

TRAINING MANUAL ON GENDER RESPONSIVE ADJUDICATION FOR JUDICIAL OFFICERS IN UGANDA

SUBMITTED TO:

THE PRESIDENT
NATIONAL ASSOCIATION OF WOMEN JUDGES IN UGANDA (NAWJU)

AND

THE CONTRACTING MANAGER,
INTERNATIONAL DEVELOPMENT LAW ORGANIZATION (IDLO)

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List of abbreviations

CEDAW	Convention on the Elimination of all forms of Discrimination against Women
ICCPR	International Covenant on Civil and Political Rights
CRC	Convention on the Rights of Child
DNA	Deoxyribonucleic acid
FGM	Female genital mutilation
GBV	Gender based Violence
HIV/AIDS	Human immune deficiency virus infection and acquired immune deficiency syndrome
ICGLR-RTF	International Conference on the Great Lakes Region - Regional Training Facility
ILO	International Labour Organization
ICESCR	International Covenant on Economic, Social and Cultural Right
JLOS institutions	Justice, Law and Order sector
JTI	Judicial Training Institute
NGO	Non-governmental organization
ODPP	Office of Director of Public Prosecution
RBA	Rights based Approach
SGBV	Sexual and Gender Based Violence
SOP	Standard Operating Procedures
SRHR	Sexual Reproductive Health and Rights
STI	Sexually transmitted infections
TOT	Training of trainers
UN	United Nations
UDHR	Universal Declaration of Human Rights
UDHS	Uganda Demographic Household Survey

Preliminary Training Matters

- a) How to use the Training Manual on Gender Responsive Adjudication for Judicial officers.

When using the Training Manual as support for a one-time training, NAWJU trainers will need to make a careful selection of the topics and materials, as the content of this Training Manual far exceeds what can be covered in the scope of a short training event, ideally lasting one week.

This scenario has been foreseen in the design of the Training Manual and it is for this reason that the Training Manual has been structured in modules and sections. One module is an independent part of the main eight parts of the Training Manual.

Additionally, each main part has several sections. For example, each module has sections exploring: - 1) common myth and gender stereotypes, 2) the international, regional and legal framework, 3) case law, and 4) aspects of the daily practice of judicial officers that ensure gender responsive adjudication.

The choice of sections belonging to the different modules is left at the discretion of NAWJU trainers, bearing in mind that certain sections would be more relevant to a particular theme than others.

The Training Manual enables trainers to develop and use both a thematic approach (focusing, for instance, on gender discrimination in employment matters) and one that focuses on standards and legal principles for gender and access to justice that cut across a series of themes and areas of law (such as the principle of non-discriminatory access to justice or that of access to effective remedies). Indeed, each training event would be designed to integrate a combination of these approaches and it is left to the discretion of the NAWJU trainers to select among the many possible topics.

When used to support initial training, the Training Manual can be more extensively integrated in the curricula of JTI, given that initial training is of longer duration (probably two weeks) and it gives scope for more topics to be covered. Initial training also offers

more time for self-study and the Training Manual can be used as further reading or to develop additional exercises or assignments for self-study.

The Training Manual is a comprehensive tool and a training event can be planned using this Training Manual as one go-to resource. In this manner, the first module defines gender responsive adjudication, key terms that will be used throughout the training and the principles of gender responsive adjudication, while the rest of the modules provide application of gender responsiveness in adjudication.

In addition, a number of resources are going to be made available as Annexes, including multimedia resources. Trainers will be encouraged to review these resources, which will enhance the quality of the training. At the same time, trainers are encouraged to develop and adapt their own training specific, presentations, exercises, group work tasks and case studies. In order to prepare for the case studies, trainers are advised to ensure resource materials such as flip charts, markers, Copies of global and national laws and policies concerning the different thematic areas that they will be exploring in a particular module.

The Training Manual includes some examples of exercises and discussion points for each topic, but the additional contribution of trainers is expected in order to prepare the specific materials of each training. Training of judicial officers, should have a clear and practical approach, focused on the development of skills, rather than on traditional 'education', given that the participants in this type of training are highly educated adults.

In addition to building specific skills, for example on gender-sensitive case and courtroom management, training on gender responsive adjudication has the goal of challenging attitudes and assumptions about gender in the justice system.

Training should not only transmit information about standards on gender equality, but also assist the participants being trained to apply that information in real life situations mindful of the challenges they may encounter. The following section discusses in more detail some of the significant resistances that trainers, and participants may be confronted with when trying to address gender equality.

b) Training as a tool for gender equality in access to justice


The ultimate goal of conducting training on gender responsive adjudication is to improve adherence to the principle of gender equality in adjudication of cases as enshrined in the Constitution of Uganda and International Human Rights Laws. This will resultantly enhance the capacity of judicial officers to adequately respond to specific justice needs of women and girls during the adjudication of cases as a conduit to the attainment of gender justice. A key element in reaching this goal is to challenge and address gender stereotypes within the judiciary. The Training Manual provides ample evidence that gender stereotypes are one of the main obstacles to gender equality. The manual also suggests a number of strategies that may be employed to support, empower and enable judicial officers to avoid gender stereotyping in their work. However, “de-biasing minds is hard” and research suggests that training on gender responsive adjudication is more effective when it uses specific and purposeful strategies to challenge bias and provide alternative ways of thinking and behaving.

Bohnet¹ recommends refocusing the training on capacity building. This means one should not raise awareness only, but also offer specific tools that help people make better decisions. NAWJU and its trainers should also be mindful of the resistance they may encounter to such training. Resistance to gender training may take a number of forms, such as “denial of the relevance of gender equality policies, refusal to accept responsibility for dealing with gender equality policies or simply through non-implementation”² Moreover, these different forms of resistances are located at different levels, from individual to institutional, and do not only involve participants, but also trainers themselves, as those may prove reluctant to question their own attitudes, methods or knowledge. As standards, gender and access to justice are reinforced and elaborated upon by international or regional human rights frameworks, as such, resistance can also stem from lack of knowledge of international law and the perception that international law is complicated and difficult to apply in the national context. In order to deal with resistance, participants may be encouraged to examine their own

¹ Iris Bohnet. 2016. *What Works. Gender Equality by Design*. Cambridge and London: The Belknap Press of Harvard University Press. p. 54.

² Lucy Ferguson and Maxime Forest. 2011. *OPERA Final Report: Advancing Gender+ Training in Theory and Practice*. Deliverable of the research project *Quality in Gender+ Equality Policies (QUING)*. See also: Maria Bustelo, Lucy Ferguson and Maxime Forest (eds.). 2016. *The politics of feminist knowledge transfer: gender training and gender expertise*. New York: Palgrave Macmillan.

experiences and challenge their own assumptions. This requires a high level of trust in the group, as well as an open and flexible approach from the trainers. The Training Manual includes some activities and exercises meant to help the trainers address gender bias or help participants challenge gender stereotypes in the training.



MODULE 1: INTRODUCTION TO GENDER RESPONSIVE ADJUDICATION

DURATION: 2 hours

AIM: To create a deeper understanding of gender responsive adjudication with a view to prepare participants for the forthcoming training sessions.

Objectives:

By the end of this session, participants should be able to:

- ✚ Define gender responsive adjudication
- ✚ Identify key terms that unlock gender responsiveness
- ✚ Indicate the principles of gender responsive adjudication
- ✚ Describe the role of a judicial officer in gender responsive adjudication

FACILITATOR'S NOTES:

This session focuses on the definition of gender responsive adjudication, key terms on gender responsive adjudication, the principles of gender responsive adjudication and the judicial officer's role in interpreting the principles of gender responsive adjudication

1.1. Definition of Gender Responsive Adjudication

Explain

This is an adjudication process where judicial officers and other stakeholders in the justice sector recognize how gender can result in different privileges and opportunities (and disadvantages) for women and men and thereafter using strategies to redress existing gender inequalities.

1.2. Key terms in gender responsive adjudication

The facilitator puts a paper on the wall and writes various key terms as listed below. Discussion on key concepts on gender responsive adjudication will follow with PowerPoint presentation:

· Equality	· Gender Discrimination
· Sex	· Gender neutrality
· Gender	· Gender based violence
· Gender mainstreaming	· Gender Blind
· Gender equality	· Gender Sensitivity
· Gender equity	· Gender roles
· Gender analysis or gender impact assessment	· Gender stereotypes
· Sex discrimination	· Vulnerable groups

Information for Facilitator to Use:

- **Sex and Gender:** This manual uses the terms ‘sex’ and ‘gender’ when discussing concepts of equality and discrimination. In our everyday language, we often use these terms interchangeably, but they do have different meanings. Remember that sex refers only to “the biological characteristics that define humans as female or male.”
- **Equality:** Equality is about ensuring every individual has an equal opportunity to make the most of their lives and talents. It means no one should have poorer life chances because of where, what or whom they were born, what they believe or whether they have a disability.
- **Gender Equality:** This refers to the equal rights, responsibilities and opportunities of women and men. Equality does not mean women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male, intersex or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration and that the diversity of different groups of women and men is recognized.
- **Gender Equity:** Gender equity is the process of being fair to women and men. To ensure fairness, measures must often be put in place to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field. Equity is a means; equality is the result.
- **Gender Analysis/Gender impact assessment:** Gender analysis is a critical examination of how differences in gender roles, activities, needs, opportunities and rights/entitlements affect women, men, girls and boys in certain situation or contexts. Gender analysis examines the relationships between females and males and their access to and control of resources and the constraints they face relative to each other. A gender analysis should be integrated into all the different areas of law that are adjudicated upon to ensure the adjudication process does not exacerbate gender-based injustices and inequalities, and that, where possible, greater equality and justice in

gender relations are promoted.

- **Gender sensitivity:** Gender sensitivity means being aware of how gender can result in different privileges and opportunities for women and men.
- **Gender discrimination:** Gender discrimination is any distinction, exclusion or restriction made on the basis of sex or gender that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women and men of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field. Discrimination can stem from both law (de jure) and practice (de facto).
- **Gender neutrality:** There is an assumption that laws, policy or conduct that are gender-neutral do not have a discriminatory effect. This is incorrect. Women and men experience the world differently and, as such, laws, policies or conduct will invariably have different impacts on them. Sometimes, gender-neutral laws, policies or conduct will reinforce women and men's privileges and vulnerabilities.
- **Gender roles:** Gender roles refer to social and behavioral norms that, within a specific culture, are widely considered to be socially appropriate for individuals of a specific sex. These often determine the traditional responsibilities and tasks assigned to women, men, girls and boys. Gender-specific roles are often conditioned by household structure, access to resources, specific impacts of the global economy, occurrence of conflict or disaster and other locally relevant factors such as ecological conditions. Like gender itself, gender roles can evolve over time, in particular through the empowerment of women and the transformation of masculinities
- **Gender stereotypes:** Gender stereotypes are simplistic generalizations about the gender attributes, differences and roles of women and men. Stereotypical characteristics about men are that they are competitive, acquisitive, autonomous, independent, confrontational and concerned about private goods. Parallel stereotypes of women hold that they are cooperative, nurturing, caring, connecting, group-oriented and concerned about public goods. Stereotypes are often used to justify gender discrimination more broadly and can be reflected and reinforced by traditional and modern theories, laws and institutional practices. Messages reinforcing gender stereotypes and the idea that women are inferior come in a variety of "packages" – from songs and advertising to traditional proverbs.
- **Gender based violence:** "Gender-based violence" is a generic term used to describe any harmful act perpetrated against an individual against his or her will based on his or her socially defined identity as female or male (UN, 2005). The United Nations General Assembly defined violence against women in the 1993 Declaration on the Elimination of Violence Against Women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private". There are different kinds of violence, including (but not limited to) physical, verbal, sexual, psychological and socioeconomic violence.
- **Vulnerable groups:** Vulnerable groups refers to persons who have been relegated to the fringes of society owing to characteristics or social statuses that prevent them from having full access to rights, resources and

opportunities

- **Sex-based discrimination:** The differential and unfavorable treatment based on the sex of the person (for example, if a company hires only women for administrative posts).

Note: The definitions are not exhaustive and static. They seek only to offer judicial officers a breakdown of the current understanding of how individuals perceive these terms. Like all socially constructed terms or categories, they are subject to change over time.

1.3. The Four Principles of Gender Responsive Adjudication

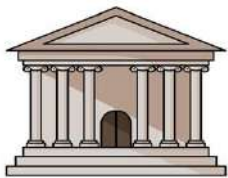
Explain



EQUALITY: Defines the legal principle of equality and illustrates its application in Uganda's domestic law.



NON-DISCRIMINATION: Outlines how gender-based stereotypes can lead to gender and/or sex discrimination as well as how gender discrimination interacts with social status or identities to create particular vulnerabilities for women and men.



STATE OBLIGATION: Illustrates how state obligation gives rise to an expectation that judicial officers will interpret domestic law in accordance with international standards regarding gender equality.



JUDICIAL IMPARTIALITY: Recognizes that judicial officers may be affected by hidden or implicit bias in relation to gender and identifies measures they can adopt to reduce the negative impact gender stereotypes and biases can have on outcomes in court cases.

Information for Facilitator to Use:

These form the underlying conceptual and legal framework to ensure the effective realization of gender equality.

3 principles have been adopted from CEDAW - equality, non-discrimination and state obligation. The rule against bias in judicial decision-making will be used alongside these core principles to provide the overarching framework for the Training Manual.

1.3.1. The principle of Equality

Discuss

Divide the participants into 4 groups and ask each group to suggest instances where power imbalance may exist in the courtroom

Information for Facilitator to Use:

Examples may include:

Where one party has personal skills/resources substantially greater than the other. *Example: A custody dispute between an eloquent and wealthy father and an unemployed mother from a low-income community.*

- Where one party has detailed technical knowledge/information not held by the other *Example: A child support dispute where one side is represented by an experienced lawyer and the other side is unrepresented.*
- Where one party is perceived to have higher status *Example: A dispute between a well-off, middle-aged businessman and an unemployed youth.*
- Where one party is intimidated/threatened by the other *Example: 1) A 12-year-old as a complainant in a sexual assault case involving her step-father as the alleged perpetrator or 2) an applicant bringing a protection order application against a partner on whom the applicant is economically and psychologically dependent.*

Discuss: Ask the participants to suggest strategies they can apply in interpreting the principle of Equality. Write the suggestions on a flip chart as they brain storm.

Information for Facilitator to Use:

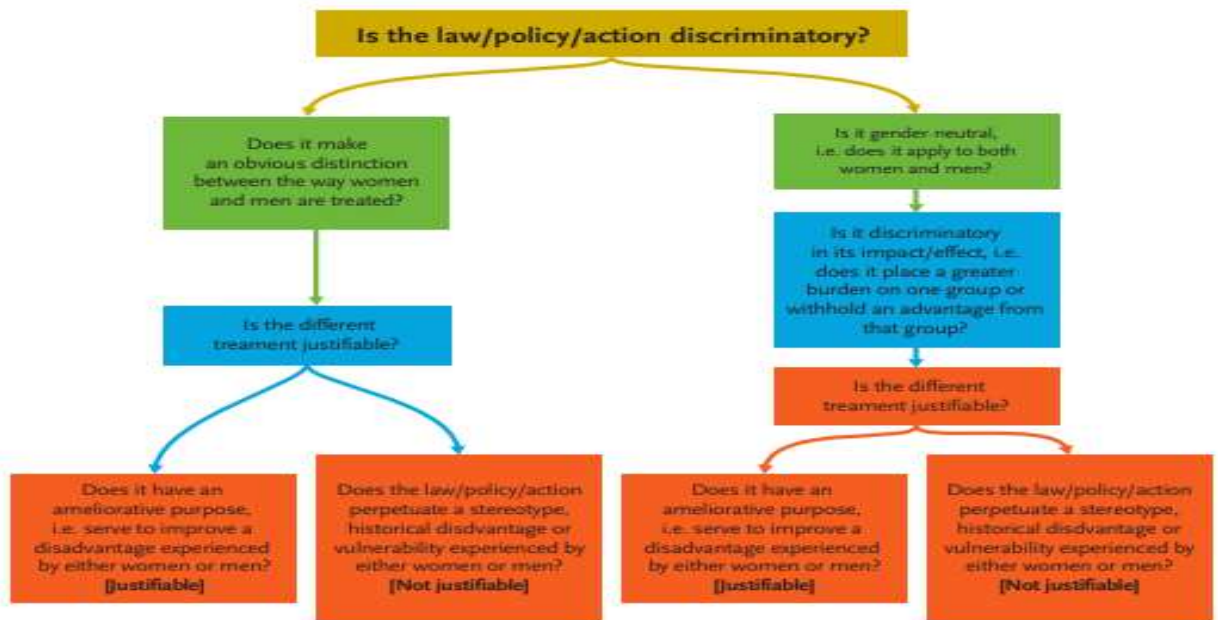
Suggestions may include

- Use of the substantive approach during adjudication.
- Considering the impact/effect of the law or procedure on an individual before they apply it. This means exploring among others 1) the social context within which the law operates, 2) any existing power imbalances and 3) the need to step in to ameliorate disadvantages that serve to hinder the ability of the individual to equal treatment in the courtroom.
- Giving: 1) equal treatment to equals, 2) different treatment to those who are differently situated or 3) special treatment to the vulnerable
- Re - ordering the power dynamics between parties before the court by:
 - Making the courtroom less intimidating in family and gender-based violence cases;
 - Appreciating that parties can feel humiliated or silenced by harsh or insensitive interaction with judicial or court officers;
 - Recognizing and giving practical effect to the inherent dignity of each person who appears before them.

1.3.2. The principle of Non-Discrimination

Explain

Legal analysis to determine if a law/policy/action leads to gender discrimination



Discuss

Ask the participants to suggest strategies they can apply in interpreting the principle of non-discrimination. Write the suggestions on a flip chart as they brain storm.

Information for Facilitator to Use:

Suggestions may include: Performing ones' judicial duties without favour, bias or prejudice.

- Striving to be aware of, and to understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other causes (“irrelevant grounds”).
- During the performance of judicial duties, avoiding by words or conduct, manifesting bias or prejudice towards any person or group on irrelevant grounds.
- Avoiding making decisions that unjustifiably differentiate between people based on status or personal characteristics that form the core of an individual's identity.
- Being aware that not all differentiation is a breach of the principle of non-discrimination. Certain social and biological realities may make it justifiable to treat people differently.
- Familiarize with how gender intersects with other status or personal characteristics to create both privileges and vulnerabilities for women and men.

1.3.3. The principle of State Obligation

Explain

Having ratified CEDAW and other treaties dealing with gender equality and fundamental human rights, the Government of Uganda has a duty to protect the rights of women and girls. For example, in article 2, CEDAW requires state parties to take measures to eliminate discrimination against women and girls. This means Uganda has a legal obligation to remove all impediments that bar women and men from equal access to justice, education, health care and the political process. The judiciary, as one of the arms of the state, has a responsibility to take positive steps to improve women and men's access to justice.

CEDAW's General Recommendation 33 states that perpetuation of gender stereotypes, gender inequalities and discriminatory practices hinders access to justice. Consequently,

to ensure promotion of gender equality in decision-making, Uganda’s international obligations calls upon judicial officers to:

- Consider whether cases before them show elements of gender discrimination or stereotyping;
- Apply laws in a manner that considers how gender or sex intersects with other social status to create disadvantages for both women and men;
- Be cognizant of how their own personal notions or biases can affect their decisions from the bench;
- Ensure their decisions do not perpetuate gender stereotypes.

Information for Facilitator to Use:

Ensure that you highlight the following to the participants

- Relevant international instruments, conventions and treaties related to gender equality.
- Relevant National laws, regulations and policies related to gender equality.
- Demonstrate to the participants on how Uganda has Incorporated international standards into domestic law

1.3.4. The principle of Judicial Impartiality

Explain

Judicial impartiality does not require judicial officers to be devoid of bias. To expect judges to be free of bias is naïve. They are “ensnared by the same prejudices that afflict us all—prejudices attributable to the influences of their class, gender, race, ethnicity, and life experiences”.

However, judicial impartiality, demands that all judicial officers practice impartiality in the performance of their judicial function.

The what and why of judicial impartiality

What it means to be judicially impartial

Judicial impartiality demands, at a minimum, that a judicial officer:

- 1) is aware of her/his own prejudices and biases; and
- 2) thereafter puts in place measures to ensure a fair-minded and informed observer could not reasonably deem her/his judgement to be partial.

Why judicial impartiality is important

- 1) To preserve public confidence in the courts and administration of justice;
- 2) To ensure procedural fairness for parties in the litigation process;
- 3) To ensure judicial officers conduct themselves honourably and ethically.

