

BEYOND ACCESS:
THE ADMINISTRATION OF JUSTICE FOR WOMEN IN UGANDA

APARNA POLAVARAPU

Assistant Professor, University of South Carolina School of Law
Core Faculty, Rule of Law Collaborative at the University of South Carolina

OCTOBER 2015



Justice Sector Training, Research and Coordination (JusTRAC)* Research Report

* A Cooperative Agreement of the Rule of Law Collaborative at the
University of South Carolina and the Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State
The views expressed herein do not necessarily reflect the views of the U.S. Department of State.

EXECUTIVE SUMMARY

This research project explores a core—and often unexamined—question of access to justice through the lens of a single country. The specific research question presented here looks to the Ugandan court system and asks whether women and men are equally able to obtain justice, if at all, once they arrive in court, either in the civil or criminal context. Conversations about the interaction between the justice system and Ugandan citizens, particularly those citizens who are marginalized in one way or another, tend to focus on well-documented obstacles to access, which include, *inter alia*, prohibitive costs, physical inaccessibility, inadequate court structures, and social stigma. Many interventions designed to ensure sex equality in the justice system focus on improving the substantive laws and training judicial officers to administer justice fairly and equally. In Uganda and elsewhere the implicit assumption is that if the problems of access are overcome, the laws are good, and the judges are well trained and fair, court users can obtain justice. This project takes the important next step of questioning what obstacles court users face once they actually find themselves in the court system.

The research undertaken as part of this study reveals that a number of obstacles prevent both men and women from obtaining justice in courts, although women, due to their socioeconomic position, tend to suffer the weight of such obstacles more heavily than men. Primary factors undermining the administration of justice include (1) difficulty in executing civil judgments, (2) language barriers, and (3) corruption throughout the judiciary. Additionally, (4) the use of

reconciliation in cases of domestic violence merits a closer look in terms of how it impacts women.

The difficulty executing civil judgments is a particular problem for women. Executing a civil judgment can prove near impossible in certain cases, especially those involving (1) land allocation against family, clan, or community norms, or (2) child maintenance. In the former, complainants are often female heirs to property. In the latter, complainants are typically mothers. Language barriers and corruption problems are worse for those who are undereducated or poverty-stricken. Women, often comparatively poorer and lacking in education, are commonly cited as feeling the brunt of these problems more keenly. Reconciliation, an alternative dispute resolution strategy implemented in the criminal justice context, was viewed favorably by all respondents, including judicial officers and women's rights advocates, but could potentially re-victimize women suffering domestic violence.

This report is limited to addressing some of the key issues undermining administration of justice once users make it to court, and thus it excludes certain content. First, it deliberately avoids obstacles to access, because the research distinguishes between obstacles preventing access to courts and obstacles preventing receipt of justice within courts, although the two are related. Second, this report does not include every identifiable problem with the administration of justice, instead honing in on some of the key issues consistently identified by respondents. Noticeably absent is the issue of case backlog, which is excluded

because this particular report emphasizes those issues arising when courts do issue judgments, whether timely or not.

The findings laid out in this report create additional opportunity for research and understanding. Perhaps most importantly, deeper exploration into each of the identified obstacles can inform the creation of focused and effective interventions to improve the administration of justice.

Contents

Executive Summary.....	2
I. Purpose, Context, and Methodology.....	5
II. Ugandan Judiciary: A Brief Overview.....	7
III. Initial Findings.....	9
(A) Difficulty Executing Judgments	11
(B) Language Barriers	15
(C) Corruption in all levels of the Judiciary.....	17
(D) Reconciliation and Domestic Violence	18
V. Conclusion.....	21

I. Purpose, Context, and Methodology

This research looks to the Ugandan court system and asks whether women and men are equally able to obtain justice, if at all, once they arrive in court, either in the civil or criminal context. Conversations about the interaction between the justice system and Ugandan citizens, particularly those citizens who are marginalized in one way or another, tend to focus on well-documented obstacles to access, which include, *inter alia*, prohibitive costs,¹ physical inaccessibility,² inadequate court structures,³ and social stigma.⁴ Many interventions designed to

¹ Costs can arise in a number of ways, including costs attendant to securing counsel and to paying fees. LEGAL VICE PRESIDENCY, THE WORLD BANK, UGANDA: LEGAL AND JUDICIAL SECTOR STUDY REPORT 80, 100 (2009), <http://apps.americanbar.org/intlaw/ilrc/Legal%20and%20Judicial%20Sector%20Study%20UGANDA.pdf> [hereinafter JLOS Study]. Court users must also, of course, bear the costs of traveling to court and missing days of work. THE DANISH INSTITUTE FOR HUMAN RIGHTS, ACCESS TO JUSTICE AND LEGAL AID IN AFRICA—COMPARATIVE REPORT 33–34 (2011) [hereinafter DIHR Report].

