

Examining the Legal Framework Regulating Domestic Violence in Makindye Division of Uganda

Mutumba Fred

School of Law Kampala International University, Uganda

ABSTRACT

This article explores legal framework regulating domestic violence in Makindye division of Uganda. The article revealed that domestic violence has devastating effects on all victims including women children and men and the community at large. It is also an obstacle to the implementation and enjoyment of human rights. More so, it is prejudicial to the physical, intellectual and emotional development of the victims thereof. The study calls for domestic violence to be given prominence as a national issue of concern because of its correlation to health, economic and social issues. More so, there should be concerted efforts to educate and sensitization of the entire public about the causes, the impacts, the laws regulating Domestic Violence and its distinction in institution of cases.

Keywords: Children Act, Domestic violence, Legal framework, Police Act, Sexual abuse.

INTRODUCTION

In the recent years Domestic Violence in Uganda has been on the rise and it has affected people in many families especially children, women and men [1]. These continue to be adversely impacted by the Domestic Violence which occurs in families and homes. However there has not been sufficient research professing the causes and impacts of Domestic Violence on women, children and men. This research is intended to fill the gaps left out [2]. Domestic Violence as a term has turned out to be the most efficient term used to as a legal characterization to describe and categorize battering in relationships. Rakovec-Felser [3] observed that there is growing recognition that while women are abused by men, are still the primary victims of abuse, battering occurs in same-sex relationships and that in some cases women abuse men. Furthermore, Domestic Violence focuses our attention on the broader social and legal contexts of battering rather than on victims and their individual psychologies. It also includes material that reaches beyond the narrow phenomenon of physical battering to a definition of violence that includes all forms of power and control used by perpetrators, including sexual, financial, and emotional abuse.

Male to female Domestic Violence is high in rural

areas of Uganda and these are related to alcohol consumption and male partners perceive the risk of attain HIV AIDS, in relation to the research conducted by the John Hopkins Bloomberg School of Public Health, the researchers found in their study that one in approximately three women living in rural Uganda are reported being physically threatened and /or assaulted by her current partner. The findings from the study suggest solutions and links between the risk of Domestic Violence and alcohol consumption and women perceived risks of HIV of their male partners [4]. However, gender-based violence or Domestic Violence is committed against men too, at home, work places, in the communities and in the positions of leadership. There is great reluctance of men and boys to report sexual related violence makes it very difficult to accurately assess its scope. Men are not at any one time seen as subject to sexual violence as women are perceived hence has led to a gender biased policies [5].

The incidental reporting of Domestic Violence in relation to women, children and men concurrently is low; Domestic Violence is an issue that has great concern in Uganda. Because of a number of cases in relation to Domestic Violence, it led to the enactment of the Domestic Violence Act 2010 [6]. This Act

protects all persons subjected to Domestic Violence. But there are little efforts done to encourage men to report their Domestic Violence cases. The abuse of both women children and men in the domestic context is one of great concern for many organizations in the country. A number of established organizations such as FIDA have undertaken interventions directly to children and women abuses but little has been done in considering even men since they also face various modes of Domestic Violence. This article explores the legal frame work of Domestic Violence in relation to women children and men as a whole and causes and effects of Domestic Violence.

Causes of Domestic Violence

Misuse of power

Domestic Violence against women by men is 'caused' by the misuse of power and control within a context of male privilege. Male privilege operates on an individual and societal level to maintain a situation of male dominance, where men have power over women and children. Perpetrators of Domestic Violence choose to behave abusively to get what they want and gain control. Their behavior often originates from a sense of entitlement which is often supported by sexist, racist, homophobic and other discriminatory attitudes. In this way[7], Domestic violence by men against women can be seen as a consequence of the inequalities between men and women, rooted in patriarchal traditions that encourage men to believe they are entitled to power and control over their partners[4].

Stress

Domestic Violence is learned intentional behavior rather than the consequence of stress, individual pathology, substance use or a 'dysfunctional' relationship. Perpetrators of Domestic Violence frequently avoid taking responsibility for their behavior, by blaming their violence on someone or something else, denying it took place at all or minimizing their behavior [2]. Whilst responsibility for the Actual violence is the perpetrators alone, there are belief systems in our society that perpetuate abusive attitudes and make it difficult for women and children to get help. These include: Blaming the victim for the violence, putting the 'family' before the safety of women and children, tolerating the use of violence Privileging men over women and children's needs and treating Domestic Violence as a private matter[8].