1.3.4.1. Stereotypes, prejudices, biases and judicial decision-making

Explain: Gender stereotypes and implicit or explicit gender bias in judicial decision-making can significantly impede women’s and men’s rights to access justice. Gender bias, whether conscious or unconscious, is problematic when it intersects with prejudices regarding other social identities and statuses such as sexual orientation and socio-economic status.

Non-exhaustive list of stereotypes about men and women

Type of stereotype	Definition	Example of Stereotypes
Sex stereotype	Based on physical and biological differences between women and men	Women, by virtue of having a womb and the ability to give birth to a child, are “naturally” better nurturers and care-givers.
Sexual stereotype	Based on perceived sexual predispositions that women or men are believed to have, as well as on ideas about sexual interactions between the sexes.	There is nothing wrong with men having several sexual partners but a woman must be chaste. Women are seen as sexual objects existing solely for male pleasure.
Gender-role stereotype	Based upon roles or behaviours attributed to, and expected of women and men, arising out of social and cultural constructions or physiology.	Within the family, men should be the primary financial providers, while women should be the primary care-givers for children and should take care of domestic matters.

Non-Exhaustive Examples of Compounded or intersectional stereotype



When a gender stereotype interacts with another type of stereotype. These attribute different characteristics and roles to different subgroups of women and men.



<p>PEOPLE LIVING WITH DISABILITIES</p> <p>People living with disabilities are viewed as incompetent, less intelligent and to be pitied.</p>	<p>LANGUAGE</p> <p>Women and men who speak the local language and do not have a good grasp of English are viewed as inarticulate, illiterate and have no ability to grasp easily</p>	<p>SOCIAL CLASS</p> <ul style="list-style-type: none"> • Poor women with children are viewed as irresponsible. • Poor women with children by different fathers are seen as “loose” and “gold diggers” • Men from the ghetto/slum communities are labelled as “thugs” and, if they have children, as irresponsible fathers. • Women and men from lower socioeconomic groups receive negative judgements based on their dress/grooming style.
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Discuss

- Why do Judicial Officers reach different decisions on the same case after applying the same law to the same facts?
- Is the law always objective and impartial?
- What is gender bias, how can judicial officer manage gender bias in order to dispense justice?
- Should adjudication of cases only take into account the facts and the law in order to reach a legal decision?

<p>Information for Facilitator to Use:</p>
<ul style="list-style-type: none"> • Do judicial officers simply follow the formula: the facts + the law = legal decision? • Is there anything else?

- If it was that easy, wouldn't all judges in all courts come to the same conclusion? But judicial officers don't. Rather, dedicated and fair-minded legal-judicial professionals arrive at different decisions on the same cases, *despite reviewing the same law and the same facts*.
- This is demonstrated by the very structure of most judiciaries or court systems in the world, which have both 1st and 2nd instance courts, as well as appellate courts and supreme courts. This is meant to ensure that decisions are checked, double checked, and even triple checked, with evidence scrutinized against the law multiple times and from multiple perspectives.
- *But why are these differences in perspective apparent?*
- In the end, judicial professionals cannot escape the fact that they are the sum of their combined experiences, knowledge, opinions, and beliefs. Like everyone else, they are unique individuals with varied childhoods and upbringings, and different religious affiliations, expertise, socio-political values, cultural backgrounds, life experiences, and education.³

Discuss

Video: If you have the facilities, show the video on unconscious bias:
https://www.youtube.com/watch?time_continue=169&v=dVp9Z5k0dEE

1. Explain the following:

Bias can be explicit or implicit. Explicit biases are ones that we consciously hold, are deliberately formed and easy to notice. However, implicit biases are unconsciously held, unintentionally formed and we may not be aware we have them. Implicit biases may be based on stereotypes about specific social groups (gender, race, ethnicity, religion, etc.) and they can unconsciously affect how we make decisions in every area of our life. Both types of bias are natural and part of being human. Here are some examples:⁴

³ DCAF, "Gender Bias and the Law: Legal Frameworks and Practice From Bosnia & Herzegovina and Beyond" (Sarajevo, 2017), available at <https://www.dcaf.ch/gender-bias-and-law-legal-frameworks-and-practice-bosnia-herzegovina-and-beyond>

⁴Adapted from <http://factmyth.com/understanding-explicit-bias-and-implicit-bias/>

- You are attending a conference where you don't know anyone else. You overhear someone nearby mention that they are big supporter of Arsenal. You love football and you also support Arsenal. You think 'I'm going to like this person' and feel quite comfortable to go up to them and start a conversation. This is an example of explicit bias. You consciously noticed that they were an Arsenal supporter and determined that you were going to like this person. Your bias was at the conscious level, deliberately formed and you could tell someone else about it.
- At the same conference, you start to feel uncomfortable. You continue to talk to your new friend but your friend notices and even asks you what's wrong but you have no idea. It's possible there was another person nearby who reminded you of someone from your past that you really disliked. Your bias is making you feel uncomfortable but it is unconscious. The bias is at an unconscious level, unknowingly formed and you don't know it is there so you can't tell someone else about it.

While members of the judiciary inevitably come to their profession with unique experiences, perspectives, opinions, and implicitly held assumptions, this is not necessarily problematic. What is problematic, is being unaware. This was explored in the Canadian Supreme Court by Justices L'Heureux-Dubé and McLachlin when they noted:

...the test for reasonable apprehension of bias established in jurisprudence is reflective of the reality that while judges can never be neutral, in the sense of purely objective, they can and must strive for impartiality. It therefore recognizes as inevitable and appropriate that the differing experiences of judges assist them in their decision-making process and will be reflected in their judgments, so long as those experiences are relevant to the cases, are not based on inappropriate stereotypes, and do not prevent a fair and just determination of the cases based on the facts in evidence... True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind.⁵

Discuss

Ask the participants to suggest strategies they can apply in interpreting the principle of judicial impartiality. Write the suggestions on a flip chart as they brain storm.

Information for Facilitator to Use:

Suggestions may include

- Be aware of your own prejudices and biases.

⁵ Reg Graycar, "Gender, Race, Bias and Perspective: OR, How Otherness Colours Your Judgment," International Journal of the Legal Profession 15, nos. 1 and 2 (2008), 76.

- Put in place measures to ensure a fair-minded and informed observer could not reasonably deem your judgement to be partial.
- Make every effort to identify your own gendered biases, particularly when those biases intersect with other social identities and statuses such as socio-economic status.
- Ensure your decisions do not perpetuate stereotypes that reinforce discrimination against specific subgroups of Ugandan men and Women

MODULE 2: THE TRIAL PROCESS

DURATION: 6 hours

AIM: To help Judicial officers appreciate how identities of women and men determine different vulnerabilities and capacities in the trial process.

Objectives

By the end of this session, the participants will be able to:

- ✚ Apply a gender lens in their day to day practice of administration of justice
- ✚ Describe how neutral laws and procedures create barriers in access to justice.
- ✚ Identify good practices that promote gender responsive adjudication

FACILITATOR'S NOTES:

This session explores gender dimensions at various stages of the trial (Pre-trial, in-trial, award of remedies and sentencing), gender analysis and impact assessment, dynamics of domestic violence, evidential burden on women victims, and the judicial officer's role in gender responsive adjudication at different levels of the trial.

2.1. The Pre- Trial Stage

2.1.1. Gender Dimensions in the Pre-trial stage.

Divide the participants into 4 groups. Give each group a flip chart and a mark. Ask each group to think and write down gender dimensions that may affect men, women and children during the pre-trial stage. After 10 minutes pin the flip charts on the walls and go through their answers together.

Some of the information the Facilitator may use.

Women	Women are the main victims of gender-based violence
	It is presumed to be justifiable to punish a woman if she has not attended to her designated unpaid domestic work or disobeyed her husband/partner.
	Very few women turn to the legal system for redress, due to lack of knowledge of the law, and lack of money for to pay court fees.
	Very few women initiate legal proceedings when their rights have been abused due to feelings of shame or fear of retaliation, especially if the perpetrator's actions are viewed as the norm.
	Due to lack of financial independence survivors remain confined with the abusers/perpetuators thus leading to a high risk of repeated and escalated abuse, retaliation and threats against the survivor.
	Women may not be able to make bail or access court documents due to the fact that they have designated unpaid domestic work or they are involved in poorly paid jobs in the informal sector.
	Victims of gender-based violence may not be supported in the court process since they are not formal parties to the criminal proceedings.
	Women may not report gender-based violence because these are considered to be family matters that should be solved by clansmen.
	Women have designated care services at home and may not be in position to keep up with a protracted long trial.
Men	Many may not necessary be in position to make bail especially when they are unemployed.
	Unemployed, poor men may stand a high chance of their bail being denied since they are presumed to stand a high chance of being at flight risk
Children	Girls are the main victims of sexual violence.
	It is a high chance that victims and perpetrators know each other.
	Child/underage Marriages are presumed a norm.
	Children may not have agency during applications for custody since they are presumed to be too young to have their views listened to.

2.1.2. Needs and Risk Assessment at Pre- trial stage

Discuss

Ask the participants to discuss with the person next to them various issues that a judicial officer can take into account while determining a court user's needs, risks and strengths. After 5 minutes, encourage participants to share their ideas with the group and facilitate conversation.

Information for Facilitator to Use:

Some of the information to get may relate to an individual's risk to commit crime or fail to appear in court if released, pre – trial or knowledge of an individual's needs to offer solutions and alternatives.

Some of the responses may include but are not limited to:

- Residential stability
- Homelessness status
- Children
- Education
- Employment
- Trauma
- Child abuse
- Adult Abuse
- Personal Safety
- Mental Health
- Substance Abuse
- Disability
- Multiple Discrimination
- Knowledge of the law

2.1.3. The role of a judicial officer in pre – trial stage

Explain

- a) Ensure safety of the victim and other family members by issuing protective orders.
- b) Promptly hear and decide applications for protection orders and hold the substantive hearing before the expiration of the interim protection order. It is highly desirable that protection order applications be heard without delay since, by reporting the matter, applicants may place themselves at high risk of further abuse or death;
- c) Issue interim protection orders in cases where delay would or might cause serious injury, undue hardship or a risk to personal safety
- d) Protect the victim from secondary victimisation by excluding the public from hearings (protective order hearings, bail hearings) if the case concerns sexual violence and requires confidentiality.
- e) Inform victims about potential danger from the perpetrator for example interfering with evidence
- f) Inform the victims about their rights such as the right to legal representation
- g) Inform victims about available services such as legal aid, medical services, socio-psychological support, alternative court procedures such as the family and children's court for cases of maintenance and custody and small claims procedure for debts below 10m etc
- h) Always remember in any case involving children' the welfare principle of a child is paramount.
- i) Encourage litigants to negotiate and settle cases to avoid long protracted trials.
- j) Investigate and ensure that the decision to settle has been made by the parties and it is voluntary.
- k) Do not promote settlement of egregious cases such as aggravated defilement.
- l) Use expedited proceedings (fast-tracking) in cases of violence against women and children.
- m) Ensure that the parties do not have a multiplicity of cases concerning the same subject matter.

Information for Facilitator to Use: Emphasize the following:

- Availability of court services
- Responsiveness of a court
- Coordinated and integrated approaches to criminal, civil, family and administrative law cases
- Prioritization of cases
- Victim centred, empowerment oriented and rights based pre-trial processes.
- Readiness for trial

- No forced mediation, Alternative Dispute Resolution in cases involving violence against women.
- Victims access to immediate, urgent and long-term protection measures
- Enforcement of protection measures
- Prioritization of safety planning and Risk Assessment
- Victim and witness support services
- Referrals to health and social service providers.

2.2. The Trial Stage

2.2.1. Gender Dimensions in the Trial stage.

Divide the participants into 4 groups. Give each group a flip chart and a mark. Ask each group to think and write down gender dimensions that may affect men, women and children during the trial stage. After 10 minutes pin the flip charts at the front of the class and go through their answers together.

Some of the information the Facilitator may use.

Domestic violence is not a one-off incident. It occurs in a cycle. The stages may affect victims when they have to testify in court.

Women stand a high chance of not having their cases investigated and prosecuted in cases where offenses are considered a norm for example in marital rape, domestic violence etc.

Women may fail to give evidence in sexual offenses due to feelings of shame or fear that may arise as a result of a public hearing or intrusive/repetitive questioning from defence counsel.

Some procedural and evidentiary rules especially those relevant to violence against women are “restrictive, inflexible or influenced by gender stereotypes” (especially those related to sexual violence) for example: - promptness to make a complaint, corroboration of a victim’s testimony, credibility of a victim etc.

Women may fail to testify because of: - threats from the perpetrator; pressure not to cooperate from family members; the dependent status on the perpetrator; the designated unpaid 24/7 domestic work, threat of losing a job due to continuous absence especially if employed in informal sector.

Women stand a high risk of failing to produce evidence of gender or sex-based discrimination because of lack of evidence since the laws and rules appear neutral; they do not explicitly establish different treatment for women and men.

Women are the main victims of emerging online violence occurring with the use of ICT and social media – for example, cyber stalking. The authorities and victims stand a high chance of failing to establish the burden of proof since it is relatively hard to collect evidence of online offenses. The judicial officers do not have the adequate capacity to adjudicate such cases.

Sexual violence is normally a traumatic experience that may affect the capacity of a victim to testify at trial.

Where there is an ongoing history of violence which had led to accumulated anger, women may turn violent to punish a perpetrator in absence of an eminent attack which renders them incapable of using the defense of "self defense" or "provocation"

Sexual violence normally occurs between people who know each other. Evidence of the use of force or a physical struggle (as an element of the crime or relied upon as corroborative evidence to bolster a victim's credibility); lack of evidence of the victim fighting back (to imply that the sexual intercourse was consensual) are barriers for women to access justice in sexual offenses.

Men rarely get access to justice during cases of sexual violence or domestic violence due to social norms and behaviours related to masculinity (e.g. a man cannot be raped, a real man cannot be beaten by his wife, a real man deals with his personal problems)

Men may fail to give evidence in sexual offenses due to feelings of humiliation.

CHILDREN

Girls are the main victims of sexual violence.

There is are a lot of grey areas when it comes to child justice. For example, there is no laid down procedure on how to take down a voire dire.

There is are a lot of grey areas when it comes to child justice. For example, there is no laid down procedure on how to conduct a voire dire.

Sexual offenses amongst children are perpetuated by people known to them. The victim's evidence may face a challenge in getting corroborated

Girls above 14 years rarely get access to justice during cases of sexual violence due to social norms and behaviours (e.g. child/underage marriages, the need for bride price, normalizing of sex)

Sexual violence is normally a traumatic experience that may affect the capacity of a child victim to testify at trial

2.2.2. Dynamics of domestic violence crimes

2.2.2.1. Cultural Gendered Myths and Misconceptions

Brainstorm

As participants to suggest cultural gendered myths and misconceptions that surround domestic violence cases.

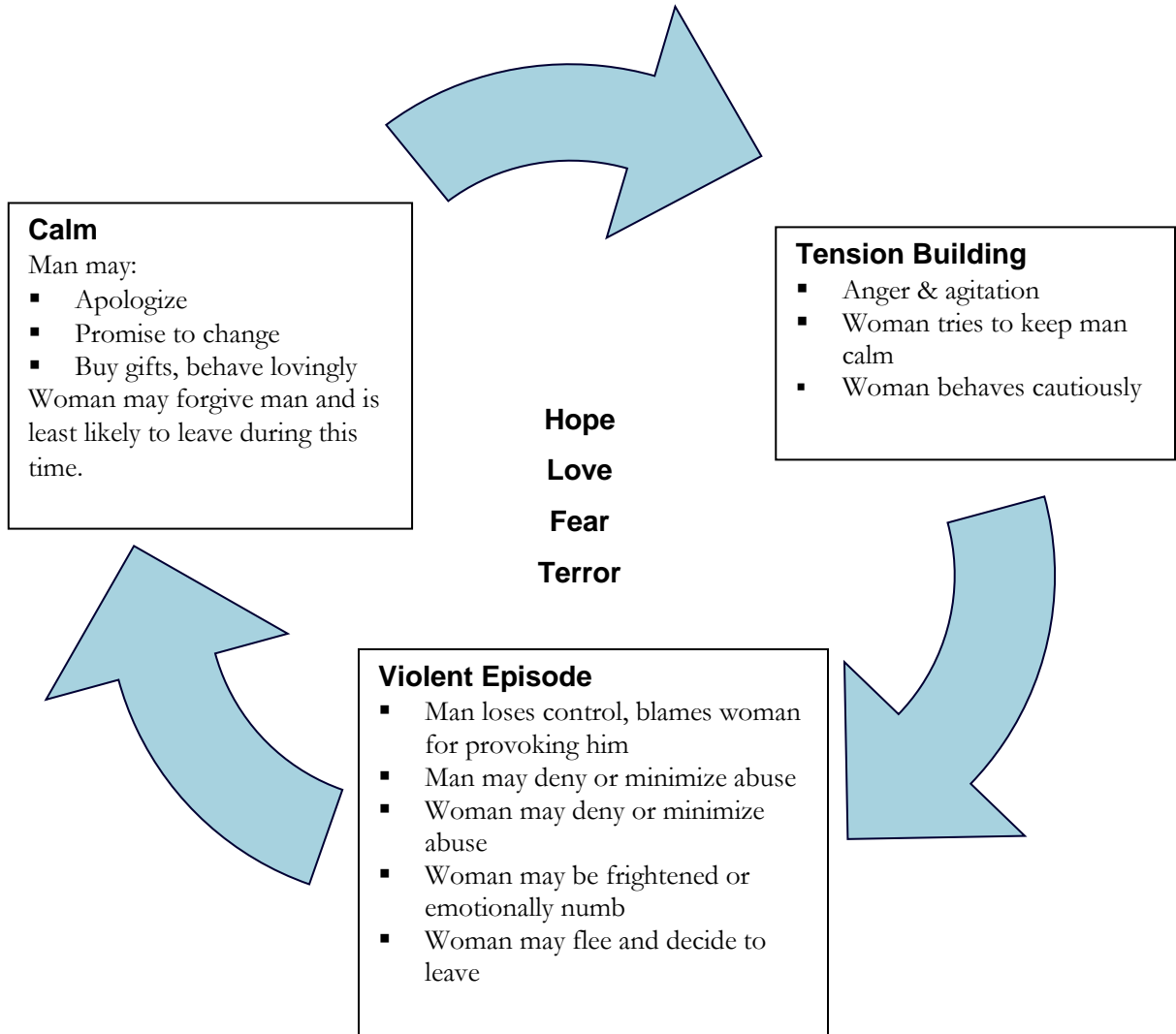
Information for Facilitator to Use:

Examples could be: -

- It is ok for a man to discipline his wife.
- Men have sexual needs that are entitled to be met but women don't: this comes into approaches to rape, sexual abuse, sexual harassment and domestic violence (blaming women for men's violence if the wife doesn't have sex with her husband whenever he wants to).
- Women who pursue charges of domestic violence are 'breaking up the family' not the man who was violent.

2.2.2.2. *Cycle of violence*

Explain



2.2.2.2. Identifying the main perpetrator

Read out this story to participants

Agnes started cohabiting with the Amos when she was 15 years old. Amos infected her with HIV/AIDS. The couple had three children, two of whom tested HIV-positive. Agnes started continuously getting sick. She asked her parents to allow her young sister Auma to come and nurse her and the sick children. Amos had an affair with Auma. On learning of this affair, Agnes got angry, picked up a club, hit Amos on the head and he died instantly.

Discuss

- Ask the participants who they think is the main perpetrator in this story?
- What might happen if this case was brought to your court?
- Are you likely to hear anything beyond the murder incident?
- If evidence is adduced and the full story got out, how would you handle the case?
- What might be the effect in the community if Agnes was acquitted?

Information for Facilitator to Use:

Given the complex nature of crimes that happen in domestic relationships, it is not always easy to identify who the main perpetrator may be in a situation.

Where there is an ongoing history of violence, both parties may have been aggressive or violent towards each other. However, usually the aggression and violence will not be equal.

The main perpetrator is the person who poses the most serious, ongoing threat, and perpetrates the pattern of violence, using power and control rather than the one who hit first or sustained injuries in this particular incident of violence.

Victims may utilize violence to pre-emptively avert an attack from the aggressor or in self-defence. However, law enforcement may improperly assess or document these situations, or even allow incidents to go unacknowledged. The main perpetrators may even try to convince the court that they are the victims.

2.2.3. Corroborative evidence in sexual offenses

Brain storm:

Ask the participants to share different pieces of evidence that can be used as corroborating evidence. Nominate a member to write down the suggested answers on the flip chart.