² DIHR Report, *supra* note 1. Even accessing police stations to file a report and trigger a proceeding can require traveling long distances. AMNESTY INT’L, DOUBLY TRAUMATISED: LACK OF ACCESS TO JUSTICE FOR FEMALE VICTIMS OF SEXUAL AND GENDER-BASED VIOLENCE IN NORTHERN UGANDA 13 (2007).

³ For example, “most magistrates courts still have a heavy caseloads [sic], are poorly staffed, and the disposal of disputes is very slow.” JLOS Study, *supra* note 1, at 75.

⁴ *E.g.*, AMNESTY INT’L, I CAN’T AFFORD JUSTICE: VIOLENCE AGAINST WOMEN IN UGANDA UNCHECKED AND UNPUNISHED 39–40 (2010).

ensure sex equality in the justice system focus on improving the substantive laws and training judicial officers to administer justice fairly and equally. In Uganda and elsewhere the implicit assumption is that if the problems of access are overcome, the laws are good, and the judges are well trained and fair, court users can obtain justice. This project questions what obstacles to justice court users face once they get past all the hurdles to access, and whether these obstacles differ in any way with respect to women and men. Because the research examined both civil and criminal justice, I use the term “court user” to encompass civil litigants, victims of crimes, and criminal defendants.

Although this research seeks to disentangle justice during and after court proceedings from the ability to access a court in order to institute a proceeding, it acknowledges that obstacles to accessing courts may transform into obstacles to obtaining justice once within the courts. This research instead highlights that in the continuum of justice administration, some factors continue to undermine the pursuit of justice even after an individual appears in court.

The research consisted of semi-structured qualitative interviews conducted both in-person and by phone and Skype. Interviewees included magistrates, judges, court users, prisoners, legal services providers, state attorneys and prosecutors, and other government officials with knowledge of the courts and justice system. In all, 86 in-country interviews were conducted in the Northern, Central (including Kampala, the capital city), and Eastern regions of Uganda. This regional distribution

reflects a dual focus: the first on removing risks of geographical bias, and the second on obtaining both rural and urban perspectives.

II. Ugandan Judiciary: A Brief Overview

Uganda is a legally pluralist nation, with both common law and customary law playing an important role in people's lives. The 1995 constitution sets out the country's legal foundations, as well as the basic architecture of the judiciary.⁵ The Magistrate Courts exercise extensive original jurisdiction in civil⁶ and criminal⁷ proceedings. Rulings of the Magistrate Courts are appealable to the High Court, which also exercises original jurisdiction over those proceedings not under the Magistrate Courts' subject matter jurisdiction. In addition, Parliament has empowered Local Council Courts, granting them jurisdiction over a set range of matters including, *inter alia*, customary law disputes, land matters, and civil

⁵ CONST. OF THE REPUBLIC OF UGANDA (1995) art. 129(1). The relevant language states:
(1) The judicial power of Uganda shall be exercised by the courts of judicature which shall consist of—

- (a) the Supreme Court of Uganda;
- (b) the Court of Appeal of Uganda;
- (c) the High Court of Uganda; and

- (d) such subordinate courts as Parliament may by law establish, including qadhis' courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

⁶ Magistrate Courts Act, Cap. 16 (1971) § 207, <http://www.ulii.org/ug/legislation/consolidated-act/16>. "A chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed five million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass." S. 207(1)1. All lower ranked magistrates have reduced civil subject matter jurisdiction. S. 207(1). In addition, a chief magistrate and Magistrate Grade I have unlimited jurisdiction where the cause is governed by civil customary law, regardless of the value of the disputed subject matter. S. 207(2).

