

JLOS: Judiciary and ODP

Access to Justice For Survivors and Accountability for Perpetrators is Vital for the Elimination of Gender-Based Violence.

Intimate partner violence, sexual violence, and other forms of gender-based violence (GBV) remain rampant throughout Uganda, not only violating the human rights of victims, but also severely undermining the nation's economic and social development and security.

While the Government of Uganda has put in place impressive laws and policies to protect the rights and interests of women and girls – including the Domestic Violence Act 2010, the Prohibition of Female Genital Mutilation Act 2010, the Prevention of Trafficking in Persons Act 2009 and the National Policy on the Elimination of Gender Based Violence– implementation remains limited and abuse rampant. Reporting of GBV remains low, investigations poor, and legal cases experience dismissal more often than conviction, resulting in impunity for many GBV-related crimes. Survivor support services remain extremely limited and uncoordinated. Many communities and duty-bearers continue to believe that GBV is acceptable, silencing survivors and pressuring them not to report the abuse or seek help.

There are myriad complex reasons that GBV remains so pervasive – ranging from negative cultural and gender norms, to limited understanding of the law and critical gaps within the administration of justice and institutional weaknesses. **A critical reason why Uganda has been unable to curb these abuses is the failure of sectors to adequately fund interventions necessary to implement the law, ensure accountability for perpetrators, prevent and respond to GBV, and provide critical support to survivors.**

56% of ever-married Ugandan women (age 15-49) experience spousal violence¹

One million Ugandan women (13%) experienced sexual violence last year²

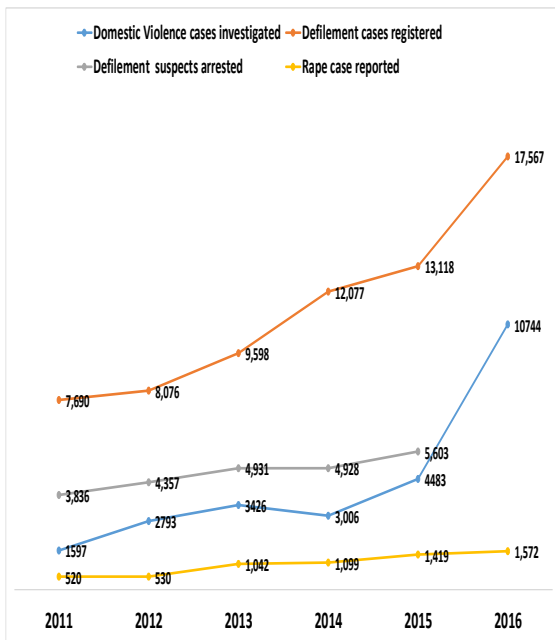
76% of Defilement cases taken to court in 2016 are still pending³

49% of women and 41% of men believe a man is justified to beat his wife for specific reasons¹

GBV costs 77.5 billion UGX annually in expenses and lost profits.⁴

The fourth JLOs Strategic Development Plan has among its strategic objectives to promote gender equality and equitable access to justice. These strategic outcomes need to be translated in to actions for the benefit of vulnerable women and girls.

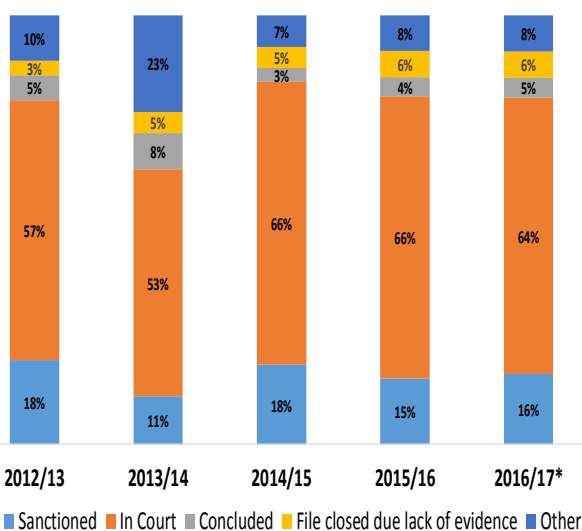
Sector Priorities in the National GBV Action Plan



UPF Annual Crime Reports⁵

The number of reported GBV cases continues to increase annually, without a corresponding increase in budget allocation. Between 2011 and 2016, the number defilement cases increased from 7,690 to 17,567. However, prosecution remains weak and GBV cases are dismissed or withdrawn at a far higher rate than conviction with only 3-5% concluded (fully adjudicated) annually.⁶

Percentage distribution of sexual violence cases in the DPP 2012/13-2016/17⁶



The 2016 National Action Plan on the Elimination of Gender-Based Violence requires the Judiciary and Office of the Director of Public Prosecutions (ODPP) to prioritize and fund the prosecution of perpetrators of GBV, survivor services, and specialized GBV courts.

Through national, regional and global policies and agreements, Uganda has committed to eliminating all forms of violence against women and girls in the public and private spheres, recognizing that this is a prerequisite for sustainable national and social development. The Judiciary and ODPP play critical roles in GBV prevention and response, particularly in the National Action Plan on the Elimination of Gender-Based Violence (“NGBV Plan”) priority area of **ending impunity for GBV**.

Under the NGBV Plan, as well as National Development Plan II, the ODPP and Judiciary are required to commit adequate resources to implement enumerated GBV-specific interventions. However, the sectors budgets fail to provide resources to meet its obligations, including the creation of a specialized GBV court, improving GBV prosecution rates, improving victim support services and establishing sentencing guidelines.