Information for Facilitator to Use:

Check list of the most common types of non-victim/corroborating evidence

- Statements of police officers, from the scene or regarding other interactions with the victim or accused.
- Statements of neighbors or other witness accounts (for example, friends, children, teachers, co-workers, staff of women's crisis centres and shelters, etc.).
- Recordings of emergency calls/ police dispatch calls.
- CCTV recordings (note that such recordings are especially useful in cases of stalking or harassment).
- Photographs of the injury and scene (including photographs of property damage).
- Medical history/reports (including history of emergency treatment as well as reports that show a history of abuse, such as dental records; examinations by specialists).
- Forensic medical certificate from the incident.
- History of previous incidents (e.g. criminal record of the perpetrator; past exclusion/protective orders; administrative penalties).
- Previous reports on domestic violence that were not pursued.
- Communication from the perpetrator to the victim, especially those that can be used as evidence of threats

(notes, letters, emails, SMS messages, Facebook/WhatsApp posts, etc.)

- Bad character evidence about the perpetrator.
- Expert testimony or witnesses, especially to explain the impact of violence on the victim, common behaviours and reactions of rape victim, concepts such as the cycle of violence or battered women's syndrome, etc.

2.2.4. Significant cases on the Legal and Procedural Constraints in the trial stage

Small Group Exercise

Divide the participants into 3 groups. Provide the group with one or more copies of a judgment and ask them to read it and answer the following questions:

1. What is the relevance of this case to gender?
2. Why is this case significant?
3. What approach to judicial decision making did the judges take? A narrow or broad approach? Did the court focus on enforcement or interpretation? Do you think the decision improves social equality and the protection of human rights in Uganda? If so, how did they achieve this?
4. How has this decision influenced the application of the constitution and human rights in the judiciary?

Give the groups an hour to do this exercise. After an hour, ask each group to report back to the group.

Information for Facilitator to Use:

Some of the cases that may arise

- **Uganda v. Apai Stephen**, High Court Criminal Session Case No. 23 of 1994 at Tororo. This case is a classic example of how open court hearings, culture can deny female victims of sexual violence access to justice. In this case, the elderly victim of rape refused to testify using explicit language claiming that the words were "too big to go through her mouth." Instead, she described what happened to her using euphemisms: "He made me his wife and worked on me." Justice Ssemu Lugayizi dismissed the statement as "vague and meaningless" and acquitted the accused for lack of compelling evidence.

- ***Uganda v. Tereza Nakayima, HCCSCML 378 of 1971.*** The accused killed her husband after he had wounded her on the forehead, cut her left index finger and bruised her middle finger. There was also evidence of a history of persecution of the accused by the deceased. In sentencing her, Justice Youds has this to say,

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

- ***Uganda v Jacqueline Uwera Nsenga, High Court Criminal Session Case No. 013 of 2013.*** Justice Duncan Gaswaga in denying the accused’s defence of “battered woman syndrome” had this to say;

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

- ***Uganda v Kamuhanda Emmanuel, High Court Criminal Session Case No. 24 of 2012 at Fort Portal (unreported).*** Justice Batema considered accumulated anger arising from repeated acts of domestic violence, and more so when they are committed with impunity, as a partial defence to homicides and other crimes committed against a perpetrator of domestic violence. Indeed, accumulated anger was viewed as a very serious mitigating factor in sentencing which helped the accused to get sentenced to two years for murdering his father.

The court also called for an amendment of section 193 of the Penal Code Act which defines provocation as an act done in heat of passion arguing that it is blind to the gendered inequalities in domestic violence where one can act after a prolonged period of time of experiencing violence.

- ***Uganda v Yiga Hamidu and Others, High Court Criminal Session Case No. 55 of 2002.*** Justice Musoke Kibuuka rejected the accused’s defense of mistaken belief that the complainant was his wife in a rape case. He interpreted that the constitutional provisions on equality in marriage and the recognition of the equal dignity of women and men under Article 31 had effectively amended Sections 9 and 123 of the Penal Code, which originally excluded husbands from being held criminally liable for marital rape.

- ***Uganda v Peter Matovu, High Court Criminal Session Case No. 146 of 2001.*** Justice Lugayizi relied on CEDAW to argue that the legal requirement for corroboration discriminated against women who

were “by far, the most frequent victims of sexual offences and is therefore inconsistent with Uganda’s international obligations.” He dismissed the cautionary rule practiced by courts when receiving the evidence of female victims holding that:

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

- ***Ntambala Fred v Uganda*** (CRIMINAL APPEAL NO. 34 OF 2015) [2018] UGSC 1. Justice Tibatemwa held that the value of corroboration is rooted in the legal standard (proof beyond reasonable doubt) that must be met by the prosecution in order to secure a conviction. Consequently, the prosecution may find it necessary to adduce evidence from more than one witness in order to prove their case beyond reasonable doubt. ... Nevertheless, section 133 of the Evidence Act provides that: “Subject to the provisions of any other law in force, no particular number of witnesses shall in any case be required for the proof of any fact.” Consequently, a conviction can be solely based on the testimony of the victim as a single witness, provided the court finds her to be truthful and reliable. She further stated that the practice where courts were required to warn themselves of “the danger” of acting on uncorroborated evidence in cases of sexual assault because women were perceived as ‘peculiarly prone to malice and mendacity, and are particularly adept at concealing it’ had no scientific nor logical basis.
- ***Uganda v Apio Nancy*** Criminal Sessions Case No. 0122 Of 2018 at Gulu. This is one of the few cases where we see that boys can also fall victim of sexual violence. In this case Apio Nancy 18 years of age and living with HIV/AIDS was found guilty of aggravated defilement having lured a 16-year-old boy to her house and having sex with him while her husband was away.
- ***Uganda v NA, MSK-CR-AA-132/2013***, High Court of Uganda At Masaka. This case involved a daughter killing her father after he had subjected her and her siblings to a history of sexual abuse and impregnated her. Realising that a harsh sentence would not serve justice in the case, the court exercised its discretion and gave the accused a lenient sentence because, although she was before court as a perpetrator of violence, her violent act was in reaction to the extreme abuse she suffered at the hands of the deceased. In arriving at an appropriate sentence, the judge placed this case within a broader context recognising that ‘her violence’ was not an exclusively legal issue.

2.2.5. The role of a judicial officer in the Trial Process.

Explain

- a) Continue proceedings even if the victim withdraws her or his statement or complaint.
- b) Adopt a victim-centred approach that minimises the risk of repeated violence for the victim for example by: -
 - Adopting a closed hearing;
 - Using video conferencing to protect victim from being in the same room with perpetrator;
 - Adopting a victim's statement in absence of victim's evidence;
 - Shielding victims from overly intrusive or repetitive questioning;
 - Shielding victims from prejudicial, embarrassing or harmful evidence by the defence, in particular evidence that is not relevant or necessary (for example, evidence of past sexual conduct or reputation, of substance abuse, etc.);
 - Shield victims from the need for corroboration from defences counsel;
 - Inform the parties about their rights such as the right to prepare their defence;

- Always remember in any case involving children’ the welfare principle of a child is paramount; and
- Use expedited proceedings (fast-tracking) in cases of violence against women and children.

Information for Facilitator to Use:

Emphasize the following

- A safe and friendly courtroom environment ‘
- Protection of privacy, integrity and dignity of a victim
- Full participation of all parties
- Non-discriminatory interpretation and application of evidentiary rules

2.3. End of the Trial Stage

2.3.1. Remedies

2.3.1.1. *Relevance Remedies*

Explain

At the end of the trial, a judicial officer should award remedies that are “adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered”. Judicial remedies should be tailored to meet the specific human rights violation, to address the wrong and also to compensate for the harm suffered. Gender-sensitivity requires consideration of what is the most appropriate remedy in a given situation.

2.3.1.2. *Considerations of a gender responsive remedy*

 Discuss

Ask the participants to discuss what considerations they can use to determine a remedy when they are using gender responsive adjudication. After 15 minutes, encourage participants to share their ideas with the group and facilitate conversation.

Information for Facilitator to Use:

- What are the dynamics of violence that the victim has suffered?
- Did the party suffer disproportionate harm based on his/her sex/gender?
- What types of remedies could provide the best redress for this kind of differential impact?
- What remedy would be the most appropriate way to make the victim whole, given the type of harm suffered?
- What are the victim's desires?
- Will the remedy provide redress for all the different types of harms that the victim has experienced and have been identified? (Keep in mind, for example, the psychological harm that victims of gender-based violence may suffer in addition to physical, sexual or other forms of harm, or lost income in cases of employment discrimination).
- In criminal matters victims of VAW are entitled to civil remedies (against the perpetrator in parallel with criminal sanctions).
- In civil cases, for example employment discrimination, appropriate remedies may include restitution (reinstatement), compensation/compensatory damages, and measures to ensure non-repetition. Note that for victims of sexual harassment or other forms of employment discrimination, reinstatement may not necessarily be the remedy that women are seeking.
- Does the perpetrator have the capacity to pay compensation

2.3.1.3. The role of a judicial officer in award of remedies.

Explain

- a) Order remedies that extend beyond those requested by litigants, and have a broader impact across society. This may include orders to require certain public actors (e.g. law enforcement officers or health service providers) to take specific action.
- b) Provide basic information about entitlements to civil damages and how to seek further remedies along with referrals to legal aid services.
- c) Use protective orders in conjunction with separation and divorce proceedings.
- d) In addition to a sentence, order a perpetrator to attend programs for perpetrators that treat offenders and teach them how to adopt non-violent practices, with an eye toward the prevention of future violence for example anger

management, relationship counselling or treatment for substance abuse and addiction.

- e) Engage in a dialogue about remedies with the Executive Branch and require it to propose solutions and explain its action on the matters before the court.
- f) Shield vulnerable litigants (women and widows) from financial orders that they may not be able to pay.

Form Buzz Group, give each buzz group 10 minutes to propose practical remedies that they think would be gender responsive.

After 10 minutes, ask some buzz groups to share information on what they have proposed and any other buzz group with different ideas.

2.3.2. Sentencing and the enforcement/execution of judgements

2.3.2.1. Relevance of sentencing

Explain

Sentences should be fair, non-discriminatory, proportionate, uniform and consistent. Note that the primary goals of sentencing must be to prevent the reoccurrence of the violence, to protect the victim, and to hold the perpetrator accountable.

2.3.2.2. Considerations to determine a gender responsive sentence

Discuss

Ask the participants to discuss what considerations they can use to determine a sentence when they are using gender responsive adjudication. After 5 minutes, encourage participants to share their ideas with the group and facilitate conversation.

Information for Facilitator to Use:

Are there aggravating circumstances that justify an increased sentence? These can include: -

- the relationship of the perpetrator to the victim;
- whether the offense was repeated/does the perpetrator has a prior conviction;
- whether children were present when the violence was committed;
- which part of body did perpetuator attack;
- the extreme nature of the violence and/or whether a weapon was used;
- Attempts to frustrate or impede the administration of justice;
- The offender committed crime while subject to trial process;
- Vulnerable victim(s) were targeted;
- Offenders abused a position of power, authority or trust;


There were multiple victims or multiple incidents. See Rule 6 and 9 of the Sentencing Guidelines,

- Does any risk assessment that was conducted during the pre - trial proceedings indicate that there is a possibility that the perpetrator will reoffend?
- Is the perpetrator a 'first-time' offender? Many offenders who appear in court for the first time have used violence in the past but may never have been charged.

2.3.2.3. The role of a judicial officer in sentencing.

Explain

- Use the Sentencing Guidelines to support you in working towards a uniform sentencing for similar cases.

- Ensure that the requested sentence reflects the serious nature of the crime in cases of violence against women
 - Consult other sources of information apart from the prosecution or police to determine a perpetrator's history of abuse. For example, from prisons, or local authorities if the offender continues to make threats to harm the victim.
 - Order authorities to register the perpetrator of sexual violence as a sexual offender as part of the sentence.
 - Give the victim an opportunity to provide information about the impact of the violence that is relevant to sentencing? For example, you can allow victims to address the court or provide a written statement that presents their opinion about the sentencing of the perpetrator, the effect of the crime on themselves and other family member, especially children and any concerns they may have.
 - The sentence should consider the results of a risk assessment of future violence.
 - Liaise with different agencies to diminish missing information, misunderstandings and/or the absence of appropriate reactions concerning the case or to the level of risk.
 - Ask for victim impact and community impact statements from the prosecutor to get a better understanding of the ongoing impact of domestic violence, rape, economic violence and other forms of GBV-related crimes on victims, their families and the community.
 - Carry out a sentencing hearing to interview the victim, relevant witnesses and the perpetrator in case there are no victim impact and community impact statement or if those provided are sufficient. See Rule 14 of the Sentencing Guidelines, section 98 of the *Trial on Indictment Act* or sections 133, 164 and 165 of the *Magistrates Courts Act*
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MODULE 3: SEXUAL VIOLENCE

DURATION: 2 hours

AIM: To provide an overview on sexual violence and the common stereotypes and misconceptions that impede gender sensitive adjudication.

Objectives

By the end of the module, the Judicial Officers will be able to:

- ✚ Describe the importance of gender sensitivity in the adjudication of sexual violence cases using the existing legislative framework and Precedents;
- ✚ Indicate the main areas in the process of adjudication of sexual violence which illustrate the need gender sensitivity and responsiveness; and
- ✚ Create a list of at least 3 “best practices” that can enhance deliver gender justice in handling Sexual Violence cases.

FACILITATOR’S NOTES

This module focusses on the importance of gender sensitivity in the adjudication of Sexual Violence cases. It defines Sexual Violence, highlights the existing legislative framework, adjudication procedures, and precedents on Sexual Violence which illustrate the need for gender sensitivity and responsivity. This is done with the aim of facilitating participants to - reflect on their own experience; and create a list of best practices that can enhance gender sensitive adjudication.

3.1. Definition of Sexual Violence

Discuss

The Facilitator puts a paper on the wall and writes ‘*What is Sexual Violence?*’ Each participant is given a Sticky Note to write their response. Thereafter each participant reads out their definition and sticks it on the paper on the wall – where similar responses are grouped together. A discussion on definition of sexual violence proposed by participants is followed with a Power Point Presentation.

Information for Facilitator to Use:

- Sexual violence is one of the most common and most serious violations of human rights, suffered by both men and women, in most cases women make up the highest number of victims.
- It is defined as any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or acts otherwise directed, against a person's sexuality.
- It is committed against person's will – either the person has not given consent, or the person was unable to give consent (due to age or disability, for example).
- Sexual violence is a form of Gender Based Violence, it occurs within the family, within the community and is perpetrated by individuals and sometimes by the State.
- According to national, regional, and international legal framework, sexual violence includes acts such as - *rape, defilement, sexual abuse of persons with disabilities, sexual harassment, enforced prostitution, and trafficking for purposes of sexual exploitation, forced abortion.*

3.2. Myths and Misconceptions on Sexual Violence

Discuss

Divide the participants in groups, request each group to write myths and misconceptions on sexual violence and to share this information in plenary. Sharing of information from groups should followed by reflections on myths and misconceptions. It is important to take into account these myths and misconceptions, noting that they have the potential to influence unconscious bias and gender insensitive adjudication.

Information for Facilitator to Use:

Some of the myths and misconceptions include:

- Sexual violence usually occurs between strangers, there cannot be sexual violence between intimate partners.
- Sexual violence usually occurs at night, in dark and isolated areas.
- False allegations about rape and defilement are common.
- A 'real victim' or 'ideal victim' screams and fights off their attacker, which causes physical injuries that leave evidence.
- Sexual offenders are only interested in young attractive people, and not older women or persons with disabilities.
- One cannot claim to be a victim of sexual violence if they were dressed indecently, or if they had

consumed alcohol or drugs.

- It is hard for men to resist their sexual impulses.
- A victim of sexual violence will avoid the perpetrator and never want to see them again.

3.2.1. Reflection on Myths and Misconceptions

- What lessons that can be taken away from these myths and misconceptions?
- What best practices can judicial officers adopt to ensure that myths and misconceptions are addressed in order to enhance gender responsiveness, gender sensitivity and finally gender justice?

Information for Facilitator to Use:

- Sexual Violence, a form of Gender Based Violence affects both men and women, women are usually most affected due to gender inequality.
- Sexual violence forms the highest percentage of criminal cases reported.
- Cases of Sexual violence reported in the criminal justice system are very few...; those prosecuted are even fewer ...due to several factors – stigma, fear, lack of information, lack of resources, lack of protection, poverty, poor investigations, inordinate delays, gender insensitivity, lack of protection...
- More often than not, perpetrators are known to victims, have power and control over the victims, are emotionally connected - as parents, partners, or employers.
- Adjudication of sexual violence cases requires gender sensitivity and responsiveness considering criminal laws standards of proof beyond reasonable doubt and associated myths and misconceptions.

- Sexual violence is a complex crime which requires that factors which impede access justice are addressed in order to ensure that all actors – the victim, family, community leaders, police, probation officers, prosecutors, judges, and prison officials are coordinated in order to ensure gender justice.

3.3. The Legal Framework on Sexual Violence cases

Explain

3.3.1. The International Instruments

- International, including the Universal Declaration of Human Rights;
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ratified on 22 July 1985;
- The International Covenant on Civil and Political Rights (ICCPR) ratified on 21 June 1995;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified on 21 January 1987;
- The UN Security Council Resolution 1325 which calls for the adoption of a gender perspective to consider the special needs of women and girls during conflict and the UN Security Council Resolution 1820, which condemns the use of sexual violence as a tool of war.
- The United Nations Declaration on the Elimination of Violence against Women, in its article 2, refers to sexual violence within the family, the general community and the State. The Declaration also contains specific reference to: sexual abuse of

female children in the household, marital rape, rape, sexual abuse and sexual harassment.

- The African Charter on Human and Peoples' Rights ratified on 10 May 1986;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol); ratified on 22 July 2010;
- The International Conference on the Great Lakes Region (ICGLR) Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, 2006 (SGBV Protocol, 2006),
- The ICGLR Protocol on SGBV, 2006; and ICGLR Kampala Declaration on SGBV, 2011; and Goma Declaration on eradicating sexual violence and ending impunity in the Great Lakes Region, adopted in 2008.

3.3.2. The National Legal Framework includes:

- The Domestic Violence Act, 2010 that prohibits different forms of domestic violence and provides for punishment of perpetrators of domestic violence;
- The Prohibition of Female Genital Mutilation Act, 2010 that makes Female Genital Mutilation an offense and puts obligations on persons to report cases of FGM to the police;
- The Prevention of Trafficking in Persons Act, 2009 prohibits trafficking in persons;
- The International Criminal Court Act, 2010 that domesticates the Rome Statute of the International Criminal Court (ICC) and provides domestic jurisdiction to prosecute crimes that amount to genocide, war crimes and crimes against humanity.
- The Penal Code Act, cap 120 that prohibits different forms of sexual and gender-based violence, such as rape, defilement, and sexual assault;
- The Penal Code Act, Cap 120 addresses acts of sexual violence, including:
 - Rape (ss 123 and 124)
 - Attempted rape (s 125)

- Defilement (s 129(1))
- Aggravated defilement (s 129(3))
- Abduction with the intent to marry or have sexual intercourse (s 126)
- Indecent assault (s 128(1))
- Insulting the modesty of a woman (s 128(3))
- Defilement of idiots or imbeciles (s 130)
- Procuration (s 131)
- Procuring defilement by threats (s 132)
- Householder permitting defilement (s 133)
- Detention with sexual intent (s 134)
- Conspiracy to defile (s 140)

In 2007 the Penal Code Act was amended to expand the offence of “defilement of persons under 18 years”. Section 129 of the Penal Code Act was amended to introduce new classifications of defilement:

- Defilement (S. 129(1)): Defilement of children aged 14 years and above but less than 18 years. This is an offence triable by Chief Magistrates, and on conviction, the maximum sentence is life imprisonment.
- Aggravated defilement (S. 129(3)): This is triable by the High Court only and punishable by death. This is where defilement is accompanied by one of the following factors:
 - a. the victim is below 14 years of age;
 - b. the offender is infected with HIV;
 - c. the offender is a parent, guardian, or person in authority over the victim;
 - d. the victim is a person with a disability;
 - e. the offender is a serial offender.
- Child-to-child sex. (s129A) which procedure under which children who are accused of committing defilement should be tried.

- The Computer Misuse Act, 2011 which provides for offences which can be linked to Sexual Offences on Child pornography under Section 23; Cyber harassment under Section 24; and Offensive communication under Section 25.; and Cyber stalking under Section 26.
- The Anti-Pornography Act, 2014 which under Section 14 prohibits child pornography.

3.4. Evidentiary Challenges

The Facilitator leads a brain storming session where participants are asked to share information on the type of evidence required and evidential challenges that they have or a likely to encounter in sexual violence cases.

Information for Facilitator to Use:
There are two main types of evidence; namely, direct evidence and circumstantial evidence. The court recognizes these five types of evidence: Real evidence. Real evidence is any material that was used or present in the crime scene at the time of the crime; Documentary evidence; Demonstrative evidence; Testimonial evidence; Digital evidence.

