

The Obscure Nature of Plea Bargaining in Domestic and Intimate Partner Violence (IPV) Crimes in Uganda: The Accused-Victims' Impugned Right to A Fair Hearing

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ABSTRACT

The Uganda Plea Bargain Rules [the Rules] allow victims to participate in plea negotiations, which aligns with the international principle of the need to capture the victims' voices in decision-making.[1] Victim participation can be from two viewpoints: the complainants as victims and the accused as both victims and perpetrators. The paper underscores the latter victims' concerns, arguing that the accused can also be victims of the same offences they commit, orchestrated by domestic violence, in several ways: as victims of an act(s) of violence from their partners—the primary complainants (or victims) in their charges; or as victims of violence orchestrated by their partners, which cascades to their innocent loved ones—also as primary (or victims) in their charges, but regarding this category, some die or are affected immensely. These accused, as victims, have a high propensity to plea bargain in self-conviction, to come to terms with the reality of their offences, irrespective of guilt, involuntarily, equivocally, when not well-informed, and when their convictions are not fully factual-based; contravening the international standards of a plea bargain. This lapse fundamentally flaws their right to a fair hearing as this paper highlights.

In a case study of Uganda's High Court bargained trials from 2014 to 2021 entitled: *An Accused's Self-Conviction to End Trial? Plea Bargaining and the Right to A Fair Hearing in Uganda*, [2] analysis of 66 convicts (45 men and 21 women) narratives revealed that 20 (30.3 %) conflicted with the law after domestic related squabbles. They wrangled with either a wife, girlfriend, boyfriend, father of their children or husband. Seventeen (85%) were later charged with egregious offences, mostly murders, stemming from these situations, with the majority having a history of a cycle of violence. They all plea bargained, regardless of gender or literacy levels. Gender-related roles and spaces compelled mothers to plea bargain as nurturers and fathers to plea bargain as family heads, irrespective of guilt. Justice Actors seem blind to the causes that compel such accused victims into criminality. This paper suggests reforms towards their protection, calling for the courts thorough inquiries to justify their convictions.

BACKGROUND

In 2016, Uganda embraced plea bargaining—a full trial-waiver model alongside the traditional full trials—to address trial delays, one of which cardinal objectives was to involve the victim in the adjudication process. [3] Plea bargaining revolves on plea agreements between the accused and the state, where the former pleads guilty in return for the latter's concessions.[4] Existing literature underlines these concessions globally encompassing, in most cases: a recommendation to the court for a lighter sentence (a sentence bargain); the dismissal of additional or potential charges, or preference of lesser charge(s) (charge bargain); a

prosecutor's promise of no affirmative action beyond the prosecution of the offence in question; a recommendation of the accused's choice of punishment, and the accused to testify as a state witness.^[5] The procedure costs some of the accused's fair trial rights, ^[6] despite the international standard spelt out in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)^[7] that a conviction for the accused should be complete only after they are proven guilty or have pleaded guilty to the offence subject to all other fair trial rights. Uganda's constitution and trial laws recap this standard.^[8] The other fundamental fair trial rights include the right to a trial without undue delay (commonly referred to as the right to a speedy trial), which even the Ugandan constitution guarantees that 'justice [should] not be delayed'^[9] and which plea bargaining should unquestionably uphold.

Notably, Uganda is a UN member state that ratified the ICCPR on June 21 1987, without reservations and has a constitutional objective of foreign policy to respect international treaties.^[10] Uganda domesticated the international Bill of Rights .^[11] Article 28 of Uganda's Constitution reiterates Article 14 of the ICCPR, protecting the right to a speedy trial under the broader right to a fair hearing. Article 28 guarantees every Ugandan 'a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.'^[12] Uganda protects this broader right, and impliedly the right to a speedy trial, legislated as highlighted earlier, from derogation.^[13] This implies that all trial processes, including plea bargaining, should be conducted, cognisant of all the indivisible fair trial rights, as a package of the inviolable right to a fair hearing. Furthermore, Uganda has national policies and laws in place that protect women,^[14] but trial courts must fully embrace these efforts in order to implement these women's (who include the most neglected accused victims of domestic squabbles during plea bargaining) constitutional fair trial guarantees. Uganda Bureau of Statistics reports that by 2021, 56% of the women in Uganda had experienced both physical and sexual violence or either physical or sexual violence when perpetuated by their partners. Physical violence was relatively higher (45%) compared to sexual violence (36%).^[15]

Uganda's Domestic Violence Act, 2010, ^[16] (hereinafter, DVA) is a progressive law that prohibits domestic violence, spelling out the acts that constitute it to include: physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, harassment, harm, injury, or coercion to meet any unlawful demand for any property or valuable security, threatening their loved ones with any of the above acts, or other acts that otherwise injure or causes physical or mental harm to them.^[17] The Act defines "domestic relationship" from the context of a family. Thus; as 'a family relationship, a relationship similar to a family relationship or a relationship in a domestic setting that exists or existed between a victim and a perpetrator.'^[18] A "perpetrator", under the Act is that person who is alleged to have committed an actual or threatened act of domestic violence,^[19] while the "victim" is defined as that person 'who directly or indirectly suffers' that threat or act. ^[20] Both parties in the issue relationship at the time the offence should be married or were married to each other; or, are both family members related by consanguinity, affinity or kinship; share or shared the same residence. The victim could have been employed by the perpetrator as a domestic worker or house servant when the victim did or did not reside with the perpetrator; or an employer of the perpetrator residing or not with the perpetrator; or, is or was in a relationship that can be determined by the court to be a domestic relationship.^[21] The courts, while making the determinations, above, must consider the legal nature of the relationships between the victims and their perpetrators, the amount of time they spend or spent together, the place where this time is or was ordinarily spent, the manner that time is or was spent, and the duration of the relationships. ^[22] In more specific terms, the DVA defines domestic violence extensively—as any act or omission of a perpetrator that: mentally or physically harms, injures or endangers the health, safety, life, limb or well-being of the victims or tends to do so; including acts that cause them physical, sexual, emotional, verbal, psychological, and economic abuses;^[23] acts that harasses,^[24] harms, injures, or endangers them with a view to coercing them, or any other person related to them, to meet any unlawful demand for any property or valuable security; and acts with the effect of threatening them or any person related to them by any conduct in the above scenarios, or in other circumstances that physically or mentally injures or harms them.^[25]

The court procedures of handling these claims are informal, simple and user friendly, but punitive, primarily by way of compensation orders to victims, default of which attracts imprisonment, subject to statutory basic principles, even where the victim inadvertently consented to the violence, subject to the and procedural guidance. [26] Occasionally, the Local Council Courts can make non-custodial reconciliatory orders in favour of both parties, such as a caution, apology to the [victim](#), counselling, community service, a fine not exceeding twenty five currency points, [27] compensation, reconciliation, declaration, restitution, attachment and sale, or, any other order provided for under the Local Council Courts Act, 2006. [28] Council courts can, however, refer the matters to the police and the magistrates in exceptional circumstances where the perpetrator is a second or repeat offender, is likely to inflict further harm on the victim, and, or, the violence warrants the involvement of the police and a formal [court](#). [29] The council court must: inquire into whether there are children involved in the domestic relationship; Where it establishes that they are there, it orders in writing the Probation and Social Welfare Officer (PSWO) to make an inquiry and to take any necessary action regarding their welfare in accordance with the provisions of the Children Act. A member of the local council court or local council executive committee can also commence an inquiry, through a PSWO, into an act of domestic violence within his or her jurisdiction with or without a formal complaint by the victim; All cases of domestic violence must be handled expeditiously, not later than 48 hours after the filing of the complaints, including days which are not ordinarily working days. [30] The parties to a complaint have a right of appeal ‘in the manner provided for under Part X of the Local Council Courts Act, 2006.’ [31]

The formal courts (magistrate courts that might double as family and children courts [32]) determine matters that are either referred to them under the Act, or, as alternate courts of first instance since the majority of litigants are more familiar with the formal justice system. Whatever the way the disputes are lodged before the formal courts, the courts must apply the Family and Children Court Procedural Rules, subject to the necessary modifications. [33] They can issue protection orders, [34] subject to the law. [35] Default of a protection order attracts sanctions. [36]

Despite the above DVA protection in place, evidence from the study mentioned earlier, suggested that the accused victims who commit serious crimes and plea bargain do not benefit from it. They are arraigned mostly in lower formal courts whose jurisdictional implications (since they issue modest orders) exclude these courts from dealing with serious offences. [37] The DVA protection is also limited by its definition of a victim of domestic violence as a person within the context of a family setting, [38] which can easily imply a “household”, “home”, and “family”, a narrow context that most probably expunges some of the accused from protection. In particular, those in informal love affairs but suffering intimate partner violence, occasionally extending to their children or other household members. [39]

Civil society organisations, such as the *Federation International De Abogadas (Spanish)* (FIDA), are struggling to engage duty bearers at all available platforms to have the Plea Bargaining Rules reviewed to address the imbalances that prejudice SGBV victims’ survivors, who include the accused, [40] but much needs to be done. Judiciary too is yet to address these imbalances. In the FY 2022/2023, Uganda’s Judicial Training Institute (JTI), where the researcher was deployed as a registrar in charge of research, participated in a project where the Judiciary selected 11 Centres of Excellence based in areas in the High Court circuits where GBV is prevalent. These were: The High Court Criminal Division (the Division and Buganda Road Chief Magistrate’s Court); Soroti High Court Circuit (the High Court and Chief Magistrate’s Court); Gulu High Court Circuit (the High Court and Chief Magistrate’s Court); Fort Portal High Court Circuit (the High Court, Fort Portal Chief Magistrate’s Court, Kasese Chief Magistrate’s Court); Moroto High Court Circuit (the Chief Magistrate’s Court); and Tororo High Court Circuit (the Chief Magistrate’s Court). The JTI with the support of the United Nations Population Fund (UNFPA) and UNWomen trained several actors in the gender justice chain in the 11 Centres on survivor-centred support and victim management as below.

The court clerks, interpreters, and receptionists and security guards as frontline staff, were trained on

survivor centered management of victims during court services, sign language (since some victims have hearing challenges) and GBV sensitive terminologies. The administrative staff were trained on attitude change, and the police forensics teams on how best to gather evidence in GBV cases. The PSWOs, police officers, judicial officers, and attorneys were trained to guard against the standard biases where they prejudice victims, such as asking questions like, “Why did you have to go to that man’s place at night?” Under the same UNFPA and UNWomen support, the Judiciary conducted police and media sensitisation campaigns in these centres, followed by court open days and Barrazas where all actors’ representatives gathered to explain and respond to public concerns. It conducted a census of GBV cases and printed civil and criminal GBV registers. It heightened the usage of audio-visual link electronic evidence taking (it had launched in 2016) to protect victim witnesses from court trauma and save other witnesses’ transportation and logistical costs. It set up victim-friendly waiting rooms, at the High Court criminal division.

Despite these positive victim-protection initiatives in place, the courts’ jurisprudence in these 11 centres is yet to inform reliable empirical evidence of the success of such a justice system’s tailored intervention during plea bargaining. There is invisible protection for domestic violence accused-victims during plea bargaining, exacerbated by Uganda’s flaws in the implementation of plea bargaining international standards: the plea must be voluntary, unequivocal, informed, and factual-based.[\[41\]](#) Thus, contravening their right to a fair hearing.

Briefly, Rule 12 of the Plea Bargaining Rules mandates trial courts to inform the accused the fair rights they waive, and to satisfy themselves that the accused understand them, before they record the agreements on court file. The accused waive all their fair trial rights save the right to appeal that is limited to the legality or severity of sentence or if the judge sentences the accused outside the agreement. The court is mandated to inform the accused the nature of the charges they are pleading to; any maximum possible penalty, including imprisonment, fines, community service order, probation or conditional discharge; any applicable forfeiture; the court’s authority to order compensation and restitution or both; and that by entering into a plea agreement, Rule 12 also mandates the courts to read and explain the charge to the accused in a language they understand before the accused take plea; the prosecution must lay before the courts the factual basis contained in the plea bargain agreements and the courts must determine whether there exists a basis for the agreements; the accused must freely and voluntarily, without threat or use of force, execute the agreements with full understanding of all matters. A plea confirmation, binding the prosecution and the accused, is signed by the parties before the trial court as part of the court record in addition to the plea agreement form.[\[42\]](#) The problem is that these standards are, in most of the cases, flawed. Primarily, the trial courts never hear, or, inquire into the factual situations that informed the accused victims’ offending, contradicting their right to a fair hearing.

METHODOLOGY

This paper is derived from the author’s **case study of Uganda’s High Court bargained trials for capital offences (charges that attract the death penalty as the maximum penalty) from 2014 to 2021** entitled: *An Accused’s Self-Conviction to End Trial? Plea Bargaining and the Right to A Fair Hearing in Uganda*. The investigations were conducted in 11 High Court circuits of Uganda: Mubende, Mbarara, Fort Portal, Gulu, Masindi, Kabale, Mbale, Masaka, Arua, Soroti, Lira; and two High Court Divisions: Kampala High Court Criminal Division, and the International Criminal Division, Kololo. The selection was made from the gazetted 20 High Court circuits of Uganda at the time of this report, representing 55% of the diverse circuits’ locations in approximately 112 districts of Uganda.[\[43\]](#) Its geographical scope comprised 78 administrative districts of 146 districts [as of May 2022 (53.4%) of the country] and two divisions with jurisdiction over the entire Uganda. The High Court Criminal Division specialises in handling criminal matters throughout the country. It feeds the Upper Luzira prison, which keeps thousands of capital offenders

under high security in Uganda. The International Criminal Division handles all international crimes in Uganda and those referred to it by the International Criminal Court and other jurisdictions under the doctrine of complementarity. Circuits have Magistrates courts located in administrative districts but it is the High Court that mostly employed plea-bargaining. This sampling choice was an eclectic selection of urban, semi-urban and rural settings experiences, which represented the outstanding ethnic locations of Uganda. It was the most appropriate inductive strategy to secure a reliable, broader, informative, and representative scope for a national inquiry that could unravel plea-bargaining realities.