Research shows that violent men are most likely to perpetrate violence in response to their own sexual jealousy and possessiveness; their demands for domestic services; and in order to demonstrate male authority. Some men also believe that sex is

another type of domestic service that they can demand[9]. Violent men will also typically justify or ignore their behavior by: Minimizing the violence e.g., saying it was "just a slap" or "isn't that bad"., Justifying the behavior to them and blaming the victim, denying the violence happened or refusing to talk about it and expecting the victim to just move on[10].

Alcohol or drugs

Alcohol consumption in most cases results in to Domestic Violence cases between spouses, sometimes alcoholic spouses loose it all when they are drunk and batter their follow spouses and children and after they are sober, they regret but this has happened concurrently and continuously hence Domestic Violence. According to a study carried out in Uganda, 42% of the respondents said that the leading cause of Domestic Violence, in Uganda is Alcoholism[11]. The use or misuse of substance is the underlying cause of Domestic Violence. Many people who drink too much or take drugs abuse their partners or family members. Likewise, abusers may be violent without the use of alcohol or other drugs. Abusers who use alcohol or drugs may use this as an excuse for their behavior saying "I was drunk" or "I don't remember". Even if they genuinely don't realize what they did, it doesn't remove responsibility for their behavior. The causes of Domestic Violence are far deeper rooted than simply being an effect of intoxication or alcohol/drug dependency. If an abuser is alcohol/drug dependent, it is important that this is treated in tandem with addressing the violent behavior. Addressing only one without the other is unlikely to prove successful[12].

Women experiencing Domestic Violence may also turn to alcohol or drugs as a form of escape from the violence. Sometimes abusers will use their partner's addiction as an excuse for violent behavior, saying they have been provoked into using violence. Excuses such as these are used by the perpetrator to deflect responsibility from them and put the blame for the violence onto the victim. In these situations, it is vitally important not only for women to receive the support they need, but also, for perpetrators to be held accountable for their Actions. They should never be excused on account of the woman's alleged behavior[2].

A study of 336 convicted offenders of domestic Violence, found that alcohol was a feature in 62% of offences and 48% of offenders were alcohol dependent, one study of 60 women using crack cocaine in London found that 40% reported regular physical assaults from current partner - rising to 70% if past partners were included[13].

Lack of control

Domestic Violence is about gaining control. If an abuser is careful about when, where and to whom

they are abusive, then they are showing sufficient awareness and knowledge about their Actions to indicate they are not 'out of control'. Abusers use violence and tactics of coercion as a way of exercising control and getting what they want[14].

Mental illness

The vast majority of people with mental health problems do not abuse other people. However, there are a small number of people who are in mental distress who may behave abusively, though this may not be caused by the mental health problem itself. If an abuser is careful about when, where and to whom they are abusive then they are showing sufficient awareness and knowledge about their actions to indicate they are making choices about their behavior. If an abuser is random and unpredictable, being abusive to strangers as well as people they know (for example in public and in the workplace), then mental illness may be a possibility. Even if this is the case, it still doesn't mean anyone must put up with abusive behavior. In these situations, it is important that the safety of survivors is prioritized and that the person experiencing mental distress obtains the professional care they need[15]. Mental health issues are more likely to result from Domestic Violence than to cause it. Women who have experienced Domestic Violence have higher rates of mental illness: 64% experience post-traumatic stress disorder, 48% have depression, and 18% attempt or commit suicide.

Socialization on gender roles

Socialization on fixed gender roles plays a role in promoting the physical violence in society since children grow up watching situations of Domestic Violence for example seeing their fathers battering their mothers, this is as a result of some cultures where beating of a woman is no big deal and it shows a sign of authority that is in case of a mistake hence traditionally such women invited violence to themselves in the guise that their husbands would ignore them. However, this is not the marriages today[14].

The presumption that women are to be submissive to their husbands

Women are expected to be submissive to all demands made by their husbands no matter whether they are unreasonable, it is also sad to know that women are subjected to sexual violence and abuse. They are held as sex objects and not expected to express disinterest. They are expected to be tolerating physical abuse within the marriage because it is believed to be part of marriage life[16]. It is common that all domestic work at home is allocated to women since they are viewed as caretakers in homes. Thus, they are overwhelmed and sometimes accused of children at the expense of the man. There is an assertion that women are the ones who wrong men but

not vice versa, this only means that it's the women to ask for pardon from the men. Most cases of Domestic Violence do not reach the formal dispute resolution because of under reporting and laxity which increases the rate of Domestic Violence[3].