⁷ Magistrate Courts Acts, *supra* note 6, § 161. A chief magistrate has jurisdiction over any crime except for those which are punishable by death. All lower ranked magistrates have reduced criminal subject matter jurisdiction. *Id.*

matters.⁸ These courts are often located in closer proximity to the *situs* of disputes and therefore require less travel by would-be court users than the Magistrate Courts. Accordingly, Local Council Courts are also more numerous than Magistrate Courts. While some Local Council Courts continue to function regularly,⁹ they are no longer technically operating legally, because the terms of their committee members have been expired for years without any reelection.¹⁰ In spite of this not insignificant technical issue, Local Council Courts continue to matter tremendously, and court users often visit them before turning to Magistrate Courts.

For family and land disputes, Ugandans, particularly those in rural areas, often go to their family or clan heads first to seek help in resolving the dispute. If that fails, the next step is to go either to the Local Council Court or the Magistrate Courts. While many Ugandans prefer to first seek relief at the Local Council Courts because of their proximity and because of committee members' knowledge of local communities, several Local Council committee members have stated that they automatically refer cases of physical domestic violence to the formal courts or the police. To the extent land disputes are not peaceably mediated, those too are often

⁸ Local Council Courts Act § 10 (2006), <http://faolex.fao.org/docs/pdf/uga138974.pdf>. Local Council Courts are the current iteration of what were once known as the Resistance Committee Courts, which were formalized in 1987 via the Resistance Councils and Committees Statute. PENAL REFORM INT'L, ACCESS TO JUSTICE IN SUB-SAHARAN AFRICA: THE ROLE OF TRADITIONAL AND INFORMAL JUSTICE SYSTEMS 60 (2001).

⁹ Although they are governed by formal law, Local Council Courts are not necessarily consistent across the board in their behavior, decisions, or functioning. This is especially true as they are designed to implement customary law, which varies from tribe to tribe, community to community, and sometimes family to family, and thus by its very nature is not generalizable across a nation. Local Council Courts thus represent an example of the growing phenomenon of formalized informal courts.

¹⁰ The Electoral Commission has thus far failed to set elections for these courts.

referred to Magistrate Courts. Additionally, anyone unhappy with a Local Council decision may turn to a Magistrate Court to try to seek a different judgment. A Magistrate Court does not review the decision-making of the Local Council Court, as a typical appeals court might, but instead hears the case as an original proceeding. Some Magistrate Courts do invite Local Council committee members to provide input or advice in certain cases, as they are considered experts on their communities and community members.

Other specialized courts may be and have been created by Parliament, including Family and Children Courts.¹¹ In addition, via its powers under the Judicature Act, a Rules Committee consisting of several members of the judiciary and legal community has created a small claims procedure (referred to in practice as the Small Claims Court) within the Magistrate Courts.¹² Both the Family and Children Courts and Small Claims Courts are viewed as creating more accessible justice because of their relatively relaxed process.

III. Initial Findings

A number of common themes emerged from the interviews, suggesting that (A) the difficulty executing judgments, (B) language barriers, and (C) corruption play an outsized role in whether a court user is able to access justice. Additionally, the research suggests that (D) the use of reconciliation as an alternative dispute

¹¹ Children Act, Cap. 59 (1997) § 13, <http://www.ulii.org/ug/legislation/consolidated-act/59-0>.

¹² Judicature Act, Cap. 13 (1996) § 41, <http://www.ulii.org/ug/legislation/consolidated-act/13>.

resolution strategy in domestic violence cases has the potential to undermine justice by re-victimizing women.

This report does not include every identifiable problem relating to the administration of justice.¹³ It hones in on some of the key issues consistently identified by respondents. Noticeably absent is the issue of case backlog, a well-recognized problem in the Ugandan judiciary.¹⁴ The issue of case backlog is deliberately excluded in this initial report. Although justice delayed is certainly justice denied, this particular report emphasizes those issues arising when courts do issue judgments, whether timely or not.