The case study employed mostly two qualitative methodologies: doctrinal legal research—research into the law and legal concepts,[\[44\]](#) and empirical data collection. The doctrinal legal research was conducted by way of desk review of existing plea bargaining and human rights literature, including journal articles and treatises; primary sources of domestic laws, regional and international human rights instruments on the right to a fair hearing and plea bargaining; as well as related international, regional and domestic case law. Sieved excerpts of these legal texts were analysed to derive underpinnings. Field surveys collected empirical data, whose trends were occasionally explained quantitatively. The investigation employed four sampling techniques: quota, purposive, random and snowballing, to allow the collection of the most reliable data from field surveys. First, quota sampling came in handy to identify the initial case categories of the estimated representative sample of the case study population of 200 unit respondents. It helped the researcher ‘to reach a predetermined number of cases in each category.’[\[45\]](#) Additionally, purposive sampling helped to categorise the estimated unit respondents into strata ‘selected “on purpose”’ of convenient homogeneous characteristics that the researcher required in the study sample. [\[46\]](#) The most homogeneous informative respondents in each strata, shared characteristics ranging from status experiences, jobs, professions, to traditional cultures. These strata were divided into two significant categories: Convicts’ stratum (n_1) (explicitly selected using random but mostly snowballing sampling) and Justice actors’ strata (n_2-n_{12}) (confirmed through purposive sampling). These diverse sampling techniques helped to achieve the case study’s population saturation level of 126 respondents: 66 accused and 60 justice actors of a variable gender cluster of male (m) and female (f) adults, each with an equal probability of selection as a study respondent. These respondents provided an informative in-depth exposure to how plea bargaining processes relate to the accused’s right to a fair hearing in Uganda. A saturation level is that point of data adequacy, where the investigation reaches a stage when there is no new information from the sample interrogation, creating the impression of having “heard it all”.[\[47\]](#) It indicates that the data collected has captured the diversity, depth, and nuances of the issues studied—thereby demonstrating content validity.[\[48\]](#) For purposes of this paper, the analysis of the saturation sample narratives revealed, *interalia*, that 20 (30.3 %) of the convicts’ stratum (n_1) had conflicted with the law after domestic or intimate partner relationships squabbles. They wrangled with either a wife, girlfriend, boyfriend, father of their children or husband. Seventeen (85%) were mothers charged with egregious offences, mostly murders, that arose from a situation of violence, most with a history of a cycle of violence. They all plea bargained, regardless of gender or literacy levels.

LITERATURE REVIEW

Some Ugandan studies claim that the impact of victims’ voices on the accused’s sentencing process during plea bargaining is intangible, especially if they are women. The other parties to the bargain might not consider their views because their females’ social roles in a patriarchal society, such as Uganda’s, might not allow their full participation in these negotiation processes.[\[49\]](#) This could explain why in situations where women as victims complainants, when they have not healed enough to appreciate negotiations, can skew the bargains by insisting on unreasonably high sentences to avenge what the accused made them go through. Victims’ impact assessment reports could not be traced on most of the accused’s respondents’ court files. This raises a critical concern: most negotiations, even when victims are involved, are most likely not based on a thorough understanding of their experiences during the crime events, which are frequently laced with trauma. One

accused shared that during a plea bargaining hearing session in open court:

There was an inmate whose complainant attended court and was allowed to give her views on the probable punishment. She suggested 30 years despite the plea agreement sentence of ten years! So, the absence of complainants during plea bargain hearings works to the accused's advantage. [50]

Victim's assessment reports and meaningful dialogue with the victims during plea bargaining can quieten some of these fears and effects.

Several studies also show that patriarchy disempowers women from discussing or claiming sexual rights as abominable: the male figureheads possess unquestionable sexual dominance over women's sexuality; in a typical African setting, given the social interpretation of conjugal rights, marital rape is 'perpetuated by the patriarchal notions, cultural and religious dictates. [These] portray "a good wife" as one who submits to her husband's needs and never protests his demands in any way,' [51] including sexual advances at any time. Some men perceive wives as husbands' property. These patriarchal nuances support other gender studies that caution that Uganda's rape and defilement law is a form of violence and discrimination against women and girls because it does not adequately protect them, but '(...) categorizes rape as a sexual offence rather than a violent offence against the person of the woman.' [52] There is, however a need, to continue the discourse on sexual violence while wearing the lens of the accused who are victims of IPV and other forms of domestic violence. Gender research is yet to explore the extent IPV informs the accused's criminality and propensity to plea bargain.

Ugandan gender research needs to explore the extent IPV informs the victim-accused's self-defence as causation to their criminality and propensity to plea bargain. Studies, such as Tibatemwa's, [53] found that some women offenders are victims of crimes of passion committed against their perpetrators; they are much more sinned against by their perpetrators, mostly their partners, than them sinning. The respondents in that study underwent full trials or entered ordinary guilty pleas, whereas respondents in the case study that informs this paper plea bargained. Uganda had not yet adopted plea bargaining at the time of that study. The recent ODPG plea bargain guidelines that present a 'victim/survivor centred and gender sensitive' [54] approach stand the test of time to confirm that they protect all victims of crime, including the accused victims.

Other Ugandan researchers, such as Gubi., *et al*, [55] have linked intimate partner violence (IPV) in Uganda significantly to regions: Women in the Northern and Western regions of Uganda with higher odds of experiencing emotional, physical and any IPV; while women in Eastern and Western Uganda were found to be more likely to experience sexual IPV compared to those in Central Uganda. In confirmation, the case study found that 17 (85 %) of the domestic violence and IPV accused victims were women: Eight (47%) originated from western Uganda, five (29%) from Eastern Uganda, two (12%) from Northern Uganda, one (6%) from central Uganda, and one (6%) was a Ugandan of Rwandese origin. While this quantitative data relationship between the Gubi., *et al* study and the author's case study could be a natural coincidence, the findings tally with the earlier studies that found that structural factors, such as, gender inequality, devastating poverty, alcoholism and police corruption, help to sustain IPV. [56] The 'social acceptance of violence as a tool to resolve conflicts in relationships among some Ugandan societies alongside weak implementation of community sanctions against IPV could explain' [57] these earlier findings. Nonetheless, while Ugandan gender research underscores the injustice that women face as victims of gender violence, there is a need to advocate for the protection of women and men who engage in domestic squabbles and later plea bargain to protect their gender roles and spaces.

Some other Africa studies have made efforts to analyse the efficacy of the state laws in protecting women survivors of sexual violence, whose voices are never heard; for example, Siang'andu, [58] highlighted

flaws in the Zambian laws and criminal justice system, in the court's interpretation of the elements of the offences of rape and defilement. Her finding is pertinent that criminal law burdens victims of sexual violence with a higher standard of evidence. It requires corroboration and tangible proof of the sexual acts against them, and yet, many women victims of domestic-related violence cannot meet this standard. Indeed, Courts fail to inquire into the tales behind accused-victims' guilty pleas.

Elsewhere, studies, such as that of Golding, *et. al.*,^[59] reflect limited plea bargain engendering from the context of the accused bargainers. The survey, in evaluating public perceptions of plea bargaining as a legal tool in addressing sexual assault in child and adult females, engaged a sample population of seventy-four community members (46 women, 28 men). Golding, *et. al.* manipulated scenarios of mock sexual assaults of a six and 26-year-old victims where the prosecution entered plea-agreements with an accused/ assailant; for a reduced prison sentence, and, a probation. The reasons to plea bargain were to either save a selected victim from reliving a traumatic experience, or save court's time. One of the questions that the researchers asked the participants, who observed the scenarios, was whether the agreements served justice. The results showed less support of plea bargaining when it involved a child than the adult female victim. The survey indicated similar results where; the sentence was only probation than a reduced sentence, and, when the rationale for the plea bargain was to save time as opposed to reliving the victim from a past traumatic experience. Plea deals involving probation in the sets of the child victim were perceived most negatively.^[60] The study illustrates the past research's edge for the complainant-victim than accused-victim.

PRESENTATION AND DISCUSSION OF FINDINGS: UN TOLD TALES TO COURTS

The Court of Appeal of Uganda guided in *Katonsa Michael v Uganda*^[61] that plea agreements should not replace trial courts' proceedings, however, most of Uganda's court records of plea bargaining trials, were found scanty, limited to arraignment details and reasons for sentencing. Plea agreements are protected from public access by law; in most cases are expunged from court records. Thus, during the case study, the researcher/author relied on the stories of the 66 accused interviewees as primary sources of their plea bargaining proceedings.

The narratives revealed, *inter alia*, that 29% of the 66 accused interviewees sentence bargained aggravated defilement charges, 5% sentence bargained simple defilement charges, and 8% sentence bargained rape charges. These statistics strongly infer plea bargaining of sexual related offences in Uganda. Precisely, 20 (30.3%) of 66 stories are from the respondents who were arrested as a result of domestic violence related squabbles. They are highly credible because the respondents opened up voluntarily after due caution to offer information willingly. Some agreed to disclose their identity and gave their reasons, most others opted for anonymity. This paper analyses in depth 16 most significant stories in the following sections that revealed two other significant key findings: some accused commit crimes as victims of violence from their primary victims—their partners; occasionally, that violence cascades to their innocent loved ones as primary victims of their offences. Consequently, they have a high proclivity to plea bargain in self-conviction, to come to terms with the reality of their offences, regardless of guilt, involuntarily, equivocally, when not well-informed, and when their convictions aren't fully factual based. These plea agreements they contract violate their right to a fair hearing.

The Accused as Victims of Violence from Their Primary Victims—Their Partners

(i) She Died in My Hands!

MC3's lover 'died in [his] hands,'^[62] during an IPV caused by mistrust. He narrated:

In my best heart of hearts, I did not kill this girl. I loved her. I was a victim of circumstances. (...) I joined

plea bargaining out of fear given the gravity of the murder charge. I was apprehensive too of the long pretrial detention. I had no private lawyer to make an effective follow up on my full trial (...) I was sentenced to 06 years. Perhaps, since I lost my girlfriend [that sentence] is okay, and, I feel it is okay. I feel it is justice for her, and for her death. If I had not caused the other girl to come in my hostel room, my girlfriend would not have died.[63]

MC3, a 23-year-old Ugandan Tutsi, was charged with murder of her girlfriend. On the October 14, 2016, his old girlfriend visited him and decided to sleep over in his hostel at Uganda Young Men's Christian Association, but the late, came over to MC3's hostel room on learning of the presence of the old girlfriend in there. Banging loudly on the door forced MC3 to open the door slowly, but in the process, the late forced herself inside to attack the other girl in the room. She lifted a nearby standing fan with a pole to hit her with it. MC3 grabbed her from behind to prevent her from hitting her opponent. In the end, the latter escaped from the room. Enraged, she and MC3 had a heated argument. She went to bedroom.

MC3 assumed she would have calmed down by the time she returned, only to appear a few minutes later with a hotplate. She attempted to strike him with it. He grabbed her hands in an attempt to pull her down, but they both tumbled and fell. She rolled near a plastic rack. MC3 attempted to pick her up, thinking she had fallen unconscious, but he noticed she had taken a knife from the rack. She stabbed him with it, causing him to bleed profusely. [64] He pushed her back in horror, and she fell back onto the rack, still clutching the knife. They fought over it, all of the objects from the rack falling on her, and during the scuffle, the knife tore her neck. They both bled excessively while lying on the floor, until her death while MC3 fell unconscious. MC3 regained consciousness 14 days later under the police guard in hospital.

On October 28, 2016, he appeared in Buganda Road Magistrate's Court that informed him of the murder charge for his girlfriend, and committed him on February 28, 2017 to stand trial.

Scared by the indictment for murder, in particular; the maximum death penalty that it entails, he resolved to plea bargain and registered for the program. He underwent hurried and limited sensitisation programmes as well as complicated negotiations before sealing his plea agreement: A team from the judiciary made a short visit to explain plea bargaining to the inmates, but the time was too short for the inmates to appreciate its rationale; one female lawyer interviewed over thirty inmates, each interface, which focused on lenient sentencing and remission of pre-trial detention periods if inmates admitted guilt to their charges, lasted about 18 minutes; the other teams of lawyers who conducted similar prison visits only distributed plea bargaining brochures to the inmates, the contents of which did not alleviate MC3's fear of a post-conviction criminal record; and his lawyer never explained any procedural setbacks to the over 30 inmates she represented. The negotiations took six rounds between March and December 2017, still without MC3 understanding the procedure's complexities, for him to agree to a six-year prison sentence. The confusion compounded his unexplained trial delay.[65] In essence, his admission of guilt was not informed.

MC3's admission of guilt out of fear, contrition, and confusion not only suggests the plea was involuntary and insufficiently informed, but also its equivocalness: During the brawl, his late girlfriend assaulted him, which constituted physical abuse.[66] Furthermore, his plea not was also not factual based for the following reasons: His untold story pointed to a lack of the requisite *men's rea* (pre-determined intent) to murder his girlfriend; the circumstances of his offence did not create a sufficient factual basis to infer his *actus reus* (the actual act or series of them) that he killed her; he 'was a victim of circumstances,' [67] like the deceased whom he cheated on, both ending in a scuffle over a deadly weapon that she used to hurt both of them that caused her death, which he survived; as such he had a plea of self-defence. The court ought to have inquired into his story; it was a case that ought to have been remanded for a full trial.

(ii) The Fatal Bar Stampede

WC6[68] got entangled in a brawl in the bar that led to the death of her husband; she stated:

[I]f an accused woman admits guilt; the court should sentence her lightly to allow her return home. Unfortunately, such women offenders are sentenced harshly as high as to serve a 15 year- sentence, despite the plea-agreements they endorse for the sake of securing lenient sentences. At times, these imprisoned mothers have large families that comprise, for example, five children that they wish to take care of, [she weeps], I was sentenced to eight years imprisonment.[69]

On October 20, 2014, her late husband returned from his drinking spree. He found her cooking and began battering her, condemning her for a rumour he had heard from a friend's wife at the bar. According to the friend's wife, WC6 gave the friend's girlfriend a cell phone, which she used to call and abuse her. Enraged by the rumour, WC6 dashed to her late husband's favourite pub, where she ran into that late husband's friend, to whom she told her ordeal due to his wife. When the friend checked his wife's cell phone, he found that the number that his wife claimed to have been used by his girlfriend belonged to WC6's brother-in-law. Onlookers who overheard this conversation were baffled as to why WC6's husband unjustly blamed WC6. Meanwhile, the husband who had sneaked back to the bar, got infuriated by their concern. He got up from where he had inconspicuously seated, slapped WC6 who fell face up, sat on her, boxed, and attempted to strangle her. He was a renowned violent man, whom people feared to restrain whenever he broke into fights. When they attempted to separate the couple, he hit them 'like he was threshing millet'. [70] A big fight ensued, and someone stabbed him with a knife causing him to fall down. As the fighting among his other bar-mates continued, one of them picked WC6 from the ground where she had fallen, and rushed her away from the scene in the company of her brother-in-law to a nearby police post. Her husband was declared dead not long after. A police officer hurriedly transferred her, incognito with her head covered with a piece of cloth, to a nearby army barracks for her safety. This officer feared that WC6's in-laws would attack and kill her to avenge their brother's death.

