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# The Justice-Seeking Power of Women who Experience Sexual Violence in Uganda

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**SIT Study Abroad**  
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*“The Justice-Seeking Power of Women who Experience Sexual Violence in Uganda”*

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Fall 2015

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# **Abstract**

This six-week study explores the justice-seeking power of women who have experienced sexual violence in Uganda, by examining a diversity of avenues used to pursue justice. The research includes three unique case studies: examining (1) the formal prosecution system in the rural, eastern region of Kapchorwa, (2) the internal judiciary framework within Makerere University and (3) the unique alternative projects being brought forward by FIDA Uganda in post-conflict Gulu and the greater Acholi regions. The study looks to understand and evaluate each of the frameworks for justice considering the extent to which they are able to serve survivors of sexual violence.

The researcher was simultaneously taking part in a practicum experience with FIDA Uganda. For this reason a portion of the research was collected through participant observation. Extensive insight was gained from the experience working with FIDA and observing their daily operations. The study was primarily conducted through the use of semi-structured key informant interviews, utilizing interview schedules designed specifically to engage the expertise of each informant. The study also includes literary analysis of rape cases, policies and laws. In addition, there were 4 focus groups discussions accompanied by administered surveys. The data collection gathered almost entirely qualitative data. As part of the research project, the researcher participated in a practicum/internship experience with FIDA Uganda. The internship involved shadowing lawyers, observing the day-to-day operations, interviewing FIDA employees and writing articles for the organization. The internship provided a platform through which the research was conducted.

Study findings suggest that women face systematic, societal, environmental and economic barriers when pursuing justice within any of the available frameworks. Although sexual violence is prevalent within Ugandan societies, women have largely abandoned their attempts to realize justice. Though few risk their livelihoods by speaking out about their experiences of sexual violence, most women who pursue justice are failed by the existing justice frameworks, which are unable to serve the needs of survivors. While organizations and policy makers have stepped in to improve women's access to justice, women remain largely disenfranchised from systems that do not represent their unique role in society. Policies lack implementation, NGOs and traditional courts lack jurisdiction and survivors lack a knowledge of available recourses.

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# Acronyms

CAFHUR	Community Action for Human Rights
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CID	Criminal Investigation Department
DNA	Deoxyribonucleic Acid
DPP	Director of Public Prosecutions
FGM	Female Genital Mutilation
FIDA	The Federation of Women Lawyers
GBV	Gender Based Violence
GDP	Gross Domestic Product
HIV	Human Immune Deficiency Virus
ICC	International Criminal Court
JLOS	Justice Law and Order Sector
LC	Local Council
LRA	Lord's Resistance Army
MASHC	Makerere University Anti- Sexual Harassment Committee
NGO	Non-governmental Organization
PF3	Police Form 3
SGBV	Sexual and Gender Based Violence
UDPF	Uganda People's Defense Force
VC	Vice Chancellor

# 1.0 Introduction

This study examines the justice-seeking capabilities of women who have experienced sexual violence in Uganda. It is the intention of the study to evaluate the available pathways to justice considering their accessibility and effectiveness in serving survivors of sexual violence. It looks to understand the modern legal system within the context of traditional perceptions of justice. It assesses the systematic, institutional, legal, social, environmental and economic barriers that prevent women from successfully prosecuting perpetrators of rape through available legal and paralegal avenues. It also critically examines contemporary alternative conflict resolution frameworks, considering how they might continue to service survivors of sexual violence in contemporary Uganda. The study includes three unique case studies, exploring the diversity of avenues through which women pursue justice for sexual violence in Uganda. The study looks at the Kapchorwa region to explore the realities of seeking justice through the formal legal system in a rural setting, Makerere University to understand the internal judiciary framework within the university, and Gulu to evaluate alternative justice frameworks within the unique post conflict setting.

The study was conducted through the use of semi-structured interviews, administered surveys, focus group discussions, participant observation and literary analysis. These methodologies were utilized in order to collect both qualitative data about justice seeking structures and the experiences of those who use them.

The study provides a holistic look at the unique pathway through which women seek justice and the obstacles embedded in each. It is situated within the Human Development and Human Security paradigms, which emphasize the inclusion of decision-making power, individual freedoms, security and quality of life when considering the measurement of the overall developmental status of a nation.

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## 1.1 Background

The International Criminal Court (ICC) has emphasized the severity of the issue of sexual violence around the world, recognizing its status as a crime against humanity (Uganda: Audit, 2015). Sexual violence remains a prevalent issue internationally; however countries and governments around the world continue to deny justice to survivors. The prevalence of sexual violence against women perpetuates human indignities and prevents nations from realizing gender equality and other developmental objectives. Patriarchal governments and legal systems fail to

punish perpetrators of assault and perpetuate rape cultures that disproportionately victimize women and girls. Despite the high occurrence of rape, levels of reporting and prosecution in Uganda are extremely low.

### *Modern Laws and Policies*

In contemporary Uganda, there are numerous policies that exist to protect the rights of women who have experienced sexual assault, however the implementation of these policies is frequently interrupted by weak structures and systems that often ignore the severity of sexual violence as a crime against humanity. The rates of reporting and rates of prosecution within Uganda are low. The inability to prosecute denies women who have experienced assault their right to justice within the formal legal system and allows perpetrators to go unpunished.

The legal definition of rape in Uganda has evolved over the many centuries since the country's independence. In 1965, the case of *Kibazo vs. Uganda* established the three necessary elements within a case to properly prosecute rape within the court system. The courts determined that the prosecution must prove beyond reasonable doubt that: (1) there was sexual intercourse with the complainant, (2) that the complainant did not consent to the sexual intercourse, and (3) that it was the accused who did participate in the complained sexual intercourse (*Kibazo v. Uganda, 1965*). Then, in 1976 four separate cases, including the *DPP vs. Morgan* case from the United Kingdom, were used to further establish the definition of rape in Uganda. In this particular case, Lord Hailsham defined rape as, "having unlawful sexual intercourse with a woman without her consent and by force. It does not mean there has to be a fight or blows have to be inflicted. It means there has to be some violence used against the women to overbear her will or that there has to be a threat of violence as a result of which her will is over borne" (*DPP v. Morgan, 1976*). In the modern court system, the definition of rape is established within the Ugandan Penal Code of 2007. According to the Penal Code amendments in Chapter 120, Section 123, rape is defined as "having unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representation as to the nature of the act, or in the case of a married woman, by impersonating her husband." (Penal Code 2007)

According to the Penal Code of 2007, a person convicted of rape is liable to face the maximum sentence of the death penalty. An individual who attempts to rape is liable to life imprisonment. While the laws establish maximum sentencing standards they do not establish a minimum, leaving sentencing up to the discretion of the judge. One study conducted in 2009 found

that convicted perpetrators of rape are rarely given the maximum sentence (Uganda: Audit, 2009). Due to the wide discretion of the judge, perpetrators are frequently handed significantly reduced sentences often attributed to “mitigating circumstances” (Penal Code, 2007). Marital rape remains a taboo subject within Ugandan societies and is not recognized directly in the law, making it nearly impossible to prosecute. In addition, the law does not specifically address acquaintance rape also known as “date rape.” Nor do policies solidify an operational definition of consent. The existing laws fail to address many of the “grey areas” inherent in sexual relations, ignoring the many complicated dimensions of sex.

The laws and policies in Uganda that specifically address the issue of rape are supplemented by additional policies that have been interpreted to apply within cases of sexual violence. These domestic policies are embedded within the Ugandan Constitution, the Penal Code of 2007, the Domestic Violence Bill (2009), the Female Genital Mutilation Bill (2009), the Marriage and Divorce Act, and the National Action Plan on Women, among others. The 1995 Constitution provides a vague outline for the rights of women within Ugandan society, stating that, “The state shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement” (Constitution of Uganda, 1995).

In addition to these domestic policies, the government has ratified many international protocols to protect the rights and integrity of women including The African Charter on Human and People’s Rights of Women in Africa (2003), CEDAW the Prevention and Suppression of Sexual Violence against Women and Children, and the Goma Declaration of 2008. While the protocols have been ratified and recognized by the government, their implementation in Uganda is frequently called into question.

A problematic policy commonly referenced surrounding the prosecution of sexual violence in Uganda is the strict requirement of corroborated evidence. Studies highlight policies, which require that victims have witnesses present to testify in court. At face value this policy seems extremely problematic and out of touch with the realities of sexual violence. However, the term witness does not necessarily mean a witness to the actual crime but rather individuals who can serve as corroborated evidence. Ugandan law dictates that the doctor who files the medical exam conducted after an individual reports sexual violence or sexual assault must be present at the court to testify as a principle witness (Esuruku, 2012). In addition to the doctor and the medical evidence she or he presents, successful prosecution is also reliant of having other additional witnesses including the police officers in charge of intake and witnesses to the crime itself (Penal Code, 2007). The term “witness” does not mean a person who saw the crime itself committed, but rather

people who were involved in the rescuing and reporting processes. While it remains incredibly difficult for victims to collect the other necessary evidence, fortunately their case is not compromised if they do not have an eye-witness to the crime.

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## **1.2 Problem Statement**

On paper, the policies and laws in Uganda give the illusion of existing gender equality. However, the realities of sexual violence in the country corrupt this narrative. For this reason, the following questions were asked within the research: What is the ability of women to seek justice after experiencing sexual violence? What are the gaps between policy and practice that account for the lack of legal prosecution of sexual violence? What is the feasibility of alternative frameworks in addressing sexual assault and ensuring justice for victims? This study therefore, assesses the capability of women to pursue justice after experiencing sexual violence through both legal and paralegal, formal and informal frameworks.

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## **1.3 Objective**

It was the objective of this study to look comprehensively at the ability of women to prosecute or otherwise seek justice after experiencing sexual violence. The study aimed to (1) evaluate the prosecution processes of sexual violence as documented in policy and as experienced by survivors (2) investigate the feasibility of alternative forms of justice and their ability to service survivors, (3) propose recommendations to the Ugandan government, civil society and other stakeholders in line with observations made by those involved in the research and (4) to learn about how FIDA Uganda is able to serve and support survivors of sexual violence on their journeys to accessing justice.

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## **1.4 Justification**

Sexual violence against women remains a huge and unquantifiable human rights violation in Uganda. The Ugandan government has been largely progressive in supporting policies to promote women's rights; however the survivors of sexual violence have not realized the benefits of these improved legal frameworks. While most cases of sexual assault go unreported, those that are reported rarely make it to court and even fewer result in the successful prosecution of the perpetrator (Uganda: Audit, 2009). For this reason, it is necessary to critically examine the justice-

seeking power of women who have experienced sexual violence in Uganda and the ways in which systems could be improved to better serve their needs as survivors.

The sites of study were chosen in order to provide insight into the different avenues of justice available to survivors of sexual violence in Uganda. The research aims to look at a diversity of legal and paralegal frameworks in order to provide a holistic understanding of the justice-seeking power of survivors. The Kapchorwa region was chosen after being a subject of preliminary research. The area serves to provide a perspective of rural women and their experiences accessing the justice through the formal legal sector. In addition, the research explores briefly, the influences of traditional justice systems. Makerere University was chosen as the second location for study in order to provide prospective into the justice-seeking capabilities of students within a university structure. The university provides a unique look into an internal judiciary body designed to fill the gaps of students who struggle to utilize the formal criminal justice system. While the research originally intended to look at the experiences of urban survivors living within Kampala, those other than university students, it was discarded after FIDA introduced the unique experiences of women in Gulu. It was decided that this study would include examination of the FIDA programs being implemented in Gulu that look to serve the unique and complex needs of survivors living in the post-conflict setting. This portion of the study examines a legal case being brought against the government as well as the programs designed to engage traditional justice systems. Each of the three locations for the study offers differing perspectives into the multitude of paths survivors have utilized in order to pursue justice. Together, the three locations provide a more comprehensive picture of the justice-seeking opportunities available to women in Uganda.

I wish to also acknowledge the prevalence of sexual violence perpetrated against men and boys in Uganda. Unfortunately, the operating definitions of rape in Uganda do not recognize sexual violence against men as a legitimate form of rape. While it is incredibly important for male survivors to be part of the dialogues surrounding rape culture and sexual violence, the subject area was deemed too taboo and sensitive to be included within this six-week study. For this reason, it was decided that male survivors of sexual violence would not be included within this study.

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## **1.5 Literature Review**

### *Theoretical and Conceptual Framework*

This study is situated within a transnational feminist framework. Through this framework, the study looks critically at the barriers that prevent women from accessing justice. However, the research looks to deconstruct Eurocentric, western perceptions, which dominate international understandings of justice. The framework legitimizes the desires of women within their own culture and society, validating their values and experiences. To a degree, this framework utilizes a cultural relativist approach. However, employing cultural relativity does not mean that the research cannot look critically at a society but rather that the researcher must first understand issues comprehensively before judgments can be made. The study looked to conduct holistic research based on the perspective that one “cannot understand a phenomenon from just one of two perspectives” (Kumar, 2011).

The study also utilizes the Human Development and Human Security paradigms, which emphasize the inclusion of decision-making power, individual freedoms, security and quality of life when considering the measurement of the overall developmental status of a nation. It is imperative that development look beyond GDP and other measures of economic success to consider the quality of life of the people living within the nations studied. The justice-seeking power of women is one factor that should be considered when examining the development status of a nation within either of these two paradigms.

