



Exploring the effects of Domestic Violence on the Development of Nyendo Ssenyange Masaka District, Uganda

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ABSTRACT

The study explores the effects of domestic violence on the development of Nyendo Ssenyange Masaka District of Uganda. Women in Uganda have been prejudiced by the lack of legislation to protect them against domestic violence. Although criminal sanctions under the Ugandan Penal Code are sometimes imposed against perpetrators of domestic violence (including cautions, fines, and prison sentences), they are so lenient that, rather than deter further acts of domestic violence, they provoke them. In some instances, women who have even been slightly successful in obtaining redress have paid with their lives. This is a perverse situation which is set to continue. It is in this light that this study calls for law reform that deals specifically with domestic violence. Domestic violence legislation must be enacted because the existing criminal law does not provide adequate legal remedies and punishments are often very lenient, with the accused simply being warned or fined, which is a mockery of justice. The reformed law should provide victims of domestic violence with adequate remedies and reference should be made to other jurisdictions which have come up with a Domestic Violence Act, such as Malawi, Zimbabwe, and South Africa to mention a few. Also, there is a need for the government of Uganda to comply with its international obligation to protect women including women refugees against all forms of violence, whether occurring in the private or public sphere, and to strengthen the institutional and technical capacity of government agencies to address domestic violence, and to develop a model for intervention on a nationwidescale.

Keywords: Domestic violence, Government agencies, Government policies, international obligations, Ugandan laws

INTRODUCTION

Violence against women is often referred to as gender-based violence [1], which is violence targeted at women or girls based on their subordinate status in society. Gender-based violence has been shown to have a direct impact on women's reproductive health and child health [2]. Sexual violence is one of the different forms of gender-based violence. This is when a person has non-consensual sex usually through threats, intimidation, physical force, unwanted sexual acts, or forced sex with others [3]. Women already infected with HIV are themselves subject to increased rates of violence, which can take the form of abandonment, disinheritance, sexual assault, brutalization, and partner violence [4]. Around 2 million women were newly infected with HIV in 2005, a number roughly equal to the number of men infected, but evidence suggests that the burden of HIV/AIDS will be increasingly borne by women. The circumstances that influence sexual violence, the brutality of the event itself, and the inability of women to protect themselves from sexually transmitted diseases make it an exceedingly effective medium for spreading HIV [5]. Studies have shown that 40 to 60 percent of known sexual assaults within the family are committed against girls aged 15 years and below [6]. A recent study in the Netherlands showed that 45 percent of the victims of sexual violence within the domestic sphere are under the age of 18. Of these, girls are far more likely to be victims of incest than boys [7]. In every setting where data is available, a considerable number of young women experience coercive sex within marriage. In most settings, sexual coercion is initiated early in marriage, and in settings characterized by early and arranged marriage, specifically at sexual initiation [8, 9]. Sexual violence is still prevalent in Uganda, and the highest rates are in East Central Uganda, (53 percent). According to Tumwesigye et al. [10], almost four out of ten women in Uganda have ever experienced sexual violence (39 percent). As expected, forced first sexual intercourse is much more common among women than men. One out of four women aged 15-49 years (24 percent) report that their first sexual intercourse was forced against their will. Intimate partner violence is common in Eastern Uganda and is related to gender inequality, multiple partners, alcohol, and poverty. Accordingly, programmes for the prevention of intimate partner violence need to target these underlying factors. The suggested link between intimate partner violence and HIV risky behaviors or prevention strategies calls for further