At the army barracks, WC6 informed the commander about her breastfeeding baby. The commander summoned the Local Council chairperson to bring the child to WC6. The chairperson discovered some of her in-laws had whisked the child away due to an alleged threat by another one of them to kill it. Unsettled, she insisted to keep her child while in custody, and the chairperson managed to secure the child over to her. As such, the child became a secondary victim of the violence from its parent's brawl at the bar. A female police officer collected some of the baby's clothes from WC6's home. A police patrol vehicle that picked her husband's dead body ferried her from the army barracks straight to the main police station. She spent two weeks and a day in police custody and attended court for a pre-trial charge hearing five days later.

She was detained for about seven months before being committed to the High Court for her trial. She registered for plea bargaining, two months and two days after her committal for several reasons: She had been on pre-trial detention period of nine months and seven days since her arrest; one of her fellow inmate, AM 'convinced [her]' [71] that the court would find her responsible for her husband's death because the fatal fight started from their home; [72] the resident judge sensitised inmates that they could plea bargain for lenient sentences; her fellow inmates on similar charges had delayed on pre-trial detention for over three years; wanted to return home early and take care of her other child she left home; she hoped that on being sentenced, the prison's department would transfer her to Lira where her relatives could visit her and take the child away from her; her relatives could not afford to pay blood compensation to the deceased's family; and one lawyer in the sensitising team informed inmates that the court could release those who joined the program. These myriad reasons support that WC6's plea of bargain was conditional, and therefore, most likely, involuntary.

Her narrative also indicated that she never freely participated in the negotiations that took place at the courthouse. The defence team first offered six years' imprisonment to the state attorney, but the judge, having set the session sentencing-starting point at ten years, rejected the agreement. The judge remarked

, ‘...you kill somebody’s son and you say you want few years....!’.[73] Intimidated, she ‘started crying;’[74] the judge rejected her plea agreement renegotiated eight-year sentence, proposing instead a nine-year sentence. The attorneys obliged. WC6 appended her signature on the plea bargaining form, whose contents were read out to her by the attorneys who kept ticking away at the form. The Judge asked her to confirm the nine-year sentence, which WC6 did, especially since her family was unwilling to pay blood compensation. The deceased’s brother, who was not pleased with the nine-year sentence, had informed the judge about it, raising related arguments until the judge ordered him out of order. This entire situation since arrest to sentencing suggests that WC6 was induced into the program.

(iii) The Boiling Water

WC3’s [75] pled guilty for the murder of her husband. She too narrated her unheard story, thus:

Meanwhile, on the fire stove nearby there was boiling water. It was for my husband’s tea, as his breakfast for he had returned in the morning while drunk. While I was unaware, he again picked the hammer to hit me. In defense, I pushed him and alas! He fell onto the boiling tea pan, which tipped over him and as a result his back got scalded. So, I together with the neighbors rushed him to hospital at Namungona. We were referred to Mulago hospital, where we spent three weeks while he was admitted. I was taking care of him. While there, the healthy workers informed me that he had got constipated due to digestion problems and his stomach as a result got swollen. He was operated on and he died on the operation table. His body was not taken to the mortuary. I alerted the community chairperson of our village that the father of my children had died.[76]

WC3, a 47-year-old *Mufumbira* mother of four children, hailing from Kisoro District of Uganda, was staying with KY a father of her children, the eldest of which was aged around fourteen years. The couple was in the process of completing their traditional marriage preliminaries, so, their relationship can be construed as that ‘in a domestic setting that (...) existed between’;[77] or, at worst as intimate partners who can suffer violence.[78] KY, a habitual alcoholic, would beat WC3 whenever she complained about his inebriation, and would occasionally sexually engage her in front of their children. When the children told their friends about their father sleeping with her in their presence, she was subjected to public ridicule.[79]

On the fateful day, in March 2016, KY returned home while drunk and made his usual sexual demands that WC3 this time around declined. A fight ensued. WC3 made an alarm that was answered by their neighbours who separated them. Nonetheless, KY went to their bedroom, picked a hammer[80] and threatened to hit her with it. The neighbours removed it from him, but, unfortunately, they placed it down within his reach. KY met his death on April 04, 2016 as per WC3’s narrative introductory caption above. The area chairperson secured the car on which the deceased’s body was loaded from the hospital. Unawares, they drove WC3 to *Kabalagala* police station, where she spent about one and a half months. In June 2016, she appeared in *Makindye* magistrate’s court for a charge hearing of the murder of her husband, after which she was committed to the High Court for trial in November 2016.

In April 2017, WC3 considered plea bargaining while influenced by the following factors: Her fellow inmates warned her of the possibility of five years of pre-trial detention; special prison visitors who sensitised inmates about the procedure within the same month after her committal for trial; and the officer in charge (OC) prison’s suggestion to her to plea bargain for a lenient sentence and return to her children. Cautioning her about the possibility of a death sentence on full trial, the officer projected a two-year sentence for manslaughter if she plea bargained, which she found attractive. She also had an underlying health issue—she had contracted HIV since 2008. These insurmountable conditions, most likely, tainted her free will, preventing her from contracting legally, since she lacked a sound mind at that time. A ‘*sound mind for purposes of contracting*’,[81] is when the contracting party has the capacity to understand the contract

and form ‘a rational judgment as to its effect upon his/her interests.’[\[82\]](#)

While WC3 was over the admissible contractual age of eighteen,[\[83\]](#) she had to sign the plea agreement ‘with full understanding of all matters.’ [\[84\]](#) Arguably, her decision was not well-informed: Her education level was as low as primary three, as such she was fairly illiterate; the lawyer filled everything on the form and she only signed at its end.[\[85\]](#) Therefore, she neither comprehended its contents, nor the eight-year sentence that she signed for in exchange with her admission of guilt to the charge of manslaughter of her late husband. The ‘just like one minute’[\[86\]](#) court proceedings from arraignment to sentencing astounded her. The judge did not offer her a hearing on how the deceased ‘fell on a boiling cooking pot that was on the fire stove that [She] wanted to tell the court about, in the presence of all the witnesses including [her] children’ and her in-laws. [\[87\]](#) She had expected the court to summon them to corroborate her self-defence. Gazing in the court room, there was no one she knew, only to be ‘whisked away and they called another accused to the dock. It was a very rushed process.’[\[88\]](#) Her lawyer had not addressed her expectations, beyond assuring her that the proceedings would be fast. When she later informed her in-laws about her sentence- bargain, they blamed her for not having called them to testify on her behalf. She lamented:

It is not me who killed him. I just pushed him from me in defence, when he tried to hit me with a hammer. I could not and did not kill my husband. All my children are young and were all left at school. When I went to the hospital I left them with our neighbours who can confirm so.[\[89\]](#)

The above reaction reveals that WC3 was not sensitised on the ingredients of the offence of manslaughter that she would be implicated for unintentional homicide, and that if the court heard her full story it would, on her conviction consider her plea of self-defence in mitigation of her sentence. Thus, since she did not understand the consequences of her guilty plea, it was equivocal, and a self-conviction, contravening her right to a fair hearing.

(iv) I Hit Him with a Stool

Nassaka Meldrine,[\[90\]](#) a 29-year-old *Muganda* lady in Uganda, also charged with the murder of her husband, lamented:

It would have been fair, if courts give mothers considerate sentences than give a sentence that would render the six and four-year aged children to remain on their own in a home. (...) [My in-laws] refused to give the children to my mother. My mother in law did not like them. When I tried to find out from the area local chairperson, he also did not know where my children had relocated.[\[91\]](#)

The couple in their five-year marriage since 2016 were blessed with two children: boys aged six and four years. Her husband was sickly, but that didn’t stop him from drinking, causing him to spend all the profits from their joint investment returns on garden harvests. As a result, *Nassaka* started a small income generating business [details of which she did not state], to help her contribute towards the basic necessities for the family, particularly for their children. Irritated by her resolve, her husband would assault her whenever she realised some sales. She sought counsel from his parents, who implored her to endure the situation for the sake of her marriage and children. She did for the next two more years until that fateful day.

On that day, her husband returned from his drinking sprees at around 8.00 pm., finding her sleeping, he demanded to be opened for by whoever was around. When he walked in he asked to be served food. She awoke to the noise and prepared to serve him food, but he instead assaulted her. A brawl ensued. In the process he wriggled her arm and pressed it forcefully down on the bed, leaving her in extreme pain. She managed to get hold of herself using her right hand to get up, but the husband continued twisting her left arm. She reached for a nearby stool with her right hand and struck his arm, which was twisting her left arm; she believed the pain from the stool crash forced him to release her arm, so she pushed him, and he fell

down on the other side of the room. She dashed to a police station for safety, where she spent the night. She was in much pain when she got home in the morning. Although the brawl had worsened his sickly condition, her husband remained enraged and resumed his drinking habit. Meanwhile, he would go to the drugstore to get medicine for self-treatment. He died at home two weeks later, on November 28, 2019.

Following her husband's death, *Nassaka's* mother-in-law surrendered her to *Rakai* police station, claiming that *Nassaka* had fought with her son over charcoal and potato sales of ten thousand shillings. *Nassaka* spent a week in *Rakai* police custody, another five days as a lodger in *Rakai* prison awaiting court because the area Chief magistrate was out of station, until she was transferred to *Masaka* Prisons from where she appeared for charge hearing before *Masaka* Court on January 26, 2020. She was committed to the High Court for her trial for murder of her husband on March 6, 2020. She entered a plea bargain arrangement to admit guilty to murder in exchange for an eight-year prison sentence in June 2020.

Nassaka's plea bargaining was conditional on: anxiety about further pre-trial detention; a desire to return home to her children; failure to secure bail release; information from the OC that there was no planned High Court session for full trials in the near future; and the OC's recommendation to plea bargain 'regardless of whether [she] committed the offence or not, for a lenient sentence in order to return home to [her] children.' [92] These conditions suggest that her plea was involuntary. *Nassaka's* competence to contract an informed plea agreement also raised doubt. She had never gone to school. She stated that the lawyers kept writing on their files as the negotiations continued. They had informed them as inmates that if they agreed to their deals, they would write somewhere to assent to the years agreed upon. [93] The court's ambience exacerbated the situation. She was arraigned via Zoom conferencing on June 11, 2020, because of the COVID-19 pandemic, which was a mystery to her. The judge asked her to plead any factor to mitigate her bargained sentence. The programme administrators switched off the camera to allow the judge review her file. She was brought back on camera after around 20 minutes, and was sentenced to six years. 'The court had very limited time, to explain her fair trial rights and concentrated on [her] sentence agreement; They were many other inmates to handle.' [94] She could not, in such a limited time, plead the serial domestic violence that ended in her self-defence. Other women, as some, below suffered similar plea predicaments.

(v) The Beer Bottle

WC2, [95] a 39-year-old *Gisu* from *Mbale* in eastern Uganda and a mother of three, opined:

Even if the accused admits the offence, this accused should be given a hearing to at least explain[it] so that the court weighs the entire case beyond the agreed-upon sentence. If the court heard my story, it would have perhaps given me a more lenient sentence than the sentence I signed for in the plea agreement. [96]

On December 13, 2014, WC2 and the late, father to her children, planned an evening out settling for a drink at a pub near their Kampala home. As music played in the background, the late asked her to dance, but she declined, which enraged him. They quarrelled, fought and he injured her eye, which began to bleed. She retaliated by hitting him with a beer bottle; injuring him, he was hospitalised and he died three days later. The police arrested her, detaining her for three weeks at the *Kabalaga* Police Station. In December 2014, she appeared before the *Luzira* Court magistrate for information of her charge of murdering her children's father; spent five months in pre-trial detention before being committed to the High Court for trial in May 2015, She spent another two years and three months before her trial could be scheduled in 2017. It still delayed due to a lack of funds. Thus, she entered a ten-year sentence bargain.

She made an conditional rather than voluntary decision to bargain because of: her three-year pre-trial detention period since her arrest; the plea bargaining sensitisation programme she attended, focused on sentence leniency; and '[a]ll [she] wanted was to serve a specific period of time and go home' to her three children, whom she had left in a rented house. [97] Like the earlier respondents, her contractual capacity was

questionable: it was her lawyer who filled out the entire plea-agreement form, she thumb marked; despite her claimed primary five education level, she did not comprehend her undertaking. Her relatively five minutes' court experience a week later, confused her more than the negotiation process did. The judge neither explained her waived fair trial rights, nor did she say anything beyond her plea.[98] These circumstances suggest she entered an un-informed guilty plea. She also raised the defences of diminished responsibility (because she was drunk),[99] and self-defence, which circumstances she 'wanted to explain to the judge but the lawyer had cautioned [her] to keep quiet (...)'[100] while in court, which she did. These probable defences rendered her plea equivocal, justifying a full trial.

(vi) Mistook Him for a Robber

WC9,[101] a 37-year-old *Munyoro* Ugandan from *Masindi* District and a mother of two children, was also charged with the murder of their father that occurred on November 14, 2014. She charge- and- sentence bargained her murder case to that of manslaughter, and offered to serve a ten year- imprisonment. She lamented:

I regret the act, but I never intended it. I am depressed by being here while away from my children who I neither know how they are, nor I ever see. There is nothing I can do but to serve and complete my sentence. [102]

The couple had been living separately, but in an intimate partners' relationship. On that fateful night, around 2:00 a.m., she heard someone banging on her front door. It fell in, and the intruder entered the house. In a daze from an abrupt awakening, she raised an alarm for rescue, hitting him with a stick mistaking him for a robber. Her neighbours answered the alarm, only to discover that the assailant was her children's father. The chairperson of the village local council escorted the father to his true home, promising to clear up the misunderstanding the next morning. The area defence secretary, however, informed WC9 at dawn that she had severely injured her children's father; whom they together took to hospital, but he died that same day. WC9 surrendered herself to the village police station where she spent a week before being transferred to Masindi Central Police Station, where she spent another three days before she appeared before the Masindi Magistrate's Court for information of the charge of murder. She expressed a willingness to admit guilty, but the court could not arraign her due to a lack of jurisdiction. On April 17, 2015, she was committed to the High Court for her trial, and entered a plea deal on June 8, 2016.