The study utilized a process/monitoring evolution method considering the gaps in the frameworks to deliver justice to survivors. The research considers the degree to which “the delivery of a service is consistent with the original design specifications and, if not, for identifying the reasons and justifications for non-compliance” (Kumar, 2011). This conceptual framework aimed to evaluate the extent of use and the drop-out rate of the examined service as well as the extent to which the framework is appropriately designed to service the target population. This approach is philosophically based, so as to be improvement-oriented with the goal of identifying gaps in policy and practice, which can be improved upon to better serve survivors of sexual violence.

### *Prosecuting Sexual Violence in Uganda*

Relevant literature suggests that sexual violence in Uganda remains grossly underreported, especially within rural communities. In addition, the few cases that have been reported have resulted in a negligible number of convictions; only study found that only three of the more than 1,500 reported cases in Gulu in 2008 resulted in convictions (Uganda: Audit, 2009). “Even though sexual gender-based violence is captured in policy and legal documents as having priority stature

(recognized as a human rights violation) in terms of political will and resource allocation, this prioritization is not clearly evident” (Uganda: Audit, 2009). This suggests that while Ugandan policies may lay out a model society in writing, in reality the implementation of these laws and policies is rather weak.

Studies have found that police responsible for investigating an allegation of rape often lack adequate knowledge of the laws and policies surrounding sexual violence, which results in cases being handled improperly (Uganda: Audit, 2009). One study indicated that cases of rape are sometimes classified in police reports as “indecent assault.”<sup>1</sup> This classification inhibits accurate and effective investigation of the case. Despite sexual violence being a capital offense, officials frequently do not recognize its legal gravity and have been said to tell women that their case is not a police matter and that they should “talk it out at home.”

#### *Traditional Justice and English Common Law*

Studies of pre-colonial African societies suggest rape was considered an extremely serious crime within many communities and punished harshly within cultural courts. In some cases, offenders of rape would often be made to compensate a woman’s family. In rare cases, it is said that men could be castrated or enslaved as punishment for raping a woman or girl (Staples, 2006). While it is important to recognize the extent to which rape culture has been influenced by western intervention, it is imperative that modern research avoids over-glorification of the patriarchal nature of pre-colonial civilizations. It is important to recognize the extent to which pre-colonial African communities valued the bodily integrity of women and punished perpetrators of sexual violence. However, researchers should not paint a picture of rape-free societies. It is imperative that individuals look at contemporary rape cultures as nuanced and complex, deeply imbedded in environments, cultures and histories of unique societies.

When the British colonized Uganda in the 1860s, they brought with them English Common Law which was based on values and traditions specific to English societies. Some studies suggest that the legal system imported by the British largely uprooted traditional conflict resolution frameworks, which once served communities (Shadel, 1999). The dismantling of indigenous tradition in Uganda has influenced the modern realities of sexual violence in the country. Nwolise suggests that the importation of foreign justice systems is problematic as, “a society which neglects the instructive value of its past for its present and future, cannot be self-confident and self-reliant;

and will therefore lack internally generated dynamism and stability” (Nwolise, 2005, pp.153-157). While colonial rule greatly interfered and uprooted many aspects of tradition, African societies did not become merely puppets of the British colonists. It is important to recognize the extent to which communities, chiefs and clan leaders maintained power and preserved culture throughout the colonial rule. One study explains, “British administrators often opposed codifying customary law in order to maintain their ability to respond flexibly to different situations. As a result, Africans determined the content of the law in the course of individual decisions in which they provided a more nuanced interpretation of the law than colonial constructions allowed” (Shalde, 1999).

Much of the existing research surrounding legal prosecution in Uganda has failed to examine how the implementation of the English Common Law system during colonialization has shaped the contemporary legal realities experienced by sexual violence survivors. English Common Law, being a legal system imported during the colonial era, does not directly reflect the cultural practices or justice-seeking behavior in Uganda. The existing body of knowledge surrounding legal prosecution in Uganda maintains Eurocentric ideals of legal institutions failing to look at the legal realities within the historical and cultural contexts of the country. Existing recommendations to improve access to justice are based around “fixing” a broken system to better resemble the justice systems of western society and do not seriously take into consideration, alternative frameworks based in regional traditions.

The contemporary laws of Uganda have resulted in the partial disenfranchisement of traditional conflict resolution frameworks. The Penal Code of 2007 outlines the legal jurisdictions and regulations of clan or cultural courts. In some instances, the law has left room for Ugandans to continue community conflict resolution practices. Cultural courts have the jurisdiction to resolve noncriminal acts such as domestic violence, land disputes, etc. Community members seeking conflict resolution continue to seek guidance from their community elders and LCs to facilitate these processes. Non-governmental organizations (NGOs) have entered communities to supplement and sensitize existing mediation services. NGOs help to facilitate agreements between two or more parties in order to settle community or household disputes. While these mediations do not result in legally binding agreements, communities generally respect the role of the NGOs and their role in the process of mediation.

While the Ugandan constitution includes provisions to allow for the utilization of cultural courts in capital offenses, it has made it illegal to utilize alternative conflict resolution frameworks within the context of sexual violence. This provision is designed to ensure that women access

justice within the criminal justice system. While in principle it suggests that sexual violence is a high priority within the law and state, in practice it disenfranchises women from traditional practices of conflict resolution and perhaps leaves women without feasible routes through which to seek justice.

The modern legal system does not take into account the unique cultural norms and taboos surrounding sexual violence. Many women fear coming forward about their experiences because sexuality is highly stigmatized within their communities. Women are taught both directly and indirectly that they should keep quiet about issues surrounding their own sexual behavior and health. Despite the taboo nature of sex and sexual violence, women frequently confide in trusted female family members, clan members or other members of their communities. This cultural practice suggests that women are often more comfortable addressing issues of sexuality and sexual violence within their communities.

Further exacerbating the problem of stigmatization, there exists a strong culture of victim blaming. Women are expected to take the necessary precautions to avoid being raped and are frequently blamed for their carelessness if they are assaulted.

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### **1.3 FIDA Uganda**

Research conducted on behalf of this study was completed in collaboration with the Federation of Women Lawyers (FIDA). FIDA is an international non-governmental organization that looks to build upon the justice-seeking capabilities of women by providing them access to legal aid and advocacy. Founded in Mexico City in 1944, FIDA is now actively working in 73 countries around the world. The organization was established in Uganda in 1974. FIDA Uganda now has 13 field branches, of which some are based in Gulu, Arua, Iganga, Soroti, Mbale, Kampala, Moroto, and Kapchorwa. The organization “provides a shield against legal impunity by raising awareness of rights and the mechanisms to enforce them, thus enabling women to assert and claim their rights while concurrently enhancing the capacity of law enforcement agencies to protect women.” As such, FIDA’s is dedicated to promoting the human rights and inherent dignity of women and children using law as a tool for social justice. Their work aims to empower women to contribute to conflict resolution, decision-making, peace building and traditional justice by providing legal aid, legal education, public interest litigation and advocacy for law and practice

reform. FIDA engages both formal and informal justice systems to enhance its ability to protect the rights of women.

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## 2.0 Methods

### *Methodology and Tools*

- *Case Studies:* The research initially was designed around three original case studies (1) Kapchorwa, (2) Makerere University and (3) Kampala, examining the unique justice-seeking frameworks in each. The third case study, the Kampala region was eliminated in order to explore in depth, the unique circumstances of survivors living in post-conflict Gulu and the greater Acholi region, which was introduced to the research by FIDA. The case studies were carried out using a multitude of methodological tools including interviews, analysis of primary and secondary source material, surveys, observation and more. Case studies allowed the researcher to study intensively, bodies of knowledge largely unknown within the greater world of academia (Kumar, 2015). The cumulative findings produced as a result of the many utilized tools were analyzed in collaboration with one another at the end of the study. This was an effective way to collect data as it allowed the research to look at several distinctive pathways to justice analyzing and evaluating each individually.
- *Literary Analysis:* The research also reviewed both primary and secondary source material. Included within the literary analysis, was an assessment of the Ugandan legal structures and case laws surrounding the prosecution of sexual violence. The study analyzed sexual violence case files, which were made available by police and the office of the state attorney. Data collected from these files included a summary of each incident, the evidence collected, the date of the incident, report, medical examination, arrest and court hearing, as well as any other vital information. The research included review of reports conducted by FIDA Uganda related to sexual violence, traditional justice systems and the post-conflict Gulu region. Policies set forth by Makerere University were analyzed in order to understand the internal judicial structure. The policies were analyzed as written, while the key informant interviews were used to corroborate the realities of policy implementation. This methodology was essential to understanding the gaps between policy and practice, and to positioning my work within the existing research that has been conducted by FIDA Uganda.

- *Key Informant Interviews:* The majority of the research was conducted through the use of key informant interviews including members of the police force, medical personnel, counselors, FIDA lawyers, state attorneys, NGO staff, students, Makerere University authority figures and government authorities. While it was the initial intention of the study to include the statements of victims within the study, it was decided that the risk of retraumatization was too high to pursue within a 6-week study. While an initial list of informants was established to begin the interviewing process, most informants were discovered through a snowball sampling process. Many of the informants were identified during the research process. Within each interview, participants were asked to recommend or identify other informants who could provide useful insight into the area of study.

Interviews were conducted through a semi-structured fashion, utilizing interview schedules made specifically to address the specific area of expertise of each participant. Samples of interview schedules can be found in the appendix section of the report (Appendix Tool 3). While the interview schedules guided the overall sequence of questioning, questions were added organically throughout the process in order to tap into unforeseen information. Interviews lasted anywhere from fifteen minutes to one hour, depending on the number of questions and the length of the responses provided by each participant.

Interviews were conducted on an individual basis, primarily in the offices of those with whom I spoke. Of the twenty-six interviews conducted, only one was conducted in pairs. In this instance, the two informants asked to be interviewed together which was permitted because the two held the same position and shared an office space.

Each interview participant was required to sign a consent form prior to the commencement of the interview. A sample of the consent form can be found in the appendix section of the report (Appendix Tool 1). Interview participants were asked to read through the form prior to the beginning of the interview. There was one instance in which the interviewee was illiterate and required a verbal reading of the consent form. After signing, individuals were asked whether they were comfortable having the interview recorded. It was explained that the recording would not be used elsewhere and was only for the purpose of retrieving quotes after the completion of the interview. All of those who were asked about recording accepted verbally. The interviews were recorded and transcribed onto a WORD document. In addition, rigorous notes were taken throughout the proceedings of the interview. Both were used in collaboration to produce the final report.

Interviews were perhaps the most informative research methodology utilized throughout this study. Each new interview was helpful to expand the existing body of information as well as to triangulate preexisting understandings.

- *Focus group discussions:* Four focus groups were conducted through the extent of the study period. One focus group was conducted as part of a pre-existing women's group meeting in Kapchorwa. This focus group required a translator who was also a participant in the women's group itself. Three focus groups were conducted with female students from Makerere University. These groups were organized with the help of two Women and Gender studies students at the university who were identified by professor Peace Mussimenta. Each of the focus groups was conducted in a semi-structured manor. The facilitator did not participate in the dialogue but helped to guide the discussion using a predesigned question schedule. Some of the focus groups were recorded after receiving consent from the entire group. None of the names of the participants were recorded in order to maintain confidentiality within the group. Focus groups were helpful to the research, as they allowed women to talk about their shared experiences. It was often a struggle to get everyone in the group to participate because there was often a dominant voice. However, an effort was made to draw out perspectives and experiences from each of the participants.
- *Short surveys:* During the second and third focus group at Makerere University, a twelve-question survey was administered to participants about their perceptions and experiences with sexual violence at the university. The surveys were distributed prior to the dialogue portion of the focus groups so that student's responses were not influenced by the discussion itself. The survey included attitudinal questions, multiple choice and open-ended questions. A sample of the administered surveys can be found in the appendix section of the report (Appendix Tool 2). While the surveys were not used to collect any concrete data, they helped to provide insight into the experiences of students on campus in a confidential manner. Due to the small number of administered surveys, no significant conclusions could be made from the data collection.
- *Naturalistic and Participant observation:* Naturalistic and participant observation was conducted through a working with FIDA Uganda. The research included naturalistic observation of FIDA's daily operations, attending court cases, sitting in on FIDA Uganda meetings, observing a mediation process, and more. Thorough notes were taken throughout the involvement in the activities of FIDA. Participant observation was also conducted during an "inter university dialogue on sexuality" held at Makerere University, where the

researcher participated as a panelist. Participant observation was important to the study as it provided insight into the situations women face when they seek justice.

- *Practicum Experience:* The research was also collected through a practicum/internship experience with FIDA Uganda. The internship included shadowing the legal officials, observing the daily operations, writing articles in response to current events and interviewing many of the employees at the organization. While the internship was primarily a platform through which the research was conducted, the researcher also contributed to the daily operations of the organization and to its public relations efforts.

### *Ethics*

While the research did not include interviews with vulnerable participants, the study focused on an incredibly sensitive topic. During the course of the research, issues of confidentiality arose frequently. Ugandan laws and policies do not require that cases of sexual violence remain confidential within the investigatory process or court proceedings. For this reason, rape case files were made available to me at both the police station and the state attorney's office in Kapchorwa. In an attempt to learn from this primary source material and to also maintain ethical standards of confidentiality, I took notes on the case files but was careful not to include names or other identifying information about the victims or witnesses. Counselors and other individuals who work with survivors were able to talk about the experiences of their clients. While this is second hand information, it was determined that survivors should not be put through a process of retraumatization for the purpose of this study.