Economic dependence

Economic dependence against women increases emotional abuse and violence against them. Men usually take advantage of their control of women and their access to economic resources to inflict emotional violence on them. In the case of *Uganda vs. Juvenile*[17] where a woman was convicted of manslaughter after admitting to have drowned her children. She claimed that her husband who had denied her access to the gardens to get food for the children pushed her to such actions. It is crystal clear that the immediate cause of the crime was the husband subjecting the accused to mental torture by controlling her access to economic resources. The husband was guilty of emotional violence and in effect had a role to play in the crimes committed against the children. As the defense counsel to the case noted that, the husband should have been punished.

Disciplinary measures

In situations where the wife does a mistake, the husband is required to punish with a reasonable act but most times the men take advantage of the situation and batter their wives beyond normal claiming that, they are disciplining them. For example, in a newspaper report, a woman lost her front teeth because of seven million she took without the consent of the husband. The husband claimed that the beating was a way to discipline her[18].

Women emancipation

Women emancipation is the effort to elevate, raise, or recognize the rights of women in the society. This is an idea which is increasingly being embraced all over the world hence feminine revolution which in some circumstances cause Domestic Violence. Women are influenced by such views of equal treatment to men forgetting the history and the trend of their respective cultures. Here women start imposing demands on their husbands by commanding respect from their dear husbands and sometimes results in Domestic Violence in many homes[19].

Poverty

Poverty is another cause of Domestic Violence in homes since money is supposed to be used in day-to-day life and most Ugandans live below the poverty line hence if the husband fails to execute his duties, then he becomes bitter since he cannot provide fully, this latter led to adultery and Domestic Violence. According to a research carried out in Uganda, 34% of Domestic Violence cases were linked to

poverty³⁵.in a report where the father could not provide daily bread, school fees and basic needs of the family, she claimed that this necessitated her to start stealing, pick pocketing and breaking into people's houses[20].

Adoption of the western cultures

Africans have a mentality that every African thing is backward and most times they copy and try to imitate the lifestyle of the western world and in this Ugandan women have copied such lifestyle hence Domestic Violence, there are some core values in Africa which are gradually being washed away by the western lifestyle for example, a woman kneeling down when greeting her husband which most women claiming modernity have abandoned, this has increased the rates of Domestic Violence cases in Uganda[4].

Domestic Laws Regulating Domestic Violence in Uganda

The constitution of the Republic of Uganda 1995

The 1995 Constitution[21] is the supreme law of the Republic of Uganda and all the laws must conform to it. Article 2(I) provides that: "The Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda." And sub-article (2) states that; "If any other law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail. and that other law or custom shall, to the extent of the inconsistency, be void."

Although the Constitution does not have a specific provision dealing with Domestic Violence issues, it does, however, guarantee a wide range of rights. Article 21[22] confirms the equal status of all Ugandans before the law, provides for the equal protection of the law, and prohibits discrimination on a number of grounds including sex, ethnic origin, tribe, and race. Article 33 accords women equality with men and provides that laws, cultures, customs which undermine the status, dignity, wellbeing or interest of women are prohibited by the constitution. However, government policy has failed to translate these lofty constitutional provisions into action. In other words, there has been a distinct failure to implement constitutional provisions to protect women. What is missing is the link between laws contained on the statutes and their effective implementation in society.

Uganda has progressive constitutional provisions for women, but they are not operational. The constitution is designed to provide for the Ugandan people's fundamental rights and freedoms, yet women's constitutional rights are literally trampled on every basis. The National Association of Women Judges in conjunction with Law Reform Commission has drafted legislation in respect to Domestic

Violence. Since the early 1990's, local NGO's have unsuccessfully lobbied the government to pass domestic legislation and legislation addressing domestic relations. Fortunately, in 2010 Uganda passed the Domestic Violence Act (DEVA) into law and has raised awareness of the problem of Domestic Violence and to end it through the use of media campaigns, public events, lobbying, and the training of stakeholders[6]. Article 3 of DEVA stipulates that women are entitled to equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, and civil or any other field. These rights include inter alia:

- a) The right to life;
- b) The right to equality;
- c) The right to liberty and security of person;
- d) The right to equal protection under the law;
- e) The right to be free from all forms of discrimination;
- f) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

The United Nations General Assembly, under Article I of the Universal Declaration of Human Rights (1948), confirmed that all human beings are born free and equal in dignity and right. In the case of Van Eeden v Minister of Safety and Security[23], the Court, following the Constitutional Case of Carmichele v Minister of Safety and Security[24], emphasized that freedom from violence is fundamental to the equal enjoyment of human rights.

