Fighting Domestic Violence - Uganda

1. Legal provisions

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# Executive summary

For nearly two decades, Northern Uganda has been ravaged by conflict. Thousands of civilians have been subjected to brutal attacks and sexual violence, including rape, torture and the destruction of homes and communities. In recent years, there has been some movement toward justice for victims of these atrocities, but the progress has been slow and hampered by continued violence. In Uganda, victims of domestic violence in particular, as well as the police and the courts, face numerous challenges in responding effectively to the crisis of such conflict. The problems are aggravated by an overwhelming culture of silence, poor parliamentary oversight and difficulties in holding the police accountable for their shortcomings. It is clear that protecting victims and holding perpetrators to account takes more than just sound law.

However, victims of domestic violence have legal remedies for acts of domestic violence committed against them. One of the key pieces of legislation that will be discussed in this memorandum is the Ugandan Domestic Violence Act, 17 of 2010 and its supplementary regulations. Further, the Constitution of Uganda prohibits inhuman and degrading treatment, and domestic violence falls within this type of treatment.

Uganda has ratified a number of international conventions, including the Convention on the Elimination of All Forms of Discrimination against Women, 1985 and the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. This has been done with the intention of using these conventions as a platform to bolster the protection and promotion of the rights of women.

This memorandum analyses and compares the protection offered to victims of domestic violence under national Ugandan law, the Convention on the Elimination of All Forms of Discrimination against Women, 1985 and the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. In doing so, this memorandum explores, in detail, the Ugandan legal framework governing domestic violence, and, as already mentioned, analyzes the key provisions of the Domestic Violence Act, 17 of 2010. More specifically, it investigates those routes of recourse offered to victims of domestic violence, as well as those measures that are available to victims of domestic violence, including, most importantly, civil protection orders, which are granted by courts to protect victims against perpetrators of such violence. Finally, this memorandum examines the Ugandan legal framework surrounding various special issues, such as the governance of child custody support, domestic violence in the workplace and housing rights of domestic violence survivors.

# 1.2 What is the controlling case law?

The controlling case law regarding the response to domestic violence in Uganda comprises the following three cases:

*Uganda v. Bongomin* (criminal session case No. 194 of 2011) [2014] UGHCCRD 91 (13 June 2014)

*Idrifua v. Uganda* (criminal appeal No. 0014 of 2014) [2017] UGHCCRD 14 (10 August 2017)

*Mifumi (U) Ltd. & Anor v. Attorney General & Anor* (constitutional appeal No. 2 of 2014) [2015] UGSC 13

# 1.3 What are the specific parts of the court system that address domestic violence?

The judiciary is an independent organ of government entrusted to administer justice through a well-established court structure, including the local council courts, the magistrates' courts, the family and children courts, the High Court of Uganda ("High Court"), the Court of Appeal of Uganda ("Court of Appeal") and the Supreme Court of Uganda ("Supreme Court").[2]

**Local council courts**

A complaint of domestic violence may be made to a local council court in the area where the victim or perpetrator resides. Upon receipt of a complaint, the court will make a record of the complaint and proceed to hear the matter in the manner prescribed under the Local Council Courts Act, 2006.

The local council courts can make various orders, including the following:[3]

a caution

an apology to the victim

counseling

community service

a fine not exceeding 25 currency points

compensation

reconciliation

declaration

restitution

attachment and sale

any other order provided for under the Local Council Courts Act, 2006

**Magistrates' courts**

Magistrates' courts handle the bulk of civil and criminal cases in Uganda. There are three levels of magistrates' courts: chief magistrates, magistrates grade I and magistrates grade II. These are subordinate courts, whose decisions are subject to review by the High Court.[4] Every magistrates' court has the competency to hear domestic violence matters. These courts have to apply the procedure prescribed by the Family and Children Court Rules and they have the power to issue protection orders against alleged perpetrators of domestic violence.

**Family and children courts**

Family and children courts hear and determine matters of domestic violence under the Domestic Violence Act, regardless of whether it involves a child. These courts may issue an interim protection order or a protection order in the same manner as a magistrates' court.

**High Court**

The High Court is the third court of record, in order of hierarchy, and it has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude. Appeals from all magistrates' courts go to the High Court. The High Court is headed by the honorable principal judge, who is responsible for the administration of the court and who has supervisory powers over magistrates' courts. The High Court has unlimited original jurisdiction under Article 139 of the Constitution of Uganda to adjudicate any domestic violence case that may arise.

**Court of Appeal**

The Court of Appeal is the second court of record and the first appellate court of matters from the High Court. The Court of Appeal, sitting as a constitutional court, determine questions regarding the interpretation of the Constitution of Uganda on any issues on domestic violence.

**Supreme Court**

 The Supreme Court is the first court of record and final court of appeal. All other courts are bound to follow the decisions of the Supreme Court on questions of law.

# 1.4 What are potential causes of action?

Section 4 of the Domestic Violence Act prohibits a person in a domestic relationship from engaging in domestic violence. Should a person in a domestic relationship engage in domestic violence, they might be liable to a fine, not exceeding 48 currency points, or to imprisonment not exceeding two years, or to both. Moreover, the person may also be liable to pay compensation to the victim, in an amount determined by the court. This section contains the most notable cause of action in respect of domestic violence under Ugandan law.

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