WC9 recounted similar reasons to those of her counterparts, noted earlier that informed her plea bargain, which suggests it was involuntarily: Her lengthy pre-trial detention without release on bail since her arrest; general inmate sensitisation emphasising sentence leniency and saving court time; and her unattended children that she left at home. Additionally, the plea was non-informed: Her negotiation skills were influenced by her primary four low education level; she 'signed on some papers which [her lawyer] had, which had some typewritten information with some lines where [she] was supposed to sign.' [103] No one informed her the fair trial rights she waived before she sealed her ten year sentence agreement.

She was arraigned on June 09, 2016 on the basis of her plea agreement, but did not comprehend the court proceedings. Both the defence and state attorneys were 'talking with the judge in English,' [104] that she did not understand, despite the court interpreter's services. While the judge adopted the ten year- sentence plea-agreement, her pleas of mental and physical abuse (where her partner intruded her home at night while drunk hitting down a door like a robber); self-defence; and mistake of fact [105] of his identity, would have most likely caused the court to register a not guilty plea and remand her file for full trial had the court listened to her story, however briefly. Her woes are similar to *Tubuhairwe Rosemary's* [106] in the tale below that underlines psychological and physical abuse too.

(vii) I Asked Him Why He Was Late

Tubuhairwe, a 30-year-old- *Munyoro*, resident of *Kagadi* town, *Kagadi* District, Uganda, and a mother of seven children, the youngest of which was breastfeeding,^[107] was charged with the murder of her husband too. On November 01, 2016, at around 2.00 a.m., her husband returned home late. When she asked him why he was that late, he started assaulting her. In retaliation she pushed him and he fell facing down. About an hour later, he alerted her that he was bleeding profusely. She dashed to the neighbourhood to summon her in-laws for assistance. She and some of them took him to *Kagadi* Government hospital, where the doctor administered a blood transfusion therapy and stitched his face injury but he died on the fourth day of his admission, despite the continual medical attention. The police arrested her the next day during the deceased's burial. They allowed her to bring her baby with her. They held her for five days at the *Kagadi* Police Station. On November 11, 2016, they took her to *Kagadi* District Court on a murder charge, the court remanded her to *Kagadi* Prison, continued to mention her case, and committed her to the High Court for her trial on February 22, 2017. She learned about plea bargaining in May 2017 from some visitors who sensitised inmates about it while on pre-trial detention in *Masindi* prison. Like elsewhere, they underlined the procedure's benefit of sentence leniency to those who embrace it voluntarily, provided they knew that they committed the offences they are charged with. She enlisted for plea bargaining a year later on May 2, 2018. Despite the assistance of her defence lawyer, her decision was most likely involuntary: the judge declined her initial sentence offer of ten years, which he deemed insufficient for the charged offence. Her lawyer renegotiated a 15-year sentence as a counteroffer, and she signed the plea agreement on May 7, 2018, but her competency to contract is questionable too:

While the lawyer '[informed her] that plea bargaining [helps] when one does not disturb the court,'^[108] 'he did not'^[109] inform her of any disadvantage of undergoing the process; she signed the agreement in the absence of the other contracting party—the state attorney; she had 'stopped in primary three',^[110] did not 'know how to write properly,'^[111] except her name, and thus could neither read nor internalise the agreement. She scribbled her name on the last page of 'some written documents,'^[112] in the space indicated by lawyer. This situation suggests that her decision to plea bargain was not well-informed.

In an 'about half an hour'^[113] hurried court proceeding, she clearly did not comprehend the implications of her guilty plea. The judge did not explain clearly to her all her fair trial rights that she waived; she claimed he only 'explained to [her] that [she] had the right to say anything, talk to the complainant, deny the offence, and decline the sentence'.^[114] She was hurting that she left her seven children behind, yet she 'did not have the intent to commit [the] crime but found [herself] having committed it'.^[115] This expression shows that her plea that the court recorded was more equivocal than unequivocal. Her case deserved a full trial to investigate her claim of self-defence in response to domestic violence in the form of physical abuse by her deceased husband. Relatedly, is WC14^[116] tale below, where the brawl that resulted in the husband's death was caused, this time majorly by economic abuse—another facet of domestic violence: failure to provide for home maintenance.

(viii) Failure to Provide for Home Maintenance

Like the other convicted mothers, discussed in this section, WC14, a 44-year-old *Rwandan* resident of *Kyembogo* village *Kasambya* sub-county, *Masindi* district, Uganda, urged the government to be lenient with mothers who plea bargain during their sentencing.^[117] She was charged with the murder of her husband too. On that fateful morning, the couple was preparing local brew for sale on the next day, which was a market day. WC14 was threading the grass with a machete, which she would in preparing the brew. During the process, she asked her husband for money to buy soap for their laundry, but, he instead started belittling her that she was no longer in his relationship class.^[118] She retorted that he should at least be responsible enough to provide for his children—before the fateful event she had an ongoing disagreement with him

about the many children he had outside of marriage that he would not care for. This enraged him, and a fight ensued, albeit still with the machete she was using to thresh the grass for the brew. They wrestled over it, and she accidentally cut him in the neck in the process. She fled when she realised her husband was bleeding profusely. Later that day, she received a phone call from her mother, who was staying in the neighbourhood, informing her that her husband had died. The mother warned her to stay away from the enraged village members, fearing she would be killed by the mob in retaliation for her husband's death.

WC14 remained in hiding for a year before surrendering to *Mubende* Central Police Station. She told the police how her husband had died and that she wanted to see her children again. The police warned her that they needed to assess her safety before she returned to the community. They held her in police custody for approximately two weeks before taking her to court, which remanded her to *Kaweri* prison in *Mubende* district for seven months, before committing her to the High Court for trial. She was inducted into plea bargaining a month later by some lawyers who visited prison. She plea bargained her charge of murder to that of manslaughter in exchange for an admission of unintentionally killing her husband and eight years' imprisonment. The circumstances below impugn the legality of her guilty plea.

Her negotiation skills are suspect because she was illiterate and could only print her name. She claimed that after negotiating a ten-year sentence with two solicitors, they took the offer to their boss for consideration. Later, she was summoned by a prison officer, who informed her that the state attorney's office had forwarded a document to the prison's office that she needed to sign for an eight-year sentence. She wrote her name on that document in a space shown to her by the officer, without fully comprehending its implications, importing that she was not well-informed about it.

The court process for WC14 was hurried, as it had been in the cases of other accused victims' stories in this section. While both the defence and state attorneys confirmed to the judge the eight-year sentence in the plea agreement, none explained to her what was going on, nor her full trial rights. These gaps point to the conclusion that the plea was equivocal.

(ix) I Hit Him with a Stick

Akongo, a 25-year-old *Atesot* from *Kumi* District in Uganda, and mother of three [119] hit her husband with a stick causing his eventual death, and was charged for his murder. She lamented:

My children are just loitering there without help. They would have been better off if their father was around, but even me I have spent two years in prison, when they are unattended to (...) I keep on imagining that they are suffering without any help.[120]

As a prelude to the fateful event, *Akongo's* husband often returned home drunk and would question the people around him as to whether she had left their home. He used to yell and assault any family member within his reach. Their eleven-month-old baby girl would wail whenever she heard the commotion. This would enrage him even more, and he would start beating up this baby as well, accusing it that: 'you behave like your mother... I can kill you'. [121]

On that fateful Sunday evening in February 2019, returning home again while drunk, he grabbed the wailing baby and began beating it up. When *Akongo* tried to rescue the baby from him, they ended up in a fight. [122] She dashed out of the house, and ran to her parents' home, but he followed her up and they continued to fight from there. He wrestled her and tried to strangle her. While lying down, she reached for a nearby stick and hit him with it in self-defence. She could not remember the part of his body she hit. She dashed into her parents' hut after freeing herself. He then began stoning the hut while making an alarm, but she hid inside. She didn't leave her parents' hut until the following Monday morning, and that is when she noticed him leaning against one of its poles. His relatives later took him to the *Ongino* Hospital in the *Kumi* district,

Uganda, where he spent six days, and they refused her access to him. He passed away in the first week of March 2019.

Akongo's father-in-law called *Akongo's* father and told him how *Akongo* had killed their son. *Akongo* learned that the police intended to arrest her at her parents' home. She could not attend the burial because the deceased's relatives intended to lynch her. She, like WC14, went into hiding, fleeing to Kampala to live with relatives. Continuously blaming herself for her husband's death, ten months later, she returned to her parents' home in *Ingino* village, *Kumi* district in Uganda. She reported to the area local council chairperson and informed him that she wanted to reconcile with the deceased's family. She expressed her desire to initiate the *ailuc pocet ritual* (meaning compensating the blood once poured) for the loss of their son.^[123] Because her family could not afford the blood price, the local chairperson insisted that the incident be reported to police. *Akongo* accompanied the chairperson to the Kumi Central Police Station, where she was detained for one week, appeared before the Magistrates Court in March 2019 for information on her murder charge, and was committed for trial over a year later, on June 8, 2020. She embraced plea bargaining in the same month in the circumstances below, which seemed more conditional than voluntary, suggesting that her plea was equivocal.

She found fellow inmates in prison who had been committed for their trials but had not gone through them for five to seven years; she reasoned that they could have served their sentences during the same time period. To avoid such long pre-trial detention, she bargained her murder charge to manslaughter in exchange for an eight-year prison sentence. 'It is better that you know your fate other than not knowing it, so you admit falsely.'^[124]

Akongo's ability to appreciate this plea arrangement is questionable. She had attended school up to primary three: this questioned her ability to enter into a meaningful plea agreement because she couldn't read or write well, and could only thumbmark her documents. She thumb marked 'a pack of papers' in a slot where she was shown to press her inked finger.^[125] While her lawyer signed the same papers that she later learned constituted her incomplete plea agreement that was subject to approval by the state attorney, the lawyer never explained their contents to her.^[126] The situation easily imply that her plea was not well-informed. The following day on June 24, 2020, the state attorney declined the defence five-year sentence offer. She renegotiated an eight-year imprisonment sentence that the court confirmed on July 3, 2020. The whole procedure, however, left her wondering as to why, despite the admission of guilt, an accused cannot be released but instead receives a harsh imprisonment sentence.

Akongo recommended the President of the Republic of Uganda exercise his prerogative and forgive all plea-bargainers, particularly mothers.^[127] Giving birth while in prison custody, like WC11,^[128] a twenty-year-old mother in Arua did, exacerbates the inmates' motherhood quandary. WC11 and WC12,^[129] argued that some women, some detained while young, plea bargain, yet innocent, to return to their freedom early and plan ahead. WC12 held the common view illustrated throughout this section that women ' (...) should at least be given shorter sentences,'^[130] because they leave behind the children in need of care. A prison administrator in charge of one of the women inmate prison sections in one of Uganda's prison facility^[131] confirmed (in anonymity) that many of these women inmates, especially those who are charged with capital offences, do not admit guilt because they committed the offences, rather, they do 'in projection of lenient sentences for fear of the maximum death penalty on conviction.'^[132] She also contended that 'everyone should have an opportunity to plea bargain or else restraining them would be unconstitutional,'^[133] and prison officers cannot not restrain them from such false pleading. She, however, confirmed that 'these women sign the forms without even reading through or understanding them, but simply thumb mark them. She was wary that such knowledge gaps are worse, for the illiterates whose endorsements on the agreements 'are not witnessed as by the law required.'^[134] This situation brings into question a need for further research on the prison officers' roles, during the inmates plea bargaining, as justices of peace.^[135]

She reported that ‘[t]here is lack of psychological support especially after [they] admit the offences they are charged with,’ [136] and attain harsh sentences in the defeat of their dream to reunite with their children.

Oyugi, [137] a practising advocate in Lango sub region of Northern Uganda, attested that wives suffer from domestic violence in form of; infidelity, cruelty, constant abuse, wastage of family resources, stress from family responsibilities, blame for their failed daughter’s marriages, among others, because of the dowry their husbands paid for their marriages. Provoked by a small spark, these women commit crimes of passion after failure of the traditional clan mechanisms to resolve their marital conflicts. *Adriko* of FIDA Uganda Chapter, confirmed that ‘most of the homicides the women commit are in self-defence or arise from domestic violence.’ [138] *Adriko* shared the FIDA experience of their client who had been the victim of continuous marital rape by her deceased husband, who had HIV. One time, in defiance, their client pushed the husband away from her, causing him to fall, injure himself and die. When she plea bargained, the court did not consider her continuous mental violence. [139] Such justice actors’ sampled voices, and the preceding respondent’s narratives, strongly suggest that the accused who are victims of domestic violence or IPV have a high proclivity to plea bargain crimes they commit against their spouses or partners out of contrition but not out of guilt, to shorten their incarceration time and continue their pressing gender and social roles.

The Accused as Victims of Violence from Their Partners — which Violence Cascades to their Innocent Loved Ones as Primary Victims of their Offences

(i) I Hit My In-Law

MC12, [140] a 26-year-old *Langi* from *Lango* District in Northern Uganda, was charged with the murder of his sister in-law who died on March 22, 2015 during MC12’s scuffle with his wife. In an attempt to separate them, the late was knocked unconscious by a house corner pillar and died on her way to the hospital, despite efforts to save her. *Alebtong* Central Police arrested MC12 and detained him for about a month. On April 18, 2015, he appeared before *Alebtong* magistrates’ court, which informed him of the murder charge, detained him in *Alebtong* Prison for approximately three months and 26 days in pre-trial detention, and on August 14, 2015 committed him to the High Court in *Lira* for his trial. He spent another eight months in *Alebtong* Prison, where he learned about plea bargaining from a visiting team that he could negotiate with the government if he committed the crime. The prison department transferred him to *Oyam* Prison, where, he ‘embraced plea- bargaining in 2016 to get a lenient sentence because the prison was so congested. Inmates would take four to five years awaiting trials.’ [141] Later, on June 28, 2016, the High Court in *Lira* sentenced him to eight years imprisonment under his plea agreement. His plea defied guilty plea standards too.