The Penal Code Act CAP 120

The Penal Code Act[25] provides for criminal codes in offences which are punishable with penalties and fines. It does not provide directly for Domestic Violence however; it provides crimes related to Domestic Violence hence the Penal Code Act renders any acts against another violent as a crime. S.156 provides for the Desertion of children that, any person who, being the parent, guardian or other person having the lawful care or charge of a child under the age of fourteen years, and being able to maintain such child, willfully and without lawful or reasonable cause deserts the child and leaves it without means of support, commits a misdemeanor[25]. It continues to outlay under S. 157 that Neglecting to provide food, for children is a crime, Any person who, being the parent or guardian or other person having the lawful care or charge of any child of tender years and unable to provide for itself refuses or neglects, being able to do so, to provide sufficient food, clothes, bedding and other necessities for such child, so as to injure the health of the child, commits a misdemeanor[25].

The Penal Code Act continues to describe Domestic Violence as a crime under **S.235**. According to the section, any person who unlawfully assaults another commits a misdemeanor, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year. It is also considered Domestic Violence under **S.236** which provides for Assaults causing Actual bodily harm. Any person who commits an assault occasioning Actual bodily harm commits a misdemeanor and is liable to imprisonment for five years[25].

The Domestic Violence Act 2010

The Domestic Violence Act[6] provides for under S.4, for the Prohibition of Domestic Violence that.

1. A person in a domestic relationship shall not engage in Domestic Violence.
2. A person in a domestic relationship who engages in Domestic Violence commits an offence and is liable on conviction to a fine not exceeding forty-eight currency points or imprisonment not exceeding two years or to both.
3. The court may, in addition to imposing a fine or imprisonment, order the offender in a case of Domestic Violence to pay compensation to the victim of an amount determined by the court.
4. In determining the compensation under subsection (3), the court shall be guided by

Domestic Violence has devastating effects on all victims including women children and men and the community at large. It is also an obstacle to the implementation and enjoyment of human rights. More so, it is prejudicial to the physical, intellectual and emotional development of the victims thereof.

CONCLUSION

Recommendations

The study calls for domestic violence to be given prominence as a national issue of concern because of its correlation to health, economic and social issues. More so, there should be concerted efforts to educate and sensitization of the entire public about the causes, the impacts, the laws regulating Domestic Violence and its distinction in institution of cases.

REFERENCES

1. 200 Kayunga men battered by their wives every year | Monitor, <https://www.monitor.co.ug/uganda/special-reports/200-kayunga-men-battered-by-their-wives-every-year-4619342>
2. Doroudchi, A., Zarenezhad, M., Hosseini-zhad, H., Malekpour, A., Ehsaei, Z., Kaboodkhani, R., Valiei, M.: Psychological complications of the children exposed to domestic violence: a systematic review. *Egypt J Forensic Sci.* 13, 26 (2023). <https://doi.org/10.1186/s41935-023-00343-4>
3. Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective - PMC, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4768593/>
4. MBILINYI, L.F., LOGAN-GREENE, P.B., NEIGHBORS, C., WALKER, D.D., ROFFMAN, R.A., ZEGREE, J.: EXPOSURE TO DOMESTIC VIOLENCE AND CHILDHOOD EMOTIONAL ABUSE. *J Aggress Maltreat Trauma.* 21, 171–187 (2012). <https://doi.org/10.1080/10926771.2012.639203>
5. Hunt, G.R., Higgins, D.J., Willis, M.L., Harris, L.: Scoping Review of the Definitions Used to Describe and Understand Harmful Sexual Behaviors in Children and Young People. *Trauma Violence Abuse.* 15248380231218294