The research utilized informed consent of all participants. While most participants signed a formal consent form, others were read allowed the consent requirements and asked to give verbal consent. None of the participants raised issue with any aspect of the consent form though some asked that their name not be included in the study.

It is possible that this research will be delegitimized by individuals who scrutinize the inability of the researcher to prove whether victims involved in the study are "real" survivors of sexual violence or whether they are "lying." For the entirety of the study, I did not deny the experiences of those claiming to be survivors of sexual violence. I feel confident in doing this because, contrary to popular belief, lying about sexual assault is a very uncommon occurrence. The social, political and economic realities in Uganda would make it unfeasible for a woman to abuse this system for her own personal gain. Therefore, I am not concerned that the research is in any way corrupted by participants who claim false victimization.

### *Challenges and Limitations*

The initial intentions of the study were to follow several cases of sexual violence as it was taken through the legal system. It was the initial objective of the study to work directly with survivors to understand their challenges as they go through the prosecution process. However, this turned out to be an impractical way to go about the research within the designated six weeks of study. The first issue was getting in touch with survivors. The issue is incredibly stigmatized; for this reason few women come forward about their experiences. In addition, it is unlikely that there would be any significant progress in an individual case over a six-week period since cases commonly run for over a year. For this reason it was decided that it would be more beneficial to my study to talk to individuals involved in the justice-seeking processes. Of those interviewed counselors were perhaps most beneficial in providing clear and honest insight into the experiences of survivors, primarily because the counselors were able to anonymously share the stories and cases of their clients without breaching confidentiality and without igniting stigmatization or reproducing trauma.

As in any study of sexual violence, it was very challenging to establish concrete data reflecting the frequency in which rape occurs in the various communities studied. While the Ugandan Police Force publishes a few statistics about reporting and arrest rates, it is nearly impossible even to estimate the number of cases, which go unreported. For this reason, it was difficult to quantify and evaluate objectively, the effectiveness of different systems of justice. Similarly, it was difficult to concretely understand the capacity for women to navigate these systems effectively.

Limited time was a large constraint within this research. Several interviews had to be eliminated as a result of limited time. The entirety of the project was compressed into a 6-week time frame. The research would have benefited greatly from additional time to explore during the preparatory stages. Informants often had to reschedule or cancel completely leaving holes in schedules. It would have been helpful to have more time to reschedule with key informants. In addition, it would have been ideal for a portion of the research to take place in Gulu, however, due to time restraints, the Gulu-related research had to be conducted in Kampala.

Finally, the language barrier was often a limitation, which prevented effective communication with a few informants. The researcher does not speak local languages and while most of the interviewees spoke exceptional English, a few struggled to understand the line of questioning as a result of the language barrier. While none of the informants needed or wanted to have a translator, minor miscommunications impacted the effectiveness of the interviews.

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## 3.0 Findings & Analysis

### *Perceptions of justice*

In order to look critically at the justice-seeking power of survivors, one must first consider definitions of justice. Uganda is home to a diversity of people and cultures, each with unique histories, languages and environments. For this reason, it is impossible to construct a definition of justice applicable across this wide range of Ugandan societies. However, I do want to address general perceptions of justice in Uganda and how they might differ from my own Eurocentric interpretations. Ugandan perceptions of justice reflect the high value of community and reconciliation. Justice is served not only for the victim or survivor but also for the greater good of a community. Punishments are not administered simply to discipline perpetrators but also to set a precedent within the society to discourage potential perpetrators from engaging in crime. The culture emphasizes the importance of maintaining peace within the community rather than demanding individual compensation to make up for wrongdoing. These perceptions are particularly prominent in rural areas where individuals more intimately interact with those in their community. Many communities continue to utilize their traditional clan-based conflict resolution practices. These traditional justice systems emphasize the value of mediation and negotiation as means of reestablishing peace and harmony after conflict. However, these values permeate into both the formal and informal justice systems, influencing mediation, court procedures, reporting, etc.

Sentencing practices are also influenced by the societal perceptions of justice. From what I have observed, crimes are not directly equated with years in prison as they are within American society. Ugandan law establishes maximum sentencing for cases of rape, although it is rare for individuals to receive the maximum sentence. Perpetrators of sexual assault, on average, receive sentences far reduced from standards of sexual violence in the U.S. While this could reflect a lack of value placed on women's bodily integrity, it may also reflect a value of reintegrating those who commit crime back into the community. Judges take into serious consideration the mitigating circumstances of a perpetrator's life, such as previous crime rate and the dependency of the perpetrator's family, which could lead to familial suffering as a result of prolonged imprisonment, both of which frequently result in reduced sentences. In this sense justice is served with consideration for many, while in the west justice is served primarily for the victim and their

families. As the researcher, coming from the United States, I have been brought up in the land of mass incarceration. U.S. incarceration rates account for more than 20% of the world's prison population (Ye Hee Lee, 2015)). For this reason, prison has been normalized in my life, believed to be a deserved punishment for crime. During the course of this study it became clear to me that I have come to equate conviction for crimes with prison sentences. I have seen high sentencing rates for cases of sexual assault as customary, as appropriate justice. But in Uganda, systems of punishment do not operate within the same pattern. Perpetrators receive lighter sentences, perhaps five years on average, even for cases of aggravated sexual violence. While I was initially disturbed by these figures, I have come to understand them differently. It is imperative that individuals understand sentencing practices within the cultural context, appreciating that years in prison are not handed out as heavily in Uganda as they are in the U.S.

In Ugandan societies, justice is not equated with prison sentences. Women who seek justice after experiencing sexual violence are not all pursuing the same ends. According to the Director of FIDA Uganda, "There are those who want to reconcile. Some want to grab this man's property. Some say 'I will feel good if he is finally sentenced.' So it is of course case-by-case. You cannot have a one (size) fits all answer to that" (Bunga Idembe, 2015). Some women seek counseling, some want an apology from the perpetrator, some want financial compensation, while others seek reparations for their trauma. Justice can be realized in a multiplicity of ways. As a result, in an attempt to appreciate the complexity of understandings of justice, this study does not utilize a unified measurement of justice but rather takes into account the intricacies embedded in the justice-seeking process.

English common law is largely blind to the nuances within Ugandan culture. It demands for individual justice and punishment. However, despite it being a western importation, the practice of English Common Law is heavily influenced by Ugandan cultures and traditions.

### *Sexual Violence in Uganda*

The table below displays rape statistics as reported in the Annual Crime Reports published by the Ugandan Police Force. It is evident that the number of individuals ultimately convicted for rape is extremely small in comparison to the totals reported and/or investigated. It is difficult to compile comprehensive statistics from this data, as the annual reports are inconsistent in their data presentation. The 2013 Annual Crime and Traffic Road Safety Report is the most recent report available to the public online. In that year, only 0.8% of cases reported to police resulted in convictions. The 2013 report indicates that only 35% of cases investigated resulted in the suspect

being arrested and charged in court (Annual Crime and Traffic Road Safety Report, 2013). It is evident that rape is a big issue within Uganda however; women are not able to consistently realize justice after being assaulted. It is the goal of this study to explain these numbers and consider seriously how access to justice for survivors can be increased through alternative conflict resolution frameworks.

Year	Reported	Investigated	Arrested/ Charged	Pending in Court	Dismissed/ Acquitted	Convicted
2008	1,536	-	239	222	14	3
2009	-	619	240	212	-	12
2010	-	709	252	-	-	-
2011		520	269	243	33	5
2012	-	530	-	-	-	-
2013	1365	1042	365	342	11	11

**Figure 1: Rape Statistics, Annual Crime Report 2008-2013: Ugandan Police Force**

### *Confidentiality and Protection of the Victim*

In each of the avenues to justice that were examined, the issue of confidentiality became an apparent issue. The criminal justice system does not have provisions that work to protect the victim and their confidentiality during the prosecution process. One FIDA lawyer explains, “There is not protection. I can’t assure you that we do have it. It’s not there” (Lwanga, 2015). While confidentiality is somewhat protected within cases of defilement, as victims are under the age of 18, there are no such protections for rape victims or their witnesses who are over the age of 18 (Lwanga, 2015). Court hearings for rape cases are made open to the public. Legal reports publish the names, places of residency and intimate details of the crime committed. This lack of confidentiality deters women from reporting cases of rape to the police as the publicity can cause further traumatization. This lack of victim protection also puts individuals at greater risk of being threatened by the community or the family of the perpetrator. These threats may coerce victims into dropping their case entirely. Victims are also subject to further traumatization during the cross-examination process where they are made to answer directly to the accused. This practice does not take into consideration the levels of threat and intimidation already involved in the acts of sexual violence themselves. Having a victim cross-examined by her rapist jeopardizes the ability of the victim to present her case in the absence of this threatening influence.

Confidentiality also becomes a factor within alternative methods of justice. In traditional systems, justice is often considered more protected as the issue remains within the community.

Women express that they are more confident and comfortable utilizing this system, due to the confidentiality maintained throughout the process.

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### **3.1 Kapchorwa District**

Women in Kapchorwa face a unique set of obstacles when navigating both the traditional and criminal justice systems. Kapchorwa, meaning “home of friends” is located in a remote region of the ranges of Mount Elegon in eastern Uganda. The district occupies 136.9 square miles and is home to an estimated 104,580 people according to the Ugandan Census, 2014. The district has a relatively equal gender distribution with 51% of the population being female. The area has a growth rate of 2.85 with an average household of 4.8 persons. The rural community relies primarily on the economic income generated from agricultural production. The region is also one of the world’s premier growers of specialty coffee (Action Aid).

#### *Sexual Violence in Kapchorwa*

Women seeking justice in Kapchorwa are burdened by the remote location, economic impoverishment, traditional patriarchal values, and inadequate government resources, which plague their navigation of the criminal justice system. When asked about the primary challenges of women within their community, the participants in the Kapchorwa women’s group formulated a substantial list of grievances. The women stated that they are overworked, economically disempowered and frequently beaten by their husbands (Kapchorwa Women’s Focus Group, 2015). The women explain that men sell their land without consulting them and fail to provide for their families. As a result, women struggle to send their children to school and make ends meet. Women in this region have little access to finances since men traditionally control money within the family structure. “Women are being cheated of their recourses” (Kapchorwa Women’s Focus Group, 2015). A study conducted by Action Aid found that women, on average, work 18 hours a day while men only work 4 (Aggrey Kibet, 2015). The labor of women is largely unpaid and strained by additional burdens, routinely carrying young children and babies on their backs. The Program Director of Action Aid Kapchorwa Branch explained that culture and tradition have “given men more power in all spheres of life” (Aggrey Kibet, 2015).

When it comes to sex, Rose Lagua, counselor of Gender-Based Violence at the local hospital, suggests that women, especially married women, “do not have the power to negotiate

sex” (Lagua, 2015). Peter Quma of the Child and Family Protection Unit explains that “women are attached to bride price and become property: treated like something, not like someone” (Quma, 2015). In each of the three files I examined in Kapchorwa, the victim first reported the crime to her mother or another trusted woman in the community. The director of the Women’s Protection Center in Kween district emphasized that women are afraid to report as a result of social stigma within the community. She says that women will use “soft language” to talk about sexual violence in attempts to deflect the stigma associated with rape (Cherukur, 2015). One community woman explained that married women could not report rape out of fear that her husband will divorce her (Kapchorwa Focus Group, 2015). During a focus group a few women explained that their husbands frequently forced them to have sex. While they expressed that this was an issue that they faced in their lives, it was seemingly aberrational which none of the participants recognized as rape (Kapchorwa Focus Group 2015). The hospital counselor suggested that marital rape is not recognized culturally and that married women reporting rape will be told to handle their domestic matters at home. Despite this stigma, in each of the cases I examined, it was the trusted confidant who either encouraged the victim to report the incident to the police or who reported the crime herself. For obvious reasons, there is no accurate estimation of the number of rape cases that go unreported in this region though it is evident that under reporting is a huge problem.

For the few who do report, the battle is far from won. Women face numerous barriers at every step in the prosecution process. Only a small number of cases ever make it to court. The graphic below illustrates the reporting and prosecution process existing in Kapchorwa.

Quma explains that women will usually try to address issues of sexual and gender-based violence within their clan leadership. Cherukur of the Women’s Protection Center suggests that women report only when the traditional negotiating processes are unsuccessful. This suggests that traditional conflict resolutions are still widely used within the community to address issues of sexual violence. This may to some extent account for the low rates of reporting within the community.