studies to clearly establish this relationship. The Ugandan government has adopted several policies to stop gender-based violence, which policies are achieved through the following strategies gender mainstreaming, a process of assessing the implications for women and men of any planned action, including legislation, policies, or programmes, in all areas and at all levels. It is a strategy for making women's, as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring, and evaluation of policies and programmes in all political, economic and societal spheres so that both women and men benefit equally. The ultimate goal is to achieve gender equality [11, 11]. In addition, sensitization on gender issues at all levels is being done and promoting the Gender and Development (GAD) approach, which is based on the understanding of gender roles and social relations of women and men as well as the Women in Development (WID) approach which focuses on women specifically. Statistics have indicated that women refugees form 51% of the refugee population compared to 49% of the male refugees in Uganda [12]. Despite women refugees forming a higher percentage, women lag in all other rights and development. The majority of women are not able to make independent decisions at the household level. For those women refugees who are currently married or living with men, the men are the major decision-makers. In Nyendo Ssenyange Masaka District where men are generally the heads of the households, domestic violence is a serious problem and, unfortunately, this is widely tolerated. In this and many other communities in Uganda, domestic violence is not considered a serious crime, even by women's rights activists; wife battery that does not result in serious injury is tolerated and considered a normal part of marriage [13]. It is therefore important to note that one of the root causes of domestic violence lies in the unequal power relationships between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement of their human rights [14]. It is also imperative to note that domestic violence is a violation of human rights and needs to be combatted. The law in the Uganda Penal Code Act [15] does not specifically provide that domestic violence is an offense. The absence of a specific law protecting women against domestic violence, fear, as well as being ostracized by society, traditional beliefs, and attitudes have made women more vulnerable to domestic violence. The presumption that a spouse consents to sex with her partner throughout the marriage relationship means that the act of marital rape is legally impossible and cannot amount to domestic violence. This necessitated the present study that examines the effects of domestic violence on the development of Nyendo Ssenyange Masaka district of Uganda.

The Ugandan Existing Legal and Policy Framework Relating to Domestic Violence and their Status

Section 2 of the Ugandan Refugee Act [16] mentions "domestic violence" as one of the gender-discriminating practices. *"Gender discriminating practices" "include strict and forced adherence to a dress code, obligatory pre-arranged marriages, physically harmful facial or genital mutilation, rape, domestic violence, and other gender-related negative activities" [16].*

Since Ugandan law treats domestic violence primarily as a crime, it is in the area of criminal law that it is developing. In terms of its aforementioned wide international definition, other aspects of or remedies for domestic violence may also be accommodated and developed in other areas of law, such as the law dealing with maintenance. In Uganda, domestic violence is prosecuted as an assault under the penal code, and its provisions are used to prosecute intimate partner violence against women whether they take the form of simple or ordinary assaults or assaults occasioning grievous bodily harm [17]. Section 227 of the Ugandan Penal Code Act Cap 106 provides:

"Any person who unlawfully assaults another is guilty of a misdemeanor, and, if the assault is not committed in the circumstances for which a great punishment is provided in this code, is liable to imprisonment for one year."

And Section 228 of the Ugandan Penal Code Act Cap 106, states:

"Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor and is liable to imprisonment for five years."