The Facilitator writes the types of evidence and corresponding challenges on a flip chart.

Type of Evidence	Evidential Challenge
Witnesses	Most cases of sexual violence have no witnesses, as such, cases rest heavily on victim testimony. The character and credibility of the victim become key components, which brings in issues of gender bias and adds to the shame and trauma of victims.
Medical Evidence/Forensic Evidence	Medical evidence and reports: where victims live in remote areas, getting medical evidence before it is too late can be a barrier.
Expert Witnesses	Securing expert witnesses such as - clinical officers or registered nurses or midwives to give testimony in court as expert witnesses can be difficult and expensive. Expert witness evidence is not binding on court and can be challenged.

Expert Evidence	Balancing the need to interrogate expert evidence with treating experts with courtesy and respect.
Proof beyond reasonable doubt – language	Cultural and gender barriers to discussing sexual activity. No eye witnesses in most cases of Sexual violence, no need for corroboration under case law/precedents in Uganda.
Witness credibility	Age of victim and knowledge of that age partly due to lack of birth certificates. Need to conduct a voire dire for children of tender years/age of under 14 years; and how its conducted.
Forensic evidence/Computer evidence/Canine evidence	Most victims may not be in possession to retrieve forensic evidence. Canine evidence is circumstantial and needs to be corroborated.

Discuss

3.4.1. Expert Evidence

What is expert evidence? Refer to (*R v. Silverlock* [1894] 2 Q.B. 766) – “No one may be allowed to give evidence as an expert unless his or her profession or course of study gives him or her more opportunity of judging than other people.”

Information for Facilitator to Use:

Note: There are various challenges a victim may face while trying to bring an expert in court. Examples may include; busy schedules of experts; unprofessional treatment experts in court; balancing rights of the victim and perpetrator with the need to protect experts from inappropriate questions.

3.4.2. Corroboration

The definition of Corroboration is provided for in *Uganda vs. George Wilson Simbwa* (SC) Criminal Appeal No. 37 of 1995.

Corroboration in sexual offences is not always easy to obtain, since there are usually no eye witnesses to sexual violence.

Corroboration brings in issues of the credibility of a victim which may add to the shame, fear and pressure on the victim.

3.4.2.1. Corroboration in sexual offenses

While corroborative evidence is always helpful, there has been a particular emphasis on this in sexual violence cases. This procedural practice is prejudicial to victims of sexual offences.

The requirement of corroboration in sexual violence cases has been held to be discriminatory and unconstitutional:

Information for Facilitator to Use:

- *John Mwashighadi Mukungu v. Republic*, ([2003] 2 EA.);
- *Uganda v. Peter Matovu Criminal Session Case No. 146 of 2001*;
- *Ntambala Fred v Uganda* (CRIMINAL APPEAL NO. 34 OF 2015) [2018] UGSC 1 (18 January 2018); In a separate concurring judgment, Justice Tibatemwa-Ekirikubinza **noted** that courts were required to warn themselves of “the danger” of acting on uncorroborated evidence in cases of sexual assault because women were perceived as ‘peculiarly prone to malice and mendacity, and are particularly adept at concealing it’. However, as far back as the 1970s, courts have acknowledged that there is no scientific nor logical basis for it. Justice Tibatemwa-Ekirikubinza cites a Jamaican case that highlighted the absurdity of the rule as the testimony of a woman who was held up at gun point, robbed and then raped required the court to warn itself of the danger of uncorroborated evidence but if the accused had stopped at robbery, it would not have been necessary. She concludes by holding that: What I must therefore emphasize is that the evidence of a victim in a sexual offence must be treated and evaluated in the same manner as the evidence of a victim of any other offence. As it is in other cases, the test to be applied to such evidence is that it must be cogent.

Section 133 of the Evidence Act provides that: “Subject to the provisions of any other law in force, no particular number of witnesses shall in any case be required for the proof of any fact.” Consequently, a conviction can be solely based on the testimony of the victim as a single witness, provided the court finds her to be truthful and reliable.

3.4.2.2. Unsworn Evidence of children

Section 38 (now 40(3)) of the Trial on Indictment Act provides that corroboration is required in cases where children give unsworn evidence.

However, in *Christopher Kizito v Uganda* (Cr. Appeal No.18 Of 1993) [1995] UGSC 12 (28 June 1995) the Supreme Court questioned whether the threshold for child evidence is too high, as there are rarely eye-witnesses to cases of defilement or rape. Medical evidence was used to corroborate that a sexual act took place and the question concerned identification of the suspect. The Supreme Court noted that the suspect had placed himself at the scene of the crime in his unsworn statement of defence, despite raising an alibi, and this was enough to sustain the conviction.

In ***Katende Mohammed v Uganda*** Criminal Appeal No 32/2001, the court held:

“... it is trite that no conviction of an accused can be based on the uncorroborated evidence of a child of tender years who testifies without swearing ... In order to corroborate the testimony of a witness, any former statement made by such a witness relating to the same fact, at or about the time when the fact took place, or before authority legally competent to investigate the fact, may be proved. The court observed that the victim had met her mother immediately after being defiled and was in a distressed state, crying and bleeding. This corroborated the victim’s evidence on defilement. The victim told her mother that it was the appellant who did it and by virtue of s 156 of the Evidence Act, her statement to her mother corroborated her testimony about identity.”

3.4.2.3. Sexual history of a victim of Sexual violence

Section 154(d) of the *Evidence Act* (Cap 6) allowed the credibility of a rape victim to be impeached on the grounds that she is of generally immoral character.

This is deeply biased. Firstly, it means that previous sexual history can be introduced into a trial and the victim cross-examined on events that have no bearing on the actual incident. This creates barriers for women to report and pursue prosecution of rape cases, for fear of the embarrassment, shame and trauma of being public questioned about their sexual behaviour.

Further, it assumes that women's past behaviour or morals is somehow relevant to whether they provided consent in a particular instance. One's sexual life (experiences, desires, orientations, feelings, behaviours) ought to be irrelevant to the legal question of whether or not she gave consent to someone to engage with her sexually.

Indeed, a gender bias task force in the United States found that women victims of rape and sexual assault were routinely judged on their appearance, demeanour, lifestyle, and reputation, yet defendants were not subjected to this kind of scrutiny.⁶

3.4.2.4. *Consent*

Whether a victim is seen to have consented to sexual activity or not is shaped by gendered notions of behaviour and experiences of fear. Rape cases tend to focus on the behaviour, actions, and choices of *victims* as if those choices or behaviours are causative factors in sexual assault. And this reveals a continued prevailing belief that a victim is responsible, even if only in part, for their own experience of sexual violence. This focus on the victim reflects gender-based attitudes, values, and stereotypes that define how women (and men) are 'supposed' to behave – wherein rape and sexual violence are largely seen as a consequence for stepping outside of accepted social lines.

Moreover, a lack of understanding by judges about the social reality of women's lives influences the interpretation of when women may be afraid and what amounts to intimidation or threats. The age, physical size and strength, and amount of power an offender has compared to the victim may mean that women may be afraid or intimidated in situations where a man may not.

3.4. The role of a judicial officer in enhancing gender Responsive adjudication

Discuss

Who is a good/bad victim?

⁶ Richard C. Kearney and Holly Sellers, "Sex on the Docket: Reports of State Task Forces on Gender Bias," *Public Administration Review* 56, no. 6 (1996), 590

A) Sanyu: dressed in her pinafore with hair in pigtails, skipping through the park on her way home from Bible study, when a big ugly man jumps out from behind the bushes, pushes her to the ground, and sexually assaults her.

B) Nakintu, who dressed provocatively, drinks twenty shots of Tequila before accompanying a newfound drinking mate to his home, purportedly to review his coin collection, when he sexually assaults her.

Exercise

Remind the participants of the case *Uganda v. Apai Stephen* (High Court Criminal Session Case No. 23 of 1994 at Tororo)

In this infamous case, the elderly victim of rape refused to testify using explicit language claiming that the words were “too big to go through her mouth.” Instead, she described what happened to her using euphemisms: “He made me his wife and worked on me.” The judge, Justice Ssempe Lugayizi, dismissed the statement as “vague and meaningless” and acquitted the accused for lack of compelling evidence. He concluded with the following statement:

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

Discuss

Ask the participants what they think of this statement. Why did the victim talk the way she did? What sort of bias is evident in this judgment? How could this situation be treated in a more sensitive way?

Information for Facilitator to Use:

This includes both age and gender-related biases against the victim, who did not fit the 'ideal victim'.

It is important to remember that, in some cultural contexts, women are encouraged to be modest and discouraged from publicly discussing sexuality, their relationships or their bodies. Many witnesses, irrespective of gender or age, fail to recount in detail the sexual assaults committed against them for fear of the public's reaction. Many prefer to use euphemisms or words with hidden meanings because the actual names and descriptions are too explicit. To talk publicly, particularly in an intimidating courtroom setting, about such matters is deeply shaming. Children may also not be able to directly describe abuse. Judges need to be sensitive to such age, culture and religious factors.

It is good practice therefore, for these types of trials to be held in camera or in closed court. This prevents additional trauma for victims and witnesses, based on assumed or real negative perceptions from the public

Explain

Tell the participants that several years later Justice Lugayizi appears to have developed a far greater sensitivity to issues faced by victims as he later made the following reservation about a contradictory statement made by a rape victim concerning her virginity:

...the third contradiction is a bit complicated. Its effect may not be easy to determine if its context is not well understood. Sarah (the victim) is presently 17 years old or so. Therefore, it is not out of place to conclude that she is still under the authority of her parents. At the time she gave her testimony her mother was just outside the court room; and probably some of her other relatives (who were not witnesses) in this case were seated inside the court room. From all appearances Sarah was placed in a dilemma as to how to answer the question concerning her virginity when Mr. Katongole (counsel for the accused) asked it. Taking into account all, Court thinks, too, that the last contradiction did not affect Sarah's general credibility as a witness; and it must, therefore, be ignored. (Justice E.S. Lugayizi in Uganda v. Peter Matovu, Grim. Sess. Case No. 146 of 2001 (Unreported), at 9-10.)

Discuss

What are the best practices that can enhance gender responsive adjudication in cases of Sexual Violence?

Information for Facilitator to Use:

- Respect for privacy by hearing sexual violence cases in camera;
- Utilization of video links where the victims feel uncomfortable to testify before perpetrators; and
- Use of anatomical dolls to name the body parts to clearly identify body parts.
- Provide victim support which includes psychosocial support, security of witnesses, practical needs – food, shelter, clothing, and medical attention.
- Utilize expert witnesses, use of forensic evidence to facilitate the criminal law standard which requires ‘proof beyond reasonable doubt’.
- Expedite delivery of justice, otherwise victims, witnesses lose interest...

MODULE 4: EMERGENCIES

DURATION: 2 Hours

AIM: To help participants to appreciate how identities of women and men determine different vulnerabilities and capacities in emergencies.

Objectives

By the end of this session, participants should be able to:

- ✚ Discuss some of emergencies.
- ✚ Explain why working from a gender perspective, and working towards gender equality, in emergencies/insurgencies/pandemics is critical.
- ✚ Discuss some of the human rights commonly abused during emergencies.
- ✚ Explain the roles of a judicial officer emergencies.

FACILITATOR’S NOTES

This module focuses on gender responsive adjudication in situations of emergencies. It gives the definition of what emergencies are in regard to this module and describes

forms of emergencies. It also explores gender dimensions during emergencies, highlights the existing legislative framework about emergencies and the role of judicial officers in ensuring gender responsive adjudication in emergencies.

4.1. Definition of Emergencies

Explain

For the purpose of this training, emergencies are defined as conditions where life, health, or property is in jeopardy, and immediate call to action is essential.

4.2. Examples of Emergencies

Brainstorm

Ask the participants to suggest different examples of critical emergencies that may happen in their communities. Write down their answers on a flip chart and discuss them and where they may occur in the country.

What Causes an Emergency Response?

Many events can cause the activation of an emergency operations plan to minimize negative impacts and save lives.



Floods



Earthquakes



Wildfires



Hurricanes



Terrorist attacks



Pandemics

Source: Centers for Disease Control and Prevention

Information for Facilitator to Use:

Some of the critical emergencies include: -

- Floods
- Land slides
- Earth quakes
- Pandemics such as COVID-19, Ebola etc
- Civil unrests such as riots
- Conflicts such as wars

4.3. How gender affects different people in emergencies

Discuss: Divide participants into small groups and give each a flip chart that has been divided into three columns titled “men”, “women” “persons with disabilities” and “children”

Ask the participants to identify different examples of negative effects that the 4 groups of people face during emergencies. Ensure that participants attend to each group. Ask each group to present their flip charts, and keep each flip chart taped up so the participants can see all of them.

Some of the information the Facilitator may use.

Women	Women stand a high risk of being absent from work and losing their jobs due to domestic work and care services.
	Women are designated as care service providers; they are more exposed to emergency risks.
	Emergencies exacerbate domestic violence due to economic strains on households, stress, and reduced access to support systems.
	Sexual violence such as defilement, rape increases more during emergencies and vulnerable people such as women are more prone to abuse by first responders who are mainly men.
	Women overburdened by balancing work, home, and care activities they risk experiencing burnout, and post-traumatic stress.
	Women are mostly excluded from public life therefore they will not take part in decision making processes that respond to emergencies. The negative effects of women will thus be compounded.
	Emergencies mostly disrupt the work of self-employed, part-time, informal workers - who are majorly women.
	Emergencies may mean having more online traffic which may increase online digital harm such as: trafficking in persons; online and offline sexual harassment and gender-based bullying and abuse; sexual exploitation and abuse.
	Emergency measures such as stay-at-homes force some GBV survivors to remain confined with abusers and perpetrators, limiting their ability to access legal, health, informal support networks etc.
	The gap between women and men’s access to technology and the Internet has increases the lack of women in accessing information and resources shared through digital technology.
Men	Men being the breadwinners of the home risk going into depression due to disruptions of their income generating streams.
	Men face higher mortality rates during pandemics due to social norms and behaviors related to masculinity (e.g., lower rates of handwashing and mask-wearing, higher rates of smoking, and lower health-care-seeking behavior) and biological factors.

Men are overwhelmed with increased responsibility for care roles that women typically manage. Emergencies make gender roles fluid.

Children

Out of school youth are at increased risk of engaging in harmful coping mechanisms (such as drugs and alcohol) and are vulnerable to physical or emotional abuse

Girls out of school may be at greater risk of child marriages/defilement, child labor, sexual exploitation, and other forms of GBV

Emergencies lead to loss of parents, Separation and/or abandonment of children thereby increasing gender-specific vulnerabilities.

Increased use of the Internet for remote learning has the potential to increase children's exposure to online risk that includes online sexual exploitation, harmful content.

Information for Facilitator to Use:

- Gender and age matter in cases of emergencies, who is injured and how, who is affected and in what ways, and what their lives are like before, during and after the crisis.
- Crises impact women, girls, boys and men in profoundly different ways.
- Women and men also respond to crises in different ways: they resist violence, try and survive, and support dependents differently.

4.4. Emergencies and International Human rights

Explain

Right to life

- Article 3 of the Universal Declaration on Human Rights of 1948

- Article 6 of International Covenant on Civil and Political Rights of 1966
- Article 4 of the African Charter on Human and Peoples' Rights of 1981
- Article 4 protocol to the African Charter on human and people's rights on the rights of women in Africa.

Right to mental health

- Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966
- Article 16(1) of the African Charter on Human and Peoples' Rights of 1981

Prohibition against torture and cruel, inhuman, and degrading treatment and punishment

- Article 5 of the Universal Declaration on Human Rights of 1948
- Article 7 of International Covenant on Civil and Political Rights of 1966
- Article 5 of the African Charter on Human and Peoples' Rights of 1981

Right to non-discrimination

- Articles 2 & 7 of the Universal Declaration on Human Rights of 1948
- Articles 2(1) & 26 of International Covenant on Civil and Political Rights of 1966
- Article 2(2) of the International Covenant on Economic, Social and Cultural Rights of 1966
- Article 2 and 18(3) of the African Charter on Human and Peoples Rights of 1981
- Article 5 on the United Nations Convention on the Rights of Persons with Disabilities of 2006

This non-discriminatory application of rights and the enjoyment of these rights by all is explicitly included in the United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 1966 and the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 1963.

Right of children to special protection

- Article 24 of International Covenant on Civil and Political Rights of 1966

- Article 10(3) of the International Covenant on Economic, Social and Cultural Rights of 1966
- Article 3 and 7 of the United Nations Convention on the Rights of a Child of 1989

Right to food

- Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966
- Article 15, UN Declaration on the Rights of Peasants and Other People Working in Rural Areas

Right to property and water

- Right of land, housing & Water supply; of Rural Women Article 14 2(g) and (h), CEDAW

Freedom of movement

- Article 3, and 13 of the Universal Declaration on Human Rights of 1948
- Article 11 of International Covenant on Civil and Political Rights of 1966
- Article 6 and 12 of the African Charter on Human and Peoples' Rights of 1981

Right to information

- Article 9 of the African Charter on Human and Peoples' Rights of 1981
- Article 10 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979;

Right to a fair trial

- Article 8, 9, 10 and 11 of the Universal Declaration on Human Rights of 1948
- Article 11 of International Covenant on Civil and Political Rights of 1966

Other important instruments to look at can include:-

- United Nations Refugee Convention of 1951;
- United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 1990;
- United Nations Declaration on the Rights of Indigenous People of 1970.

Reflection Question

Is the international legal framework on emergencies adequate to promote access to justice of different genders? If not why?

4.5. Review of the National Legal Frame Work on Gender and Emergencies

Brainstorm

Ask the participants what Ugandan laws they think are relevant to how Uganda addresses gender and emergencies

Write the suggestions on a flip chart and discuss how each law addresses gender and emergencies.

Information for Facilitator to Use:

Provisions of the law should include:

- Freedom from discrimination; Article 21, 1995 Constitution
- Right to life; Article 22, 1995 Constitution
- Right to a fair hearing, Article 28 1995 Constitution
- Freedom of movement Article 29 1995 Constitution
- Affirmative action in favour of marginalised groups; Article 32, 1995 Constitution
- State's obligation to provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement; Article 33(2), 1995 Constitution.

- Right to personal liberty Article, 23 1995 Constitution
- Procedures and processes to have in mind during a declaration and subsistence of a state of emergency, Article 110 Constitution

Other Key Legislations to consider are:

- The Public Health Act
- The Public Health (Control of Covid-19) Rules, 2020
- The HIV/AIDS Prevention and Control Act, 2014
- Chief Justice's Regulation of Execution proceedings and orders during the partial lockdown due to the COVID-19 Pandemic
- Right of access to information Article 41 1995 Constitution.

Reflection Questions

- Is Uganda’s legal frame work in regards to ensuring gender equality during emergencies adequate? If not why?
- How can states balance the adherence with international human rights standards and protecting the masses during emergencies?

4.6. Significant case on gender and pandemics

Exercise

Divide the participants into 4 groups, and allocate a copy of the judgement of Center for Food and Adequate Living Rights [CEFROHT] Vs Attorney General, High Court (Civil Division) Misc. Cause No. 75 of 2020 to them.

Ask participants to read it and answer the following questions:

1. What is the relevance of this case to gender responsive adjudication in pandemics?
2. Why is this case significant?
3. What approach to judicial decision making did the judge take? A narrow or broad approach? Did the court focus on enforcement or interpretation? Do you think the decision improves social equality and the protection of human rights in Uganda? If so, how did it achieve this?

Give the groups 20 minutes to do this exercise. After, ask each group to report back to the group.

Information for Facilitator to Use:

Summary of the case:

Center for Food and Adequate Living Rights [CEFROHT] Vs Attorney General, High Court (Civil Division) Misc. Cause No. 75 Of 2020. The applicant brought a claim against the government for failure to issue guidance on food to vulnerable people and the entire population and to maintain food reserves during the COVID19 pandemic.

Justice Esta Nambayo held that the office of Prime Minister had guidelines and there were regulations in place to guide the whole process of distribution and quality of food distributed. There was also general guidance on access to food by all people. On the issue of price the her lordship held that Uganda does not have price control laws to protect citizens from price hikes arising from unethical conduct in business practices and by the minister of trade coming out to condemn the act of hoarding of essential goods so as to hike the price, was good effort in the circumstances to protect the consumers and the right of access to food.

Her lordship further stated that much as there are no food reserves in the country, there are other systems that the government has put in place and was working on instead of the food reserves.

4.7. The role of a judicial officer in ensuring gender responsive adjudication during emergencies.

Group Exercise

Divide the participants into small groups, and ask them to discuss and write down their role in ensuring gender responsive adjudication during emergencies. Give the groups 10 minutes to do the exercise

Ask each group to present their flip charts, and keep each flip chart taped up so that the participants can see all of them.