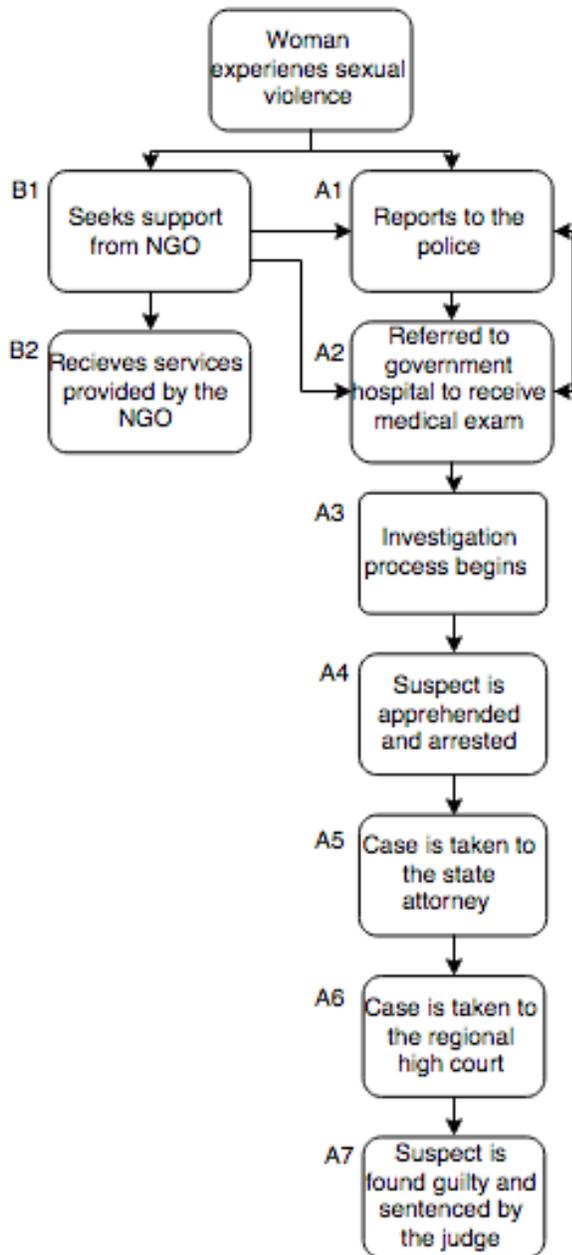


Figure 2: Formal reporting process in Kapchorwa

### B1, B2. Seeking the support of NGOs

Some women seek refuge with trusted NGOs after experiencing sexual violence. The participants in a local women’s group emphasized their trust in organizations like Action Aid, FIDA and CAFHUR as they are “faster”, “supportive” and “don’t ask for money” unlike the local police department. These organizations are essential in providing vulnerable women with counseling services, group support and in some cases, legal advocacy. The Women’s Protection Center in Kween has also become a space for survivors to seek support. There, the staff will help facilitate the reporting process with the police. In almost every interview conducted, individuals emphasized that women in Kapchorwa fear reporting issues of sexual violence due to cultural and community stigma. Peter Quma of the Child and Family protection unit suggests, “Most women suffer in silence.” Muzaki of Kapchorwa Hospital says that most of the clients they receive at the hospital are not looking to report their case. Most clients are seeking medical attention and counseling. Cherukur of the Women’s Protection Center says

that when women come to the center they are seeking justice and determined to report. For the few women who do decide to report, NGOs like Action Aid and FIDA are able to provide them with legal advocacy though they cannot represent cases of rape in court. NGOs frequently refer cases to the police.

### A1. Reporting to the Police

Reporting is the first of many barriers within the prosecution process. Women must travel to the district police station in the town center in order to make an initial report. Being a rural community, many women cannot access the station by foot and must pay for transportation. This

is just the beginning of the numerous financial requirements associated with the reporting process. Upon arriving to the station, police will take a statement from the survivor and the witness of rescue if one is available. While the police deny asking for financial compensation, according to FIDA and Action Aid, women consistently report being solicited for money before the police will begin to process their case. One focus group participant explains that going to the police, “costs money each time you go” (Kapchorwa Women’s Focus Group, 2015).

Women in the community express that the police do take seriously crimes of sexual violence however, lack of sensitization can lend itself to mishandling case files even with the best of intentions. Kibet of Action Aid emphasized that the police do not receive adequate training to make officials sensitive to issues surrounding sexual violence cases. One of the files examined was filed as a rape case, even though the victim was under the age of 18 and it should have been filed as a defilement charge. This error could result in a complete mismanagement of the case, as it would not be taken through the proper procedures. Quma explains that cases of rape are often misclassified as domestic violence cases as the society considers them to be “domestic matters” (Quma, 2015).

Ugandan police procedure dictates that sexual and gender-based violence cases are to be handled within the Child and Family Protection Unit. However, the Kapchorwa police department has created a unit within the crime investigation department to deal specifically with cases of sexual violence. Rose Lugua is the officer in charge of this unit. Quma suggests that establishing a separate unit has helped to streamline cases of sexual violence bringing them closer to the department in charge of investigation (Quma, 2015). Lugua suggests that the department receives at least five cases of rape each month (Lugua, 2015). Lugua is an officer from the Kapchorwa region, and speaks the local language. This allows women to tell their stories without the confidentiality breach brought on by the presence of a translator.

The police department in Kapchorwa is staffed with officers from both inside and outside of the region. Many of the higher ranked officers come from Kampala. Lwanga of FIDA explains that this outside influence helps to minimize bias of local officers who are perhaps “too close” to the community they serve (Lwanga, 2015). At the same time, officers brought into the region from Kampala or other areas do not understand the local language and are less familiar with the unique cultural identity. In addition, officers traveling from Kampala are given longer leave so that they may return home, which leaves holes in staffing on a regular basis.

Police and NGO officials explain that reporting to the authorities is a last resort for most women. Community members generally seek justice first within their clan leadership. It is only

when the conflict resolution in the clan is unsuccessful, that individuals look to resolve their case within the criminal justice system. Quma suggests that this practice significantly detracts from the ability of police to effectively conduct their work and prevents women from seeking the justice they deserve (Quma, 2015).

## *A2. Medical Examination*

After reporting to the police, victims are to be provided with a Police Form 3 to document the physical harm endured during their assault. Women are then supposed to be examined by the district police surgeon who is responsible for filling out the PF3. However, the station does not currently have the qualified personnel to administer these examinations. For this reason, women who experience rape receive the PF3 from the police and are referred to the local hospital to receive a medical examination, counseling, HIV testing, etc. The hospital is conveniently located within reasonable walking distance from the police station. While it is not part of official policy, the Kapchorwa police ask that government medical staff file the medical examination. One officer suggested that this was because the government medical staff charged less money.

Local NGOs suggested that the hospital frequently lacks qualified medical personnel to administer exams. The local hospital currently employs four government doctors; however, the hospital is frequently crowded with long lines of patients in waiting rooms. Four doctors are perhaps not sufficient to handle the influx of patients that enter the hospital each day. While the examination is supposed to be free, none of the people I spoke with, including the district police commander suggested that the survivors received this service without charge. According to police and NGO workers, the exam costs approximately 50,000 Ugandan shs, which is a high price to ask from a woman who likely has limited control over her finances. Patrick Odokonyero, the DPP of the Kapchorwa district police station, explained that JLOS, the government organization, was supposed to provide the police with money to pay for victim medical examinations. However, he explained that this money generally comes late or not at all. If the victim has already paid for the examination, it is unlikely that they receive compensation when the police are eventually reimbursed. Of the medical exams I was able to assess, none included a collection of DNA. The PF3 forms leave it up to the discretion of the medical examiner to administer a DNA test. The forms primarily highlighted the visible physical harm inflicted upon the victim such as bruising or scratches. The Sexual and Gender-Based Violence (SGBV) counselor said that medical officials take a “history” of patients who come in for sexual violence. She suggests this includes whether or not the woman had negotiated for sex prior to being raped. For women who do not fight back

or who are drugged, these forms would be largely inconsequential to their case. The hospital has three nurses who also act as counselors of SGBV though they are not paid for these additional services. Muzaki Annamary, one of the SGBV counselors at the hospital suggests that they receive at least one case of rape a week on average. Muzaki suggests that victims frequently come to the hospital when it is too late for medical officials to collect sufficient evidence.

### *A3. Police investigation*

The police investigation continues after the victim returns with the medical examination and produces a formal statement. According to Officer Odokonyero, the police will begin their search for the suspect after receiving a statement and a medical examination. Officers will collect statements from the doctor who administered the medical exam, witnesses, the suspect and any other persons involved with the crime. Odokonyero emphasized that the Kapchorwa police department, along with other departments in the area, often lack the necessary resources to carry out a thorough investigation. The station receives only 400 liters of fuel a month provided by the government. The geographically large size of the region makes it difficult for police to reach isolated areas with their designated monthly fuel stipend. For instances of rape, this means that police struggle to get statements from the necessary witnesses, which could compromise the case. According to Odokonyero, the police station is also understaffed. He suggests that only four of the stations employees are sufficiently versed in matters of sexual violence. Inadequate police training leaves room for poor investigatory processes.

Lwanga Deborah Marie, the legal advisor at FIDA's Kapchorwa branch, suggests that the investigation process holds many other barriers. She explained that many of her clients have reported violations of police power, which result in the disruption of the prosecution process. Several women have reported that police routinely request financial compensation, demanding money for transport or stationary. Others have reported to FIDA that the police claim to have misplaced their file and terminate their case as a result. CAFHUR and other local NGOs have called for meetings with the police department to address issues of corruption, however, the officials deny these allegations. Officer Odonyero admitted to several shortcomings of the police station highlighting the lack of remedies and training, but he did not suggest that there was corruption within the department.

### *A4. Suspect is Charged and Arrested*

If the preliminary investigation process goes accordingly, police are able to identify the suspect using the information provided by the key witnesses. Officer Odokonyero explained that capturing suspects could be compromised, as some flee the area, sometimes for years, to escape the pending charges. If police are able to identify and locate the suspect, they bring him in to make a statement as well. While the police suggested that they were usually able to arrest the suspect within a timely manner, the case files suggest otherwise. In one file there was a letter to the police addressed from Action Aid inquiring about the progress of a case. While the incident had happened on October 19<sup>th</sup>, the accused was “still at large” when the letter was sent on November 7<sup>th</sup>. The file indicates that the accused was not arrested until January 28<sup>th</sup> of the following year and gives no explanation for the delay.

Suspects that are apprehended are charged with rape and are taken to the hospital for a medical examination. Of the cases I examined, only two included a medical examination of the suspect. However, the file indicated that the exam was conducted nearly a month after the assault making it unlikely that the suspect would have lingering physical evidence on his body. In addition, there was no DNA test administered. The lack of DNA evidence and timely relevance makes this examination inconsequential to the case proceedings.

According to FIDA, in at least one case, the police had a suspect in custody but let him go soon after arresting him, citing the man’s innocence as justification for his release. This instance further suggests corruption and bribery within the police force.

#### *A5. The Case is Handed Over to the Regional State Attorney*

Mirembe Yudaya, the district state attorney found that communication between the police and the state attorney’s office was efficient and that the two offices collaborated effectively. The offices of the state attorney and the police are very close in physical proximity, a walkable distance. The district police commander believed that the state attorneys were understaffed and overloaded with casework. He suggested that this stage was the primary reason for delay in prosecution. However, the state attorney suggested that their staff had adequate time to prepare for the depositions of their cases. Yudaya expressed that plaintiffs rarely come into the state attorney’s office prior to their court date. The community is not sensitized to the prosecution process and is therefore uninformed about the importance of meeting with the state attorney before the court date.

#### *A6. Case is taken to the High Court*

While the chief magistrate of the region can handle most criminal cases in Kapchorwa, including defilement, cases of rape have a stricter jurisdiction. Because rape is a capital crime, it is a requirement of Ugandan law that rape cases are seen within a Ugandan High Court. In Kapchorwa, this means that rape cases must be taken to Mbale, roughly an hour's drive from Kapchorwa. The high court in Mbale is designed to take cases from each region on a rotational monthly basis. Kapchorwa is designated two one-month periods a year in which cases from the region can be seen in the high court of Mbale. However according to the Kapchorwa state attorney's office and the local police department, the second sitting of cases for this year, scheduled for September, has been delayed indefinitely. The district state attorney explained that the government has not provided proper funding in Mbale, which has resulted in a backlog within the high court proceedings.

The district state attorney explained that cases sometimes have to wait up to a year to be seen within the high court. The case files I examined suggested that some victims wait closer to two years before their cases go to court. The state attorney suggested that this step in the process is the biggest cause of delay in prosecution. The lack of expediency is a major barrier to prosecution as victims are more likely to become tired of dealing with the criminal justice system and may withdraw their cases.

However, delay is not the only barrier within this step of prosecution. Yudaya suggests that it is at this stage that the greatest numbers of women withdraw from the proceedings. She explains, "Because it involves embarrassment, it involves degrading, so these ladies always stay behind. They do not want to come out to say, 'this man raped me' so at the end of the day we can lack the key witnesses to follow up this matter" (Yudaya, 2015). It is not only the victims themselves that fear appearing in court but also the other key witnesses. Yudaya explains, "Witnesses don't always appear whenever they compromise themselves... they always compromise and do not appear to testify against this person in court."

Another major deterrent to appearing in court is the distance of the high court. Mbale is more than an hour from the urban center of Kapchorwa. While the state attorney assures that witnesses are compensated for their transportation costs, the officer in charge of SGBV in the police department suggested that individuals have to pay these transportation costs out of their own pockets. In addition to financial constraints, the journey to Mbale acts as an additional stress to those seeking prosecution.

While observing court proceedings in the region, there were several obstacles evident within the court proceedings. The first major issue is the language barrier. Magistrates and state

attorneys frequently come from other regions of the country and are therefore foreign to the localized language of Sebien spoken in Kapchorwa. For this reason, victims, witnesses and defendants relied on translation from a community member. This prevents judges from speaking directly to victims and witnesses and inevitably complicates communication.