Remedies for victims of domestic violence are contained in the penal code which imposes a variety of punishments for their offenders including cautions, fines, and imprisonment for between one and five years [18]. Despite the availability of these punishments, domestic violence remains a hidden problem since it usually occurs in the home, with men being the usual perpetrators and women the usual victims [19]. The presence of violence in the home is normally attributed to power struggles in the family. The gender inequalities between men and women in the family promote violence [20]. Hence the general assault provisions that are used to prosecute domestic violence assaults under the penal code are not designed to cater to the distinctive social, cultural, economic, and political circumstances under which domestic violence unfolds. An assault by a stranger is different from one committed by an intimate partner. In other words, the wide definition of assault under the penal code does not capture the aspects of intimate partner violence which is based on control, power, and abuse of trust. The prescribed sentences are also inappropriate. Specific legislation dealing only with domestic violence could not only embrace all forms of domestic violence but also provide more appropriate remedies (as opposed to criminal sentences), such as compensation of victims, orders for child custody, emergency protection orders, and the removal of the offender from the home [21]. The 1995 Constitution [22] is the supreme law of the Republic of Uganda and all the laws must conform to it. Article 2(1) 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(1) confirms the equal status of all Ugandans before the law, provides for equal protection of the law, and prohibits discrimination on several grounds including sex, ethnic origin, tribe, and race. Article 33(1)²⁶ accords women's equality with men and provides that laws, cultures, and customs that undermine the status, dignity, well-being 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 in 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 trampled on every basis. The National Association of Women Judges in conjunction with the Law Reform Commission has drafted legislation in respect to domestic violence. Since the early 1990s, local NGOs have unsuccessfully lobbied the government to pass domestic legislation and legislation addressing domestic relations [23]. Unfortunately, efforts in Uganda are continuing to pass the domestic violence legislation to raise 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. The duty to protect the rights and welfare of the child through the legal framework is not a new development but one that began at the end of the World War era. Following rampant abuse of human rights in the pre and post-war period, the United Nations General Assembly proclaimed the 1948 Universal Declaration of Human Rights [24] as a foundation for the promotion and protection of human rights. The Declaration recognizes the inherent dignity and the equal and inalienable rights of all members of the human family without distinction of any kind, such as race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or other status (Article 2). Article 4 of the Declaration provides that *no one shall be held in slavery or servitude; slavery, and the slave trade shall be prohibited in all their forms*. Article 5 further states that *no one is to be subjected to torture or cruel, inhuman, or degrading treatment or punishment* [24]. The two provisions are against any form of abuse to all humans, including the child. Article 26 (1) of the Declaration provides that everyone has the right to education and that it shall be free at least in the elementary and fundamental stages. All school age going children are expected to be in school and not in work or any other form of activity that deters them from having an education, and the parents according to Article 26 (3) have a prior right to choose the kind of education that shall be given to their children. Embedded in the Constitution of the Republic of Uganda (1995), is Article 34 (4) which provides for child labour law and enforcement. Therein it's stated that children should not be employed in work that is likely to be hazardous or work that would otherwise endanger their health, physical, mental, spiritual, moral, and social development or work that would interfere with their education. The same Constitution under Article 34 (5) states that children shall be persons under the age of sixteen years. In line with the 1995 Constitution of Uganda is the Children's Act [25] which prohibits the employment of children in work that may be harmful to their health, education, and mental, or moral development. Contrary to the Constitution, the Children's Act defines a child as a person below the age of eighteen years (Section 2). Coupled with these instruments is the National Child Labour Policy [26] whose main thrust is to guide and promote sustainable action aimed at the progressive elimination of child labor, especially its worst forms. The Government of Uganda about various sections and articles embedded within several international instruments including; the AU Charter on the Rights of the Child, UDHR, and the UNCRC has established legal and administrative institutions to ensure full implementation of Articles that cover the formal and informal sectors of employment and having regard to the relevant provisions of the ILO's instruments relating to children. Article 15 (1) of the Organization of African Union Charter on the Rights and Welfare of the Child [27] provides inter alia that; *every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development*. To ensure full implementation of this provision, Article 15 (2) further asserts that state parties should *Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article (that is, Article 15(1))*

For instance, in Uganda Section 131 of the Penal Code (Amendment) Act [15] prohibits individuals from procuring girls under the age of 21 for sex in Uganda or elsewhere; violation of this code is punishable by up to 7 years imprisonment. Section 129 of the same Act provides for defilement of persons under the age of eighteen years. Section 129 (1) states that *any person who performs a sexual act with another person who is below the age of eighteen years commits a felony known as defilement and is on conviction liable to life imprisonment*. Further, a person who attempts to defile a

person below that age is liable to imprisonment not exceeding eighteen years (Section 129 (2)). A person who performs a sexual act with another person who is under the age of eighteen years in such circumstances where the offender is infected with HIV is a parent or guardian or person in authority (over the person against whom the offense is committed), is a serial offender, or where the victim is under fourteen years of age and or disabled commits a felony²⁸ called aggravated defilement and is, on conviction by the High Court, liable to suffer death (Section 129 (3)) [15]. Uganda is a signatory to several regional and international child rights instruments and is thus obliged to incorporate them into its national legal and policy framework. Most of these instruments have been ratified as a move to address the child labour problem in the country. Incumbent upon the background that Uganda is part of the international legal order and above all, a signatory to the majority of the international and regional human rights instruments, it has domesticated most of them and legislation on the rights and welfare of the child is no exception to this [28]. The United Nations Convention on the Rights of the Child [29]; is an International Convention setting out the civil, political, social, economic, and cultural rights of children. Uganda ratified this Convention and is therefore bound to it by International Law. Article 1 of the Convention defines a child as any human being below the age of 18, unless an earlier age of majority is recognized by a country's law. The Convention deals with the child's specific needs and rights and it further requires that states act in the best interest of the child. This approach is different from the common law approach in most countries that had previously treated children and wives as possessions.

Article 32(1) of the Convention provides that;

States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual or moral and social development. States overall have the duty to protect, promote and preserve the rights of the child following the provisions in such legal instruments.

