other transaction in respect of family land except with written consent of his or her spouse.

The consent to be given by the spouse must be given in writing by free will prior to the transaction. All registrars of titles and recorders in the case of customary land and tenancy by occupancy is barred from registering any transaction for which spousal consent is required but not given.

Possible course of actions in case of infringement of one's Land rights**Lodging a Caveat**

If a person is satisfied and has evidence that his or her land rights have been infringed, he may lodge a caveat on the certificate of title or certificate of occupancy or certificate of customary ownership in respect of the land in question with the Registrar of Titles or Recorder.

The Land Act for example gives the spouse not being owner of the land a right to lodge a caveat on the certificate of title, certificate of occupancy or certificate of customary ownership of the person who is the owner of the land to indicate that the property is subject to the requirement of consent.

Lodging a complaint with Court/ Land Tribunal

A complainant may lodge by application a complaint a court presided over by a Magistrate Grade I or a Chief Magistrate seeking a remedy for infringement of his land rights. The Land Amendment Act 2010 gives a registered owner the right to apply to court for an eviction order against a lawful or bona fide occupant who fails to pay the annual nominal ground rent.

In cases of land held under customary tenure, the complaint may be lodged with the area Local Council Court.