First, it was misinformed. It was influenced by the visiting team’s caution of inmates that harsh judges occasionally refuse to deduct pre-trial detention periods from the bargained sentences and can pass harsher terms in departure from the plea agreements, and that yet plea agreements are not appealable. [142] To recap Ugandan law, the trial judge has a constitutional obligation to deduct the period spent in pre-trial detention from the sentence; [143] and the right to appeal regarding the legality or severity of the sentence, or if the judge sentences the accused in violation the agreement is preserved. [144] In *Agaba Emmanuel and others v Uganda*, the Court of Appeal guided that the trial court only plays the role of a regulator to ensure that the agreement conforms to the needs of justice of a case, but ‘is not privy to the agreement and cannot redefine it.’ [145]

Second, the trial Judge exceeded his oversight role during the plea hearing, casting doubt on the voluntariness of MC12’s negotiations. When asked whether he went through any other process, MC12 stated:

I was assigned a lawyer named O.D. We sat down with him and agreed to make a defence offer of six years in prison in exchange for my admission of guilt on the charge. He accepted my proposal and gave it to the Judge. He returned and informed me that the Judge had rejected it as too low in light of the seriousness of the murder charge against me. Instead of our offer, the judge proposed an eight-year sentence.[Emphasis added][146]

Third, the plea hearing was too hurried to ensure an informed plea while also allowing the trial judge investigate the factual basis for the accused's conviction. The court process, including arraignment took about 15 minutes. The judge did not inform him about the fair trial rights he had waived prior the negotiations. After consulting with his lawyer, MC12 agreed to the judge's directions to the eight-year sentence term, simply out of contrition for his in-law's death during the scuffle, not because he was guilty of murdering her. He noted:

I will go back in 2021 and apologise to the family of the deceased. I want to go and talk to them. I was willing to talk to them during the plea bargain process.[147]

MC12's story demonstrates that some accused self-convict through plea bargaining out of empathy for their domestic wrangles. MC2 further confirmed this proposition.

(ii) Saying Sorry, You Atone Less

MC2, a 46 year-old Muganda, male, faith based- Muslim, and Ugandan resident of Kikajjo[148] was arrested on the basis of his wife's complaint that he had defiled their daughter. MC2 attributed the claim to a disagreement with his wife out of jealousy after she heard rumours that he intended to marry an additional wife—polygamy is permissible in the Muslim faith. MC2 claimed that the complainant wished that together with the intended bride they lose out on their marriage to him. He later entered a charge and sentence bargain with the prosecution to be imprisoned for 12 years in exchange for his guilty plea to simple defilement —hoping to reconcile with his wife, not that he committed the offence. He held the view that; 'Gunsinze aliwa bitono, ekisigadde Katonda wamwe yamannya ebitufu'[149][Luganda adage loosely meaning that when you say sorry, you atone less and it is the God of the two of you who would always know the truth]. The adage implied that plea bargaining connotes a common social context of 'reconciliation between the suspect and the victim, to the extent that even where the suspect is innocent, admission of guilt out of convenience resolves the conflict.'[150] Thus, it mends social ties when broken by emotional abuse precipitated by trust issues in intimate partner relationships. From this context, the legality of MC2's plea bargain is questionable given the circumstances below under which it was implemented.

First, his decision was most likely coerced by his lengthy pre-trial detention, making it more involuntary than not. On his arrest by the police on February 18, 2013, the police detained him for three days at *Kikajjo* police post and later transferred him to *Kajansi* police station. On March 21, 2013 he appeared before the *Kajansi* magistrate court that informed him of the charge of aggravated defilement, detained him at *Kigo* prison, and, over time, committed him for High Court trial in May 2013. A team from the Office of the Director of Public Prosecution (ODPP) introduced him to plea bargaining in May 2014. It sensitised inmates, inter alia, that the procedure promotes reconciliation. Convinced, and fearing to undergo a full trial with a probability of a serious penalty, and, infuriated by the long pre-trial detention for over a year since arrest, he enrolled for plea bargaining on April 29, 2014. After three days of negotiations, he, on May 01, 2014, entered an agreement in the terms explained earlier.

Second, his plea bargain arrangement was not well-informed. He underwent a hurried court process for 'only about five minutes in the court dock,'[151] wherein the Judge never explained to him any implications of having waived his fair trial rights. Worse, the trial judge proceeded to sentence him to 43 years in

departure from his plea-agreement's 12-year sentence, because of his alleged unbecoming incest, contrary to the law. The trial judge did not balance his discretionary powers with his oversight role over plea bargains. A judge 'is not privy to the agreement and cannot redefine it;' [152] he should have, instead of giving this harsh sentence, rejected the agreement, if was he dissatisfied with its sentence term, and referred the matter for trial to another the court. [153] Third, the court never inquired fully into the charge's factual basis—none of the victims (wife and daughter), or, their village mates appeared in court to shade light on this alleged incest.

MC2's tale depicts a tumultuous relationship between a couple and, most likely, their child, fraught with both mental and physical violence. They were all victims of an entanglement that went un-investigated by the court and which the offender, apparently as a victim of mental violence or mistrust, thought he could reconcile by apologising through plea bargaining. This story lends support to the conclusion that trust issues between couples are some of the primary causes of violence that spark some of the crimes they are charged with, sometimes committed against secondary victims of this cycle of violence, which they later plea bargain. WC21's [154] situation captured below confirms this proposition.

(iii) He Strangled My Child to Death

WC21, a *Mufumbira* Ugandan in western Uganda, was charged with the murder of her newly-born baby. She was 25 years old and mother of three children, aged 13 years, 12 years, and eight years. Her husband had abandoned her in their new home in *Masaka* (central Uganda) in search of casual labour away from home. When he returned, he discovered she was pregnant due to a secret love affair because the term of the pregnancy did not correspond to the dates they last had conjugal rights. When she gave birth and called to inform him, he warned her not to come to his house unless she handed the baby to its father. She called her lover for them to meet over the maintenance and support for where she would stay with the new-born. Her lover agreed to meet so he could see the child.

They met in a sorghum plantation. She handed the baby to him. To her surprise, her lover suffocated the baby to death using the baby's wrapping piece of cloth. When WC21 threatened to raise the alarm, her lover warned her that he would similarly deal with her. He instructed her to cover up the deceased's body and inform anyone who would be concerned about her pregnancy that she had suffered a miscarriage. He abandoned her at the crime scene. Thus, WC21 suffered emotional, verbal, and psychological abuse due to her intimate lover's actions. [155] Leaving the corpse behind, she dashed to a friend to tell her about her ordeal. Later that night, they returned to the field to confirm the baby's alleged death and discovered it to be true. She went home to wait for her husband. When her husband returned from work, she told him what had happened. He asked her to stay at home while he reported the incident to the local chairperson, with whom he returned and she explained what had happened. A search for her lover was fruitless. The chairperson reported the incident to the *Mutorole* police station in *Kisoro* District, where she and the chairperson recorded statements. She was later detained for seven days at *Kisoro's* central police station. The baby's body was transported to the main hospital mortuary for a post-mortem examination that found the child had died of suffocation.

Despite this evidence, she was, a week later, produced before the *Kisoro* magistrates court that informed her of the charge of murdering her baby, detained her in *Kisoro* prison, and after pre-trial detention period of one year, two months, and twelve days committed her on November 14, 2018 to the High Court for her trial. While in *Kisoro* prison she learned from her fellow inmates that through plea bargaining, she could negotiate a lenient sentence that she could serve and return home. Over time, the prison administration moved her to *Ndorwa* prison in the neighbouring *Kabale* district to attend her trial at the *Kabale* High Court. She registered for plea bargaining on June 9, 2020 and a month later entered a plea bargain arrangement.

She plea bargained due to these insurmountable challenges that suggest the involuntariness of her plea: the

gravity of the murder charge; the possibility of further delay in pre-trial detention; the agony for her lost child; a lenient sentence she could serve early and ‘return home to care of her three other minor children she left there; [and] to continue with [her] daily activities and family chores.’ [156] She also expected to be welcomed and accepted back in her community because they all knew that she never killed her child, although she never explained to them why she took responsibility for her child’s death by admitting she killed it, whereas she did not. [157]

Her decision was not well-informed: she had had little formal education, had completed primary three, was majorly English illiterate, and could only write her name; her attorneys negotiated a five-year sentence agreement in English that she signed by scribbling her name ‘alongside [her printed] name already indicated on the agreement; ‘they showed her where to sign on a single computer-typed sheet of paper, and she just signed’ [158] but ‘never explained anything else to her.’ [159] The preceding events call into question her ability to meaningfully contract, the legal implications of which were discussed earlier. After her arraignment, the court sentenced her to two years, eleven months, and ten days, without inquiring into the factual basis for the charge. Suppose the court inquired into her story as told above; it should have rejected her plea agreement on the apparent grounds that it was involuntary, not well informed, or factual-based, and equivocal. It would, most likely, have changed her plea on record to not guilty and remanded her case for trial. Again, an accused can be a victim of economic abuse from a partner under related conditions that flow over to a secondary victim of the offence.

(iv) I Am Responsible for My Child’s Death

For example, *Olinawe*, [160] a *Mufumbira* 22-year-old Ugandan was a victim of economic, physical, emotional, verbal, and psychological domestic abuse. A mother of three: her eldest had become ill; the youngest was aged two; and she was two months pregnant. She took out a loan from a friend to treat the sick child, [161] which later, after the child got treated, resulted in a fight with her husband, which caused the death of that child. She wept as she lamented:

My husband did it. (...) I had to admit that my child died from a fight between us that no one else witnessed; he later vanished. I didn’t have a witness to back me up. I buried my child alone and willingly reported the incident to the police. Other than myself, who else would I have accused of murdering my child? [162]

Olinawe’s question reflects the quandary that led to her self-conviction, lending credence to the conclusion that she plea bargained out of remorse for a violent situation in which she lost her child, rather than guilt that she killed the child. She critiqued the court’s sentencing inconsistencies that make plea bargaining loose meaning. She wondered why courts give harsh sentences ‘as high as 20 years, 30 years, [and] 50 years! (...).’ [163] She opined that ‘God [should give judges] sympathetic hearts so that they do not sentence mothers who plea bargain with harsh unreasonable sentences (...) [for] their dream to redeem their unattended to children fails.’ [164] She proposed that courts should consider accused’s narratives on how their offences ensued before sentencing them. Briefly her untold story was as follows:

Her child became ill before or around March 28, 2014. She borrowed 45,000 Ugandan shillings from a friend to transport the child to the hospital, where the child was admitted for a week and three days. Her husband never came to see her while she was caring for their child. When she returned home after the child was discharged, she did not immediately inform her husband that she had borrowed money for the hospital bills. The creditor arrived days later, found her and her husband at their home, called her aside, discussed the debt with her, and left. She informed her husband about the visitor while they were having dinner that evening. The husband assured her that he would refund the money, but he became suspicious of how the liability arose. When he returned home from work for lunch the following day, he requested her to explain how she spent the money, which she did. He questioned her decision to take the child to the hospital without

his presence. She reminded him that she had asked him to accompany them, but he had declined, so she decided to go alone. He kept harping on the debt. *Olinawe* did not respond because she suspected someone or something at work had irritated him. When he insisted on more information, she retorted that the debt was not owed by a man friend and that the lady creditor wanted her money back. This sparked the brawl. [\[165\]](#)

The husband picked a machete placed alongside the door, swearing that he would refund the money in good or bad faith. A stampede ensued in the dining hall, where the sick child slept. Their other small child fled the house for safety. *Olinawe* attempted to flee, but her husband locked the main door. He began striking her with the blunt back of the machete and hit the child on the head in the process. At this point, none of them were aware of the accident. Each of them was fighting for survival against the other's wrath until some school children on their way home heard the noise. The children alerted some elders, who intervened, slammed into, and broke the door, causing it to fall inside. *Olinawe* fled to her mother's nearby home while her husband pursued her. A short period later, a passer-by noticed the abandoned child bleeding from the nose and mouth inside the unclosed house. Some of the elders who had gathered around rescued and took the child to where *Olinawe* and her husband were and advised the enraged husband to clean up, dress appropriately, and take his child for medication. He walked away as if he would comply, but vanished. *Olinawe's* mother dressed quickly and carried the child for medication with the help of some village members, but the child died on the way to the hospital. They returned the body home. *Olinawe* and her relatives, village mates, and parents kept its vigil that evening. The local chairman telephoned the area police, who camped out all night, waiting to arrest her husband. She never saw him again. Her father paid the police to conduct a post-mortem, which confirmed that a blunt object damaged the child's skull, causing its death due to excessive bleeding. The child was buried the following day. [\[166\]](#)

The police informed *Olinawe's* family members that she required protection from her husband, who would likely pursue her. *Olinawe* made a statement at the *Kabuga* police station, was detained for the night and taken to *Kamwenge* Central Police Station the next day where she was detained for one week and two days until she appeared before *Fort Portal* Magistrates' Court that informed her the charge of child murder. The court detained her at *Fort portal* main prison and committed her to the High Court for her trial three months later. She had heard her fellow inmates repeating the phrase "plea bargaining." The welfare officer, along with the visiting paralegals, educated inmates about plea bargaining in general. Four months after her committal for trial, she embraced it. [\[167\]](#) The circumstances that informed and under which she did tainted the legality of her plea as below.

Her admission of guilt was most likely involuntary. She was wary that many of her fellow inmates had spent long periods in pre-trial detention. It took her five months to strike a plea deal because the negotiation process was complicated and gave her a very hard time: She was de-cause listed from the session due to her refusal to accept the state attorney's cross-offer of a 15-year sentence in exchange for her guilty plea. Her defence attorney chastised her. When re-cause listed for the subsequent session, the defence counsel proposed a 12 years and 21 months offer to the state attorney that she accepted and signed for. She did so on realising that there were so many inmates in the queue to undergo full high court trials. Furthermore, together with some of the women inmates they agreed to enter plea bargaining arrangements, admitting some facts, in order to secure short lenient sentences that some had long served and others, like her, were still serving. Relying on any of the facts that related to their charged offences, they would use that factual connection to negotiate their plea bargains to help them end their trials. She also felt abandoned because of her child's death, had lost contact with her relatives, and never received any visitors while in detention to offer her assistance. [\[168\]](#) These and other insurmountable circumstances rendered her admission of guilt involuntary.

Olinawe's contractual capacity, like the rest of the respondents discussed earlier, was questionable. She was

pregnant at the time of the negotiations, in addition to grieving the loss of her child. When one is imprisoned, such situations can be extremely stressful. With such mental burdens, she was not in a sound mental state to enter into a plea bargain, which legal implications have been discussed at length. Apparently, aside from her admission of the crime and the prison term she agreed to, she had no idea what the rest of the agreement entailed. She had limited experience with formal education. She stopped in primary two and was illiterate:[169] She signed ‘... on a piece of paper, where [she] was shown to sign [by her lawyer] (...), by writing [her] name on those papers (...) in confirmation of what [she] was going to serve.’[170] The lawyer cautioned her that as an adult she had a right to do whatever she wished to do, but never explained to her the consequences of her guilty plea before entering the plea agreement. Thus, her guilty plea was not well-informed.