It was also observed that the judge, upon speaking with the witnesses, asked about the resolutions made in clan mediation prior to individuals coming to court. This suggests that the judge was taking into account the decisions and values of the community leadership. This is perhaps a positive factor as it suggests that the judge, despite being from another region, is conscientious and respectful of the cultural practices. On the other hand, the clan resolution potentially influences the decision of the judge. This could influence the ruling of the judge within the court.

#### *A7. Suspect is Found Guilty and is Sentenced by the Judge*

The police and the state attorney were only able to find two cases that had been successfully prosecuted. In one case, there was a witness to the actual crime who escaped the grip of the two rapists and took refuge in nearby bushes. The victim was beaten badly and had clear signs of physical harm evident in her medical examination. The perpetrator had threatened to “slaughter” the victim and used a knife to force her to comply with his demands. In the second case, the victim knew the man who raped her and went to report the incident to the man’s mother. The mother was appalled, however, not surprised that her son had committed this crime. It was the mother of the perpetrator who went to the police to report the crime. In both cases, the perpetrator used force and threats. Neither case left much in question or had grey area. It should be expected that both of these cases resulted in guilty verdicts.

The police, hospital workers and legal advisors did not suggest that there were issues establishing lack of consent within rape cases. They indicated that a victim’s word was generally enough to implicate the perpetrator.

Despite the violent and purposeful nature of the perpetrators in both cases, they received what I consider to be very light sentencing. The man who raped and threatened to murder his victim with a knife was sentenced to eight years in prison. The man whose mother reported him after raping his neighbor was given eleven years in prison. While the penal act establishes the death penalty as the maximum sentence for rape, it is clear that this sentence is rarely given. Even in the extreme case in which a man used a knife to threaten his victim, he was sentenced to less

than ten years. The judge has total discretion over the sentencing in these cases. It is clear from reading case files that the judge is quick to take into account a plethora of mitigating circumstances.

The GBV counselor in Kapchorwa Hospital suggested that women will sometimes move after prosecuting cases of sexual violence because they do not want to return to a community that will likely stigmatize them.

### *Observations*

The rape cases files presented for examination by the District Police Department and the Regional State Attorney outlined horrific incidents of sexual violence taking place in the Kapchorwa region. Each of the examined cases involved threats, knives, breaking and entering, gang rape, beating the victim, or other gruesome factors. None of the cases examined could be classified as marital or acquaintance rape. I suggest that that this is likely due to a limited understanding of rape and sexual violence within Ugandan society. Marital rape and acquaintance rape are not recognized within law and are considered taboo within many Ugandan cultures. I suggest that while these incidents of rape commonly occur, they are not reported, as individuals do not want to implicate those within the community or family. For this reason, the majority of cases reported are seemingly cases of stranger rape; where a man catches a woman on her way home in the night, or breaks into her home when he knows that she is alone. While these cases may be harder to investigate, as the perpetrator may be unknown to the community, they should be easier to convict as they involve vandalism, threats and physical violence.

One officer suggests that even in cases of rape, there are attempts to reconcile the case at every stage of prosecution. It is only cases that cannot be resolved within dispute resolution that are taken to court (Quma, 2015).

In the formal legal system, judges consistently cite mitigating circumstances as factors, which inform their sentencing.

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## **3.2 Makerere University**

Makerere University is the largest institution of higher education in Uganda. First established as a technical school in 1922, the university now enrolls more than 40,000 undergraduate and postgraduate students with a high enrollment of international students primarily

from other East African countries. The academics at Makerere are recognized globally, having graduated a large number of internationally notable alumni.

### *Makerere University Rape Culture*

Though Makerere promotes an academically rigorous environment, like many modern universities, the campus fosters a culture of sexual violence and harassment. Rape and sexual exploitation of female students at the university is rampant. Though there are no published statistics within the university, there have been at least three Makerere students who have been raped and murdered in this year alone (Tumwine, 2015). Counselors of the University Counseling Center estimated that they see an average of one to two cases of rape each month. Counselors at Makerere University Hospital estimated that they see closer to three or four victims a month from the university. However, students, counselors and police alike emphasize that rape is grossly under reported on campus. For this reason, it is difficult to estimate the frequency with which sexual violence actually occurs within the student population.

Speaking with the counselors and students from the university provided insight into the realities of sexual violence experienced by women on campus. The counselors there described victims who have experienced gang rape, who are forced to take pornographic images, who are drugged, who are exploited by fellow female students and who are raped in “sugar daddy” relationships (Kungongo, 2015). The university counselors suggest that they most frequently see cases of rape committed by fellow students or by strangers posing as students on campus. Perpetrators frequently ask girls to come over to their rooms or to go out for a drink where they may be drugged or beaten before being raped (Kungongo, 2015). The counselors suggest that clients turn to them for help because they have no other options and are traumatized from their horrific experiences.

Students, counselors and even administrative staff describe specific patterns and practices utilized by perpetrators to lure female students into situations where they are sexually exploited. According to many university sources, it is common for lecturers to purposefully give female students low marks or withhold their marks altogether so that students are forced to come to the offices of the lecturers to negotiate. The lecturers end up demanding sex from the student in exchange for their proper marks. Daphine Wagusa, Makerere student and Minister of Gender and Women’s Affairs at the university referred to this type of sexual exploitation as “sexually transmitted marks” (Wagusa, 2015) The Dean of Students referred to the same exploitation as “STDs” or “sexually transmitted degrees” (Kapagambe, 2015). It is evident that both the student

body and the administration are aware of the prevalence of this issue. Surveys distributed during focus groups with female Makerere students revealed that students believed lecturers were the primary perpetrators of sexual violence on campus. One student expressed that lecturers, “put you in a situation where you don’t have options.” The Dean of Students explains that lecturers take advantage of power differentials and are able to exploit vulnerable students (Kabagambe, 2015). When students do not give into the sexual demands of the lecturers, they risk losing their academic marks. As a result some students are forced to repeat courses, others drop out of university entirely.

While the students surveyed suggested that lecturers were the most common perpetrators of sexual violence, the Acting Director of Legal Affairs at the University explained that these cases are rarely reported to the administration (Muhumuze, 2015). University counselors explain that students fear to implicate their lecturers even within the confidentiality of a counseling center (Kugongo, 2015). Student sources explain that reporting to the administration puts one at greater academic risk, as fellow lecturers will “team up” against students who implicate their coworkers. According to the Dean of Students, lecturers end up “working together, subconsciously, trying to protect themselves from students” (Kabagambe, 2015).

In 2007, the university established a dress code banning miniskirts and short dresses worn by female students. This policy was passed with support of the administration that claimed students dress was largely responsible for the rates of sexual harassment on campus. Pastor Matin Seempa, a youth worker at the university explains that “exposure of breasts, buttocks and thighs constitutes sexual harassment” (New Vision, 2015).

### *Experiences with the Police Department/ Reporting*

Students and counselors alike emphasize the reluctance of students to report sexual violence to the police. The university has a police department within its perimeters but one student suggested that many students aren’t even aware of its location. One student, whose friend was raped while at university, noted that the incident was “reported to the police, but the police never minded to follow up.” Kugongo explains, “The police [in Uganda], it is not like your police in the U.S. One girl, she went to the police, the police ridiculed her and told her she asked for it, so the girls they don’t want to go. They accuse them, ‘you put on very tight clothes, you wear short dresses’ so how can you go to such a police?” She goes on to explain that, “other victims, when you will ask them why they don’t want to go to police they will tell you, ‘I even don’t have the money.’ For our police, as soon as you put in a statement you have to put in some money. Meanwhile the culprit or suspect will come and put in more than you have put and the

case will be dropped; they will be set free.” The police are commonly criticized for compromising cases as a result of bribery. Kugongo explained another incident where a university student was raped by a Kenyan man, “she was brought here [to the hospital], she came with the police, they arrested him and took him to the police at the university but they asked for money from him and he was never taken to court.” Counselor Okware suggests that at least 70% of cases they see from the university go unreported. Kugongo explains that students want their perpetrator punished through the formal legal system. However, they are unable to achieve this because the system bars them from seeking justice; “I think in most cases they are looking for punishment if they could go to police and the police did their work. But they do not, they go scott-free. He rapes many women because they are not taken to police. Even if you go to court you are ridiculed.” (Kugongo, 2015)

Despite students and counselors expressing distrust towards the police reporting process, many also have suggested that police presence is key to preventing sexual violence in the first place. Nearly every respondent interviewed recommended that police “beef up” security especially in darker areas of campus and during the night hours. Students and counselors alike were concerned with the inability of the security to adequately monitor who is entering the campus. While students expressed that they were uncomfortable reporting to police, they also expressed their key role in preventing violence on campus.

#### *University Anti-Sexual Harassment Policy Framework*

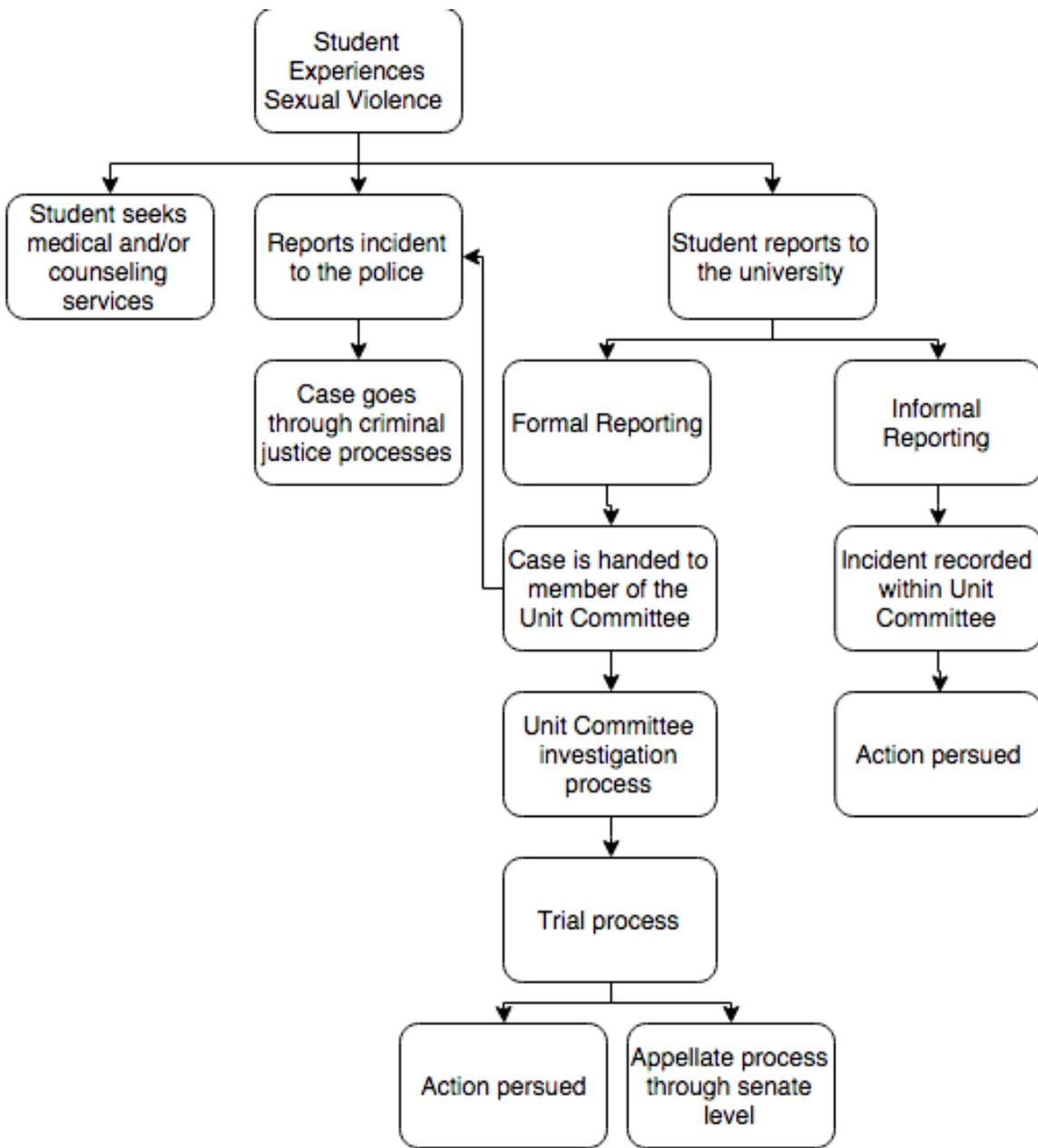
For many years, the university addressed issues of sexual violence and harassment within the university’s disciplinary committee. However, it was determined that matters of a sexual nature should be handled through a separate independent structure. As a result, the university has established an internal disciplinary framework through which students, lecturers and university employees can pursue cases of sexual harassment and sexual assault. The Makerere University “Policy and Regulations of Sexual Harassment” was finalized in 2006 in collaboration with the Carnegie Corporation of New York, the Norwegian Government and the Government of Sweden (SAREC). These policies thoroughly outline the operating definitions of sexual harassment and assault as well as the rights and responsibilities of witnesses, victims and respondents. The policy supplements existing Ugandan legal provisions to provide more extensive protections to victims and establish internal prosecution processes to be utilized within the university.

Within the policy, the university defines sexual harassment as, “unwelcome sexual advances, requests for sexual favors or unwanted physical, verbal or non-verbal conduct of a sexual

nature.” It is the stated objective of this policy campaign to, “establish an institutional framework that encourages victims of sexual harassment to exercise their rights, maintain their dignity and refuse to submit to the pressures of sexual harassment.”