Article 4 further calls for the implementation of the rights in the Convention by undertaking all appropriate legislative, administrative, and other measures. This is manifested in Uganda's legal documents like the Constitution of Uganda (1995), the Employment Act (2006), the Education Act, of 2008, and the Children's Act Cap 59. These legal instruments have been coupled with policy and programme frameworks like the Universal Primary and Secondary Education programmes and the Uganda National Policy on Child Labour (2006). Aside from the legal instruments, Uganda in close collaboration with the International Labour Organization, UNICEF and other international organizations has come up with policies and programs for the enforcement of the rights of children. The policies and programmes that have been developed not only address the problem of child abuse but also its root causes. To this effect, universal education and poverty reduction strategies have been introduced based on the root causes of the phenomenon. Several attempts by the Government of Uganda to live up to its mandate of protecting the rights of the children as enshrined in the legal, policy and programmatic frameworks, is far from reality.

Lack of institutional support from the police, and judicial system and lack of awareness of such laws

Law documents are written and explained in English, which language is used by the elite. The non-educated are not able to access such laws, understand them, and put them into practice yet they are the majority. This has caused lawlessness and it results from living in an environment where there is a composition of different behaviours like sexual harassment, alcoholism, drug abuse, and wife battery. Perrin et al. [30] observed that at home social isolation seem to produce permanent deficit in social behaviour. They affirmed that women and children suffer sexual violence silently because they are ignorant of the law. The majority of people do not know their rights and obligations. Despite the intervention by organizations and agencies like the Uganda Human Rights Commission, Centre for Domestic Violence, United Nations Convention on the Rights of People, and others most of their policies have fallen on deaf ears due to illiteracy. The 1995 Constitution of Uganda [22] spells out the rights of children, which are not supposed to be violated. But little is known about this because people are not aware of them. These laws are not translated and widely explained to people. Laws on domestic violence are not seriously enforced especially in rural areas and among the marginalized group. People do as they wish and human rights abusers are rarely brought to book. In Uganda, the inadequacy of police services compounds the problem. Often, there are no police officers to report cases to. Police stations are few and far between in northern Uganda. Furthermore, police demand money to investigate cases and arrest and transport suspects. Victims are often asked to pay costs such as providing lunch for police during the investigation.

Impact of Domestic Violence

Domestic violence causes so many health impacts to the people exposed to it and the family as a whole some of the impacts include: Children, who have witnessed domestic violence or have been abused, exhibit health and behaviour problems like problems with their weight, eating, and sleep. They may have difficulty at school and find it hard to develop close and positive friendships. They sometimes try to run away or even display suicidal tendencies [31]. Girls who have been sexually abused in their childhood are more likely to engage in risky behaviours such as early sexual intercourse and are at greater risk of unwanted and early pregnancies. Complications may follow due to illegal abortions. The victim may not be socially ready to have a baby and when she gets the baby she may neglect

her baby and not give it mother love. The children may go to the streets and become street children or maybe be abandoned on the streets and dustbins. Sometimes abortions are done and may result in maternal death if not well done by a qualified person[32]. About 33 women in violent situations are less able to use contraception or negotiate safer sex, and therefore run a high risk of contracting sexually transmitted diseases and HIV/AIDS[21]. When they die, they may leave orphans thus increasing the number of dependants. The United States Department of Justice reported that medical complications resulting from FGM could range from haemorrhage and sterility to severe psychological trauma. Studies in many countries have shown high levels of violence during pregnancy resulting in risk to the health of both the mother and the unborn foetus. In the worst cases, violence can result in the death of the woman[33]. One of the local newspapers reported that a couple disagreed about when to resume sex a few weeks after the wife had given birth to a baby, and the man stabbed his wife with a spear[34]. Sexually abused women have a high incidence of stress and stress-related illnesses such as post-traumatic stress syndrome, panic attacks, depression, sleeping and eating disturbances, elevated blood pressure, alcoholism, drug abuse, and low self-esteem. For some women, fatally depressed and demeaned by their abuser, there seems to be no escape from a violent relationship except suicide [35]. Child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation. Young married girls face onerous domestic burdens, constrained decision-making, and reduced life choices. Sexual violence also causes borderline personality disorder, which is a mental illness characterized by impulsive behaviours including intense anger, suicidal tendencies, self-mutilation, promiscuity, and difficulties with relationships, and they report some sort of childhood trauma. In a 1996 survey of 6,000 adults, women with a history of sexual violence were significantly more likely to report one or more symptoms of eating disorders than were other women. Adult survivors of child violence are more likely to suffer from obesity or morbid obesity [36].