In addition, the four themes outlined below are initial findings from very information-rich interview data, of which analysis is ongoing. This research was

¹³ In addition to these key findings, respondents raised several other issues that are not entirely within the scope of this research project, but merit a brief mention here. First, respondents reported that due to lack of social support, women receive more favorable treatment than men when accused of non-capital offenses. According to respondents in the legal and judicial communities, judicial officers are more likely to grant alternatives to imprisonment to female criminal offenders who are pregnant or have young children. Due to the lack of social services, women who are imprisoned sometimes have no option but to take their children to prison with them. Prison policy only allows children up to the age of 5 to be kept with their mothers, but a number of respondents confidentially revealed that children older than 5 were often imprisoned with their mothers.

Second, many respondents also suggested that a gender analysis of the administration of justice neglected a key group in need: juveniles. Specifically, there are very few juvenile remand homes in Uganda, and they are overcrowded. Each remand home serves multiple jurisdictions, but often lacks the resources to ensure adequate transportation to courts. The result is that remand homes can often only provide transportation to a specific court on one day a week, if even that often. Thus, juvenile defendants often experience very long delays before their cases can be resolved.

Finally, some respondents noted that the police are very slow at conducting investigations, which contributes significantly to case backlog and overcrowding of prisons as accused persons await their first appearance before the high court. Although this is well outside the scope of my research, these interview responses do suggest that some reform is needed in the investigation phase of the criminal justice system. Some prosecutors and state attorneys suggested that an inquisitorial style prosecution-led investigation would be a suitable solution.

¹⁴ In fact, reducing case backlog is currently one of the major initiatives of the Justice Law & Order Sector, an interagency Ugandan government group designed specifically to address shortcomings in the justice sector. *Case Backlog Reduction Program*, JUSTICE LAW & ORDER SECTOR (2013), <http://www.jlos.go.ug/old/index.php/2012-09-25-11-09-41/case-backlog-reduction#>.

designed to uncover obstacles to administering justice once issues of access and substantively problematic laws are overcome. Future research concentrating on each of these four themes can inform the creation of focused and effective interventions to improve the administration of justice.

(A) Difficulty Executing Judgments

1. Judgments Generally

Even where court users are able to get a favorable judgment, they often face great difficulties in executing those judgments. Ensuring execution remains the obligation of the successful party. Bailiffs are available to assist in the execution of judgments, but they set their own rates, which are sometimes calculated as a percentage of the value of the judgment. Many respondents suggested that bailiffs overcharge for their services, often rendering those services out of the reach of the most needy litigants. As one legal services attorney put it, “the bailiffs are as good as hungry lions.”¹⁵

2. Land Matters

Executing judgments without the assistance of bailiffs can prove to be quite difficult, especially when the judgment requires pushing back against family or clan norms. Accordingly, judgments relating to land allocation are often difficult to execute without external support. The issue disproportionately affects women who are seeking to assert their right to inherit land, but it also affects both men and

¹⁵ Interview with Children’s Advocate, in Jinja, Uganda (July 7, 2015)(name withheld).

women who are fighting other types of land grabs. In Lira, various judicial officers and attorneys noted that widows in the area were often evicted from marital land as soon as their husbands had died. The decedents' relatives considered the land to belong to the family, of which the widow was not a part. Even when widows receive favorable judgments, the relatives who have claimed the land resist honoring the court judgment. Women seeking to assert their right to inherit their parents' property may similarly face pushback from male heirs.

Some legal services providers and magistrates noted that ensuring the execution of land judgments required personal visits to the disputed land with a Local Council member to oversee the execution of the judgment. When a legal services provider is spearheading the supervision, he or she typically arranges for police officers, clan leaders, and judicial officers to be present to decrease the risk of resistance from others claiming rights to the land. The presence of the judicial officer—that is, a magistrate or judge—is integral to the visit. However, many magistrates and high court judges are plagued by severe case backlog, which does not afford them the time to make on-site visits. In addition, the frequent transfers of judicial officers can interfere with judicial plans for follow up.

Within Kampala, an executions division has been established within the High Court. While this division was meant to serve as a model to later roll out elsewhere in the country, it remains the only one, though respondents within the judiciary and other government offices have stated that the rollout is still planned and will happen at some unspecified time. Additionally, respondents have stated that the executions

division is riddled with corruption and is ineffective at ensuring proper enforcement of court judgments. Several respondents have stated off the record that they question the effectiveness of this division, especially with respect to land issues.