The policy establishes internal investigatory and judiciary organs including the Makerere University Anti- Sexual Harassment Committee (MASHC). The Anti-Sexual Harassment Committees are established at two levels (1) a Unit Anti- Sexual Harassment Committee at every college, faculty, school, institute or administrative department and (2), MASHC at the senate level. Each Unit Committee must be composed by persons of “high integrity” including an administrative head, two senior academic/administrative staff, two junior academic/ administrative staff, three supportive staff, and two student representatives 50% of whom must be women. For each case that arises, the Chairperson of a Unit Committee will select a five-person investigation team representing individuals from each of the personnel categories. The Senate Anti-Sexual Harassment Committee has appellate jurisdiction over decisions made within the Unit Committees. The MASHC is comprised of twenty people including the vice-chancellor, the chair of the disciplinary committee, representatives from the humanities and sciences departments, the Dean of Students, the University counselor, student representatives, administrative staff and supportive staff. The Vice-Chancellor acts as the chairperson of MASHC and is responsible for selecting a five-person investigation team for each individual case that comes forward.

Students who experience sexual violence at the university have the option of reporting the incident internally within the university administration as an alternative to reporting through the police department. Students can report incidents of sexual violence through an informal reporting process or a formal reporting process.



**Figure 3: Anti-Sexual Harassment Committee internal reporting process at Makerere University**

*Informal Reporting*

Students who choose to make an informal complaint regarding sexual assault can report an incident to any member of the academic staff, administrative staff or student leadership. The person to whom a student reports is responsible for forwarding the complaint to the designated Unit Committee where the incident is recorded. The complaint remains on file within the Unit Committee and can be used as future evidence in the case of a repeated assault. Informal reporting does not include a judicial process however; students who utilize the informal reporting process can only pursue minor actions. Within this process, victims have the ability to transfer to another

department or change his/her dissertation supervisor. In addition, victims can send an administrative warning to the perpetrator or harasser.

### *Formal Reporting*

Students who pursue formal complaints take on a more complicated process. Filing a formal complaint requires that students lodge a signed written report directly to a member of their designated Unit Committee. The formal complaint must be lodged within an unspecified “reasonable time.” The written complaint must include the name and address of the victim, the date of the incident, the nature and details of the incident and any other relevant information pertaining to the alleged assault. The Unit Committee can refer the case to the police based on the gravity of the crime committed. The Chair Person of the Unit will then select the necessary personnel to staff the investigating sub-committee and begin the investigation process. The policy requires that investigations must be carried out within three months of lodging the complaint with the exception of cases that contain unspecified “special circumstances.” The respondent is to be contacted promptly and informed about the allegations. The respondent is then required to respond in writing within 14 days of receiving the report. Failing to respond can result in additional disciplinary action. At the conclusion of the investigatory process, the case is seen by the members of the Unit Committee who collectively determine the verdict of the case (Muhumuze, 2015). Individuals not satisfied with the decisions made by the Unit Committee can file for an appeal within 14 days. The appeal is sent to the Makerere Anti-Sexual Harassment Committee at the senate level and must be completed within three months. A person found guilty of sexual assault is punished at the discretion of the Unit Committee or MASHC. The offender is liable to be transferred, demoted, dismissed, suspended, receive a written warning, ordered to give a public apology to the victim, or to financially compensate the victim.

### *Analysis of the University Policies to Address Sexual Violence*

The internal university investigatory process has the potential to act as an effective and efficient alternative-reporting framework. The policies established within the university’s Sexual Harassment Prevention Regulations offer provisions to provide victims with protections, confidentiality and timely judicial processes. As explained above, the policies outline specific time frames to ensure that the investigative process is completed in an efficient manner. This is a major benefit for victims who might otherwise have to wait more than a year to complete the investigatory process within the Ugandan criminal justice system. In addition, the policy makes

efforts to preserve confidentiality explaining that, persons of authority who receives a report of sexual violence “shall as far as practical, treat the complaint with utmost confidentiality” for victims and their witnesses. While the policy emphasizes the importance of maintaining confidentiality, it does not specify under what circumstances confidentiality can be breached. The framework offers some protections for victims facing threats or intimidation, requiring that disciplinary action be taken against any individual who retaliates against a victim or their witnesses throughout the investigatory process.

While the policy provides additional rights and protections to serve students of sexual violence, further analysis of the policy exposes gaps in the framework. Firstly, the policy does not specify that members of the Unit Committees or the investigation team be chosen on a basis of experience in working with cases of sexual violence. The committee is selected from a body of students, lecturers and academic directors, none of who are required to have any type of training or certification. Therefore individuals sitting on the committee may not have the necessary skills to adequately investigate a case. The policies do not outline sensitization practices or training for individuals in the committees. For this reason, there is no way to ensure the competency of those involved in the university judiciary process.

One of the major benefits of reporting to the administration is the policy of confidentiality. However, the ability of the unit committee to refer reported incidents to the police disrupts the attempts of victims who wish to keep their cases within the university. While the students should have the option of taking their case to the police at any time, the committee members should not report the case to the police unless individuals involved are in inherent danger.

In writing, the policies and frameworks existing within the university appear comprehensive and seem sensitive to the complexities of sexual violence. However, students and administrative staff seem largely unaware of the existing policies and frameworks. None of the students I spoke with knew about the existence of the anti-sexual harassment unit committees. Neither the university counseling center staff nor the university hospital staff was aware of this alternative judicial framework. The university’s head legal officer recalls only one incident in which the university utilized the committee structure outlined in the 2006 policy. In that specific case, the student accused a lecturer of raping her. The university formed committees to investigate the allegations; however, the lecturer disappeared and has not returned to the university. The student, who reported after having failed several of her classes, was reinstated to the university and was given financial compensation for the remaining semesters (Muhumuze, 2015).

The Head Legal Officer explains that the anti-sexual harassment committees outlined in the policy, are inactive at the university, primarily because they do not have cases to investigate. He explains that the committees are “legally in the book” (Muhumaze, 2015), but are not in reality, present on campus. He emphasizes that the committees should exist whether or not there are reported cases suggesting the role of the committees in deploying preventative programming. However, there are renewed efforts to expand the operations of the 2006 anti-sexual harassment policies. In a recent staff email the Senior Public Relations Officer explained that the university would be “re-aligning” the policies to the collegiate system (Namisango, 2015).

In investigating members of the anti-sexual harassment committee, it was discovered that the Vice Chancellor, who acts as the designated chairperson of the anti-sexual harassment committee at the senate level, faced allegations of rape in 2011 (Kostov, 2011). It is unclear whether these allegations were dropped or whether they remain unresolved. Regardless, the Vice Chancellor remains employed by the university and retains this role at the head of the anti-sexual harassment committee.

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### **3.3 Gulu: Alternative Justice-Seeking Frameworks**

#### *Sexual Violence and the Conflict in Gulu*

The northern region of Gulu provides unique insights into the challenges of seeking justice for survivors of sexual violence. From 1987- 2007, the region was at the epicenter of the civil war between the Lord’s Resistance Army (LRA) and the Ugandan government. The conflict was one of the longest running insurgencies in modern African history resulting in hundreds of thousands of civilian deaths and the displacement of over a million people. The atrocities were largely carried out by thousands of child soldiers who had been abducted by LRA combatants. The conflict was eventually subdued by peace talks beginning in 2006. Since the conflict ended, many of the displaced have left internally displaced peoples camps, some returning to their homes. The Ugandan government granted blanket amnesty to the mass majority of combatants operating within the LRA militia, indicting only 5 through the International Criminal Court. As a result, both perpetrators and victims of the violence returned to their communities living in close proximity with one another. However, the line between perpetrator and victim becomes very complex when considering the circumstances of the war. The abducted young rebels are both victims of abuse and perpetrators of atrocities. In this sense, the question of justice becomes immensely complicated.

Throughout the conflict, sexual violence was used as a weapon of war. LRA combatants, community members and UDF military personnel raped women and girls. Individuals torn from their homes were moved into internally displaced peoples' camps where they were promised protection from the government. While the areas were supposed to be protected by the military, women and children were abducted within the camps by LRA combatants. Some women were held in captivity as sex slaves. However, it was not only the LRA militants that perpetrated sexual violence during the war. Some women who returned to the camps from captivity were raped by government military personnel whom were responsible for protecting the women from violence. At the end of the war, the government employed blanket amnesty to those involved in the violence. This decision was made with the intent of reconciling a broken community. However, the decision disenfranchised survivors from seeking justice for violence through the formal criminal justice system. Today, many still live with the physical and emotional scars of the conflict. Survivors of sexual violence are stigmatized and shunned from their communities. Many women have expressed that they do not wish to prosecute the perpetrators, as the men are their own husbands, brothers, neighbors, sons, fathers to their children etc. Most women suffer in silence, as they do not wish reopen these traumatizing chapters of their lives.

Due to the unique circumstances of the region, justice and conflict resolution processes have become a forefront of the healing process for the region. In attempts to reconcile the communities within Gulu, NGOs and clan leadership have worked together to establish alternative conflict resolution mechanisms. Truth commissions were established within the area with the intentions of "creating accurate historical records for society; effective remedies to the victims; accountability to perpetrators; reformation and reconstructive of that state; and coexistence and sustainable peace." (Malombe, 2012) In some cases individuals victimized by violence have been given reparations from NGOs. According to a 2013 survey, only 5% of people were given reparations from the Ugandan government (Chirichetti, 2015). While the implementation of reparations has been scarce, their role in reconciliation is imperative as they, "acknowledge wrongdoing and recognize harm...the government's formal and unambiguous acknowledgement of the harms that occurred" (Esuku, 2012). The vast majority of individuals living in the region do not believe community members should be punished for their roles in the violence perpetrated during the war (Chirichetti, 2015). This reflects a desire within the region to move forward and maintain peace.

While most people in the region are not seeking punishment for offenders, a small number of survivors of have attempted to prosecute the offenders of sexual violence through the formal

criminal justice system. FIDA claims that while the cases had sufficient evidence, the laws and the court were ill equipped to handle sexual violence within the conflict setting. Judicial officers did not have the training to properly prosecute examples of mass rape or rape within a conflict zone (Kobusingye, 2015). As a result, the cases were dismissed.

However, FIDA is employing unique strategies to help survivors of sexual violence in Gulu to realize justice. The organization is currently deploying two projects to address access to justice for survivors through alternative frameworks developed specifically for the region.

### *The MacArthur Project*

FIDA is currently constructing a case to prosecute the state and hold the government accountable for failing to protect women during and after the LRA conflict. FIDA lawyers have interviewed more than 100 survivors and taken the statements of women who were raped during the conflict period and whom have not been given justice. 87 women of the 100 women have agreed to take their case to court. The majority of the survivors involved in the case were raped while refugees in internally displaced peoples' camps where it was promised that they would be protected by Ugandan military forces. Not only did the Ugandan military forces fail to protect them from the LRA combatants, UPDF soldiers were also responsible for raping at leasting three of the victims included within the case.

The case is a unique form of justice-seeking as it is not pursuing direct punishment for the perpetrators of the crimes but rather prosecuting the government for failing to uphold its civic duties. The Ugandan Constitution dictates that, "the state shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement." It is clear that the government did not uphold this constitutional declaration throughout the prolonged period of conflict. The women of Gulu were raped as a result of ineffective protection by the government and were not provided with the proper services and opportunities to reclaim their livelihoods after the conflict period. As a result, FIDA is demanding reparations for these women. The case utilizes the voices of many, drawing strength from the shared experience.

Another unique aspect of this case is that the survivors have made their own list of demands from the government. Most do not wish to punish those who perpetrated sexual violence against them, but are looking for reparations to reestablish their lives. Some are seeking financial compensation, others land, and others school fees for their children. Some women want the government to provide them with the health services they require as a result of physical injuries

suffered as a result of sexual violence. For these women, justice means restoring their livelihoods. Many only want recognition from the state, to acknowledge their suffering. The final case will include statements from 50 women whom experienced sexual violence during the conflict. While the case is still in its preparatory stages, FIDA lawyers are confident it will see success in court.

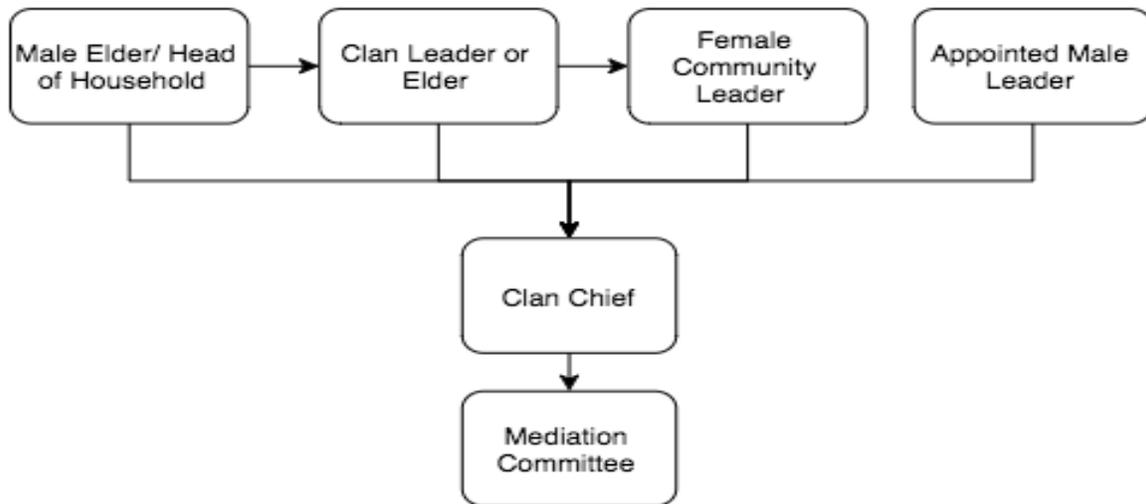
It will be interesting to see if the Ugandan judiciary system is prepared to handle this case which involves conflict, mass rape and reparations. Ugandan courts have not seen a case like the McArthur project before now. For this reason, there are no precedents to standardize the management of this case.