Information for Facilitator to Use:

- Watch out and strike down gender discriminatory legal framework and guidelines in response to pandemics.
- Avoid judicial bias (e.g., bias that manifests as negative or hostile attitudes toward survivors, trivialization of GBV, or further verbal or psychological abuse of survivors).
- Relax bail considerations in regard to appearing in court due to stay-at-home measures.
- Relax the need for immediate reports of crime since victims have reduced access to services such as courts and police.
- Carry out mobile court services for example in refugee or internally displaced people settlements.
- Use referral pathways if court users' needs legal aid services, medical and socio psychological support.
- Adhere to SOP's during pandemics at court by enforcing entry and other restrictions, including: Temperature checks and face masks; hand cleaning services such as soap and water or Alcohol-based hand sanitizer dispensers.
- Management of court room environment by excluding spectators that may jeopardize the mental and physical health of court users.

- Take advantage of using digital solutions to increase accessibility to court.
- Monitor and perform careful evaluation and impact assessments to ensure that the shift to online delivery of justice and legal services safeguards due process and is accessible to vulnerable and marginalized populations – taking into account the gender digital divide, which threatens human rights.
- Identify a list of ‘urgent matters’ to be continued through online hearings examples are hearings on temporary protection orders and temporary restraining orders.
- Avoid making orders of pre-trial remands where possible to keep prisons from overcrowding and allow people with care responsibilities such as women to go home.

MODULE 5. LAND TRANSACTIONS AND THE ENVIRONMENT

DURATION: 2 hours

AIM: To help participants to appreciate how identities of women and men determine different vulnerabilities and capacities in land transactions and in environment.

Objectives

By the end of this session, participants should be able to:

- ✚ Explain the existing practices and gender stereotypes that perpetuate inequality in land transactions and enjoyment of environmental rights.
- ✚ Identify the legal frame work, which must be applied in land and environmental cases in order to ensure gender equality before the law.
- ✚ Discuss human rights threatened by restrictions in land transactions and the right to environment
- ✚ Discuss how courts have included gender equality while handling the rights to land and environment.

FACILITATOR'S NOTES

This module focuses on gender responsive adjudication in land transactions and the environment. It explores gender dimensions in land transactions and environment, highlights the existing legislative framework on land and environment, the jurisprudence coming out of Ugandan courts and the role of judicial officers in ensuring gender responsive adjudication in land transactions and environment.

5.1. Gendered Dimensions regarding the rights to land and environment

Exercise

The Space Between Us

(This exercise requires some room. It is best done outside, but if not possible then you could clear back the tables and chairs to make room. If you are in a rectangle space (car park or room), you want participants to line up towards one of the short sides of the rectangle but with enough room for them to step forward or backwards a few times).

Explain that we're going to start this session with an exercise that demonstrates how a person's gender deeply influences their experiences and choices in life. It goes on to explore the impact of this on our enjoyment of human rights.

- i. Ask the participants to line up towards one end of the space facing the other end, with enough space to step forward or back several times.
- ii. Explain that: "We're going to have a race to the wall/line at the other end of the space. The winner will get a prize. However, before we start, we're going to rearrange where everyone starts from. I'm going to read a series of statements with an instruction to either step forward or backwards in response. This is a silent exercise and should be done without discussion".
- iii. Read the statements below and ask the participants to move after each statement in accordance with its instructions. *If space is limited, choose only a section of statements to read but make sure you get a range of statements.*
- iv. When you have finished reading all the statements, pause.
- v. Ask the participants to look around to see where they are standing and where others around them are standing. Ask them to take a moment to reflect on their own position and the position of others.
- vi. Now tell participants that when you say 'go' they have to race to the wall/line in front of them. They will be all starting from different positions, based on where they ended at the end of the statements.
- vii. Count "one, two, three, GO!"
- viii. Gather everyone back in the large circle and debrief the exercise. Make sure that both women and men are contributing their thoughts and that everyone feels safe and respected throughout the discussion.
 - a. Give the winner of the race their prize, and ask people whether they think it was fair that the winner got the prize?
 - b. How did you feel doing this exercise?

- c. How did it feel to move forward? To move backward?
- d. What did you notice about each other's reactions as the exercise progressed? (Probe: "Did the tone of the game change from playful to serious?")
- e. What did you think or feel when you saw where everyone was standing at the end of the game? Was there anything that surprised you about people's positions?
- f. Did any of you adjust the size of your steps (i.e., making them smaller or larger) as the game continued on? Why?
- g. Did anyone want or choose to not be honest in the exercise? Why? What does this tell us about our experiences? (Probe: Is there shame or stigma attached to our experiences of power?)
- h. What was your first reaction when I asked you to race to the wall? (Contributions could include: too far, too close, ran very hard, knew I couldn't win, what was the point, etc.)
- i. What does this exercise teach us about the power imbalances between women and men?
- j. What did you learn about your own power? The power of those around you?

Conclude: In our community, women typically have less power than men. This is a social norm—something that is considered normal in our community. The power imbalances between women and men mean that women are at a disadvantage. Discrimination in regards to land transactions and enjoying the right to environment is one way this power imbalance is allowed to continue."

Information for Facilitator to Use:

Statements for the Exercise

- If you were raised in a community where the majority of the people fetching water and collecting firewood were of your sex, move one step back.
- If it is generally accepted that you are the first choice of a heir during succession in case of a death in your family, move one step forward.
- If you pay for the house that you reside in, move one step forward.
- If you have ever been denied property after the death of your parents or partner, move one step back.

- If most land owners that you know are of the same sex as you, move one step forward.
- If people of your sex often inherit land from their parents, move one step forward.
- If people of your sex often evict people off land, move one step forward.
- If you were denied property because of your sex, move one step back.
- If your sex is generally considered as the most suitable for domestic work and care giving services, move one step back.
- If people of your opposite sex are often paid for cooking, for providing firewood and water for domestic use, move one step forward.
- If people of your sex stand a high chance of losing their home in case of separation, divorce or widowhood, move one step back.
- If you commonly see people of your sex doing domestic work and care giving services, move one step backward.
- If you have ever been threatened to be thrown out of a home, move one step back.
- If you have titled property within your names move, move one step forward.
- If you own the title on which your residential home is situated, move one step forward.
- If there ever was an explosion in your kitchen, and you were most likely to be hurt, move one step backward.
- If you must rely on your partner to pay for your accommodation, move one step back.
- If you are in charge of planning, buying and cooking food in your home, move one step back.
- If you have ever been denied of a loan due to lack of “spousal consent”, move one step back.
- If your sex is most likely to be at home when an electricity poll hits the house during day, move one step forward.
- If people of your sex are most likely to have different partners in the same homestead, move one step forward.
- If your people of your sex were likely to convene in the event that the community where you reside has gone without water for a week, move one step backward.
- If your sex would be reluctant to go upcountry due to a new deployment without the consent of their partner, move backward.
- If your children can easily inherit land from your parents, move one step forward.
- If your sex is most susceptible to a miscarriage or a pre-mature birth due environmental pollutant, move one step back.

If your sex can easily move quickly and seek safety in case of hail storm or a building

collapsing, move one step forward.

5.2. Relevance of Gender Responsiveness in regards to the rights to land and environment

Explain

Land

- Land is the fundamental base on which shelter is established.
- What is produced from the land is used as food in the home
- Food goes into goods that are sold at markets to provide income to families.
- Environmental degradation and climate change has had a dramatic impact on the availability and accessibility of food.
- Since Food distribution within families is often determined by men, women often suffer from undernourishment and malnutrition in times of food scarcity, food shortages and crisis more than men.
- women make up the majority of farm workers worldwide, loss of harvest may lead to loss of food and income.
- Women make up the highest percentage of the farming labor force. They face increased health risks from improper and extensive use of fertilizers and pesticides
- Due to gendered division of land, women are responsible for food production as well as the collection of water, wood and other resources necessary for daily survival.
- Though women are primary users of land, majority do not own the land they reside and farm on.

- Due to usufruct rights, women are more susceptible to homelessness and poverty in case of separation, divorce, widowhood or a partner's migration than men.
- Due to popular division of labor where women spend majority of their time performing unpaid domestic work and caring issues affects their purchasing power when it comes to owning land.
- Evictions and displacement due to Large-scale development projects such as plantations, drilling, mining dams, women more due to their limited rights to property.
- Women are more likely to travel long distances to find food and water in case of drought. This can cause fatigue, pain and spinal and pelvic injuries. It also leaves no time to take part in education, income-earning activities, political participation, and rest.
- Since women are responsible of fetching water, in instances of pollution, women and girls stand a greater risk of exposure to environmental contaminants.
- Pregnant and breast-feeding mothers are more susceptible to health damage in case of water and air pollution than men.
- Since women spend more time in close proximity with combusting polluting fuels for cooking and while carrying out domestic activities, they are more exposed to household air pollution.
- Women stand a higher chance of dying in large numbers at home in case of natural disaster since they are most likely to be at home when disaster hits and are not equipped to move quickly and seek safety.

5.3. Cycle of violence related to land and environment in the life of a woman.

Discuss

Divide the participants into small groups and give each a flip chart that has been divided into three columns titled "girl", "woman" and "old woman"

Ask the participants to identify different examples of violence as regards to land and environment that the female gender may face in the different phases of their lives in their community. You want to ensure that each list includes something.

Ask each group to present their flip charts, and keep each flip chart taped up so the participants can see all of them.

Some of the information the Facilitator may use.

Life Phases	Type of violence
Adolescence	Discrimination in ownership and inheritance of property, including land, fatigue due to long distance in search for food and water, malnutrition during famine and drought
Adult period	Domestic Violence, Denial of ownership and access to property/land and inheritance rights, fatigue and health complications due to long distance in search for food and water, malnutrition during famine and drought, homelessness, disease due to exposure to pesticides and air pollutants from firewood/charcoal fuel.
Old Age	Denial of shelter or food, forced homelessness, denial of access to land, denial of property ownership and inheritance rights, destruction of personal effects.

5.4. Land transactions, environmental rights and International human rights

Explain

- Rights To life and property; Article 3 & 17, UDHR
- Right to life; Article 6 ICCPR
- The right to food and to the highest standard of physical and mental health; Article 11 & 12 ICESCR
- Right of land, housing & Water supply; of Rural Women Article 14 2(g) and (h), CEDAW
- Measurement and quantification of the unremunerated domestic activities of women and their recognition in the country's GDP; CEDAW general Recommendations No. 16 and 17
- Rights of rural women to land, and natural resources, including water, seeds, forests, and fisheries in light of the industrial agriculture eco system that has led to negative consequence including forced evictions, the controversial use of genetically modified organisms, soil degradation and erosion, water depletion and the use of cash crops to the detriment of local food crops; CEDAW General Recommendation No.34.
- Rights of peasants and other people working in rural areas to land, this includes the right to have access to, sustainably use and manage land and the water

bodies, fisheries, pastures and forests and to have a place to live in security, peace and dignity. Article 17, UN Declaration on the Rights of Peasants and Other People Working in Rural Areas

- Right to adequate food and the fundamental right to be free from hunger; Article 15, UN Declaration on the Rights of Peasants and Other People Working in Rural Areas
- Right of people to a general satisfactory environment favorable to their development; Article 24, African Charter on Human and Peoples' Rights
- Property rights of women, including Articles: 6(j) for married women; 7(d) on the equitable sharing of property on the dissolution of marriage; 20(c) on the state's obligation to promote women's access to and control over productive resources such as land, and to guarantee their right to property; and 21 on inheritance; The Protocol to the African Charter on Human and Peoples' Rights on The Rights of Women in Africa (The Maputo Protocol).

5.5. Review of the National Legal Frame Work on land transactions and environment

Brainstorm

Ask the participants what Ugandan laws they think are relevant to how Uganda addresses gender and land transactions and environmental rights.

Write the suggestions on a flip chart and discuss how each law addresses gender and land transactions and environmental rights.

Information for Facilitator to Use:

Provisions of the law should include

- Obligation of state to promote sustain-able development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner XXVII(i) The National Objectives and Directive Principles of State Policy, 1995 Constitution
- Freedom from discrimination; Article 21, 1995 Constitution
- Right to property; Article 26, 1995 Constitution
- Parliament's obligation to make appropriate laws for the protection of widows and widowers to inherit the property of their deceased spouses; Article 31(2), 1995 Constitution
- Affirmative action in favour of marginalized groups; Article 32, 1995 Constitution
- State's obligation to provide facilities and opportunities necessary to enhance the welfare of women to

enable them to realize their full potential and advancement; Article 33(2), 1995 Constitution.

- Right to a clean and healthy environment, Article 39, 1995 Constitution
- Parliaments obligation to make appropriate laws to: - protect and preserve the environment from abuse, pollution and degradation; manage the environment for sustainable development; and promote environmental awareness; Article 245, 1995 Constitution
- Prohibition of customs, traditions, and practices of the community that deny women access to ownership, occupation or use of any land held under customary tenure; Section 27, Land Act.
- Security of occupancy of spouses to access and live on family land; Section 38(A)(1), Land Act.
- Definition of family land; 38(A), (4), Land Act.
- Spousal consent in any transaction concerning family land; Section 39, Land Act.
- Rights of occupancy to a widow or a child to a principal residential holding; Section 29, Succession Act
- Trespassing upon the property in the possession of another; Section 302, Penal Code
- Trespassing on burial places; Section 120, Penal Code
- Establishment of Environmental Standards on air quality, water quality, on discharge of effluent into water, noxious smells etc; Part IV, National Environmental Act.
- Management of the Environment such as restrictions on use of lakes, wetlands, mountains, heritage sites, protection of ozone layer, and management of hazardous waste etc; Part VII, National Environmental Act.
- Control of pollution, Part VIII, National Environmental Act
Establishes offenses and penalties relating to environment such as offences relating to hazardous waste, materials, chemicals and radioactive substances, pollution etc; Part XIII, National Environmental Act

Also See other legislations such as:-

- The Constitution (Land Evictions) (Practice) Directions, 2021
- The Water Act, Cap. 152
- The Electricity Act
- The Petroleum (Exploration and Production) Act

- The Uganda Wildlife Act
- The Land Acquisition Act
- Land in Buganda (Provisional Certificates) Act
- Historical Monuments Act
- National Forest and Tree Planting Act, 2003
- Fisheries Act
- The Agricultural Seeds and Plants Act
- The National Environment Act, 2019
- The Land Act, Cap 227

5.6. Significant cases on gender and land transactions

Small Group Exercise

Divide the participants into 6 groups, and allocate two of the following cases to each group:

1. Re Kibiego [1972] EA 172
2. Edita Nakiyingi v. Merekizadeki [1975] HCB 23.
3. Bamwite Nangobi [1977] HCB 41
4. Omella & Omella v. Etieng & Odeke (1994) KALR 98.
5. John Tom Kintu Muwanga v. Myliouse Gafabusa Kintu. High Court Divorce Appeal No. 135 of 1997
6. Best Kemigisa v. Mabel Komuntale Civil Suit No. 5 of 1998
7. Uganda Association of Women Lawyers and Others v Attorney General, Constitutional Petition No. 2/2003
8. Law & Advocacy for Women in Uganda v Attorney General (No. 1), Constitutional Petition Nos. 13/05 and 05/06
9. Paul Kagwa v. Jacline Muteteri, Matrimonial Cause No. 23 of 2005
10. Julius Rwabinumi v. Hope Bahimbisomwe. Supreme Court Civil Appeal No. 10 of 2009.

11. Julius Rwabinumi v. Hope Bahimbisomwe (Civil Appeal No.30 of 2007) [2008] UGCA 19.
12. Kigongo v Kigongo (High Court Civil Suit No 295 of 2015)
13. Ebiju & Anor v Echodu (Civil Appeal No. 43 of 2012) [2015] UGHCCD 122
14. Re Namugerwa & 2 Others (Family Cause No 28 of 2009) [2010] UGHC 13
15. Negulu Milly Eva v. Dr. Serugga Solomon. Civil Appeal No. 103 of 2013 [2014] UGHCCD 64 (30 April 2014) at Jinja
16. Kolya v Kolya Civil Suit-2016/150) [2020] UGHCFD 4.
17. Baryamureeba v Kabakonjo & 6 Ors, Civil Suit-2013/20 [2020] UGHCCD 27,

Provide the group with one or more copies of the judgment in their case and ask them to read it and answer the following questions:

- What is the relevance of this case to gender and land transactions?
- Why is this case significant?
- What approach to judicial decision making did the judges take? A narrow or broad approach? Did the court focus on enforcement or interpretation? Do you think the decision improves social equality and the protection of human rights in Uganda? If so, how did they achieve this?
- How has this decision influenced the application of the constitution and human rights amongst the judiciary?

Give the groups 30 minutes to do this exercise. After, ask each group to report back to the group.

Information for Facilitator to Use:

A summary of each of these cases:

1. **Re Kibiego [1972] EA 172.** Court held that a widow has a legal right to apply for letters of administration of her late intestate husband's estate.
2. **Edita Nakiyingi v. Merekizadeki [1975] HCB 23.** Court held that a wife who has invested in her husband's property is entitled to a share in it. In this case court took into account the "substantial" contribution (which was monetary) made by the wife.
3. **Bamwite Nangobi [1977] HCB 41.** Court held that a female child may not only inherit. Can girls inherit land from their father, but she can also be installed as a heir of her deceased father's estate.

4. ***Omella & Omella v. Etieng & Odeke (1994) KALR 98.*** Court held that a widow has a legal right to apply for letters of administration of her late intestate husband's estate.
5. ***John Tom Kintu Muwanga v. Myliouse Gafabusa Kintu. High Court Divorce Appeal No. 135 of 1997.*** Justice Solome Bossa defined matrimonial property as property which the parties chose to call home and which they jointly contribute to. She further stated that at termination of a marriage including cohabitation neither spouse walks out of the marriage empty handed, [because] each spouse makes a contribution towards acquisition of matrimonial property and this contribution is not necessarily financial.
6. ***Best Kemigisa v. Mabel Komuntale Civil Suit No. 5 of 1998.*** A widow has a legal right to apply for letters of administration of her late intestate husband's estate.
7. ***Uganda Association of Women Lawyers and Others v Attorney General, Constitutional Petition No. 2/2003.*** The Court unanimously held that the section 26 of the Divorce Act that allows a woman's property to be settled to the benefit of her husband or her children if a decree of dissolution of marriage or of judicial separation is pronounced on account of her adultery was inconsistent with the equality and non-discrimination provisions in articles 21, 31, and 33 of the Constitution, and was in effect null and void.
8. ***Law & Advocacy for Women in Uganda v Attorney General (No. 1), Constitutional Petition Nos. 13/05 and 05/06.*** The Court held that sections 2 (n) (i) (ii) which defined the words 'legal heir' and preferred a male heir to a to a female one, Section 27 which made no provision for division of property for a female intestate and whose division was oblivious to the contribution of the wife to the wealth in the home and sections 26 and 29 and rules 1, 7, 8, and 9 of schedule 2 to the Act that provided for occupancy rights of the matrimonial home that burdened a woman but not a man if any of them chose to re-marry discriminated against women in contravention of the Constitution.
9. ***Paul Kagwa v. Jacline Muteteri, Matrimonial Cause No. 23 of 2005.*** Justice Mwangusya held that a contribution towards acquisition of matrimonial property does not necessarily have to be financial.
10. ***Julius Rwabinumi v. Hope Bahimbisomwe (Civil Appeal No.30 of 2007) [2008] UGCA 19:*** Twinomujuni JA held that at the time the bridegroom and bride become husband and wife, all the property they own become joint matrimonial property and on separation they should be equally divided and shared to the extent possible and practicable. However on appeal to the Supreme Court, Kisakye JSC observed that, 'The learned Justice of Appeal not only wrongly articulated the law as to what constitutes matrimonial property, but also how and when individually held property of person acquired before or during marriage becomes matrimonial property.' The court held that a spouse can own individual property as per Article 26 or jointly with his/her spouse. Further it was held that, 'Article 31(1) (b) of the Uganda Constitution (1995) guarantees equality in treatment of either the wife or the husband at divorce, it does not, in my opinion, require that all property either individually or jointly acquired before or during the subsistence of a marriage should in all cases, be shared equally upon divorce.' It was concluded that the question whether

individual property became joint matrimonial property and whether it should be divided equally on divorce depends on the facts of each individual case. Where a spouse makes a substantial contribution to the property, it will be considered matrimonial property. The contribution may be direct and monetary or indirect and non-monetary.

11. ***Kigongo v Kigongo (High Court Civil Suit No 295 of 2015)***: The court held that the couple were never legally married but that the woman had still acquired an interest in their shared home which she believed to be their matrimonial property. The man had invited her to live there and they had lived as if they were husband and wife for 26 years. The court held found that there was proprietary estoppel in favour of the woman and declared her to co-own the house.