The NGBV Plan requires the Judiciary and ODPP to adequately fund and implement the following critical strategic actions:

- Establish special courts and processes for cases of GBV;
- Strengthen mechanisms for timely court processes that ensure prosecution of perpetrators and survivor access to justice;
- Develop effective sentencing measures that ensure accountability for perpetrators and consider the interest and views of victims;
- Enforce GBV laws, including the Domestic Violence Act, and enhance the handling of suspects in accordance with the law and with a focus on deterrence;
- Build the capacity of and sensitize judicial officers and prosecutors on GBV laws, obligations, and referral pathways;
- Offer protection, legal assistance, support, and referrals to GBV victims/survivors; and
- Collect disaggregated and streamlined GBV data.

Recommended Sector Priorities 2018/2019

Fast track the Creation of a GBV Specialized Court and Related Procedures

Specialized GBV Courts from around the world have proven to be more effective in enforcing laws on GBV. Such courts have the potential to be more gender-sensitive, have expertise in the unique aspects of GBV law, reduce case backlog, and include procedures designed to remove unique barriers to women and children accessing justice.⁷

A specialized GBV court is required under the NGBV Plan, and has been agreed to in principle by JLOS leadership. It should be given urgent consideration and funding – its continued delay undermines the national effort to curb GBV and implement the Domestic Violence Act and NGBV Plan.

Allocate Resources and Develop guidelines to Fast Track Cases of Domestic and Sexual Violence

Despite JLOS commitments to fast track cases of domestic or sexual violence, such cases are not being effectively expedited. Victims of these crimes experience significant pressure and shaming to withdraw a complaint, by both family and community members, all of which increase and compound over time – making crucial the need for these cases to be given priority in the justice system. Often, the domestic setting of the crime also increases the risk for ongoing violence, particularly if the victim appears to be cooperating with the prosecution.

JLOS institutions must allocate sufficient resources and develop effective procedures to implement its commitment to fast track cases of domestic or sexual violence, particularly until the GBV Court is operational.

Implement Plea Bargaining in a Victim-Centered and Gender-Sensitive Manner

The Judiciary adopted plea bargaining in 2014 with the aim of reducing case backlog and increasing efficiency. If plea bargaining continues to be implemented in a gender-blind and perpetrator-centered manner, it will be detrimental to survivor rights and agency, and undermine public confidence and the deterrent effect of sanctions.⁸

Resources are needed to (i) develop and implement ODPP prosecutor plea bargaining guidelines; (ii) hold special GBV plea bargaining sessions; (iii) develop plea bargaining sentencing guidelines; and (iv) strengthen the rights and role of victims through legislative reform, standard operating procedures, and increased resources to enable victim participation.

Enhance Survivor Safety and Participation in Judicial Processes

The NGBV Plan requires JLOS to provide protection and support to GBV survivors, and to eliminate barriers to survivors' participation in the judicial process. However, vital services remain weak or unimplemented due to critical underfunding. This budget gap exposes survivors to increased violence and abuse, and decreases public confidence in the justice system. Sufficient funding should be provided for fully staffed desks, witness protection programs, victim transportation refunds, survivor friendly court environments, and shelters.

Victim protection and support services must be considered core aspects of ODPP and Judiciary functions and be fully funded.

Invest Adequate Resources to Improve Prosecution Rates

Annually, only 10% of sexual violence cases are concluded, with over 50% being closed due to lack of evidence⁹ (e.g., health workers failing to testify, late reporting, 'missing' files). This is a trend seen across all GBV crimes.

Tackling these trends will require investment in the training of prosecutors and specialized judicial officers in the handling of GBV cases; providing the ODPD with the resources to utilize expert witness testimony, transportation for victims, and forensic examinations; as well as developing and operationalizing standard operating procedures for GBV cases.

Develop and Implement GBV Sentencing Regimes

Sentencing in GBV cases is almost entirely discretionary, bearing limited, if any, relationship to established Judicial sentencing guidelines, and unduly reflecting the inherent gender biases of individual judicial officers.⁸ The NGBV Plan requires the Judiciary to develop effective sentencing measures for GBV cases, considering accountability for perpetrators and the interest of survivors. To date, no funding has been allocated to this critical task.

Implementing effective guidelines requires investment in: (1) research and analysis of sentencing gaps; (2) a comparative analysis of other jurisdictions; (3) developing sentencing ranges that accurately reflect the sentencing gradation necessitated by diverse facts and contain clear aggravating and mitigating factors for domestic violence; and (4) development of accountability mechanisms.

Streamline Systems for Collection and Reporting of GBV Data

The NGBV Plan and the JLOS SDP IV require JLOS institutions to systematically collect, gender-disaggregate and disseminate timely reports on cases of GBV. There is a lack of uniformity between JLOS institutions in method, types and procedures for collecting, analyzing and the timely reporting of gender-disaggregated case data. In order to effectively combat the rampant levels of GBV, JLOS institutions and civil society require accurate, complete, and timely data on GBV cases.

Resources are needed to streamline and harmonize data collection systems and methods across JLOS institutions, and with the MGLSD to ensure reporting of gender-disaggregated data.

References

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- 3 The justice law and order sector, Annual Performance Report 2016/17
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- 6 Office of Directorate of Public Prosecution: Case Statistics 2012 /13 -2016/17.
- 7 United Nations. 2010. Handbook for Legislation on Violence Against Women. New York, USA.
- 8 UN Women and CEDOVIP. 2017. Negotiating Gender Justice: An Assessment of Plea Bargaining in Cases of Violence Against Women and Girls in the High Court of Uganda. Kampala, Uganda.