

THE NATIONAL ASSOCIATION OF WOMEN JUDGES UGANDA (NAWJU)

WOMEN'S DAY CELEBRATIONS 2015

INTERNATIONAL WOMEN'S DAY THEME: MAKE IT HAPPEN

NAWJU THEME: MAKING THE COURTS WORK FOR VICTIMS OF DOMESTIC VIOLENCE

SPEAKING NOTES FOR JUDICIAL OFFICERS & VOLUNTEERS TO COURT USERS TO MARK WOMEN'S DAY 2015

INTRODUCTION

This week, NAWJU joins the rest of the world to celebrate the International Women's day. This year's international theme is: *Make it happen*.

Accordingly and in line with NAWJU's goals and objectives, our focus this year is to make courts work for victims of domestic violence.

Several research studies have been done to show that domestic violence is very prevalent in our communities, even with the passing of laws to curb the vice, the prevalence is still high.

The purpose of this session therefore is to highlight the most important sections of the Domestic Violence Act, 2010 and the Regulations made there under and particularly to emphasize the role of courts under that law.

The Domestic Violence Act, 2010

The Domestic Violence Act provides protection and relief to victims of domestic Violence and as such;

- It defines domestic violence; (giving a broader definition than the one that was attributed to violence under the Penal Code Act)
- It provides for the avenues of remedies available,
- It provides for the different forms of remedies and the procedures to be followed to obtain them.

While the Act provides for different places that a victim of violence can seek help from, e.g., the police, Local Council Courts, Medical Practitioners and the Magistrate's Court; for the purposes of this session we shall mainly concentrate on the Magistrates Court.

What is Domestic Violence?

Domestic Violence is defined under section 2 of the Act as constituting any act or omission that endangers the health, safety, life, well being whether mental or physical of the victim. This includes causing physical, sexual, emotional, verbal, psychological and economic harm.

Domestic Violence is prohibited by the Act and a person who engages in it is liable on conviction to a fine not exceeding Nine Hundred Sixty Thousand Shillings Only or imprisonment not exceeding 2 years or to both.

Court may also additionally order the offender to pay compensation to the victim.

Definition of terms

“Victim”

This is defined as a person in a domestic relationship who suffers Domestic Violence.

“A domestic relationship”

A domestic relationship is defined to include-

- a family relationship;
- a relationship similar to a family relationship; or
- a relationship in a domestic setting that exists or existed between the victim and the perpetrator.

NB. Court is also given power to determine whether or not a relationship is domestic. The definition encompasses a broad range of both familial and non familial relationships, including (see section 3)-

- persons who are dating,
- married,
- cohabitating,
- Family member, including in-laws;
- People who share the same residence;
- The victim is an employer or employee of the perpetrator and they do not live together;
- The victim and the perpetrator lived together in a relationship which the court determines to be a domestic relationship.
- children,
- brothers and sisters,
- parents
- house helps; and
- other family and household members or persons within the domestic sphere.

The definition extends the scope of protections to cover existing and previous relationships among people who live or have lived together.

NB: Domestic Violence is not justified by the consent of the victim.

Forms of Domestic Violence

The Act under Section 2 provides for the different forms of Domestic violence as including;

1. Physical abuse;
2. Economical abuse;
3. Emotional abuse and

4. Harassment.

1. Physical abuse:

“Domestic Violence constitutes any act or omission of a perpetrator which-

- a) harms, injures or endanger the health, safety, life, limb or well-being, whether mental or physical, of the victim or tends to do so and includes causing physical abuse, sexual abuse, emotional, verbal and psychological abuse and economic abuse;
- b). harasses, harms, injures or endanger the victim with a view to coercing him/her or any other person related to him/her to meet unlawful demand for any property or valuable security;
- c) has the effect of threatening the victim or any person related to the victim by any conduct mentioned in paragraph (a) or (b): or
- d) otherwise injures or causes harm, whether physical or mental, to the victim.

2. Economic Abuse includes:

Depriving the victim of financial resources which he/she is entitled to by law, custom, or under a court order or which the victim requires out of necessity.

These could be:

- Food,
- medication,
- beddings and anything which is necessary for the sustenance of life.
- Denying or removing a person from property jointly owned or property owned by the victim.
- Refusing to pay rent or to share household expenses when the victim cannot adequately meet these alone.
- Disposing of or selling household properties whether immovable or movable such as houses land, shares bonds, securities or any assets to which the victim is entitled by reason of the domestic relationship or which is required by the victim or her children. The asset or property alienated may even belong to the victim or co owned by both parties
- Prohibiting the victim from accessing resources or facilities to which the victim is entitled to use or enjoy by virtue of the relationship or including access to the home which is shared by virtue of the relationship.

3. Emotional, verbal and psychological abuse

Emotional, verbal and psychological abuse means habitual conduct towards the victim such as:

- repeated insults, ridicule or name calling;
- repeated threats to cause emotional pain;
- repeated exhibition of possessiveness or jealousy which constitute serious invasion of the victim's privacy, liberty, integrity or security;
- Any acts which has been defines as constituting domestic violence as defined by the Act which is committed in the presence of a minor which causes him/her or is likely to cause him/her injury constitutes emotional, verbal and psychological abuse.

4. Harassment and Intimidation:

To harass is to engage in a pattern of conduct/ behavior which causes fear of harm, annoyance and aggravation.

It includes:

- repeatedly watching, or loitering near the place where the victim resides or works, studies or happens to be. It is called stalking in some jurisdictions.
- making a abusive telephone calls repeatedly or causing the abusive calls to be made by another person to the victim.
- sending, delivering or causing the delivery of offensive letters, telegrams, packages, facsimiles, electronic mail, telephone text messages or similar objects to the victim.
- repeatedly following, pursuing or accosting the victim with the intention of inducing fear, harm, annoyance or aggravation to her/him.