Olinawe claimed that court was a walkover that took less than an hour. She answered all the judge’s questions in the affirmative because the judge read everything from her file to her. When I questioned her why she so affirmed, she explained that everything that was read out was in line with the statement she had made to the police. She was the only one who could confirm these details because the child passed away during the altercation with her husband, who was still at large.[171] Had the court made a deeper inquiry into her story, it would have realised that she was a victim of physical and psychological assault, and that her admission was equivocal. Her plea bargaining path is similar to *Mukundane Winnie*’s [172] as below.

(v). I Hacked my Baby Instead of Him

On January 10, 2017, *Mukundane*, a 36-year-old *Muhima* Ugandan woman who was aiming a machete at her husband, fatally hacked her nine-month-old baby to death. She had suffered financial and emotional abuse caused by her husband, just like *Olinawe*. She cried a lot during the interview, reliving memories that undermined the legality of her plea. She advised courts:

Women should be given special consideration in the plea bargaining programme. A female will always be a female with a limited capacity for criminality. If a woman is imprisoned for a year for misbehaviour, she will develop remorse. I had already regretted my actions by the time I had served six months in prison. I had outgrown all my pride when I went to the welfare officer for help. I was a beaten woman, subjugated like a domesticated dog. I reformed and disowned the bad behavior that I had while I had my freedom. A woman reforms much faster than a man. So let them imprison us when we do wrong, but they should sentence us leniently. [173]

After losing her first husband, *Mukundane* married her dead child’s father, but brought along her six children from her previous marriage. Three of these children were sickly. Her new husband pestered her about having so many kids, for over six months. On that fateful morning, she had another argument with him. This time, he had squandered all of her money, sold her cow, and made illogical excuses. This situation reveals two serial domestic violence abuses: the emotional, verbal and psychological abuse by way of the nagging pattern by her husband over her children;[174] and the economic abuse by squandering all her money, and selling her cow without logical explanations. [175] She, however became so enraged by the economic abuse so much that she picked a machete, threw it at him, but ‘he ran way in escape.’[176] She soon realised that she had actually ripped her baby, who was sleeping nearby, dead. She raised an alarm. The villagers who responded to her alarm on hearing her description of the incident notified the *Kataryebwa* police station in *Rwabaja*, who then arrested her and transported the deceased child’s body to the hospital mortuary.

In 2017, *Mukundane* appeared before the Fort portal magistrates court, which informed her of the murder charge, detained her in *Katojo* prison and committed her to the High Court for trial after a six months and twenty days’ pre-trial detention. She promptly showed her committal papers that summarised the assembled prosecution evidence to the prison’s welfare officer. The officer cautioned her that she would almost

certainly be convicted and sentenced harshly if she underwent full trial. He suggested plea bargaining for a lenient sentence that she could serve quickly and return home to care for her children. *Mukundane* took the advice seriously after six months. In January, 2018, she registered for the program and began negotiations with the prosecution. It took her three days of haggling, while assisted by the prison's welfare officers, to reduce the sentence from the prosecution's 20 years' sentence offer to her ten years' counter offer in exchange for admitting the offence of manslaughter. She was sentenced accordingly on February 1, 2018. Like other respondents considered in this paper, her plea fell short of the admissible plea of guilt standards; her offer based on the facts that:

She discovered fellow women who had spent over four years in pre-trial detention; she was a first-time offender with medical chronic conditions; she had left her six children unattended for over a year since her arrest, and was grieving the death of her baby; none of her relatives had checked on her since her arrest, and she lacked their phone contacts as to know how her children were. These circumstances compelled her to contract the plea-agreement, inferring its involuntariness.

Her decision was not well-informed. *Mukundane* was English illiterate and the agreement form was in English. The state attorney instructed her 'that now that you have agreed to the ten-year sentence, sign there.' [177] and she 'thumb marked where he showed [her] to.' [178] This instruction points at her incapacity to contract.

Her agreement was also equivocal. She was mystified by the court process. She was originally brought before the court by prison officials on February 10, 2018, nine days after signing her plea deal, but she was returned to prison for unknown reasons. On February 22, 2018, while accompanied by the welfare officer, but unrepresented by counsel, she appeared before the judge, was arraigned, pled guilty to the lesser charge of manslaughter, and the judge convicted her in accordance with her plea deal. The judge remarked to the state attorney: 'why have you agreed to a ten-year sentence with Winnie [*Mukundane*], on the charge of murder of a child who could have become the President of this country! ?' [179] *Mukundane* was astounded by the judge's attitude. The welfare officer shot up and started arguing in her defence, but she could not understand the dialogue because it was in English, despite the court interpreter's translation services. All she recalled was that much of the dispute revolved around her illness, which the police file record showed was terminal [180] and not on the crux of the state's investigations into the factual situation that caused the child's death. This bizarre confirms that she never understood the implications of the plea bargaining process, rendering it equivocal.

The story supports the conclusion that repetitive psychological abuse from spouses can ignite women's accumulated rage that can lead to their criminality. *Mukundane*, explained that out of anger to fight her husband, she undervalued its consequences, such as her unintentional killing of her child. She realised the truism of imprisoning women like men when it dawned on her, day by day, that she was not returning home soonest. Thus, she plea bargained to return early to her unattended six children, whose father died before she contracted her problematic marriage. [181]

Mukundane, like *Olinawe*, critiqued the state attorneys' diverse negotiation styles and the court's sentencing inconsistencies. She recalled the prosecution's lenient sentences to the category of inmates, many as women, who joined the plea bargaining programme with her in 2017-2018. Some had served their sentences and left, while others were about to complete theirs. She recalled the pain her fellow women convicts, most of whom she had convinced to admit guilt, went through when they failed to negotiate away the high state attorneys' sentences in the early 2020s: They refused to eat or drink for weeks until they came to terms with their sentences; they complained that she sent them to fire, regretting why they did not persevere the long pre-trial detention and awaited High Court trials. [182] She agreed with *Olinawe* that inconsistent sentencing undermines the value of plea bargaining. Her story depicts female victims of domestic violence overcoming all odds to plea bargain, secure lenient sentences, and return home to their nurturing gender roles, a situation

that has not attracted past research.

(vi) Enraged, I Threw the Baby in the Toilet

Some accused victims, majorly adolescent mothers commit crimes because their partners impaired their mental health, which injury constitutes physical abuse in law, [183] as it did to *Nshabenta Marion*, [184] a Mukiga 19-year-old of *Rwanyana, Makanga* village, in *Kabale* District of Uganda. She threw her baby in the toilet after giving birth, was arrested, and charged with its murder. She eventually negotiated a plea agreement for a five-year term in exchange for her guilty admission. Her story below, confirms the past literature that psychosocial experiences of adolescent mothers are often marginalised. [185] It also lays credence to the past research that showed that ‘understanding the experience of women who become mothers during their teenage years is central to ensuring that the support that is offered [to them] is appropriate to meet their needs.’ [186] It is in that context, that *Nshabenta* out of guilt and fear of her parents, concealed the pregnancy by dressing up in a way that her parents could not identify it throughout its nine months’ course.

Research has also proven that pregnancy has an immense impact on the psychological wellbeing of adolescent mothers, [187] mostly depression. There is a normative construction of teenage motherhood, young mothers feel stigmatised when viewed as deviant in society. [188] This most likely explains why and how when *Nshabenta* went into labour, she managed to deliver her baby girl from home without any help of an adult. She feared stigma, confirming a Ugandan survey that the risks to teen mothers may be exacerbated by stigmatisation, and isolation from their families. [189] After delivery, she was still apprehensive that if her parents learned of it, they would not allow her to stay at home with the baby. She called her lover to inform him that she had delivered, and asked him to come over to discuss the way forward.

Her lover responded that he could not, because he had commitments elsewhere at *Rugaramaa* to attend to a sick person. What infuriated *Nshabenta* most was that he advised her to see how to go about the challenge. Like medical experts have observed, adolescent mothers’ minds can be unstable. [190] The guilt, shame and suicidal ideation (emotional and mental distress) occasionally dominate their thoughts, [191] thus, *Nshabenta* resolved to throw her new born in a pit latrine at her parents’ home, most likely due to such mental delusions.

The following day, on January 2, 2019, the neighbours found a child dumped in the toilet. They intercepted all the five ladies that were around, and took them to hospital, for examination. She was identified as the culprit who had just given birth, was arrested, taken to *Kabale* police station where she spent two weeks. She appeared before *Kabale* Chief Magistrates’ Court on January 17, 2019. The magistrate informed her the charge of murder detained her at *Ndorwa* prison. While in prison, one of the *afandes* (*Swahili* – meaning officers) introduced plea bargaining to her that she could admit guilt in return for a lenient imprisonment sentence that she could serve and return home early. Ten months later, on November 12, 2019 she was committed for her trial. She joined the plea bargain programme on July 10, 2020 when the Judiciary and the ODPP camped at the prison, and signed a plea agreement for a five-year sentence, which is legally impeachable.

First, her admission of guilt was tainted with involuntariness. Fearing that she would spend more time on pre-trial detention, and concerned that at her young age, she had a long future to explore, she entered into a plea agreement with the ODPP after an hour’s negotiation. Second, the expedited negotiation process notwithstanding, her contractual capacity was doubtful, which legal consequences were discussed earlier. She signed a single sheet of paper, after her attorney gave her ‘a pen and showed [her] where to sign on it’ [192] without explaining to her its contents. She therefore made a non-informed plea choice. Third, her plea was equivocal. *Nshabenta* felt bitter that her joy at having the baby was shortened by her state of depression. She missed her baby and felt guilty about her actions. The challenge is that the judge did not

inquire into the possibility of her mental impairment; or explain to her the ramifications of renouncing her fair trial rights when negotiating her plea. Had the court did her plea was more equivocal given her defence of depression. Fourth, the court failed to gather the victims' statements on her child's death and her relatives to establish the factual basis for her charge. During Covid-19, large gatherings could endanger inmates, but victims could be screened like they probably did with the other actors who participated in the plea bargain camp. The bargain flawed all the guilty plea standards. Fifth, her right to legal representation was flawed too: her lawyer did not address court on the factual mitigating factors for her sentence after conviction, which should be indicated in the agreement.

(vii) The Inferno

WC4, a *Munyankore* female 36-year-old with a procurement and logistics management degree,[\[193\]](#) like MC3, a diploma undergraduate, whose story was analysed at the beginning of this section on findings, demonstrates how educational levels of accused who are also victims of violence do not impact their violent offences. IPV 'occurs in all settings and among all socioeconomic, cultural, and religious groups.'[\[194\]](#) On June 17, 2016, WC4 set ablaze her matrimonial home in *Kasangati*, while inside it with her three children.

WC4 had been married for 12 years, the last five years of which were quite turbulent. The violence cycle began in the seventh year when her spouse had an extramarital relationship, which bred mistrust between them. Overtime, her spouse told her to terminate her third pregnancy. She complied but her distrust grew. The experience tormented her so much that when she became pregnant again two years later, she disregarded his subsequent instruction to terminate the fourth pregnancy. He began rejecting paternity of their three children on the grounds that they did not resemble him. He nagged her to take them to their "biological father" and leave the matrimonial home. He stopped caring for the family. Accusing her of infidelity, he would tie her up with ropes and rape her.[\[195\]](#) With the help of his lawyer, she convinced him to take the children for DNA tests, and the results were 99.9% positive, proving that he was the biological father of all the three of them. The revelation did not alleviate the marital strain but instead exacerbated it. He claimed she and his lawyer falsified the results. Henceforth, he would only meet their school fees, while she undertook all the other home maintenance expenses. Her small business was not very supportive, which accentuated the economic abuse. As a result, she set herself and her children ablaze in their house. When asked the optional question; 'Did you actually commit the offence(s) [referring to her charges of murder, attempted murder, and arson]?' She responded;

I will answer the question. I put the house on fire as a result of mental torture, but not anger. I wanted to end our pain from the marital torments of my spouse. I was not mentally okay.[\[196\]](#)

Her response confirms that she suffered a mental breakdown so much so that on the fateful day she ignited the house on fire while inside it with her children. Her state of horrific lawlessness, confirm earlier research that: women who experienced abuse as adults suffered more ill-effects to their mental health than women who did not experience such abuse; [\[197\]](#) 'battered women experience increased levels of depression, lower self-esteem, and higher levels of psychological distress when compared with non-battered women',[\[198\]](#) and 'IPV may lead women to negative health consequences, including mental health disorders.'[\[199\]](#) Ugandan studies have also demonstrated that women whose partners have controlling behaviour are more likely to experience all forms of IPV.[\[200\]](#) There is however a dearth of literature on whether courts are alive to these effects while dealing with women accused.

While WC4 was rescued from the inferno by her neighbours, she lost two of her three children— a two-year-old daughter and an eight-year-old son. Her eldest kid, who was ten years old, survived. The neighbours took her and her son to *Nakasero* hospital, where she remained under police surveillance. She was transferred to *Butabika* mental hospital. The medical report indicated that she was suffering from excessive

depression. She could not remember anything else except having started the fire. She never attended her deceased children's funeral. She discovered they died in the inferno, later while under medical care. When WC4 was discharged from hospital, she was escorted to the police station and she made a statement. In June 2016, she appeared before the *Kasangati* Magistrate's Court that informed her of the charges of murder of her two children, attempted murder of her surviving son, and arson. Apparently, the ODPP did not confirm if she had outgrown her past trauma, or, if mentally stable when it decided to charge her. She was committed for her trial by the High on October 31, 2016. She learned about plea bargaining while on pre-trial committal detention. She plea bargained in January 2019.