### *Engaging Traditional Justice Systems*

FIDA is employing “high level coordination of transitional justice experts to address violations during decades of insurgencies” (FIDA: Acholi Traditional Justice, 2013). As part of this tactic, FIDA is working to engage with clan court systems in Gulu and the greater Acholi region in efforts to increase access justice for women who experienced sexual violence during the conflict. The organization is working hand in hand with traditional court systems engaging in sensitization and conflict resolution training so that they may continue to play a progressive role in fostering transitional justice for women.

The people Gulu and in the greater Acholi region have well established structures and institutions used to administer traditional justice at various levels of social organization. The Acholi tradition of conflict resolution is based on values of reconciliation and truth telling (FIDA: Acholi Traditional Justice, 2013). It relies on three main pillars of mediation: resolving conflict, community learning and sensitization each of which are administered at every level of the conflict resolution framework. The mediation process requires that both parties consent and adhere to the procedures of mediation and that both parties accept the role of the mediator as a third party authority.

The graphic below displays the structure through which cases are reported, mediated and referred within the Acholi traditional system (Figure 4).



**Figure 4: Acholi Traditional Court System, graphic designed based on findings from FIDA Uganda's 2013 report on engaging Acholi traditional justice systems**

Cases within a community are generally mediated at the community level. The Male Elder or Head of Household is generally responsible for managing conflicts that take place within the family. This can include cases of domestic violence when it exists within the familial structure. If he is unable to resolve a conflict he can refer cases to the right or downward. The Clan Leader or Elder is responsible for resolving cases that break “clan taboo” such as incest. He can refer cases right or downward. The Female Community Leader also known as the “Rwot Okoro,” is in charge of mobilizing women within the community and specializes in issues of gender relations. She helps to handle issues of domestic and gender based violence and can only refer cases downward. The Appointed Male Leader is generally a clan elder who is locally appointed by and is responsible for handling land disputes. He too can only refer downward.

The second level of conflict resolution acts somewhat like an appellate process. Cases that cannot be settled at the community level are sent to the Clan Chief who has jurisdiction over his chiefdom. He mediates cases that are not resolved at the community level as well as conflicts that involve more than one clan. The Clan Chief has the authority to refer the case to the clan mediation committee or refer it to the formal judiciary system.

The “mediation committee” or the “Ker Kwaro Acholi,” is the highest and last mediatory body within the Acholi conflict resolution framework. Cases are referred to the committee by local chiefs or through an appellate process from lower mediation systems. The Acholi Paramount Chief is responsible for appointing the chief mediator of the committee and its other members. The committee includes a youth representative, a woman’s representative, a chairperson, a secretary and more.

Mediations are carried out systematically following common procedural standards. Many of the practices mirror proceedings found in the formal criminal court systems. Each mediation session generally include introductions, participant's acceptance of mediation, statements made by the two parties, cross-examination, suggestions from participants and a signing of the constructed agreement. Witnesses and other community members may also make statements or ask questions to either the victim or respondent during the course of the proceedings.

For those who choose to utilize this informal, traditional court system, justice is realized by reconciling conflict between two or more parties through mediation, negotiation and truth telling. Community members respect the power of the clan authorities and have confidence releasing their cases to chiefs, elders and other community leaders (FIDA: Acholi Traditional Justice, 2013). Many women have expressed that they prefer to handle their disputes within traditional courts because the "rulings are based on values, customs and principles of the people" (FIDA Uganda: Baseline, 2013). One woman suggests that, "we prefer to use our cultural courts because the criminals are punished and everybody can see that" (FIDA Uganda: Baseline, 2013).

For women who have experienced sexual violence, there are many advantages to seeking justice through the informal system. The cultural courts tend to be timely and efficient, mitigating many of the bureaucratic steps involved in the formal prosecution process. The formal processes can take years, preventing women from moving forward with their lives and forcing them to relieve their trauma throughout the prosecution proceedings. The Acholi traditional court system has established practices of confidentiality, which are sensitive to the realities of sexual violence. Unlike Ugandan national courts, victims in the Acholi system have the option of taking their statements privately so that they are not intimidated by the presence of the perpetrator (FIDA: Acholi Traditional Justice, 2013). In addition, the mediation process is not open to the public. One woman interviewed, suggested that confidentiality is better maintained when utilizing these informal systems as the criminal justice system offers little protection for victims. Others suggest that, "the formal court systems are complicated and disadvantage their largely illiterate community" (FIDA Uganda: Baseline, 2013).

However, there are also many shortcomings to the traditional system that bar survivors from receiving justice within their communities. Many Acholi cultural standards are based on patriarchal values, many of which have been exacerbated as a result of the conflict. As a result, the traditional court systems reflect the patriarchal structure of the society. In the cultural court, each level of conflict resolution lacks women representatives. Clan leaders are almost entirely men. For this reason, the issues of women are heard and interpreted through male perspectives that

are unable to empathize with the societal position of women. This discrimination becomes even more apparent within cases of sexual and gender based violence (FIDA Uganda: Baseline, 2013). In addition, the prosecution of sexual offenses within traditional court systems has become increasingly commercialized. Families of the victim will often take compensation in the form of cattle or finances. In this sense justice is served to the families of the victim. This perpetuates the idea that women are the property of their fathers or husbands who are compensated when their property is defiled.

However, FIDA has looked to engage with traditional court systems to address these problematic practices and make them powerful organs through which women can more easily access justice. The Director of FIDA Uganda states that it is an objective of the organization to, “bring back the state to realize that the informal systems are still operational.” She goes on to explain that, “in places where they still use the cultural systems...we cannot say ‘oh we only have the formal system and whatever’ we also need to influence the non-state actors” (Bunga Idembe 2015). For this reason, FIDA is working in the Acholi region to improve upon the existing traditional systems. It is the objective of FIDA to (1) increase the number of disputes that are resolved, (2) increase community intolerance to sexual and gender based violence, (3) increase recognition of women’s human rights in traditional resolution processes, (4) identify cultural practices and customs that are responsible for women’s rights violations, (5) increase the number of women included in conflict resolution processes (FIDA: Acholi Traditional Justice, 2013).

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## 4.0 Conclusions

Sexual violence in Uganda remains an incredibly pertinent issue hidden behind cultural taboos and patriarchal power dynamics. In attempting to measure the justice-seeking power of survivors this study examined a multitude of factors including the economic, societal/cultural, environmental and systematic barriers which bar women.

Sexual violence has become normalized in many societies within Uganda. It is not an anomaly but a common experience perceived to part of womanhood. For this reason, the trauma of women who experience sexual violence is trivialized. Sexual violence is often considered expected or even warranted as expressed in many of the victim blaming attitudes of citizens and officials alike. Despite this normalization, many survivors of sexual violence in Uganda want justice. However, many of the human indignities they face as women prevent them from receiving the justice they deserve. The formal legal system implemented as part of imported English

common law, has resulted in survivors being disenfranchised from traditional forms of justice. The law has made rape a capital offense meaning that it cannot be handled within cultural or tribal court systems. Additionally, the formal justice system is ill equipped to handle cases of sexual violence since the laws, policies and practices do not recognize the complexities of women's issues, culture and sexual violence. As a result, FIDA and Makerere University have made an effort to fill in these gaps, providing survivors of sexual violence an alternative route through which they are able to pursue justice. While women should have all of these options available through which they can report and receive services, none of the identified avenues has resulted in women constantly receiving the justice they deserve. The alternative systems suffer from many of the same shortfalls of the formal justice system.

While the justice-seeking power of survivors in Uganda cannot be quantified or coded, it is evident that women are largely unable to receive the reparations, punishments, compensation, apologies and resolutions, which they pursue. Each of the evaluated systems has flaws and barriers, which do not recognize the realities of sexual violence. Women are weeded out of at every stage of the justice seeking process and continue to suffer in silence.

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#### **4.1 Recommendations**

Recommendations have been constructed in collaboration with the many interview subjects. Counselors, hospital workers, FIDA employees, police officers, legal attorneys and others were consulted in order to design recommendations for the various stakeholders involved in the justice-seeking processes.

##### *Policy*

Based on the findings of this study, it is evident that many policy frameworks exist to improve access to justice for women. However, many of these policies are ineffectual because of weak implementation, which prevents women from realizing the justice they deserve. It is important the legislators hold stakeholders accountable at every level to ensure that the policies are applied the ground.

In addition to implementing existing policies, policy makers in Uganda should enact legislation to make accessing justice through the formal prosecution system more tangible for women who have experienced sexual violence. Legislation should be implemented to provide women with protections throughout the prosecution process. This means providing women with safe spaces to tell their stories in confidentiality. There should also be a provision to ensure that

court proceedings of sexual violence cases are closed to the public. In addition individuals should not have to respond directly to the perpetrator during cross-examination. Rather the questions should be passed through the judge or through the legal defense.

It is also important that policy makers adjust the regulations surrounding the strict requirement of state representation in cases of sexual violence. While the state should provide women with legal representation, victims should have the option of finding their own attorney. This would allow organizations like FIDA, who have the training and sensitization to issues of sexual violence, to provide women with support in and out of the courtroom.

### *Police*

The relationship between women in Uganda and the Ugandan police force is strained. Women express that they do not trust the police as an institution, fearing corruption, humiliation and breached confidentiality. It is imperative the police work to engage with the community to improve upon this relationship so that women feel more comfortable and confident reporting cases. Police should undergo more extensive training and sensitization in order to work more effectively with cases of sexual and gender based violence. In addition, JLOS should work to supplement existing remedies within the police department designated specifically to sexual violence related issues.

Corruption is another major issue within the police force. Women who pursue justice within the police explain that officers routinely demand financial compensation for their services. In addition, the integrity of their cases is often compromised by bribes from perpetrators. While police deny the existence of corruption within the force, women continue to reiterate this common experience.

The police should work to establish more female officers in all sectors of the police force. It is retraumatizing for women who have been victimized by men, to report to an institution made up nearly entirely of male police officers. For this reason, there should be female officers at all levels of the organization. Not only will this ensure that women have other women with whom they can take comfort, but women will also help to alleviate the patriarchal influences that plague police units.

Makerere University and its many international supporters have worked diligently to address gaps in university policies surrounding sexual harassment and violence. The university has developed an internal judiciary system designed specifically to serve students who have experienced sexual harassment, assault or violence. Ideally, this policy should increase access to justice for students who experience sexual violence and exploitation within the university. However, like many policies within Uganda, the implementation of these frameworks is questionable. Students, staff and administration seem largely unaware of this structure. While many students were aware of the disciplinary board, they were not aware of the entirely independent judiciary body that works specifically with issues of sexual violence. The university administration in collaboration with the student leadership must make it a priority to ensure that students are aware of their available recourses. Developing referral pathway tools would help students to navigate the various recourses available to them. This information should be disseminated during “fresher” orientation, on bathroom doors and on the university web site.

The university should make efforts to revitalize their anti-sexual harassment policies and frameworks. While developing a committee within each school, institution, college and faculty may not be feasible, the university should be more easily able to streamline a single judiciary board responsible for handling cases in the entire university. The improved policy should establish a list of student leaders and faculty within each department who can act as confidential reporting informants. These individuals should be trained and sensitized on issues of sexual violence as well as the existing policies and structures within the university so that they can help to guide students who report sexual violence through the process.

Based on the frequency with which lecturers sexually assault their female students, it is necessary that the university employ stricter policies to limit their exploitative power. It is imperative that female students feel that they can receive an education without the pressures of sexual engagement from their academic superiors. For this reason, a policy should be enacted that restricts all relationships of a sexual nature between students and their lecturers. It is the responsibility of the lecturer to maintain professionalism and integrity as part of the academic standards of higher education. Lecturers should not be permitted to engage in sexual acts with students for any reason. This compromises the academic integrity of the lecturer and the institution. Lecturers found to be violating this policy should be punished harshly.

The counselors at the university hospital have intentions of providing a safe space for survivors to meet together to talk about their shared experiences. This will allow women to work through their trauma with others who are working through similar painful experiences. The

counselors believe this will help to create a community in which students can support one another in the wave of suffering.

### *FIDA Uganda*

FIDA Uganda is doing incredible work to address issues of access to justice for women around the country. They are providing hope for women who are otherwise disenfranchised from systems of justice. It is imperative that the organization continues to hire women lawyers who are brilliant and passionate. In the future FIDA should make an effort to publicize prominent cases like the McArthur project currently being produced in Gulu. This will give the issues international attention and put pressure on local authorities to handle the cases in an efficient and effective manner.