12. ***Ebiju & Anor v Echodu (Civil Appeal No. 43 of 2012) [2015] UGHCCD 122***: The court held that with respect to customary tenure, although section 27 of the Land Act permits the taking of decisions in accordance with customs, traditions and practices of the concerned community, such decision must not deny women access to ownership, traditions and practices of the concerned community, such decisions must not deny women access to ownership, occupation or use. It was erroneous for the trial court to conclude that that the wife had no proprietary interest in the land left by the husband and it was not grounded in law, as it is contrary to articles 32(2) and 33 of the constitution, as well as article 5 of CEDAW.

13. ***Re Namugerwa & 2 Others (Family Cause No 28 of 2009) [2010] UGHC 13***: The aunt of 3 children applied for guardianship in order to sell the land they inherited following the death of their father, purportedly to support the children. The Court was unable to determine some critical information, including whether the children had a surviving parent and the source of the funds the aunt used to care for the children. The Court was also concerned that the children's mother might be alive and the automatic guardian, but that the aunt was chosen because she was related to the children's male parent. Under most customary community traditions in Uganda, being a paternal ancestor would give the aunt guardianship priority over the mother. The Constitutional Court found these practices unconstitutional.

14. ***Negulu Milly Eva v. Dr. Serugga Solomon. Civil Appeal No. 103of 2013 [2014] UGHCCD 64 (30 April 2014) at Jinja***. Justice Godfrey Namundi held that in circumstances where the period of cohabitation is not in dispute, the rights of the [parties] to the property acquired individually or jointly during the said cohabitation should be determined within the provisions of Article 26(1) of the Constitution. He further stated that failure to register a customary marriage does not necessarily invalidate it. One can consider himself/herself customarily married once the customary ceremonies of the community/ tribe have been performed and enjoys the rights of married people such as the rights to land.

15. ***Kolya v Kolya Civil Suit-2016/150) [2020] UGHCFD 4***. In a case where a deceased husband had willed the matrimonial home to his son, court held that the deceased had wrongly prioritized his heir over the widow. The court noted that cultural practice which allows for an heir to inherit a matrimonial home thus denying

the widow her proprietary rights is discriminatory.

16. ***Baryamureeba v Kabakonjo & 6 Ors, Civil Suit-2013/20 [2020] UGHCCD 27.*** Though Justice Adonyo acknowledged that there was no existence of any valid marriage between the plaintiff and the 1st defendant, it found that the land in question was family land and could not be subjected to sale by the plaintiff since the 1st defendant ordinarily resided on the land and had been cultivating the same since 1978 when the plaintiff acquired it from his father by way of inheritance.

5.7. Significant cases on gender and the environment

Small Group Exercise

Divide the participants into 6 groups, and allocate two of the following cases to each group:

1. *Advocates Coalition for Development and Environment Vs Attorney, High Court Misc. Cause No. 0100 of 2004.*
2. *Greenwatch Vs Uganda Wildlife Authority and Attorney General; High Misc. Application No. 92 of 2004.*
3. *Greenwatch Vs Attorney General and National Environment Management Authority (NEMA) Misc. Application. No. 140 of 2002.*
4. *Jane Lugolobi & 9 Others vs Gerald Segirinya T/A Smat Curry Powder Factory; High Court Misc Application No. 371 of 2002.*
5. *Greenwatch (U) Ltd. –Vs. A.G & Uganda Electricity Transmission Company Ltd. Hcct-00-Cv-Mc-0139 of 2001.*
6. *Siraji Waiswa –Vs Kakira Sugar Works Ltd. H. C. Misc. Applic. No. 230 of 2001.*
7. *The Environmental Action Network Ltd vs The Attorney General & National Environment Management Authority (NEMA) H.C. Misc. Applic. No. 39 of 2001.*
8. *Dr. Bwogi Richard Kanyerezi vs The Management Committee Rubaga Girls School, High Court Civil Appeal No. 3 Of 1996.*
9. *Dr. James W. Rwanyarare and 2 Others vs The Attorney General; High Court Misc. Applic. No. 85 Of 1993.*

Provide the group with one or more copies of the judgment in their case and ask them to read it and answer the following questions:

- What is the relevance of this case to gender and the Environment?
- Why is this case significant?

- What approach to judicial decision making did the judges take? A narrow or broad approach? Did the court focus on enforcement or interpretation? Do you think the decision improves social equality and the protection of human rights in Uganda? If so, how did they achieve this?
- How has this decision influenced the application of the constitution and human rights in the judiciary?

Give the groups 30 minutes to do this exercise. After, ask each group to report back to the group.

Information for Facilitator to Use: Summary of the Cases

- ***Advocates Coalition for Development and Environment Vs Attorney, High Court Misc. Cause No. 0100 of 2004.*** The applicants sought orders and a declaration that issuing Kakira Sugar Works a 50-year Forest permit by government in a forest Reserve for the purpose of growing sugarcanes was in contravention of the Constitution. The applicants argued that the local communities' views were not sought among others. Court held that the respondent's actions are in violation of public trust and that granting a permit to Kakira Sugar Works was unconstitutional and therefore null and void.
- ***Greenwatch Vs Uganda Wildlife Authority and Attorney General; High Misc. Application No. 92 of 2004.*** The applicant sought an order for temporary injunction against the respondents restraining them from exporting or relocating any chimpanzee from Uganda to the Peoples Republic of China or any other place or country in the world. Counsel for the respondents raised a preliminary objection to strike out the application on the basis that, the respondents were not issued with a statutory notice as required by the Government Proceedings Act. Court in dismissing the Preliminary Objection held that the damage complained of is of a material nature which would not adequately be compensated by award of damages and to demand from an aggrieved party a 45 days' notice, is to condemn them to infringement of their rights and freedoms for that period.
- ***Greenwatch Vs Attorney General and National Environment Management Authority (NEMA) Misc. Application. No. 140 of 2002.*** The applicants sought the regulation of the manufacture, use, distribution and sale of plastic bags and restoration of the environment to the state it was before the menace caused by the plastic. Counsel for the respondents raised a preliminary objection that the application had no cause of action since it didn't comply with Order 1 Rule 8 of the CPR which stipulates rules of representative action. Court held that Article 50 of the Constitution does not require that the applicant must have the same interest as the parties he or she seeks to represent or for whose benefit the action is brought therefore the Court was under an obligation to hear the concerned citizen, in the instant case, the applicant.
- ***Jane Lugolobi & 9 Others vs Gerald Segirinya T/A Smat Curry Powder Factory; High Court Misc. Application No. 371 of 2002.*** The plaintiff applied for a temporary injunction against the defendant restraining him from carrying on the manufacture and processing curry powder at his factory. In granting the injection, the court held that the continued manufacturing and processing of the curry powder at the Defendant's premises continues to be a health hazard to the plaintiffs whose conditions of living have become unbearable because of the activities of the defendant and that the consequences of continued processing of curry powder in the neighborhood of the plaintiffs is so serious and long term that it cannot be compensated by the damages.

- Greenwatch (U) Ltd. –Vs. A.G & Uganda Electricity Transmission Company Ltd. Hcct-00-Cv-Mc-0139 of 2001.*** The Government of Uganda entered into an agreement or a series of agreements, the main being the implementation agreement, with AES Nile Power Ltd. covering the building, operation and transfer of a Hydro Electric Power complex at Dumbell Islands on the river Nile, near Jinja Uganda. In consequence of the implementation agreement, a power purchase agreement (PPA) was executed by AES Nile Power Ltd. and Uganda Electricity Board, a Statutory Corporation at the time established and wholly owned by the Government of Uganda. The applicant sought to obtain a copy of the Power Purchase Agreement from the government of Uganda in vain with the government stating that the PPA had confidential information. Court held that since the Minister of Energy signed the Implementation Agreement on behalf of the government of the Republic of Uganda, in her official capacity, the PPA was therefore a public document.
- Siraji Waiswa –Vs Kakira Sugar Works Ltd. H. C. Misc. Applic. No. 230 Of 2001.*** The plaintiff sought a restraining order against the defendant from acquiring Butamira reserve and uprooting the forest to establish a sugar cane plantation and evicting him (the plaintiff) from the forest. In granting the temporary injunction, court held that the main suit raises questions of environmental concerns and individual interest and the damages complained of are of a material nature which would not adequately be compensated by an award of damages done.
- The Environmental Action Network Ltd vs The Attorney General & National Environment Management Authority (NEMA) H.C. Misc. Applic. No. 39 of 2001.*** The applicant brought a representative suit against the respondent demanding for regulation on public smoking. The suit was brought under a Notice of motion accompanied by an affidavit of a one Phillip Karugaba. Counsel for the Respondent raised an objection contending that the applicant did not follow the laws of bringing a representative action. Court in dismissing the preliminary objection held that, Order 1 Rule 8 of the Civil Procedure Rules governs actions by or against the parties (i.e. plaintiff or defendant) together with other parties, that they seek to represent, and they must have similar interest in the suit. This did not apply to applications brought under Article 50 of the Constitution because this provision did not require that the applicant must have the same interest as the parties he or she seeks to represent or for whose benefit the action is brought.
- Dr. Bwogi Richard Kanyerezi vs The Management Committee Rubaga Girls School, High Court Civil Appeal No. 3 Of 1996.*** The applicant sought an injunction against the respondent restraining them from using the VIP toilets at the lower boundary of the school which were directly adjoined to his home. The appellant contended that, if the VIP toilets were used, they would emit smelly gases directly into his house thus constituting a private nuisance. Court in allowing the application held that a private nuisance is private where it exclusively

affects a private person and interferes with enjoyment of his land. It gave the respondents 90 days to relocate the toilets from date of judgement.

- ***Dr. James W. Rwanyarare and 2 Others vs The Attorney General; High Court Misc. Applic. No. 85 Of 1993.*** Court held that in matters concerning enforcement of human rights, no statutory notice is required because to do so would condone the violation of the right and deny the applicant a remedy.

5.8. The Role of a Judicial officer in ensuring gender responsive adjudication in land transactions and environment

Explain

- a) Visit locus to establish the different interests on land before making any orders such as temporary injunction, eviction, attachments of property.
- b) Familiarise yourself with women's rights to property in cases of separation, divorce, and succession.
- c) Protect victims of mass evictions from government and industrialists.
- d) Protect rights of vulnerable women and men affected by non-sustainable use of water bodies, land.
- e) Ensure safety of the victim and other family members by issuing restraining orders against perpetrators of violence.
- g) Inform victims about their rights such as the right to legal representation and about available services such as legal aid.
- h) Always remember in any case involving children' the welfare principle of a child is paramount.
- i) Encourage litigants to negotiate and settle cases to avoid long protracted trials.
- j) Investigate and ensure that the decision to settle has been made by the parties and it is voluntary.
- k) Ensure that the parties do not have a multiplicity of cases concerning the same subject matter.

MODULE 6: ON-LINE GENDER BASED VIOLENCE

DURATION: 2 hours

AIM: To raise awareness on the gender dimensions attached to on-line gender-based violence.

Objectives

By the end of this module, the judicial officers would be able to: -

- ✚ Define On-line Gender-Based Violence
- ✚ List and define the different forms of On-line Gender Based Violence
- ✚ Indicate International and National legal frame work that addresses cyber-crimes linked Gender Based Violence.
- ✚ Recognize and assess the obstacles to successful adjudication of On-line Gender Based Violence.

FACILITATOR'S NOTES

This module focuses on gender responsive adjudication on online –Gender Based Violence. It explores the different forms and key terms of on-line gender based violence, explores the obstacles to successful adjudication of on-line gender based violence cases, highlight the existing legislative framework on online gender based violence and the role of judicial officers in ensuring gender responsive adjudication in emergencies in online gender based violence cases.

6.1. Introduction

Explain

Information and Communications Technology (ICT) provides users with immeasurable opportunities to communicate with other and share information in both political and economic affairs and social activities. These opportunities, however, can be misused to exploit and abuse children and adults, perpetrate anti-social and aggressive acts, and incite violence and other forms of aggression directed at individuals, groups and/or targeted populations with the intention of causing harm to others.

6.2. Definition of On-line Gender Based Violence

Discuss

Divide the class into 4 groups. Hand each group a Manilla paper and a marker. Give them 10 minutes to answer the following questions. After pin the manila paper at the front of the class and read out the answers.

Questions

- What is On-line Gender Based Violence?
- Who are the most likely victims of On-line Gender Based Violence?
- What are the effects of On-line Gender Based Violence?

Information for Facilitator to Use:

- Gender based violence is violence that is directed to someone because of their gender. Gender Based Violence affects women disproportionately than men. With the widening use of the internet, Gender Based Violence has also moved online.
- patterns of victimization in interpersonal cybercrimes, are more prominent in;
 - Marginalized groups such as women and children are most likely victims.
 - People of high social standing in society such as politicians are also most likely to be targeted as victims.
- Online gender-based violence can lead to the following: -
 - Psychological effects such as stress; fear; anxiety; depression.
 - Social effects such as shame; loss of social standing and reputational harm; loss of human dignity, personal autonomy, and privacy
 - Financial burden from medical and counselling services, legal support, and online protection services and software and offline security measures
 - Loss of life since some victims have committed suicide in response to cybercrimes

6.3. Different forms of Online Gender Based Violence

Explain

Online Gender Based violence is referred to by using different terms, including: - On-line Gender Based Violence, Gender – Based Cyber violence, Technology – Facilitated GBV, Online Gender Based Violence, Gender Violence Online, Gender-Based Cybercrimes, Cyber violence and online abuse. This module will utilize the term Online Gender Based violence but will attempt to help participants familiarize themselves with the different terms that are in use.

6.3.1. Online sexual abuse and exploitation

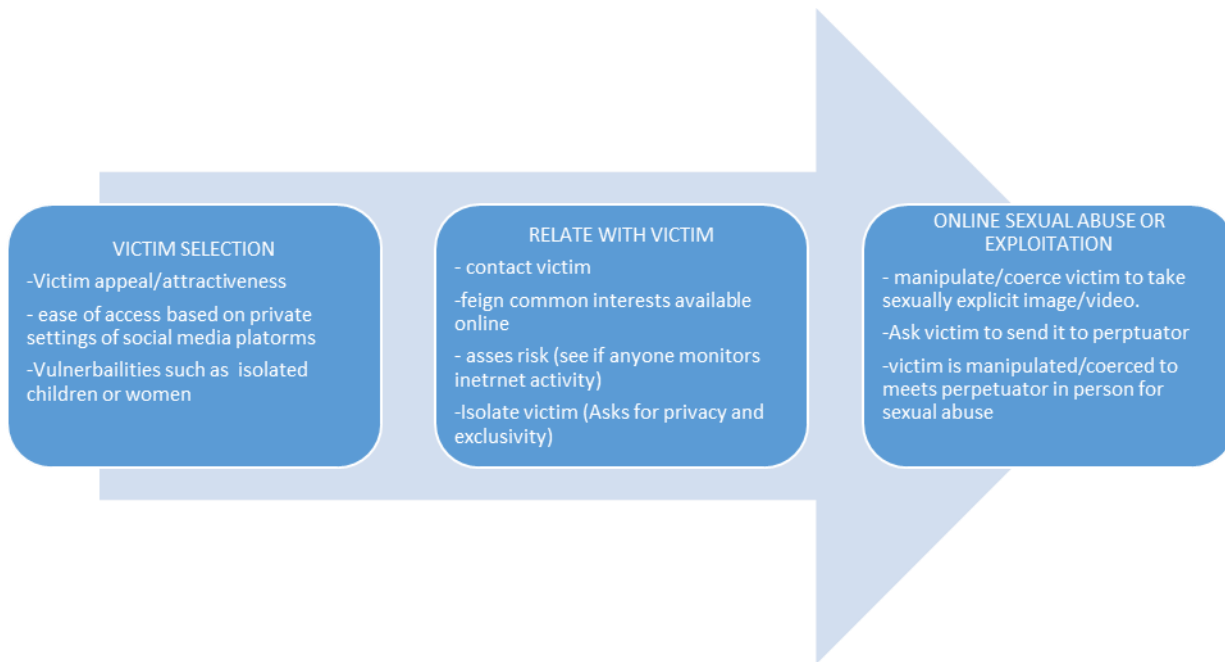
Online contacts or interactions between a victim and a perpetrator (could be known or unknown to the victim) where the victim is being used as an object for the perpetrator's sexual needs. These contacts or interactions are carried out against the victims through the use force, trickery, bribes, threats or pressure.

6.3.2. Online sexual exploitation

Involves online sexual abuse and/or other sexualized acts using the victim that involves an exchange of some kind (e.g., affection, food, drugs, and shelter). Perpetrators of this crime gain advantage over the victim through abuse or attempt to abuse a position of vulnerability, differential power, or trust for sexual purposes" for monetary or other benefit (e.g., sexual gratification).

6.3.3. Online grooming: - (a.k.a. enticement of a victim or solicitation of victims for sexual purposes).

This is described as a practice by means of which a person 'befriends' a child (often online, but offline grooming also exists and should not be neglected) with the intention of sexually abusing her/him.



6.3.4. Sexual abuse / exploitation material

The "representation, by whatever means, of a person engaged in real or simulated explicit sexual activities or representation of the sexual parts of a person for primarily sexual purposes. The use of a child to create such a representation" is known as *child pornography*. Note that Sexual abuse / exploitation material risks conveying that what is occurring is consensual.

Sexual exploitation and abuse material is mainly distributed via email, text message, instant messaging, chat rooms, peer-to-peer file sharing network etc.

6.3.5. Live streaming of child sexual abuse

This involves the real-time broadcasting of sexual abuse to viewers in remote locations. Live streaming of sexual abuse occurs on online chat rooms, social media platforms etc with viewers paying to watch and or actively communicating with the child, the sexual abuser, and/or facilitator of the child sexual abuse and requesting specific physical acts (e.g., choking) and/or sexual acts to be performed on and/or performed by the victim.

6.3.6. Cyberstalking and cyber harassment

Cyberstalking and cyber harassment involves the use of information and communications technology (ICT) to perpetrate more than one incident intended to repeatedly harass, annoy, attack, threaten, frighten, and/or verbally abuse individuals.

Examples of cyber stalking include: -



Other behaviors and actions may include

- flooding the user's inbox with emails;
- frequently posting on the user's online sites, pages, and social media accounts;
- repeatedly calling and/or texting the victim,
- leaving repeated voicemails,
- sending follower and friend requests;
- joining all online groups and communities the victim is a part of or
- following the victim's posts through acquaintances, colleagues, classmates, family members' or friends' social media accounts; and
- continuously viewing the victim's page (some websites log this information and inform the user when their page is viewed).
- Victims can be continuously watched, observed, and monitored by perpetrators with or without their knowledge on online spaces and/or offline spaces. The behavior of cyber stalkers and actions cause victims to fear for their safety and well-being, and depending on the cyber stalker's actions, this fear could extend to the safety and well-being of the victims' families, partners, and friends.

6.3.7. Cyberbullying

This involves perpetrators using of ICT "to annoy, humiliate, alarm, insult or otherwise attack" a victim. Cyber bullying may be direct where the cyberbully attacks victim or by proxy where others wittingly or unwittingly assist the cyberbullying of the victim.

Discuss

Ask the participants to suggest a law that criminalizes On-line gender based violence?

Information for Facilitator to Use:

The Computer Misuse Act creates the following offenses

- Section 24, Child pornography
- Section 25, Cyber harassment.
- Section 26, Offensive communication.
- Section 27, Cyber stalking.

6.4. Key terms in Online gender-based violence

Discuss:

Facilitate a conversation about these terms below; Ask whether participants have encountered some of these terms in their cases, how they would apply the laws and what they see as some difficulties in applying the laws to emerging types of abuse.

- Cyber smearing
- Online impersonation
- human flesh search engine
- Doxing
- Dog piling
- Internet trolls
- Up skirting

- Down blousing
- Sexting

Information for Facilitator to Use:

Some of the definitions of new terms in online violence.

- Cyber smearing involves the posting or other distribution of false information or rumors about an individual to damage the victim's social standing, interpersonal relationships, and/or reputation.
- Online Impersonation is when perpetrator create accounts with similar names and, by making use of existing images of the victims.
- Human flesh search engine is where online users work together to identify a target and perpetrate coordinated online abuse against the target.
- Doxing is the posting a victim's personal information such as address, username and password online.
- Dog piling is when users within an online space bombard a victim with offensive, insulting, and threatening messages to silence the target, force them to take back what they said and/or apologize, or to force them to leave the platform.
- Internet trolls - These are highly offensive and inflammatory remarks online that provoke an emotional reaction in order to provoke an emotional reaction and response from other users.
- Up skirting - where an image is taken up a women's skirt).
- Down blousing - where an image is taken down a woman's blouse) or surreptitious filming in public or private places.
- Sexting – refers to self-generated sexually explicit material which includes; consensual image taking and sharing, as well as consensual taking and non-consensual sharing of images (and sometimes even non-consensual taking and non-consensual sharing)"

6.5. Gender dimensions and Cyber crime

Discuss

Divide the participants into 4 groups and ask them to discuss amongst themselves how cyber stalking, cyber harassment and cyber bullying may become gender-based crimes?