It is a fair contention that her decision was not informed enough. A team of visitors from the *Justice Center, Uganda* came over to the prison to sensitise inmates about the procedure. They gave them brochures on plea bargaining. WC4 selectively read some sections of the brochure that she thought would help her avoid a full trial and save her from the painful memory of the death of her children.[\[201\]](#) She learned that the procedure's objectives were to enable the accused admit the offences they commit; bargain lenient sentences; they could opt out of the negotiations if the sentence offer is harsh; the proceedings would not be documented; the accused could be referred to another judge to undergo a full trial. However, she never learned of the rights she would waive during the process. Further, while during the interview on February 02, 2019, she presented as a very intelligent person, but hyper with mood swings and stressed. She revealed that she was on medication and would 'sometimes black out completely.'[\[202\]](#) In such a state of continued mental health challenges, she probably could not have contracted a meaningful plea agreement in January 2019, just about a month before the interview. She also revealed to the researcher/author that she signed her 15-year plea agreement without internalising its consequences. She stated:

I never read the form. It was too long a form and detailed. It is not that I did not want to read it, but the time to read and internalise its contents was not there! (...) I never saw those boxes that you are asking of which are on that form and were supposed to be ticked by the accused who bargains; nor did I tick any. I only signed the form in the space I was supposed to sign after knowing the judge's offer of 20 years' imprisonment (...) while under a lot of tension. It was my liberty and future at stake. I was not in position to think the process through.[\[203\]](#)

Additionally, during the plea hearing, 'the judge asked [her] bitter questions. (...) in disgust while already biased.'[\[204\]](#) Without giving her a chance to tell her story, he retorted; 'if it was not for plea bargaining, I would have given you a terrible sentence that would have made the whole world wonder. I am therefore going now to sentence you painfully.'[\[205\]](#) He convicted her on the basis of the agreement, but enhanced her sentence from 15 to 20 years' imprisonment.

There is therefore a gap in Uganda's Plea Bargaining Rules that do not strictly call for mental examination of the accused's state of mind as to his or her capacity to enter an informed bargained guilty plea.

It would have been desirable for the judge to adjourn the accused's plea-taking, and order for a medical report from *Butabika* mental hospital, in order to evaluate her mental status at the time of her plea. Court ought to have also ordered the ODPP to secure her original *Butabika* medical report after her confinement on commission of the offence. Ordinarily, such a report is exhibited on the police file. The two medical reports would have helped the court to ascertain if she was competent enough to enter a related plea-agreement. She appreciated the lawyer's effort to request for the second medical report from *Butabika* hospital, which was neither availed to the defence at the time of the plea negotiations nor on WC4's arraignment. The judge went on to convict and sentence her. WC4's state brief lawyer, JASB1(n₅), confirmed WC4's story, decrying the implementation challenges that entail when the accused are not given opportunity to tell their stories. [\[206\]](#)

It is also a fair argument that WC4's decision to plea bargain was involuntary, coerced by insurmountable

factors into bargaining. She was suffering extreme mental stress at the time, overwhelmed by: the sense of guilt for her children's death; desire to stop its haunting memory; the need for a lenient sentence after three years on pre-trial detention; lacked funds to pay private lawyers to risk a full trial; feared to undergo a full trial, on her own; society had already condemned her; her relatives never visited her during her pre-trial detention period; one sister seldom called to update her about her home; her husband served her with divorce papers while in prison custody, divorced her, never even paid her alimony and was living with the "other woman" who strained their marriage relationship. Mentally derailing was the fact that she had not seen her surviving son despite the divorce court order that her divorced husband, his father, brings him over to visit her every three months; and the husband denied her the assets that they had accumulated together. She had lost hope. 'Yes, all was gone. [She] was only left with a matrimonial home.'[\[207\]](#) She had to conjure an early exit from incarceration to a fresh start in life.

This explains her recommendation that convict-mothers should be given a second chance through shorter sentences. They, among other reasons, have responsibilities to take care of their nuclear and extended families that include dependants. She had her late sister's children she was taking care of in addition to her nuclear family members, before her incarceration.

To summarise this section, the findings showcased that some accused victims of domestic violence from their partners admit guilt out of contrite for this cycling violence's eventual fatal events to their loved ones who become primary victims of their result criminality.

The Accused Sense of Plea Bargaining's Fairness.

Another interesting finding that manifested was that while the respondents decried the trial courts' irrational and inconsistent sentencing in related offences, they all assessed plea bargaining's fairness from the context of social-legal expedience. To evidence this, I will cite selected views from the stories in the previous section due to the constraints of space.

MC3, appreciated plea bargaining in the social-legal context that 'it helps to end the accused's trials with certainty'[\[208\]](#) by way of a lenient sentence, even when an accused is innocent. *Olinawe*, like W21, commended its fairness in the socio context. The prison administration, in line with their policy to transfer convicts that have been sentenced to many years, transferred her when she got sentenced from *Katojjo* prison in *Fort portal* to *Kampala Luzira* women wing, *Nakasongola*, again to *Kampala*, and back to *Katojjo* prison. She was surprised that she found some of her fellow women, whom she had left when they had been committed earlier for their trials, having not undergone them. Others, had just completed them. Second, she argued that plea bargaining is a learning process, where you learn over time to distinguish between good and bad. Third, opting out of the whole trial process stabilised her health, reduced the period that she would have spent in incarceration and was about to complete her sentence; despite the extremely challenging situations she went through by the time she joined the program. Fourth, she was not anxious over the community's reactions in *Kabuga* in *Kamwenge* District, where her child died. She was ready to return to her home in that community because she neither had a grudge nor was still angry with any of her community members. She reasoned that God creates situations and time to heal hard experiences.[\[209\]](#) From her emotive points of view, she found the process fair in the socio-context of her situation.

Mukundane's tale supported *Olinawe's* socio-approach to plea bargaining. She recalled how village mates who learnt of her charges on her arrest forecasted a death sentence and condemnation in a special ward before its execution. The welfare officers helped her secure her a lenient deal. She also believed that one had to financially corrupt those who prepare the lists to be scheduled for trial or spend five or more years on pre-trial detention, which corruption the procedure relieved her. She confirmed *Olinawe's* belief that the procedure was convenient for women who in domestic violence situations would be unprepared for arrest. It deals with their anxieties over their unattended to children they leave behind. She recounted, like *Olinawe*,

fellow inmates confiding in each other about domestic violence and unintentional homicides they were charged with. They prayed together to God for committal papers, surrendered, and pleaded for plea bargaining sentences to leave prison early. Fourth, she reasoned that plea bargaining allows negotiation of a sentence from an ordinarily prosecutor's starting point of 30 years in capital cases under the sentencing guidelines to a shorter imprisonment term, unlike full trials where no choice is involved. She shared how in prison, she advised fellow mothers against insisting on trials, believing they were sleeping in prison waiting for trials they would never stand for. She agreed with *Olinawe's* approach: they should admit their charges, negotiate lenient sentences, and return home. [210] To *Nshabenta* plea bargaining accorded her a short lenient sentence that she was about to complete and was ready to return home by 2023. [211] The preceding views demonstrate that the accused victims of domestic violence assess plea bargaining's fairness from the context of social convenience.

Therefore, legitimacy of a process depends on individual perceptions on what they feel is fair justice to them, and not that the process conforms with the fair hearing as envisaged in international law. However, from the legal context, empirical evidence showed that plea bargaining, in most of the cases, infringes on the right to a fair hearing of the accused who commit crimes as a result of the domestic related violence they are subjected to.

CONCLUSION AND RECOMMENDATIONS

Conclusions

To recap the findings, all the sampled tales revealed common characteristics: Mostly accidental homicides of their beloved family members: their spouses, intimate partners, including their own children, after, majorly, repetitive domestic violence abuses from their partners. Consequently, they plea bargain out of contrition for these unfortunate incidents in self-conviction, regardless of guilt, age, tribe, gender, or education status, among other demographical identifications, in the hope of returning to their gender space and roles. In the process they contravene the international standards of a bargained guilty plea and the tenets of the right to a fair hearing.

Recommendations

1. Legal Reforms.

The DVA should be amended to extend jurisdiction to formal courts handling all crimes. Statutorily reviewing the plea bargaining procedure and providing timelines for processes (*setting* plea bargain initial offer timeline, negotiation deadlines, among other plea bargain processes' timelines) is also necessary to align plea bargains with fair speedy trials.

To avoid any laxity in implementing international standards, Uganda needs to legislate minimum standards in the trial laws to strengthen Rule 12 of Uganda's Plea Bargaining Rules, which require a voluntary, informed, unequivocal, and factual-based guilty plea. In the alternative, Rule 12(c) can be replaced entirely with a new Rule that explicitly states these plea bargain standards under international law far more eloquently.

To enhance the voluntariness and informedness of plea agreements, the Rules Committee should strike out that portion of the plea agreement form in Schedule 1 prescribed by Rule 9(1) of the current Rules. Specifically, the boxes that the accused are supposed to check regarding the waiver of fair trial rights and other related statements should be replaced with a checklist of questions that ensure compliance with international plea bargain standards. The questions should be framed in terms of the accused's common intelligence of the legalese used to make plea bargaining more equitable. [212] Rule 9(1) should be amended

to require: the attorneys to record the accused's verbatim responses to the questions; the accused to countersign or thumbprint against them in writing; the trial courts to read these responses to the accused; the accused to confirm them before courts enter a guilty plea; the court to enter a not-guilty plea and remand the case for a full trial if the answers are unclear. Form appendices in selected local languages should be scheduled to the Rules. English being the Court's language, the attorneys should file the translated agreements in accordance with the selected appendix alongside the English copies. The accused should countersign or thumb print the translated agreements, like the English copies, and the translator countersigns both copies.

The Rules should also include a provision that renders the plea equivocal and the agreement null and void if the Court fails to explain the accused's fair trial rights. They should legislate for an abridged or shortened hearing based on the summarised prosecution witness statements, material exhibited documentary and physical exhibits, expert evidence, and other necessary pieces of evidence that the accused admitted during the negotiations and continues to admit during that summary trial. The Rules should mandate the accused to present their factual versions during the abridged hearing in order to validate the facts in the filed agreement.

The rationale for the proposed alignment of the Rules to the international standards and identified best practises here and elsewhere in the report is to ensure that, even in plea bargain arrangements, the strict prosecution's legal duty to prove the accused's guilt beyond reasonable doubt, remains unwavered without being transferred to the accused. [\[213\]](#) Thus, repositioning plea bargaining into the realm of the right to a fair hearing.

2. Administrative/ Institutional Reforms

(a) Victim Assessment Reports

Police needs to collaborate with Probation and Social Welfare Officers (PSWOs) to secure reports on victims' impact statements. These reports can help the prosecutor negotiate with victims while considering their past trauma. This balances the accused's and victims' interests, addressing biases and protection needs before signing plea agreements that are filed for court hearings.

(b). Judicial Activism

Courts need to broaden domestic violence interpretation, extending it to IPV, even outside traditional family settings. The accused victims of such violence need protection and should be allowed to share their stories. Courts can remand cases for full trials if factual inquiry during plea bargaining confirmation hearings reveals domestic violence or similar violence.

(c) Hold Plea Bargain and Full Trial Hearings Simultaneously

Process plea agreements on a case-by-case basis, ensuring equal access to all trial processes. This will enable the accused to make voluntary, unequivocal, and informed admissions during arraignment in line with Article 28(3) (a) of the Constitution of the Republic of Uganda that recognises guilty pleas within the right to a fair hearing, or to opt for full trials.

(d). Heighten the Courts Oversight over filed Plea Agreements

Courts should only convict accused on an unequivocal guilty plea in line with Article 28(3) (a) of the Constitution of the Republic of Uganda, when proven by the prosecution beyond reasonable doubt. Judicial officers should study plea agreements during pre-session meetings or before the accused's arraignment to identify evidential gaps. Courts often focus on agreed-upon penalties during pre-session meetings, rather

than inquiring into the facts validity of plea agreements to support charges or reveal other charges.

(e). Avail Conducive Negotiation Ambience

Trial judges should be cautious of intimidating court decorum and domineering attitudes, which can impair negotiation voluntariness and the accused succumb to the court process due to apprehension, making equivocal admissions of guilt.

(f). Provide Psychological Support to the Accused

The Ministries of Internal Affairs and Health should provide comprehensive social psyche support for the accused in prisons both pre and post convictions, and expand the existing family and children support desks at police stations, and in prison facilities.

3. General Recommendations

(a) Conduct Rigorous Sensitisation across the Justice Chain

To prevent biased bargains, enhance sensitisation visits for inmates and prison officers by neutral agencies. Support prison welfare offices' outreach programs, such as television screens and Information, Education and Communication (IEC) pamphlets explaining plea bargaining, to promote fair negotiations. Community sensitisation programmes need to be drawn up and implemented. Law schools and institutional training schools (such as the Judicial Training Institute and the Police Training School) should incorporate plea bargaining in their curricula to build skills that discourage its implementation abuse.

(b) Conduct A Public Litigation Test Case

The private legal practitioners and academia need to engage courts in a test case to secure legal pronouncements for Ugandan plea bargaining implementation through human rights-based lenses, seeking protection for accused victims of domestic or related violence.

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FOOTNOTES

[1] Uganda. 2016. "The Judicature (Plea bargain) Rules." SI 43 2016. *Uganda Gazette CIX* (45) June 24, 2016, r. 3 (b); UN General Assembly. 1985. "The United Nations Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power." (November) *UNGA A/RES/40/34*. UN General Assembly.

[2] This Paper is in further fulfilment of the requirements by the author for this LL. D Makerere University study.

[3] The Judicature (Plea bargain) Rules., *op.cit.*, n.1, r.3.

[4] *ibid*, r.4: an exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offence, or recommend a particular sentence subject to approval by the court. Under r. 6(1) (b): 'a promise to cooperate as a witness for the prosecution in exchange for reduced charges or a reduced sentence, or both'.

[5] See e.g., Alschuler, Albert W. "Plea Bargaining and its History." *Columbia Law Review* 79, no. 1 (1979): 1-43, at 3; Green, Theodore S., John D. Ward, and Alan Arcuri. "Plea Bargaining: Fairness and Inadequacy of Representation." *Columbia Human Rights Law Review* 7 (1975): 495-527, at 496; Lubaale, Emma Charlene. "The Advent of Plea Bargaining in Uganda: Is Uganda's Criminal Justice System Cognizant of what it is up Against?" *East African Journal of Peace and Human Rights* 22, no. 2(2016):1-25, at 137; Russell, Jago, and Nancy Hollander. "The Disappearing Trial: The global spread of incentives to

encourage suspects to waive their right to a trial and plead guilty.” *New Journal of European Criminal Law* 8, no. 3 (2017): 309-322.

[6] See, The Judicature (Plea bargain) Rules., *op.cit.*, n.1, rr. 3, 4, 12 (1), and schedule 1.