CONCLUSION

Although authorities in Nyendo Ssenyange Masaka are equipped to identify and deal with sex and gender-based violence (SGBV), they are blind to domestic violence which they consider a family or private matter. This unfortunate attitude made the identification of the problem of domestic violence within the settlement difficult until I approached its women victims and found that it is rife within the camp. Therefore, although there are official structures in place for dealing with disturbances and crimes within the settlement, domestic violence is not considered sufficiently serious to warrant any attention other than counseling and mediation for the sole purpose of reconciling perpetrator and victim. This unhelpful official reaction to the problem has only exacerbated it. The problem has become so serious that it needs the attention of every individual in the settlement because it damages the entire well-being and integrity of the settlement population, the majority of whom are women. Everyone in the settlement will eventually suffer unless the indifferent attitude toward the problem (shared by the male refugees as well as the authorities) is eradicated. Domestic violence has received growing attention at the international level as a form of discrimination and a violation of women's human rights. The international community has committed itself to protecting the rights and dignity of individual women through numerous treaties and declarations. Despite the efforts that are being taken by the international community, state parties have not fulfilled their obligation to enact legislation that conforms with the international human rights instruments. Women who are the main victims of domestic violence have suffered at the hands of the concerned authorities who regard wife beating as a domestic affair and thus recommend that such acts should be settled at home. Women in Uganda have been prejudiced by the lack of legislation to protect them against domestic violence. Although criminal sanctions under the Ugandan Penal Code are sometimes imposed against perpetrators of domestic violence (including cautions, fines, and prison sentences), they are so lenient that, rather than deter further acts of domestic violence, they provoke them. In some instances, women who have even been slightly successful in obtaining redress have paid with their lives. This is a perverse situation which is set to continue. It is in this light that this study calls for law reform that deals specifically with domestic violence. Domestic violence legislation must be enacted because the existing criminal law does not provide adequate legal remedies and punishments are often very lenient, with the accused simply being warned or fined, which is a mockery of justice. The reformed law should provide victims of domestic violence with adequate remedies and reference should be made to other jurisdictions which have come up with a Domestic Violence Act, such as Malawi, Zimbabwe, and South Africa to mention a few. Also, there is a need for the government of Uganda to comply with its international obligation to protect women including women refugees against all forms of violence, whether occurring in the private or public sphere, and to strengthen the institutional and technical capacity of government agencies to address domestic violence, and to develop a model for intervention on a nationwide scale. There is a need for women activists to continue lobbying and advocating for the enactment of legislation on domestic violence that is by international legal obligations. Laws to protect women and children are essential. Victims should have the right to stay in the home in cases of domestic violence; it is the perpetrator who should be removed from the residence in such cases. Home should be a place of safety. Therefore, the fact that a crime is committed in the home should be regarded as an aggravating factor. Furthermore, the UNHCR and its

implementing agencies which are supposed to protect refugee women from domestic violence should be specifically trained in this area. They should not only be trained one counselling and mediating skills (which are necessary to resolve less serious disputes) but also legal skills so that, in more serious cases, they may recommend and monitor the full and proper prosecution of deserving perpetrators. There is also a need for the UNHCR to amend their current guidelines [on the prevention of and response to SGBV] to include special provisions for combating domestic violence (Pima 2004:60). These should be disseminated widely throughout the settlement to increase awareness about the seriousness of the problem and the determination of the authorities to stamp it out. There is also a need to build awareness programmes for the community to be aware of the magnitude of this violation of women's rights in the settlement (and in Uganda generally). This should be done both at national and grassroots levels using the media, radio broadcasts, theatre performances, and poster competitions. There is a need to train law enforcement agents and to promote public awareness about domestic violence, particularly regarding the need for legislation and the protection of women's rights. Refugee leaders should be trained on how to respond to cases of domestic violence and assist in eradicating negative social and cultural attitudes towards domestic violence. This training should be ongoing to ensure that there is constant awareness of the problem as well as awareness about appropriate responses, criminal and civil, that should be made against it. There is a need for the government to increase the capacity of the police and law enforcement officers to respond to cases of domestic violence throughout Uganda. Finally, there is a need to continue empowering refugee women economically to reduce their over-dependency on their husbands, which is one of the main causes of domestic violence.

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