3. Child Maintenance

The area of child maintenance is also rife with execution problems. Though women are often encouraged to go to court to ensure that the fathers of their children provide adequate support, ensuring payment of court-ordered child maintenance is a difficult task. The U.S. judicial strategy of garnishing wages is less effective in Uganda where many men earn income through the informal economy. Obtaining the services of a bailiff is also unsustainable for women seeking to ensure payment from repeat offenders. Most people cannot afford to repeatedly hire bailiffs to collect payments. Finally, while civil debtors' prison is an option, many respondents stated that—at best—time spent in the debtors' prison encourages the offender to make a few on-time payments before once again neglecting the court order. In addition, the claimant—in this case, the woman seeking maintenance payments—is responsible for paying an upkeep rate for each day the debtor is imprisoned. An additional problem lies sometimes with the court order itself; many court ordered payments are beyond the ability of an offender to pay.

Legal services providers tend to promote mediation as a first step when a woman is seeking child maintenance. In theory, mediation is a more effective tool than litigation because parties are more likely to comply with a resolution that was achieved by mutual agreement. However, problems relating to enforcement of child

maintenance agreements continue to be an issue even when such agreements are the result of mediation. Many legal services providers stated that they were able to ensure compliance with the agreement only by continuously monitoring and following up with the fathers who agreed to make payments. This is not a sustainable solution given the lack of resources available to legal services providers and the overall lack of legal services providers in relation to the number of people in need of one.

Recognizing the sustainability concern, some advocates have established networks within communities, including Local Council committee members and other community leaders, to ensure long-term community-level accountability. The agreement between the parties is made public to the community, creating a layer of accountability as community members check in with parties to ensure compliance. Of course, the effectiveness of this strategy varies depending on the level of commitment of the individual nodes within the community network, as well as the identity of the parties to the agreement needing enforcement and their relationship to other members of the community. Thus, while community engagement has sometimes been successful, respondents also noted that it is not always reliable.

These circumstances suggest that judicial intervention is not the right approach to ensuring adequate paternal financial support for children, and that novel, extra-judicial strategies must be considered. However, while community engagement is somewhat promising, it does not appear to comprehensively address the problem.

(B) Language Barriers

English is the official language of the courts, and one of the official languages of Uganda. However, while educated court users speak English, the vast majority of court users do not. Ethnologue, a global language reference resource, counts exactly 41 living languages in Uganda, although 2 are classified as “dying”.¹⁶ The differing languages spoken by various parties at any given time in a court sometimes presents very serious obstacles to persons seeking justice. Although interpreters are secured for the court users, these interpreters are rarely trained well enough in the language of the law to provide adequate support.

Many respondents argued that given time, a judge or magistrate could learn a number of the local languages,¹⁷ but judges and magistrates are rarely in any one place long enough to do so. To combat corruption, the judiciary has embraced a program of frequent transfers. Judges and magistrates are transferred at least once every three years to avoid the temptation to be corrupt or exercise bias, under the theory that such temptation increases the longer one stays in any one area. However, what this also means is that a judge or magistrate is sometimes transferred before having the opportunity to learn much of the local language.

Court clerks are often asked to serve as interpreters, but magistrates and legal services providers have complained that they often make mistakes, and are

¹⁶ ETHNOLOGUE: LANGUAGES OF THE WORLD, (Lewis, M. Paul et. al. eds., 18th ed. 2015), <http://www.ethnologue.com>.

¹⁷ Some were quick to note, however, that certain languages, especially in the Northern region, are much more difficult to learn. In addition, some magistrate courts have jurisdiction over areas with a large number of tribes, and multiple languages spoken.

sometimes guilty of purposeful misinterpretation after being offered bribes by the opposing party. Even earnest interpreters make errors. In areas such as Lira, where there are multiple languages spoken in the jurisdiction of the High Court of Lira, the few court clerks do not among them fluently speak all of the languages among the diverse set of potential litigants. Some are tasked with translating while having a limited working knowledge of the indigenous language, heightening the risk of error. Where a clerk is unavailable to translate, courts seek out family members or acquaintances of court users, but it can be difficult to find lay interpreters, particularly in rural areas.