Information for Facilitator to Use:

- Women and girls are more likely to experience this form of harassment than men and boys.
- Threats of sexual and physical violence, along with sexist, misogynistic, discriminatory, and prejudicial comments have been communicated to women and girls via ICT creating a hostile environment for them online.
- Women are victims of the distribution of sexually explicit images and videos
- Women receive hateful, abusive, and offensive comments online.
- Women receive unsolicited and unwanted "highly sexual comments and visual pornography that dehumanize[s]" them.
- A female public figure is most likely to receive threats of physical and sexual violence, as well as misogynistic comments than her male counterpart.
- Women have also been the predominant target of image-based sexual abuse (IBSA) (colloquially referred to as 'revenge porn'), to cause "the victim distress, humiliation, and/or harm them in some way.
- Revenge porn extends beyond revenge. It can be used to obtain monetary benefits or boost social status, or perpetrators who use images as a means to exert further control over their partners or ex-partners
- Women have been victims of morphing. This is where a victim's face or head can be superimposed on the bodies of others for defamation or pornography.
- Girls feel pressured or coerced to sexting more often than boys

- Young men are under social pressure to receive and share explicit images of their female friends with their male peers, in order to assert and protect their heterosexuality.
- Other people most vulnerable to online gender-based violence are people outside the main stream genders.
- Online grooming is predominately perpetrated by males.

6.6. Challenges to successful adjudication of online gender-based violence.

Explain

One of the most significant barriers to preventing online violence and abuse concerns attitudes, beliefs and values. Unfortunately, many people continue to hold attitudes that blame the victims of interpersonal cybercrimes and minimize the harm associated with it. Some people hold the belief that:

- People should know better than to take nude selfies in the first place. Watch out for photo shopping which may make one seem nude by juxtaposing body parts to a face.
- If a person sends a nude or sexual image to someone else, then they are at least partly responsible if the image ends up online.

The sheer size of the Internet, and the number of online platforms and apps, and digital technologies on the market, makes it easy for perpetrators to hide in plain sight.

Information for Facilitator to Use:

Reflection questions for the training:

- What are some of the obstacles to responding to image-based sexual abuse? Discuss these in relation to domestic laws and in terms of a global response.
- What are some potential ways these obstacles can be overcome?
- How can we address victim-blaming attitudes that exist in responding to interpersonal cybercrime?

Discuss the unique circumstances of case of **Uganda vs Brian Isiko...**

Do you think Hon. Sylvia Rwabwogo was a victim? If yes did she get justice?

6.7. Online gender-based violence and international human rights regime.

Explain

There is no specific international legal framework that specifically enhances access to justice for victims of online gender-based violence. Redress can be forged under other rights. Some of the rights that a judicial officer should be kin to look at while adjudicating are cases involving online gender-based violence are: -

Right to life

- Article 3 of the Universal Declaration on Human Rights of 1948
- Article 6 of International Covenant on Civil and Political Rights of 1966
- Article 4 of the African Charter on Human and Peoples' Rights of 1981
- Article 4 protocol to the African Charter on human and people's rights on the rights of women in Africa.

Right to mental health

- Article 12 of the International Covenant on Economic, Social and Cultural Rights of 1966
- Article 16(1) of the African Charter on Human and Peoples' Rights of 1981

Prohibition against torture and cruel, inhuman, and degrading treatment and punishment

- Article 5 of the Universal Declaration on Human Rights of 1948
- Article 7 of International Covenant on Civil and Political Rights of 1966
- Article 5 of the African Charter on Human and Peoples' Rights of 1981

Right to privacy

- Article 12 of the Universal Declaration on Human Rights of 1948
- Article 17 of the International Covenant on Civil and Political Rights of 1966

Right to non-discrimination

- Articles 2 & 7 of the Universal Declaration on Human Rights of 1948
- Articles 2(1) & 26 of International Covenant on Civil and Political Rights of 1966
- Article 2(2) of the International Covenant on Economic, Social and Cultural Rights of 1966
- Article 2 and 18(3) of the African Charter on Human and Peoples Rights of 1981
- Article 5 on the United Nations Convention on the Rights of Persons with Disabilities of 2006

This non-discriminatory application of rights and the enjoyment of these rights by all is explicitly included in the United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 1966 and the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 1963.

Right of children to special protection

- Article 24 of International Covenant on Civil and Political Rights of 1966
- Article 10(3) of the International Covenant on Economic, Social and Cultural Rights of 1966
- Article 3 of the United Nations Convention on the Rights of a Child of 1989

Other important instruments to look at can include: -

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979;
- United Nations Convention on the Rights of the Child;
- United Nations Refugee Convention of 1951;
- United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 1990;
- United Nations Declaration on the Rights of Indigenous People of 1970.

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

6.8. Best practices for judicial officers of access to justice for victims of online gender based violence

Explain

- Keep an updated list of perpetrators
- Liaise with other private sectors and government agencies (National Information Technology Authority (NITA)) to "block" a registered offender from accessing platforms frequented and used by children.
- Coordinate with service providers to remove child sexual exploitation and abuse material from public platforms or provide services like counselling.
- Look beyond the national law on date rape, stalking and harassment as this is an emerging area of cyber staking and online harassment.
- Avoid letting your prejudices concerning the use of the internet

MODULE 7: EMPLOYMENT

DURATION: 2 Hours

AIM: To help participants to appreciate how identities of women and men determine different vulnerabilities and capacities in their work places.

Objectives

By the end of this session, participants should be able to:

- ✚ Discuss the gender stereotypes in the workplace
- ✚ Discuss gendered terms in the work places.
- ✚ Explain why working from a gender perspective, and working towards gender equality, in employment is critical.
- ✚ Discuss the international and national framework governing employment
- ✚ Explain the roles of a judicial officer in employment law.

FACILITATOR'S NOTES

This module focuses on gender responsive adjudication in employment cases. It explores the myths and stereotypes in work places; common key terms in employment cases such as sexual harassment, unequal pay, parental leave, domestic work, trafficking in persons and child labour; highlights the existing legislative framework on employment law; and the role of judicial officers in ensuring gender responsive adjudication in employment cases.

7.1. Gender stereotypes in work places

Discuss

Ask the participants to consider the myths and stereotypes in the table below and discuss their inferences and possible effects on different genders.

Common Gender Stereotypes and Myths	Improper Inferences	Effect
A woman's place is at home	Married women have to take care of their husbands and home	Women are a minority in workplace Gender discrimination at work in hiring, promotion, and in access to capacity building opportunities that involve travel
	Women's domestic and childcare responsibilities will interfere with her work obligations	loss of job after marriage
		A work place suitable for men with no nursing and changing rooms, lack of flexi hours and maternal leave lack of policies on issues that affect women such as provision of maternal leave, flexi hours, nursing spaces and sexual harassment
<i>The man is/should be the main breadwinner</i>	<i>Women's incomes are supplementary to that of the main breadwinner.</i>	<i>Women do not deserve equal pay with men</i>
	Women should be prohibited from doing risk jobs such as those that involve working in the night	Gender discrimination at work in hiring, and promotion.
	It is risky to hire recently married and pregnant women because they will prioritise childcare over work responsibilities.	
	Women are incapable of performing certain work because they have less strength (e.g. construction work, some forms of agricultural work, security	

Women are the weaker sex in need of protection	sector work, etc.). for example the predecessor of the Employment Act, that is, the Employment Decree, purported to protect women against certain hazardous forms of employment such as mining.	
	Certain jobs present a risk for women's physical and reproductive health.	
Mothers and children have a special relationship	Mothers should be the children's primary care givers.	Absence of adequate paternal leave for men
	The special relationship between a woman and her child should be preserved by preventing its disruption by the burdens which result from full time employment.	Fire in case of pregnancy or absence from work due to childcare activities
	If a mother has to work, this will be an additional burden alongside her main role as the primary caregiver. She should be protected from this burden.	Do not hire women with children and pregnant women.
Certain jobs require attractive women	Younger women are more attractive	Employment of women in certain industries or professions should be limited to those under age of 40.
Sexual harassment occurs when a women is raped or sexually assaulted in the workplace	Women enjoy receiving compliments common insults, inappropriate remarks, jokes, insinuations and comments on a person's dress, physique, age or family situation; a condescending or paternalistic attitude with sexual implications undermining dignity; unwelcome invitations or requests that are implicit or explicit, whether or not accompanied by threats; lascivious looks or other gestures associated with sexuality; and unnecessary physical contact, such as touching, caresses, pinching or assault are accepted in a work place	Trivializing of Sexual harassment Sexual harassment is accepted as part of organizational culture

Information for Facilitator to Use:

- Gender matters in who is hired, who is promoted, who is paid, who gets a salary increase, who goes for trainings, who is fired etc.
- Work place environment impacts women, and men in profoundly different ways.
- To provide access to justice, we must understand the differences between women, men, boys and girls: their different roles, responsibilities, needs, capacities, and enjoyment of rights.

If participants mention that sexual harassment allegations can destroy the man's career, ask them how many victims' careers have been damaged or destroyed because of sexual harassment. It is important they realise that for every high-profile man (politician, actor, etc) who suffers in their career, there are many (mostly) women who are never heard from because they have much less power and no voice.

7.2. Common key terms in Employment cases

Explain

7.2.1. Sexual harassment

Sexual harassment consists of physical, verbal and nonverbal unwelcome and offensive conduct or behavior that can take two forms:

- quid pro quo- when a job benefit (e.g. a pay raise, promotion or continued employment) is made contingent on the victim "acceding to demands to engage in some form of sexual behavior;" and
- hostile working environment- when the conduct creates condition that are "intimidating or humiliating for the victim.

Sexual harassment is more likely to occur in workplaces where: men outnumber women, leadership is male-dominated, the power structure hierarchical, lower-level employees are largely dependent on superiors for promotion and power is concentrated in one person.

Sexual harassment also occurs in in schools, universities and other institutions. While schools and universities are workplaces for staff, they are also places of learning for students. Where a student experiences sexual harassment from teacher, lecturer, tutor or other university staff, this involves many similar aspects to those in the workplace, including power imbalance and a quid pro quo element where grades are exchanged for sexual favours (Sextortion).

Sexual harassment impacts on victim's careers in numerous ways, including: restricting access to on-the-job learning and mentoring; forcing victims to change jobs; abandoning leadership positions or careers entirely; unemployment; Psychological effects including depression, loss of confidence and self-worth; and long-term effects such as higher blood pressure and insomnia.

7.2.2. Unequal pay

Equal pay stems from the broader issues of equality of treatment under the law in general, and more specifically with respect to the place of work. Women are designated to do unpaid domestic and care work.

There are a few women in the formal workplaces.

Women are a minority in the workplace, which means that the laws and policies that designed for this space were (and are) mainly concerned with the situation of men.

Where women were (and are) recognized as members of the labour force ("female Jobs"), the terms on which this is accorded is largely discriminatory – with a lower pay. Such jobs include: librarians, elementary school teachers, secretaries and clerical workers among others.

7.2.3. Parental leave

The work force is made up mainly of parents. There is a gender stereotype that childcare is a female responsibility therefore most work place policies only provide paid childcare leave to mothers and not fathers or other family members. This reinforces discriminatory laws and policies for example the Employment Act in Uganda provides that paid maternity leave is 60 working days for women, and an additional 30 days in case of medical complications while paid paternity leave for men is 4 days.

Though it is true that we need to protect the maternal function of women, we need to be cautious of feeding into the prescriptive, pervasive and persistent stereotypes that

women should only be mothers, housewives and caregivers. Harmful cultural attitudes limit women’s opportunities to participate in public life

7.2.4. Domestic work

Domestic work is designated for women. On a daily basis, many women are engaged in a number of activities ranging from cooking, cleaning, garden works, fetching water, grazing animals, to caring for children, the elderly and the sick. None of these activities are recognized as work in commercial terms, and therefore are unremunerated in the domestic sphere. Yet, the same activities, when given commercial names, are recognized as formal work and therefore remunerated in the public sphere

Table 1: “My wife does not work”

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

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

In situations where it is waged, it is undertaken by poor, illiterate and marginalized individuals who fall within the broad category of “house-help”. Domestic workers may be the least paid people in the country. Their work is unregulated.

7.2.5. Trafficking in persons

Men, women, and children may be subjected to forced labor and sex trafficking. Due to high levels of poverty and unemployment in particular, women and young girls tend to be more lured into the hands of traffickers with false promises of well-paying jobs in the city or abroad than their counterparts.

Traffickers are taking advantage of relaxed labour export regulations to recruit men and children.

After women and children have been trafficked, they are forced into sexual exploitation and forced labour.

7.2.6. Child Labour

Due to high levels of poverty, many children are recruited by their parents and guardians to work. Many of these children are exposed to physical or psychological torture, sexual abuse, work underground, work at dangerous heights or in confined spaces, work with dangerous machinery, equipment and tools, or manual handling or transportation of heavy loads, work with chemicals and dangerous substances, work under extreme temperatures, high levels of noise, and working for longer hours.

There is also a presence of many street children who have been trafficked and forced into commercial begging, prostitution, and other illicit activities.

7.3. Employment and International human rights

Explain

- Right to work; Article 23 of the Universal Declaration on Human Rights of 1948
- Right to rest and leisure; Article 24 of the Universal Declaration on Human Rights of 1948
- Right to work, to associate with trade unions, to strike, equal pay, parental leave Article 6, 7, 8 and 10 of International Covenant on Economical Social and Cultural Rights of 1966

- Right to equal pay. Article 2(1) of the 1951 UN Equal Remuneration Convention; Article 7 of the ICESCR and Article 15 of the Banjul Charter.

ILO Conventions

- Equal Remuneration Convention (No. 100)
- Discrimination (Employment and Occupation) Convention (No. 111) includes protection of women from sexual harassment.
- Workers with Family Responsibilities Convention (No. 156)
- Maternity Protection Convention (No. 183)

CEDAW, Article 11

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

ensure their effective right to work, States Parties shall take appropriate measures:

- a) To Prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
 - b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*
 - c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*
 - d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.*
- 3. Protective legislation relating to matters covered in this Article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.*

Also see

- CEDAW General Recommendation No. 13 on equal remuneration for work of equal value.
- CEDAW Committee's General Recommendation No.19. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace

7.4. Review of the National Legal Frame Work on Employment Law

Brainstorm

Ask the participants to suggest what national laws they think are relevant to the employment legal framework of Uganda.

Write the suggestions on a flip chart and discuss how each law addresses gender and emergencies.

Some of the laws that the participants may give are;

- Power to parliament to enact laws on equal work without discrimination, Article 40(1)(b), 1995 Constitution
- Equal remuneration for work of equal value, Section 6 Employment Act

- Forced labour, S.5 Employment Act 2006
- Sexual harassment in employment, S. 7 Employment Act 2006
- Jurisdiction of Court, S.14

Information for Facilitator to Use:

- Women are often unaware that certain actions in the employment sphere constitute discrimination; they may not know how to protect their rights, and without legal assistance they may find it impossible to gather evidence of direct discrimination.
- In civil cases on gender discrimination, the victims have the burden to prove on a balance of probabilities that they have suffered discrimination. However, there is a challenge of proving if the specified actions or decisions are discriminatory. Evidence of direct discrimination is usually non-existent (for example, rules, policies and practices appear neutral; and they do not explicitly establish different treatment for women and men).
- Inform judicial officers that when they are reviewing evidence, the focus should be on the effects of the rules, policies or practices that are being challenged in order “to show that they are disproportionately unfavourable to specific groups of persons by comparison to others in a similar situation.
- The cautionary rule also imposes a legal requirement that the victim’s testimony must be corroborated by other evidence – whether physical, forensic, medical or the testimony of other witnesses. This requirement imposes a higher burden of proof on victims of sexual harassment in comparison with other crimes, where a conviction may be secured solely on the victim’s testimony.

Reflection Question

- Is Uganda’s legal frame work in regards to ensuring gender equality at work places adequate? If not why?

7.5. Significant cases on gender and employment law

Exercise

Divide the participants into 4 groups, and allocate one of the following cases to each group:

1. Lydia Hatega Vs Attorney General and Administrator General; The Industrial Court, Labour Dispute Claim No. 019 of 2014.
2. Irene Rebecca Nasuuna Vs Equity Bank Uganda Ltd, The Industrial Court Labour Dispute Claim No.06/2014.

3. Angella Birungi v NLS Waste Services, The Industrial Court Labour Dispute 067/2014.
4. Akankunda Anne Vs Salam Vocational Education Centre Ltd, The Industrial Court, Labour Dispute Claim. No. 041/2016.

Provide the group with one or more copies of the judgment in their case and ask them to read it and answer the following questions:

4. What is the relevance of these cases to Employment Law?
5. Why is this case significant?
6. What approach to judicial decision making did the judges take? A narrow or broad approach? Did the court focus on enforcement or interpretation? Do you think the decision improves social equality and the protection of human rights in Uganda? If so, how did they achieve this?
7. How has this decision influenced the application of the constitution and human rights amongst the judiciary?

Give the groups 30 minutes to do this exercise; after which each group reports back to the main group for further discussion.

Information for Facilitator to Use:

Summary of the cases.

- ***Lydia Hatega v Attorney General and Administrator General; The Industrial Court, Labour Dispute Claim No. 019 of 2014.*** Court held that a widow was entitled to her husband's death gratuity.
- ***Irene Rebecca Nasuuna v Equity Bank Uganda Ltd, The Industrial Court Labour Dispute Claim No.06/2014.*** Court found that Respondent's intention to dismiss the Claimant from employment before she took her maternity leave through a hurried disciplinary process, violated the principles of natural justice.
- ***Angella Birungi vs NLS Waste Services, The Industrial Court Labour Dispute 067/2014.*** Court held that the claimant fulfilled the requirement to apply for maternity leave as provided for under section 56 of the Employment Act, 2006 and in line with the company policy. Court added however, even if the claimant had applied for the leave and it was not granted to her, she was entitled to take the leave any way. She was pregnant and as nature dictates at some point, she had to deliver her baby and in order for her to do so she had to take leave. Section 75 of the employment Act 2006, prohibited termination/dismissal of an employee due to pregnancy or any reason connected with her pregnancy.
- ***Akankunda Anne v Salam Vocational Education Centre Ltd, The Industrial Court, Labour Dispute Claim. No. 041/2016.*** The court awarded the claimant general damages because it thought terminating the claimant during her maternity leave caused her great pain and given that she earned 1m/= per month and her contract was terminated only after 6 months.

7.6. What steps can you take as a judicial officer to challenge the gender stereotypes and inferences that may arise while adjudicating a case involving employment?

Small Group Exercise

Divide the participants into small groups, and ask them to discuss and write down their role in ensuring gender responsive adjudication in employment law. Give the groups 10 minutes to do the exercise

Ask each group to present their flip charts, and keep each flip chart taped up so the participants can see all of them.

Some of the answers that the participants may give are: -

- Watch out and strike down gender discriminatory legal framework and guidelines in response to employment;
- Avoid judicial bias (e.g., trivialising sexual harassment);
- Relax bail terms in regard to finances. Women are mainly deal in unpaid labour or are employed in industries with poor terms and conditions;
- Relax the need for immediate reports of sexual harassment;
- Use referral pathways if court users' needs legal aid services, medical and socio psychological support;
- Management of court room environment by excluding spectators that may jeopardize the mental and physical health of court users;
- Remember you can use evidence of a single witness in sexual harassment, you need not require corroborating evidence;
- Make your courts environmentally friendly to victims of sexual harassment by adopting measures that protect a victim's confidentiality and personal privacy;
- Be sensitive to the need to issue name suppression orders, particularly where the aggrieved employee would otherwise elect not to approach the court in order to enforce his or her right to nondiscrimination;
- Acquire and apply relevant technical and legal knowledge to reduce on judicial bias;
- Familiarize yourself with relevant international instruments and comparative national jurisprudence, and the ways in which they can be used in domestic judicial fora can make a positive contribution;
- Award appropriate remedies for example value work performed by women outside formal employment. In *Paul Kaggwa v. Jackeline Muteteri*, High Court Matrimonial Cause No. 23 of 2005, Justice Mwangusya recognized the non-monetary contribution of a spouse when he stated that:
"There seems to be no contention that at the termination of a marriage, including cohabitation, neither spouse walks off the marriage empty-handed. This is in recognition of the fact that each of the spouses makes a contribution

towards acquisition of matrimonial property and this contribution is not necessarily financial.”

- Promote social change: Judges and magistrates should use judicial activism to cause law reform where necessary and possible.