Control of Domestic Violence: Strategies and Interventions:

As discussed above, the Act provides for different places that a victim of violence can report get help from and these are:

- a) the Local Council Courts;
- b) Police;
- c) A medical practitioner; or
- d) Magistrates' Courts.

A complaint may be lodged by the complainant/ victim or by another on her /his behalf. However as mentioned earlier the purpose of this session is to familiarize you with the different remedies/reliefs that a victim of domestic violence can get from a Magistrate's Court and the procedures to obtain them.

Can a Victim of Domestic Violence get help from Court?

The Domestic Violence Act empowers a Magistrate to hear and determine cases of Domestic Violence under Section 9.

Jurisdiction of the Magistrates' Courts: (Section 9)

- 1.) Every Magistrates court may hear and determine a matter of domestic violence under this Act.
- 2) The court may, in the exercise of its jurisdiction under sub-section (1). above issue a protective order.
- 3) In hearing matters of domestic violence, the magistrates' court shall apply the procedure prescribed by the Family and Children Rules.

Different forms of reliefs that can be obtained from a Magistrates' Court:

The Court can provide the following reliefs for a victim of Domestic Violence-

- 1) Interim Protection Order
- 2) Protection Order; and
- 3) Compensation

- 4) Order for vacating a matrimonial home or other home

How to apply for a protection order (Section 10):

- 1) A victim or the representative of a victim may apply to a magistrate's Court for a protection order.
- 2) The application for a protection order must be supported by an affidavit and any reports or documents to be relied upon shall be attached to the application.
- 3) The application shall be in Form 1 (or Form 5 Regulation 2, DVA) specified in the third schedule to the DVA.
- 4) The Court, on receiving the an application, shall issue summons to the respondent directing him/her to appear in court on a date named in the summons in Form 2 in the Third Schedule.
- 5) An application for a protection order shall be heard within forty eight hours after the filing of the application.
- 6) An application for a protection order may be brought outside ordinary court hours or on a day which is not ordinary court day, where the court is satisfied that the victim may suffer hardship if the application is not dealt with immediately.

Issue of Interim Protection Order (Section 11)

The court shall issue an interim protection order, where the court is satisfied that, prima facie

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- a) the perpetrator has committed, is committing or threatening to commit an act of domestic violence; and
 - b) it is necessary or desirable to issue an immediate order to protect the victim from harm or discomfort or inconvenience, as a result of such domestic violence.

Issue of protection order: (§. 12)

On the hearing date specified in an interim protection order, the court may issue a protection order where the court is satisfied that an act of domestic violence has been committed, is threatened or is being committed by the perpetrator.

A protection order may be issued exparte if the court is satisfied that the perpetrator has been served with the notice of the application for the order.

A protection order may be served upon the respondent immediately, but not later than 48 hours.

Contents of a Protection Order: (Section. 13)

A protection order may, where appropriate—

- a) prohibit the perpetrator from committing or enlisting the help of another person to commit an act of domestic violence;

- b) direct the perpetrator to stay away from the premises or the place where the victim resides or any part of the premises, if the prohibition is in the best interest of the victim;
- c) prohibit the perpetrator from entering or approaching any place or premises where the victim works, frequents, attends or any part of the premises or place;
- d) direct the perpetrator to pay maintenance in respect of the victim's needs or the needs of any child or dependent of the perpetrator, including necessities;
- e) award the temporary custody of any child or dependent of the perpetrator to any person or institution and regulate rights of access by the perpetrator to the child or dependant;
- f) direct the perpetrator to afford the victim or any child or dependent of the victim, access to their place of residence and use the facilities associated with it;
- g) direct the perpetrator to do or omit to do any act or thing which the court considers necessary or desirable for the well being of the victim or any child or dependant of the victim.

The court may in issuing a protection order, where it considers it expedient to do so, issue an order to the perpetrator to vacate the matrimonial home or other home.

An order to vacate premises may only be issued by the court after consideration of a social report prepared by the social welfare officer.

Order for vacating a matrimonial home or other home: Regulation 33

The order to vacate the matrimonial home or other home shall be made in exceptional circumstances which include:-

- a) where the perpetrator threatens to kill the victim; or
- b) where the perpetrator has attempted to kill the victim.

What happens when one breaches a Court Order?

Failure to comply with the terms and conditions of the order is an offence punishable with a fine not exceeding 960,000/= Shillings only or imprisonment not exceeding two years or to both.

However, the court may give any other remedy it considers appropriate/fit.

Can one get bail in a domestic violence case?

Under Regulation 41, the court in considering the grant of bail for a person accused of domestic violence may place appropriate restrictions to prevent recurrence of violence.

What evidence is admissible in court in cases of Domestic violence? Regulation 44 (1)

The following evidence shall be admissible in domestic violence proceedings notwithstanding any other law:

- a) previous conviction as far as it pertains to acts of violence is it domestic or otherwise;
- b) records of previous protection orders granted to or against any of the parties;

- c) records of acts of violence be it domestic or otherwise reported to police or any other authority;
- d) formal warnings issued by the police;
- e) variations or cancellations of protective orders; or
- f) court records on matters arising out of the same or related facts.

FEES:

The fees payable shall be determined in accordance with the rules and practice governing payment of fees in the magistrates' courts.

What Can NAWJU do for Victims of Domestic Violence?

The National Association of Women Judges-Uganda (NAWJU) works in partnership with all other organizations that provide services for victims of Domestic Violence, it also has a special desk that provides support for victims of violence in terms of advise, NAWJU prides herself with having a membership of judicial officers that hear and determine these matters.

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