FIDA should also expand their programs to engage with traditional and cultural court systems in Uganda. The first few initiatives have been largely successful. It is evident that communities will continue to use these frameworks for conflict resolution so it is imperative that FIDA engage with leaders to ensure that women are being properly represented within these traditional systems for justice. The organization must continue to work in collaboration with chiefs and community leaders to foster systems that are sensitive to the issues plaguing the lives of women in Uganda. These interventions must include sensitization and structural adjustment within cultural and traditional court settings.

It is also important that FIDA and other NGOs work together to streamline their recourses. Many organizations replicate the same services. While there should be no shortage of services, NGOs could be collaborating with one another to ensure that efforts are structured efficiently. Each organization should be fully aware of the referral services provided by other organizations. In addition, attempts should be made to provide survivors with holistic care through a single organization to mitigate time wasted and transportation costs.

### *Future Research*

Future research should make an effort to follow specific cases of sexual violence from start to finish in order to understand the realities of their proceedings. Researchers should meet with victims of sexual violence to talk about their experiences utilizing the different frameworks for justice. The research would be strengthened by monitoring cases of rape, which undergo each of the four processes of justice seeking. This way the study could understand the pitfalls and

barriers as they are happening and measure the justice-seeking ability of victims who utilize one system over another.

Much of this research was focused on understanding the various frameworks for justice considering the degree to which they were accessible and operational. As a result, there were less time and recourses available to investigate in depth, the experiences of individual women who have utilized these systems. Following these cases from start to finish remains a gap within existing research. It is imperative that future research works hand in hand with an organization that services survivors so that their progress through various systems of justice can be observed. Survivors must be at the forefront of these discussions and of future research.

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- Kibet, Aggrey. Personal Interview. 24 Sept. 2015
- Kobusingye, Lillian. Personal Interview. 17 Nov. 2015
- Kugango, Justine. Personal Interview. 12 Nov. 2015
- Lagua, Rose. Personal Interview. 24 Nov. 2015
- Lwanga, Deborah Marie. Personal Interview. 24 Sept. 2015 and 24 Nov. 2015
- Magusa, Daphine. Personal Interview. 11 Nov. 2015
- Matte, Constance (Sister). Personal Interview. 10 Nov. 2015
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- Nalwanga, Rose. Personal Interview. 20 Nov. 2015
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- Focus Group 2. Makerere Female Students. 5 Oct. 2015
- Focus Group 3. Makerere Female Students. 13 Nov. 2015
- Focus Group 4. Makerere Female Students. 19 Nov. 2015
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# Appendix

## Tool 1: Consent form

### SIT Study Abroad

a program of World Learning



#### CONSENT FORM

##### 1. Brief description of the purpose of this study

You are being asked to participate in a research study. The purpose of this study is to examine the justice-seeking capabilities of women who have experienced sexual violence in Uganda. It will look at the ability of women to navigate the criminal justice system as well as explore the feasibility of alternative frameworks for justice.

##### 2. Rights Notice

In an endeavor to uphold the ethical standards of all School for International Training ISP proposals, this study has been reviewed and approved by a Local Review Board and SIT Institutional Review Board. If at any time, you feel that you are at risk or exposed to unreasonable harm, you may terminate and stop the interview. The interview may be tapped using an audio recording device with consent of the interview participant.

- a. **Privacy** - all information you present in this interview may be recorded and safeguarded. If you do not want the information recorded, you need to let the interviewer know. The interview will be tapped using an audio recording device. If you do not want the interview to be tapped, you need to inform the interviewer.
- b. **Anonymity/ Confidentiality** - all names of vulnerable participants in this study will be kept anonymous and be fully protected by the interviewer.
- c. **Risks**- It is possible that individuals participating in interviews will be triggered by the trauma they experienced in the past. Participants will be directed to counseling recourses upon request. Individuals can terminate their interview at any point.
- d. **Benefits**- There are no direct benefits to individuals participating in this study.

##### Questions

If you have any question, please ask me. If you have additional questions arise after the completion of the interview, you may contact myself or one of my supervisors:

Caren Holmes: Researcher – holmes.caren@gmail.com or 0752013109

Charlotte Mafumba: SIT Academic Director – Charlotte.Mafumbo@sit.edu

Crista Craven: College of Wooster – Ccraven@wooster.edu

##### Consent

Your signature below will indicate that you have decided to volunteer as a research subject, that you have read and understand the information provided above, and that you are at least 18 years of age. By signing below, you give the interviewer full responsibility to uphold this contract and its contents. The interviewer will also sign a copy of this contract and give it to the participant.

\_\_\_\_\_  
Participant's name printed

\_\_\_\_\_  
Participant's signature and date

\_\_\_\_\_  
Interviewer's name printed

\_\_\_\_\_  
Interviewer's signature and date

**Tool 2: Survey administered at Makerere University focus groups**

PLEASE DO NOT WRITE YOUR NAME. THIS SURVEY IS COMPLETELY CONFIDENTIAL

1. How big of a problem is sexual violence at Makerere University? Please circle on the line below.  
(1= not a big problem, 5= somewhat of a problem, 10= a huge problem)

\_\_\_\_\_

1      2      3      4      5      6      7      8      9      10

2. Have you or someone you know been raped while attending the university?  
 Yes (Continue to question 3)       No (Skip to question 6)

3. If Yes, was the incident reported?  
 Yes (Continue to question 4)       No (Skip to question 5)

4. If Yes, where was the incident reported?

5. What resulted from the reporting process?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. If No, what prevented the individual involved from reporting the incident?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Are you aware of the services available for students who have experienced sexual assault? If so, what services are you aware of?

\_\_\_\_\_  
\_\_\_\_\_

8. Please rank below the primary perpetrators of sexual violence at the university.  
(Place 1 next to the most common perpetrator numbering the rest occurring to order of prevalence)

\_\_\_ Fellow Students  
\_\_\_ Boda Boda Drivers  
\_\_\_ Lecturers/ Professors  
\_\_\_ Friends outside of the university  
\_\_\_ Strangers  
\_\_\_ Other (Please Indicate) \_\_\_\_\_

9. What are the primary factors that lead to sexual violence on campus?

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10. Have you or someone you know been sexually assaulted by a lecturer?

Yes (Continue to question 9)

No (Skip to question 10)

11. Was it reported? Was anything done by the university to address the issue?

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12. What can be done by the university, police and other players to ensure that female students are protected from sexual violence?

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IF YOU ARE WILLING TO SPEAK WITH ME CONFIDENTIALLY ABOUT YOUR PERSONAL EXPERIENCES OR WITNESSINGS OF SEXUAL VIOLENCE ON CAMPUS, PLEASE CALL OR EMAIL ME. MY CONTACT INFORMATION CAN BE FOUND ON YOUR CONSENT FORM.

### Tool 3: Interview Schedules

Interview Subject	Sample Interview Schedule
Makerere University Dean of Students	<ul style="list-style-type: none"> <li>▪ What is the university doing to address high rates of sexual violence on campus?</li> <li>▪ How does the disciplinary committee operate? Who is a member of the committee? How frequently does it meet?</li> <li>▪ What policies exist within the university to address sexual violence?</li> <li>▪ What policies exist surrounding sexual relationship between students and lecturers?</li> <li>▪ What is the capacity of the university disciplinary committee to address cases of sexual violence?</li> <li>▪ What punishments are given to students or lecturers who commit sexual violence?</li> <li>▪ Where can students report sexual violence?</li> </ul>
Kapchorwa District Police Commander	<ul style="list-style-type: none"> <li>▪ What is the reporting process for women who have experienced sexual violence?</li> <li>▪ Does the police station have the necessary resources to administer reporting (PF3), transport the suspect and do a thorough investigation?</li> <li>▪ Does the region enough state attorneys and public prosecutors to handle the existing caseload? How many of each is within the district?</li> <li>▪ What is the relationship between LCs and the police department? Do police require a letter from LCs in order to begin investigation process?</li> <li>▪ How many police officers are certified to work with sexual violence and gender-based violence at this station, in this district?</li> <li>▪ Do you have a Human Right and Complaints desk?</li> <li>▪ What is the investigation process for cases of rape?</li> <li>▪ How many cases of rape are reported each year?</li> <li>▪ How many cases of rape make it to court each year?</li> </ul>
Makerere University Minister of Woman Affairs	<ul style="list-style-type: none"> <li>▪ What is the experience of female students at Makerere in regards to sexual violence?</li> <li>▪ What factors contribute to the high rates of sexual violence at the university?</li> <li>▪ How are students educated about the services available to them? Is this adequate to inform survivors about their options?</li> <li>▪ What factors deter students from reporting?</li> <li>▪ What experiences do students have with reporting to the police?</li> <li>▪ What experiences do students have reporting to the disciplinary committee?</li> <li>▪ What do students who experience sexual violence want in terms of justice?</li> <li>▪ What prevents student survivors from receiving justice at the university?</li> </ul>
Makerere University Hall Warden	<ul style="list-style-type: none"> <li>▪ What factors account for the high occurrence of sexual violence on campus?</li> <li>▪ What services are provided to support students who experience sexual violence?</li> </ul>

	<ul style="list-style-type: none"> <li>▪ What is being done to prevent sexual violence and protect students on campus?</li> <li>▪ How can a student seek justice after being assaulted by a student or a lecturer?</li> <li>▪ How does the university address complaints of sexual violence perpetrated by lecturers?</li> <li>▪ Are there any student support groups for those who have experienced sexual violence?</li> <li>▪</li> </ul>
Director of FIDA Uganda	<ul style="list-style-type: none"> <li>▪ What is the role of FIDA in serving women who have experienced sexual violence?</li> <li>▪ How frequently are cases reported to FIDA? Do clients generally come to FIDA first? Or to the police?</li> <li>▪ What are the major barriers in prosecuting sexual violence?</li> <li>▪ What portions of clients who report are able to successfully prosecute their cases in court?</li> <li>▪ What is the average sentencing for men who commit rape?</li> <li>▪ What is the role of traditional conflict resolution or alternative conflict resolution in bringing justice to survivors?</li> <li>▪ What suggests would you make to policy reformers, NGOs, government officials, police, etc., to better serve the needs of survivors?</li> </ul>
University Focus Group	<ul style="list-style-type: none"> <li>▪ What is the prevalence of sexual assault at the university?</li> <li>▪ Who are the primary perpetrators of sexual assault?</li> <li>▪ What do female students do to avoid sexual assault?</li> <li>▪ What is the prevalence of sexual assault perpetrated by professors?</li> <li>▪ How frequently to students report incidents?</li> <li>▪ Do they prefer to report to the police or to campus administration?</li> <li>▪ What does university administration do to address sexual assault? What is there response to a report?</li> <li>▪ How do students respond when a friend or peer is sexually assaulted? Supportive? Blaming?</li> <li>▪ What services are provided for students who have experienced sexual assault?</li> <li>▪ What can the University do to prevent sexual assault and support victims?</li> </ul>
Kapchorwa State Attorney	<ul style="list-style-type: none"> <li>▪ How frequently do you see cases of sexual violence and rape?</li> <li>▪ What percentage/portion of cases that go to court end in convictions?</li> <li>▪ While rape is a capital offense, do community members still utilize traditional mediation techniques to reconcile issues of sexual violence and rape?</li> <li>▪ What are the primary pieces of evidence needed to successfully prosecute rape?</li> <li>▪ How important is it to have witnesses to the actual crime itself?</li> <li>▪ How long, on average, does it take for cases to be seen in the high court?</li> </ul>

	<ul style="list-style-type: none"> <li>▪ What is the average sentencing for a rape case? How is the sentencing determined?</li> <li>▪ Are there any policies that exist to protect confidentiality?</li> <li>▪ Are there any protections for the victim and/or her witnesses?</li> <li>▪ Are the witnesses subject to threats from the perpetrator?</li> <li>▪ At what point do women generally drop out of the prosecution process?</li> <li>▪ What is the role of the cross-examination process of the victim? How does that effect the trial?</li> <li>▪ How does the law define consent? How does the court establish a lack of consent?</li> <li>▪ What are the major factors that prevent perpetrators from being convicted?</li> </ul>
<p>Makerere University Hospital Counselors</p>	<ul style="list-style-type: none"> <li>▪ How frequently does the hospital receive cases of sexual violence and rape?</li> <li>▪ What services are provided here at the hospital for victims of rape?</li> <li>▪ Do students who come to the hospital after experiencing sexual have intentions of reporting to the police?</li> <li>▪ What prevents perpetrators from going to court and being sentenced?</li> <li>▪ Who are the primary perpetrators of sexual assault at the university?</li> <li>▪ How frequently are drugs involved in incidents of sexual violence?</li> <li>▪ Where do incidents of rape generally take place?</li> <li>▪ How frequently are female students assaulted by lecturers?</li> <li>▪ What are women who have been assaulted, seeking in terms of justice?</li> <li>▪ What could the university, police, NGOs, counseling centers, etc. do to better support survivors of sexual violence?</li> </ul>
<p>FIDA Lawyer: Head of McArthur Project</p>	<ul style="list-style-type: none"> <li>▪ What is the McArthur project? What are its goals and objectives?</li> <li>▪ How does the unique setting of Gulu influence the ability of survivors to seek justice?</li> <li>▪ Who are the women involved in the case? How many women are involved?</li> <li>▪ Who are the perpetrators of the sexual violence being prosecuted?</li> <li>▪ What are the challenges of the case?</li> <li>▪ What are the experiences of the women involved in the case?</li> <li>▪ What are the women in the case perusing in terms of justice and reparations?</li> </ul>