A Chief Magistrate in Lira illustrated how such miscommunication can change the course of a proceeding: “There was an application for setting aside an expert judgment...the respondent said, ‘you can proceed with [discussion of] the application.’ But what the clerk was interpreting for me was, ‘he is conceding the application.’ Yet he had filed papers objecting to the application.”¹⁸ The Chief Magistrate caught the mistake only because the papers objecting to the application were directly in front of him. If the papers had not been filed,¹⁹ or if he had been dealing with a matter that could not be easily checked by accompanying paperwork, he acknowledged that the proceeding could continue improperly due to such a key miscommunication.

¹⁸ Interview with Chief Magistrate John Francis Kagawa, in Lira, Uganda (Jun. 30, 2015).

¹⁹ Respondents noted that “misfiling” or “lost files” were a common result of bribes paid to clerks by parties opposing the paperwork in the file. In conjunction with misinterpretation, the result can be an enormous miscarriage of justice.

The multiplicity of languages can create multiple problems for court users. However, given that there is no one language that is spoken by all Ugandans, changing the official language of the courts may not spur any improvement. In addition, women are cited as more likely to suffer as a result of language barriers because of their comparative lack of education and exposure to English.

(C) Corruption in all levels of the Judiciary

Nearly every respondent said that corruption was a large spoiler for those seeking justice in the courts. This is consistent with reports from inside and outside the country highlighting the extreme corruption in the judiciary.²⁰ Anti-corruption efforts have been spearheaded and supported by the government and international community, but corruption remains a problem. Various respondents suggested that court clerks were the key actors soliciting bribes, although several stated that these clerks were acting on explicit direction from magistrates, who rely on clerks in order to avoid investigation. Currently implemented anti-corruption strategies include the creation of an anti-corruption court and a policy favoring frequent transfers of magistrates and judges.

As noted above, the frequent transfers of magistrates and judges, while potentially mitigating corruption, may undermine justice in other ways. The theory

²⁰ ANTI CORRUPTION COALITION UGANDA, *TEMPLES OF INJUSTICE: A REPORT HIGHLIGHTING ALLEGED ABUSE OF OFFICE IN SELECTED MAGISTRATES' COURTS IN UGANDA* (2014); CYNTHIA A. BALDWIN, *THE BROOKINGS INST., COMBATING JUDICIAL CORRUPTION IN UGANDA* (2009), http://www.brookings.edu/~media/research/files/papers/2009/9/uganda-corruption-baldwin/09_uganda_corruption_baldwin.pdf; Press Release, Afro Barometer, *Whose fight? Ugandans dispirited in anti-corruption efforts* (Sept. 25, 2015), http://afrobarometer.org/sites/default/files/press-release/uganda/uga_r6_pr3_accountability_apathy.pdf.

behind frequent transfers is that judicial officers are less likely to be biased or subject to corruption if they are not in any one place long enough to feel comfortable with the community and ask for bribes. On the other hand, these frequent transfers mean that magistrates and judges are often assigned to locales where they are not familiar with the local languages and are not living in a place long enough to become proficient or fluent. Additionally, several attorneys complained that frequent transfers worsen the case backlog problem, as new magistrates and judges need to familiarize themselves with new case files before resuming a hearing.

The phenomenon of corruption is alternately cited as being either more burdensome for women than men, or as being rather mindful of their struggles. While some courts are cited as treating women worse because they are often poorer and less able to afford bribes, others are considered to engage in a more equitable form of corruption. That is, the bribe requested is often calibrated to the amount the person can afford.

(D) Reconciliation and Domestic Violence

Reconciliation, a cousin of mediation, is an alternative dispute resolution strategy embraced by Uganda's criminal justice system. Mediation and reconciliation are not new to the Ugandan judiciary, but there seems to be an increased push towards using these methods to allow parties to obtain their own justice while avoiding long years awaiting resolution of the court process.

Reconciliation is provided for in the Ugandan Constitution, which states, "In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the

law, apply the following principles—...(d) reconciliation between the parties shall be promoted...”²¹ The Domestic Violence Act explicitly recognizes reconciliation as a potential outcome of domestic violence cases heard by the Local Council Courts.²² In later provisions, the DVA goes on to discuss police obligations and the ability of Magistrate Courts to provide protective orders, none of which mention reconciliation. However, in interviews respondents stated that the first instinct of nearly all actors, even in cases of physical violence,²³ is to ask about reconciliation. Interestingly, several Local Council committee members stated that instead of hearing domestic violence cases, they immediately forward such cases to the police.