- (2023).
<https://doi.org/10.1177/15248380231218294>
7. Domestic Violence Act, 2010. (2010)
 8. Huecker, M.R., King, K.C., Jordan, G.A., Smock, W.: Domestic Violence. In: StatPearls. StatPearls Publishing, Treasure Island (FL) (2024)
 9. Ten harmful beliefs that perpetuate violence against women and girls | Oxfam International, <https://www.oxfam.org/en/ten-harmful-beliefs-perpetuate-violence-against-women-and-girls>
 10. Bagwell-Gray, M.E., Messing, J.T., Baldwin-White, A.: Intimate Partner Sexual Violence: A Review of Terms, Definitions, and Prevalence. *Trauma, Violence & Abuse*. 16, 316–335 (2015)
 11. Akpoghome, T.: Examining the Incidences of Sexual Defilement of Children in Nigeria. (2016)
 12. Tumwesigye, N.M., Kyomuhendo, G.B., Greenfield, T.K., Wanyenze, R.K.: Problem drinking and physical intimate partner violence against women: evidence from a national survey in Uganda. *BMC Public Health*. 12, 399 (2012). <https://doi.org/10.1186/1471-2458-12-399>
 13. Apriyanti, M., Sumaryoto, Meirinaldi: The Importance of Tourism Infrastructure in Increasing Domestic and International Tourism. *International Journal of Research in Vocational Studies (IJRVOCAS)*. 3, 113–122 (2024). <https://doi.org/10.53893/ijrvocas.v3i4.46>
 14. Humphreys, C.: Domestic Violence and Substance Use: Tackling Complexity. *British Journal of Social Work - BRIT J SOC WORK*. 35, 1303–1320 (2005). <https://doi.org/10.1093/bjsw/bch212>
 15. Humphreys, Cathy. (2005). Domestic Violence and Substance Use: Tackling Complexity. *British Journal of Social Work - BRIT J SOC WORK*. 35. 1303-1320. 10.1093/bjsw/bch212.
 16. Holt, S., Buckley, H., Whelan, S.: The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature. *Child abuse & neglect*. 32, 797–810 (2008). <https://doi.org/10.1016/j.chiabu.2008.02.004>
 17. Coping Strategies in Women and Children Living with Domestic Violence: Staying Alive - PMC, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9838497/>
 18. Uganda v Juvenile (HCT 02 CR SC 0377 OF 2014) [2014] UGHCCRD 81 (15 September 2014). (2014)
 19. Folsom, W., Christensen, M., Avery, L., Moore, C.: The Co-Occurrence of Child Abuse and Domestic Violence: An Issue of Service Delivery for Social Service Professionals. *Child and Adolescent Social Work Journal*. 20, 375–387 (2003). <https://doi.org/10.1023/A:1026047929774>
 20. Ramphabana, L., Frank, R., Makhubele, J.: The influence of socio-cultural practices amongst Vhavenda towards the disclosure of child sexual abuse: implications for practice. *Gender and Behaviour*. 17, (2019)
 21. Battle, J., Lewis, M.: The Increasing Significance of Class: The Relative Effects of Race and Socioeconomic Status on Academic Achievement. *Journal of Poverty*. 6, 21–35 (2002). https://doi.org/10.1300/J134v06n02_02
 22. Constitutional history of Uganda | ConstitutionNet, <https://constitutionnet.org/country/uganda>
 23. Constitutional history of Uganda, <https://constitutionnet.org/country/uganda>
 24. Van Eeden v Minister of Safety and Security (176/01) [2002] ZASCA 132; [2002] 4 All SA 346 (SCA) (27 September 2002), <https://www.saflii.org/za/cases/ZASCA/2002/132.html>
 25. Carmichele v Minister of Safety and Security (CCT 48/00) [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (16 August 2001), <https://www.saflii.org/za/cases/ZACC/2001/22.html>
 26. PENAL CODE ACT., <https://www.ugandalaws.com/statutes/principale-legislation/penal-code-act>.
 27. Local Council Courts Act, 2006 - ULII, <https://ulii.org/akn/ug/act/2006/13/eng@2006-06-08>
 28. Children Act - ULII, <https://ulii.org/akn/ug/act/statute/1996/6/eng%402016-06-02>
 29. The Police Act, <https://mia.go.ug/resources/acts/police-act>

CITE AS: Mutumba Fred (2024). Examining the Legal Framework Regulating Domestic Violence in Makindye Division of Uganda. IDOSR JOURNAL OF BANKING, ECONOMICS AND SOCIAL SCIENCES 9(1):38-44. <https://doi.org/10.59298/JBESS/2024/91.3844000>