Information for Facilitator to Use:

- A delay in the employee’s response or reporting of the harassment should not undermine her claim.
- There is no appropriate time period within which an employee is expected to complain. The time may vary depending upon the needs, circumstances, and more importantly, the emotional threshold of a victim.
- There are many reasons that an employee might endure sexual harassment without making a report.
 - First, making the harassment public may impact future employment prospects, bearing in mind the entrenched stereotype that women are likely to fabricate allegations of sexual assault.
 - The employee may be afraid of repercussions and recriminations, such as being labelled a “trouble-maker”.
 - Thus, there is a heavy professional and personal cost in making the allegations public, which in some cases may involve a public scandal.
 - This fear is exacerbated by the power dynamics between the employer and employee.
 - The employee may have no choice but to endure the harassment due to her financial dependence on the job, and she may not have many alternative employment opportunities open to her.

- Indeed, such circumstances may even encourage an employer to persist with the harassment, and to do so with impunity.

MODULE 8: FAMILY RELATIONS

DURATION: 2 Hours

AIM: To help participants to appreciate how identities of women and men determine different vulnerabilities and capacities in domestic relationships.

Objectives

By the end of this session, participants should be able to:

- ✚ Discuss how myths and stereotypes negatively affect men and women in domestic relationships.
- ✚ Explain why working from a gender perspective, and working towards gender equality, in domestic relationships is critical.
- ✚ Discuss the international and National legal framework concerning domestic relationships.
- ✚ Explain the role of a judicial officer in promoting gender equality in domestic relationships

FACILITATOR'S NOTES

This module focuses on gender responsive adjudication in cases concerning family relations. It explores the effects of myths and stereotypes in family relations; defines domestic violence and discusses forms of domestic violence; highlights the existing legislative framework on family relations; and the role of judicial officers in ensuring gender responsive adjudication in family relations.

1. Introduction

Explain

Family law may overlap with harmful practices, for example forced marriage, female genital mutilation, assault, but it is generally distinct from sexual and gender based violence since it concerns civil, rather than criminal, matters.

In this module we will use the term domestic relationships to refer to marriages and couples living together in an unregistered domestic relationship.

8.1. The effect of gender myths and stereotypes in family relations.

Discuss

Using the checklist below

- Identify and discuss the harms caused by the stereotypes and myths set out in the table below.
- Does the gender stereotype deny the individual a right or a benefit?
- Does the gender stereotype impose a burden on the individual?
- Does the gender stereotype degrade the individual, diminish their dignity or otherwise marginalise them?

Myths and Stereotypes	Inference	Effect
A man is the head of a household	A father is the owner of the child	Men best suited for custody of children
		Women cannot grant nationality to their children
		A woman has no say on the number of children to bear
	A father's interest should be prioritized over the child's	Gender discrimination in distribution of property at the dissolution of a marriage (Divorce, separation, Death)
	A man should administer family property	
	Property should be registered in the name of the man or his male relative	Men decide whether a woman should indulge in paid work or not and what she ought to make use of the money
	Men have authority over women	
	Women have no capacity to begin, manage or end a marriage	
A man is the bread winner of a home.	Men are the primary bearers of the financial burden of taking care of a home.	Men have to pay bride price even when they cannot afford it
		Women lack grounds of divorce or separation
		Men are primary bearers of Child maintenance orders. Gender discrimination in distribution of property at

	Family Wealth belongs to a man	the dissolution of a marriage (Divorce, separation, Death)
Women are mothers, the primary homemaker and caregiver in a home	Men cannot do domestic work	Women more likely to face domestic violence in the event of failure to carry out their designated gender roles
	Men cannot take care of children	Men are not considered a good choice for custody in divorce/ custody cases, even if the father is more capable or has played a greater role in caring for the children.
	Women do not work	Since designated work is unpaid, there is a high chance of non-recognition of non-monetary contribution of women
Domestic partnerships should be celebrated by cultural and religious customs	Unregistered domestic partnerships are not worthy of recognition and protection	Unregistered domestic relationships are invalid.
		When an unregistered marriage dissolves, women are more likely to be penalized due to the fact that the unregistered marriage conveys no legal rights to them
Women are a weaker sex	Men are stronger than women and have authority over them	Men cannot be victims of Domestic violence
		Women are most likely victims of Domestic violence

Information for Facilitator to Use:

Gender matters in who initiates a domestic relationship, who manages the domestic relationship, who is affected when a partner dies or moves on onto another relationship among others.

Women, girls, boys and men have profoundly different experiences in domestic relationships.

To provide access to justice, judicial officers must understand the differences between women, men, boys and girls: their different roles, responsibilities, needs, capacities, and enjoyment of rights

8.2. Domestic Violence

Explain

8.2.1. Definition of Domestic violence

Acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit, irrespective of biological or legal family ties, or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence as the victim

8.2.2. Forms of domestic violence

The Domestic Violence Act, 2010 breaks domestic violence down into four categories. These are:

- Economic abuse
- Emotional, verbal and psychological abuse
- Sexual abuse
- Physical abuse

Ensure that the participants understand the four categories by elaborating and giving examples. For each category, brainstorm with participants some of the acts of violence and record them on a flipchart. Encourage participants to refer to the Domestic Violence Act to come up with suggestions and to also think about the types of relationships that are included.

Information for Facilitator to Use:

Economic violence refers to the deprivation of economic or financial resources to which the victim is entitled. Economic violence includes:

- Controlling access to money
- Deprivation of resources that the victim requires out of necessity for his/herself and his/her children
- Deprivation of property jointly or separately owned by the victim
- Refusing to pay rent related to the shared household and maintenance
- Selling household property
- Denying victim access to assets such as shares in family business or property in which the victim has an interest or is entitled to use of by virtue of the domestic relationship
- Withholding partner/spouse earnings
- Refusing a partner/spouse to participate in financial decision-making.
- Prohibition from seeking employment
- Abandonment
- Land grabbing. Women, especially widows, single and divorced women, are particularly at risk to property grabbing, due to their vulnerability as single women and traditional patriarchal views about inheritance and land

Emotional violence is any act that involves psychological or verbal abuse and /or controlling behaviour. It is a pattern of degrading and humiliating actions towards a victim, including:

- Repeated insults, ridicule and name- calling
- Repeated threats to cause emotional pain
- Repeated possessiveness or jealousy aimed at invading the victim's privacy, liberty, integrity or security

- If acts are committed in the presence of children and is likely to cause him or her injury
- Shouting, threats, humiliation, insults, intimidation and isolation.
- Blocking communication with the outside world

Though Sexual violence and Physical violence are forms of domestic violence, they are outside the scope of this module

8.3. International Human Rights and Family Relations

Explain

Right to Family

- Article 16 of the Universal Declaration on Human Rights of 1948
- Article 23 of International Covenant on Civil and Political Rights of 1966
- Article 10 of the International Covenant on Economic Social and Cultural rights
- Article 18 of the African Charter on Human and Peoples' Rights of 1981
- Article 6 protocol to the African Charter on human and people's rights on the rights of women in Africa.

Marriage, Divorce and Annulment

- Article 7 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.
- Eliminate discrimination against women in all matters relating to marriage and family relations, CEDAW Article 16.
- General recommendation No. 21 of the CEDAW Committee on equality in marriage and family relations
- Women's entitled to decide on the number and spacing of children
- No discrimination of women in divorce proceedings especially in matters concerning the division of property
- States' obligation to ensure that women are free from gender-based violence in both public and family life.

Right of children to special protection

- Children born out of wedlock, Article 25(2) Article 16 of the Universal Declaration on Human Rights of 1948
- Welfare principle in matters of children, CEDAW Article 5
- Closed hearings in guardianship and matrimonial causes. Article 14 of International Covenant on Civil and Political Rights of 1966
- Welfare principle of a child Article 3, United Convention on the rights of a child
- Family guidance as children develop Article 5, United Convention on the rights of a child
- Life, survival and development Article 6, United Convention on the rights of a child
- Name and nationality Article 7, United Convention on the rights of a child
- Identity Article 8, United Convention on the rights of a child
- Contact with parents across borders Article 10, United Convention on the rights of a child
- Responsibilities of parents Article 18, United Convention on the rights of a child

8.4. Review of the National Legal Frame Work on Family Relations

Brainstorm

Ask the participants what Ugandan laws they think are relevant to domestic relationships in Uganda.

Write the suggestions on a flip chart and discuss how each law addresses gender and emergencies.

Information for Facilitator to Use:

Provisions of the law should include

- Family is basic unity of society, National objective and direct principles of state policy XIX, 1995 Constitution
- Recognition of Women's role in society, National objective and direct principles of state policy XV, 1995 Constitution
- Right of children to citizenship, Article 11, 1995 Constitution
- Right to family, Article 31, 1995 Constitution
- Right of Women, Article 33, 1995 Constitutions
- Rights of children, Article 34, 1995 Constitution
- Freedom from discrimination; Article 21, 1995 Constitution
- Affirmative action in favour of marginalised groups; Article 32, 1995 Constitution

Also see the relevant provisions in the following laws

- The Marriage Act, Cap 251
- The Marriage and Divorce of Mohammedans Act, Cap 252
- The Customary Marriages (Registration) Act, Cap 248
- The Hindu Marriage and Divorce Act, Cap 250
- The Divorce Act, Cap 249
- The Succession Act, Cap 162
- Domestic Violence Act 2010
- The land Act

Reflection Question

- Is Uganda's legal framework in regards to ensuring gender equality in domestic relationships adequate? If not why?

8.5. Significant cases on gender and domestic relationships

Exercise

Divide the participants into 6 groups, and allocate two of the following cases to each group:

1. *Uganda Association of Women Lawyers and Others v Attorney General, Constitutional Petition No. 2/2003*
2. *Law & Advocacy for Women in Uganda v Attorney General (No. 1), Constitutional Petition Nos. 13/05 and 05/06*
3. *Law & Advocacy for Women in Uganda v Attorney General (No. 2), Constitutional Petition No. 08/07*
4. *Mifumi Ltd & 12 Others v Attorney General, Constitutional Petition No. 12/2007*
5. *Victor Juliet Mukasa & Yvonne Oyo v. Attorney General*
6. *Kasha Jacqueline & 2 Ors. v. Rolling Stone Ltd. & Giles Muhame*
7. Julius Rwabinumi versus Hope Bahimbisomwe Supreme Court Civil appeal No.10 of 2009
8. *Kigongo v Kigongo* (High Court Civil Suit No 295 of 2015)
9. *Ebiju & Anor v Echodu* (Civil Appeal No. 43 of 2012) [2015] UGHCCD 122
10. *Re Namugerwa & 2 Others* (Family Cause No 28 of 2009) [2010] UGHC 13
11. *Margret Hough versus David Hough* [High Court Divorce Cause No.1 of 2006]
12. *Negulu Milly Eva v. Dr. Serugga Solomon* Civil Appeal No. 103 of 2013 [2014] UGHCCD 64 (30 April 2014) at Jinja.

Provide the group with one or more copies of the judgment in their case and ask them to read it and answer the following questions:

1. What is the relevance of these cases to Domestic Relations?
2. Why is this case significant?
3. What approach to judicial decision making did the judges take? A narrow or broad approach? Did the court focus on enforcement or interpretation? Do you think the decision improves social equality and the protection of human rights in Uganda? If so, how did they achieve this?

4. How has this decision influenced the application of the constitution and human rights amongst the judiciary?

Give the groups 30 minutes to do this exercise. After, ask each group to report back to the group.

Information for Facilitator to Use:

A summary of each of these cases:

1. *Uganda Association of Women Lawyers and Others v Attorney General, Constitutional Petition No. 2/2003*: The Court unanimously held that the provisions of the *Divorce Act* were inconsistent with the equality and non-discrimination provisions in articles 21, 31, and 33 of the Constitution, and were in effect null and void.
2. *Law & Advocacy for Women in Uganda v Attorney General (No. 1)*, Constitutional Petition Nos. 13/05 and 05/06: The Court held that provisions of the *Succession Act* and the *Penal Code Act* (particularly the sections on criminal adultery) discriminated against women in contravention of the Constitution.
3. *Law & Advocacy for Women in Uganda v Attorney General (No. 2)*, Constitutional Petition No. 08/07: The Court held that the practice of Female Genital Mutilation contravened the rights of women in the Constitution, including the right to freedom from torture, cruel and inhuman treatment and drew upon the Convention on the Rights of the Child, International Convention on Economic, Social and Cultural Rights and the International Convention on Civil and Political Rights. Justice Mpagi said in in LAW-U (No.2) case:
 - a. *I would only add that since Parliament has already outlawed the practice of female genital mutilation in accordance with the International Treaties, it is now incumbent upon the judiciary to play the very important role in completely eliminating any form of violence against women including female genital mutilation.*
4. The Court refused to make a finding that the practice of Bride Price violated the Constitution. Hon. Justice Twinomujuni, in his dissenting judgment, held that: Bride price helps to perpetuate a belief in society that a man is superior to a woman, that once he buys a woman, he can batter her, humiliate her and treat her as he likes. The custom of paying bride price in a customary marriage violates all the Constitutional provisions which were enacted to give protection to women, and is repugnant to good conscience. The practice has become purely commercialized and highly exploitative and humiliating to women and it is high time that the custom is abolished and the woman should be set free.

5. *MIFUMI (U) Ltd 12 others versus Attorney General and Kenneth Kakuru.*

The supreme court held that customary practice of the refund of bride price as a condition precedent to a valid dissolution of marriage violates articles 31(1)(b), 32(2) and 33(1) of the constitutional.

Justice Jotham Tumwesigye. The custom of refund of bride price devalues the worth, respect and dignity of a woman...if the term bride price is rejected because it wrongly depicts a woman as a chattel, how then can the refund of bride price be accepted?...if a man is not subjected to valuation for the refund of bridal gifts when the marriage breaks down, it is not right or just that a woman should be subjected to valuation. She is not property that she should be valued.

6. The case of *Victor Juliet Mukasa & Yvonne Oyo v. Attorney General*, High Court Misc. Cause No.24/06; reported in (2008) AHRLR 248, represents an interesting overlap between issues of GBV and the protection of human rights, as well as to the debate on judicial activism vs. restraint. Although the first plaintiff in the case was a well-known Gay Rights activist and had sued the government for invading her right to privacy (under Article 27), personal liberty (Article 23(1), and freedom from torture (Article 24), the Court declared that the case was "not about homosexuality." According to Busingye Kabumba,

"... the sexual orientation of the applicants and issues of gay rights in general cannot but have been the large elephant in the court room throughout the hearing of the case and the rendering of the judgment." Kabumba (2009) at 221.

Relying on the above constitutional provisions, the Universal Declaration of Human Rights, and CEDAW, the Court found that her rights had been violated and awarded compensation of UGX. 10 million to the 2nd applicant, and UGX. 3 million to the 1st applicant for the violation of their property rights. No mention was made of equality and non-discrimination, although quite clearly both had been violated in the actions of the State officials. While the decision could be described as 'minimalist' it nevertheless demonstrated that there are instances in which the simple application and enforcement of the law can have radical repercussions.

7. *Margret Hough versus David Hough* [High Court Divorce Cause No.1 of 2006]

The domicile of a woman and minor children legally follow that of the family head i.e the husband/father. This is important under the system of coverture to ensure that the wife follows the bread winner wherever he goes in pursuit of employment opportunities in order to carry out her domestic obligations. Court took a more progressive view of dependent domicile.

8. *Kasha Jacqueline & 2 Ors. v. Rolling Stone Ltd. & Giles Muhame*, Miscellaneous Cause No. 163/2010, raises even more interesting issues with regard to the question of sexual orientation in the Courts. That case involved publication by the Rolling Stone newspaper of a story entitled, "Hang Them; They Are After Our Kids!!!!" accompanied by several pictures of alleged

homosexuals.

The appellants who had been named and pictured in the paper sought a permanent injunction restraining the respondents from publishing injurious information against them, plus compensation and costs. As in Mukasa's case (supra.), the Court found violations of Articles 24 and 27, and repeated the injunction that, "... this application is not about homosexuality per se. It is about fundamental rights and freedoms." See judgment of V.F. Musoke-Kibuuka, *ibid*, at 9. But most importantly for the present issue, the Court stated:

However, court does not agree that section 145 of the Penal Code Act renders every person who is gay a criminal under that section of the Penal Code Act. The scope of section 145 is narrower than gayism generally. One has to commit an act prohibited under section 145 in order to be regarded a criminal.

9. Julius Rwabinumi versus Hope Bahimbisomwe Supreme Court Civil Appeal No.10 of 2009

Justice Esther Kisakye A married spouse is free to own personal and individual property alone or in association with others under article 26 of the constitution and that such property individually owned cannot be treated as matrimonial property upon divorce. It is only matrimonial property that may be equally divided and shared to the extent possible and practicable at divorce.

10. Negulu Milly Eva v. Dr. Serugga Solomon Civil Appeal No. 103of 2013 [2014] UGHCCD 64 (30 April 2014) at Jinja. Justice Godfrey Namundi held that failure to register a customary marriage does not necessarily invalidate it. He further held that one can consider himself/herself customarily married once the customary ceremonies of the community/ tribe have been performed. Before ordering a retrial, he further noted that the trial magistrate should have considered the period of cohabitation which was not denied, and determined the rights of the petitioner to the property acquired individually on her own or jointly with the respondent during the said cohabitation within the provisions of Article 26(1) of the Constitution.

11. *Kigongo v Kigongo* (High Court Civil Suit No 295 of 2015): The court held that the couple were never legally married but that the woman had still acquired an interest in their shared home which she believed to be their matrimonial property. The man had invited her to live there and they had lived as if they were husband and wife for 26 years. The court held found that there was proprietary estoppel in favour of the woman and declared her to co-own the house.

12. *Ebiju & Anor v Echodu* (Civil Appeal No. 43 of 2012) [2015] UGHCCD 122: The court held that with respect to customary tenure, although section 27 of the Land Act permits the taking of decisions

in accordance with customs, traditions and practices of the concerned community, such decision must not deny women access to ownership, traditions and practices of the concerned community, such decisions must not deny women access to ownership, occupation or use. It was erroneous for THE trial court to conclude that that the wife had no proprietary interest in the land left by the husband and it was not grounded in law, as it is contrary to articles 32(2) and 33 of the constitution, as well as article 5 of CEDAW.

13. *Re Namugerwa & 2 Others* (Family Cause No 28 of 2009) [2010] UGHC 13: The aunt of 3 children applied for guardianship in order to sell the land they inherited following the death of their father, purportedly to support the children. The Court was unable to determine some critical information, including whether the children had a surviving parent and the source of the funds the aunt used to care for the children. The Court was also concerned that the children's mother might be alive and the automatic guardian, but that the aunt was chosen because she was related to the children's male parent. Under most customary community traditions in Uganda, being a paternal ancestor would give the aunt guardianship priority over the mother. The Constitutional Court found these practices unconstitutional.

Note:- See further discussion on women property rights under the module of land transactions and environment under Module 5.

8.6. The role of a judicial officer in ensuring gender responsive adjudication during cases concerning domestic relationships.

Small Group Exercise

Divide the participants into small groups, and ask them to discuss and write down their role in ensuring gender responsive adjudication during emergencies. Give the groups 10 minutes to do the exercise.

Ask each group to present their flip charts, and keep each flip chart taped up so the participants can see all of them.

Information for Facilitator to Use:

- Watch out and strike down gender discriminatory legal framework and guidelines in response to pandemics.
- Avoid judicial bias (e.g., children belong to men or women are naturally good at child care).
- Use referral pathways if court users' needs legal aid services, medical and socio psychological support etc.
- Management of court room environment by excluding spectators especially during matrimonial and guardianship cases.
- Take advantage of using digital solutions to increase accessibility to court
- Identify a list of 'urgent matters' to be continued through online hearings examples are hearings on temporary protection orders and temporary restraining orders.
- When handling domestic violence cases, take into consideration into consideration issues of coercion, harassment or manipulation that are characteristic of domestic violence situations.
- A significant number of contentious divorce cases actually have a history of domestic violence, be cautious when encouraging the divorcing couple to reconcile or 'work out their differences' – often in order to 'keep the family together.' You may unknowingly increase the increase danger to the victim and/or her children of repeated or escalated violence
- Ensure to ask parties if they have been to court before in matters of similar nature. This helps you to coordinate responses and find a lasting solution for the parties. For example, if there is a history of abuse, ADR is not appropriate.
- Always carry out a parental fitness assessment; and child safety assessments to arrive to the best interests of a child while determining child custody and visitation.
- Be aware that perpetrators of domestic violence often manipulate child custody and visitation arrangements in order to exercise power and control over the victim and to harass them. Ensure Perpetrators demonstrate that they are no longer abusive and do not represent a threat to the victim or the children before awarding visitation rights.