Legal services providers, state attorneys, and magistrates were generally quite favorable when discussing reconciliation as a strategy, all stating that they promoted some degree of reconciliation in criminal justice. All parties who described the process of reconciliation in the domestic violence context stated that it was the responsibility of a police officer to suggest reconciliation to victims submitting complaints. If a woman²⁴ complaining of being battered finds her way to a legal services provider, the provider also often suggests reconciliation as a first recourse over courts. State attorneys and prosecutors²⁵ have stated that they do not

²¹ CONST. OF THE REPUBLIC OF UGANDA (1995) art. 126(2)(d).

²² Domestic Violence Act (2010) § 6(5), http://www.ulii.org/files/ug/legislation/act/2010/2010/domestic_violence_act_2010_pdf_20398.pdf.

²³ The Domestic Violence Act has an expansive definition of domestic violence, which includes physical, sexual, emotional, verbal, psychological, and economic abuse. Domestic Violence Act, *supra* note 22, § 2.

²⁴ Respondents acknowledged that women also batter men, and in some relationships the parties batter each other, but the majority of complaints arise from women being battered by men.

²⁵ Although technically different positions within the judiciary, both state attorneys and prosecutors may initiate criminal proceedings on behalf of the state.

ask a woman to consider reconciliation, but they will honor requests to pursue reconciliation after a case has already begun. According to lawyers and judicial officers, it is not uncommon for a woman to propose reconciliation after the accused has spent a few days in prison.

All respondents, including some women currently seeking reconciliation with their batterers, stated that imprisoning abusers was more harmful than helpful to a woman. Without their partners, most women find themselves unable to adequately support their children. In fact, respondents asserted that most reconciliations ended with an agreement that the batterer would agree to pay enough to cover school fees and to feed the children. An additional factor encouraging women to choose reconciliation is the enormous pressure that communities and family members place on the woman to withdraw the complaint. Respondents also argued that reconciliation was an appropriate course of action because it promoted preservation of family. Some also suggested that it was a more culturally acceptable course for the woman experiencing the violence.

The clear downside of this approach is that the reconciling woman is at risk of being battered even further by a repeat and potentially enraged abuser. A number of respondents argued that this wasn't a large problem because most of the abusers simply misunderstood the law. They thus concluded that abusers would no longer commit abuse once they realized what they were doing was illegal. Several legal services providers, state attorneys, and magistrates argued that reconciliation was effective because their records reveal a low number of repeat complaints from

victims of domestic violence. However, this data is severely inadequate in that it doesn't account for women who may be unwilling, unable, or otherwise too fearful to submit repeat complaints to the police or courts.

V. Conclusion

Even when problems of access and inadequacies in substantive law are overcome, a number of factors can undermine the ability of both men and women to obtain justice in courts. Certain factors, such as the inadequacies of execution of judgments and the potential problems with reconciliation, have significant ramifications in disputes that disproportionately affect women. Other issues, such as corruption and language barriers, are less obviously gendered, but are in practice more burdensome to those marginalized as a result of poverty and lack of education. Importantly, some of these problems, especially corruption and language barriers, may effectively also act as barriers to access. This is true of corruption in the sense that court users are often asked to pay bribes to any number of officials, including police officers, before they begin to take any steps to institute judicial proceedings. It is similarly true for the language barrier in the sense that it alienates potential court users from the courts and discourages them from choosing courts at all for dispute resolution.

This research does not suggest that problems of access can be entirely divorced from problems obtaining justice during and after court proceedings. But while access to justice is a topic that is heavily explored in rule of law literature, questions of administration of justice and whether such justice is administered

equally for men and women are not. In exploring this precise question in the context of Uganda, this project reveals that there are real, disproportionately gendered issues in the administration of justice that are often masked as systemic issues. The factors identified by this research, accordingly, merit additional exploration to develop more nuanced understandings of how they impact the way justice is administered, and to develop targeted interventions. This project is thus a first step in comprehending how the administration of justice can be improved outside of the conversation about access, laws, and judicial behavior.