[7] United Nations. 1948. *Universal Declaration of Human Rights*. [hereinafter UDHR], Arts. 10-11(1).; United Nations (General Assembly). 1966. “International Covenant on Civil and Political Rights.” *Treaty Series* 999 (December): 171. [hereinafter ICCPR].

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[9] *ibid*, Art 126 (2)(b).

[10] *Constitution of the Republic of Uganda, op.cit.*, n.8, National principle XXVIII (i) (b).

[11] UDHR, *op.cit.*, n.7; ICCPR, *op.cit.*, n.7.

[12] *Constitution of the Republic of Uganda, op.cit.*, n.8, Art. 28(1).

[13] *ibid*, Art. 44.

[14] *ibid*, Art.33; Uganda. *Domestic Violence Act, 2010*. (Act 3 of 2010), *Uganda Gazette CIII (21) April 09, 2010*; Uganda. 2019. “National Policy on the Elimination of Gender Based Violence in Uganda.” *Ministry of Gender, Labour and Social Development*, ISBN: 978-9970-507-18-4; National Referral Pathway for Prevention and Response to Gender-Based Violence Cases in Uganda; Uganda. (2006). “National Policy Guidelines and Service Standards for Reproductive Health Services.” *Ministry of Health* (February 2006).

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[16] *Domestic Violence Act, 2010, op.cit.*, n.14.

[17] *ibid*, s. 2(a-d).

[18] *ibid*, s. 3(1).

[19] *ibid*, s.2.

[20] *ibid*.

[21] *Domestic Violence Act, 2010, op.cit.*, n.14, s. 3(1) (a-f).

[22] *ibid*, s. 3 (2) (a-e).

[23] *ibid*, s. 2(a-d).

[24] *ibid*, s. 2. The term “harass” means engaging in a pattern of conduct that induces fear of harm, annoyance and aggravation with the intention of inducing fear in a person: repeatedly watching or loitering outside of or near the building where the victim resides, works, carries on business, studies or happens to be; repeatedly making abusive telephone calls or causing another person to make abusive telephone calls to the victim, whether or not a conversation ensues; repeatedly sending, delivering or causing the delivery of offensive or abusive letters, telegrams, packages, facsimiles, electronic mail, telephone text messages or similar objects to the victim; or, repeatedly following, pursuing or accosting the victim with the intention of inducing fear, harm, annoyance or aggravation to the victim.

[25] *Domestic Violence Act, 2010, op.cit.*, n.14, s. 2(d).

[26] *ibid*, ss. 4(2)– 4(3); 2, 5. The schedule to the Act spells out the principles as: the pain and suffering of the victim and the nature and extent of the physical or mental injury suffered; the cost of medical treatment for these sustained injuries; any loss of earnings; the amount or value of the property taken, destroyed or damaged; the necessary and reasonable expenses (accommodation costs, transport costs, and meals) incurred by or on behalf of the victim where the victim is compelled to separate or be separated from the perpetrator; and where necessary, the court may make an order or referral for mediation and counselling of the parties by the appropriate person or authority; s. 5(1)-5(4).

[27] *ibid*, First Schedule (Sections 2, 20(1)). A currency point is equivalent to twenty thousand Shillings.

[28] *ibid*, s. 5(5) (a-k).

[29] *ibid*, s. 6 (6) (a-c).

[30] *ibid*, ss. 6 (7-11).

[31] *ibid*, s. 6(12).

[32] *ibid*, s. 17.

[33] *ibid*, s. 9(3)

[34] *ibid*, s. 2., “protection order” means a court order prohibiting domestic violence, restricting a person from harassing or threatening another person or restraining a person from contacting or approaching another person.

[35] *ibid*, ss. 10-15

[36] *ibid*, s.16.

[37] *ibid*, s. 6 (a-c).

[38] *ibid*, s. 3 (1). ‘(...) [A] family relationship, a relationship similar to a family relationship or a relationship in a domestic setting that exists or existed between a victim and a perpetrator.’

[39] See: World Health Organization. (2012). *Understanding and addressing violence against women: Intimate partner violence* (No. WHO/RHR/12.36). World Health Organization (WHO). WHO lists types of Intimate Partner Violence behaviour such as slapping, hitting, kicking and beating. Sexual violence, including forced sexual intercourse and other forms of sexual coercion. Emotional (psychological) abuse, such as insults, belittling, constant humiliation, intimidation (e.g. destroying things), threats of harm, threats

to take away children. Controlling behaviours, including isolating a person from family and friends; monitoring their movements; and restricting access to financial resources, employment, education or medical care.

[40] Adriko L, transcript, JACSO₁(n₁₁).18.06.2021, Executive Director FIDA-Ug. Mbuya, Kampala, personal communication, June 18, 2021. FIDA-Uganda relates with Uganda's criminal justice system at very many levels, but with a core focus on women and children, through provision of legal aid.

[41] As established by the *Prosecutor v. Drazen Erdemović*, Appeals Chamber Judgement, Joint Separate Opinion of Judge McDonald and Judge Vohrah, para.2 at 2., available at:

<http://www.icty.org/x/cases/erdemovic/acjug/en/erd-asojmcd971007e.pdf> [Accessed January 11, 2023], and *Prosecutor v. Drazen Erdemović*, Appeals Chamber Judgement, Separate and Dissenting Opinion of Judge Cassese, para 10, available at, <http://www.icty.org/x/cases/erdemovic/acjug/en/erd-adojcas971007e.pdf> [Accessed January 11, 2023]. These standards became international law across jurisdictional planes. See: e.g.,

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991. *Rules of Procedure and Evidence*, IT/32/Rev.50, 8 July 2015, [ICTY RPE], r. 62bis (that governs guilty pleas) and r.62ter (that governs plea agreements); The International Criminal Tribunal for Rwanda. 1995. "Rules of Procedure and Evidence." (Revised 2015). *ICTR.*, [ICTR RPE], r.62 B (that governs guilty pleas) and r.62 bis (that governs plea agreements); United Nations. United Nations Transitional Administration in East Timor. *UNTAET Regulation 2000/30 (2000) [on Transitional Rules of Criminal Procedure]*. 2000. UNTAET/REG/2000/30., s.29A (1) -(5) (that governs both guilty pleas and plea agreements); UN General Assembly. *Rome Statute of the International Criminal Court*. 1998. (Revised 2010). ISBN No. 92-9227-227 6. UN General Assembly. [Rome Statute], Art.65; Sierra Leone. Residual Special Court for Sierra Leone. 2003. "Rules of Procedure and Evidence". (Revised 2021). *RSCSL* [RSCSL Rules], r.62; Lebanon. Special Tribunal for Lebanon. 2009. "Rules of Procedure and Evidence." (Revised 2020), *STL-BD-2009-01-Rev.11.*, *STL*. [STL RPE], r. 100 (governing guilty pleas) and r.99 (governing plea agreements); Zambia. *The Plea Negotiations and Agreements Act, 2010*. (Act 20 of 2010). (Commenced by S157 of 2010). Laws of Zambia. *Blackhall Publishing 2018.*, ss. 11 and 12(1)(c); Uganda. 2016. "The Judicature (Plea bargain) Rules." *op.cit.*, n.1, r. 12.

[42] The Judicature (Plea bargain) Rules., *op.cit.*, n.1, r. 12 (1)- (5); Confirmation Form format in the Schedule 3.

[43] Uganda. "The Judicature (Designation of High Court Circuits) Instrument, 2016." SI 55 2016. *Uganda Gazette CIX* (57) August 12, 2016., par.3 and the schedule; Uganda. *International Criminal Court Act, 2010*. (Act 11 2010), *Uganda Gazette CIII* (39) June 25, 2010.

[44] For further information on this tool, See, Hutchinson, Terry, and Nigel Duncan. "Defining and Describing What We Do: Doctrinal Legal Research." *Deakin Law Review* 17 (2012): 83-119, at 84-85.

[45] Kraska, Peter B., and W. Lawrence Neuman, *Criminal Justice and Criminology Research Methods* (Upper Saddle River, New Jersey: Pearson Publishing; 2nd edition, 2011), at 140.

[46] Kassiani Nikolopoulou. "What is Purposive Sampling? Definition & Examples", available at.

<https://www.scribbr.com/methodology/purposive-sampling/>, (August 11, 2022, Revised December 1, 2022) [Accessed December 27, 2022].

[47] Morse, Janice M. “The Significance of Saturation.” *Qualitative Health Research* 5, no. 2 (1995): 147-149, at 147.

[48] Francis, Jill J., Marie Johnston, Clare Robertson, Liz Glidewell, Vikki Entwistle, Martin P. Eccles, and Jeremy M. Grimshaw. “What is an adequate sample size? Operationalising data saturation for theory-based interview studies.” *Psychology and Health* 25, no. 10 (2010): 1229-1245.

[49] Lubaale, “The Advent of Plea-bargaining in Uganda.”, *op.cit.*, n.5, at 74.

[50] MC38(n₁)., 21.04.2021, Fort Portal (Katogyo) Prison, personal video conferenced communication, April 21, 2021.

[51] P’Odong, Patricia A., and Barbara L. Can. ” Combating marital rape: The law and the criminal justice system in Uganda,” in *Violence Against Women and Criminal Justice in Africa: Volume II*. A Budoo-Scholtz, EC Lubaale, eds. (Palgrave Macmillan, Cham, 2022).,109-137, at 109.

[52] See e.g., Kabaseke, Charlotte. “Justice for Rape Victims in Uganda: Definitional Crises and Errors of Justice in Prosecuting Rape cases,” in *Women and Minority Rights Law in Africa: Reimagining Equality and Addressing Discrimination* (Comparative African Legal Studies): 3, Addaney, M., ed. (The Hague, the Netherlands: Eleven International Publishing; 1st edition, 2019), 69-86; P’Odong, *et al.*, “Combating Marital Rape,” *supra* note 737.

[53] Tibatemwa -Ekirikubinza, Lillian. *Women’s Violent Crime in Uganda: More Sinned Against Than Sinning* (Kampala: Fountain Pub Limited, 1999).

[54] Uganda. 2021. “Office of the Director of Public Prosecution. *Plea Bargain Guidelines*.” (unpublished)., part IV: Target audience, at 10.

[55] Gubi, Derrick, Elizabeth Nansubuga, and Stephen Ojiambo Wandera. “Correlates of intimate partner violence among married women in Uganda: a cross-sectional survey.” *BMC Public Health* 20, no. 1 (2020): 1-11.

[56] Karamagi, Charles AS, James K. Tumwine, Thorkild Tylleskar, and Kristian Heggenhougen. “Intimate partner violence against women in eastern Uganda: implications for HIV prevention.” *BMC public health* 6, no. 1 (2006): 1-12.; Wandera, Stephen Ojiambo, Betty Kwagala, Patricia Ndugga, and Allen Kabagenyi. “Partners’ controlling behaviors and intimate partner sexual violence among married women in Uganda.” *BMC Public Health* 15, no. 1 (2015): 1-9; and Annan, Jeannie, and Moriah Brier. “The risk of return: intimate partner violence in Northern Uganda’s armed conflict.” *Social science & medicine* 70, no. 1 (2010): 152-159.

[57] Gubi., *et. al.*, *op, cit*, n.55.

[58] Siang’andu, Ellah. “Women as Survivors of Sexual Violence in Zambia: The Unheard Voices.” In *Violence Against Women and Criminal Justice in Africa: Volume II*: 87-107. Palgrave Macmillan, Cham, 2022.

[59] Golding, Jonathan M., Kellie R. Lynch, Sarah E. Malik, and Olivia Foster-Gimbel. “Justice served? Perceptions of plea bargaining involving a sexual assault in child and adult females.” *Criminal justice and behavior*

45, no. 4 (2018): 503-518.

[60] *ibid*, 503.

[61] *Katonsa Michael v. Uganda*, Court of Appeal Criminal Appeal 520 of 2016, *unreported*, at 9.

[62] Anonymous, transcript, MC3(n₁). 14.02.2019, Kampala. Upper Maximum Security Prison, personal communication, February 14, 2019 at 4.

[63] *ibid*, at 2.

[64] At the time of the interview MC3 had visible scars that he claimed to have sustained from the assault.

[65] Anonymous, transcript, MC3(n₁). 14.02.2019, *op. cit.*, n.62, at 2-3.

[66] Domestic Violence Act, 2010, *op. cit.*, n.14, s.2; “[P]hysical abuse” refers to ‘any act or conduct which is of such a nature as to **cause bodily pain, harm or danger to life, limb, or health** or which impairs the health or development of the victim, [**and, includes assault**], criminal intimidation and criminal force.’

[67] Anonymous, transcript, MC3(n₁). 14.02.2019, *op. cit.*, n.62, at 4.

[68] Anonymous., transcript., WC6(n₁).11.09.2019, Lira. Lira Women’s prison, personal communication, September 11, 2019. She was hurting and I respected her distance as not to bother her with further permissions.

[69] *ibid*, 5-6.

[70] *ibid*, 1.

[71] *ibid*,5.

[72] *ibid*. She lamented: ‘When I accepted, the in charge Boma cell asked me: ‘Mama Gift’ have you accepted? I replied that I had accepted. She told me that I had made a mistake to listen to the advice of a fellow inmate who had overstayed in prison since this offence took place in the bar and I was not directly involved in it’.

[73] *ibid*, 4.

[74] *ibid*.

[75] Anonymous., transcript. WC3(n₃).15.02.2019, Kampala, Luzira Women’s Prison, personal communication, February 02, 2019. While ‘she [did] not mind going public on this story’ I protected her identity since she used to be sexually harassed in front of her children by their late father. It could subject the family to public ridicule.

[76] *ibid*, 3.

[77] Domestic Violence Act, 2010, *op. cit.*, n.14, s.3.

[78] WHO Report, WHO/RHR/12.36, *op. cit.*, n.39.

[79] KY's behaviour constituted emotional verbal and psychological abuse under Domestic Violence Act, 2010, *op. cit.*, n.14, s.2; and WHO Report, WHO/RHR/12.36, *supra note* 39.

[80] KY was a mason. He owned a harmer as a tool of his work.

[81] Uganda. *The Contracts Act, 2010*. (Act 7 of 2010) (Commenced by SI of 2011), *Uganda Gazette CIII* (32) May 28, 2010, s.12.

[82] *ibid*, s.12(1).

[83] *ibid*, s.11(1)(a).

[84] The Judicature (Plea bargain) Rules., *op.cit.*, n.1, r.12(4).

[85] Anonymous., transcript. WC3(n₃).15.02.2019, *op. cit.*, n.75, at 4.

[86] *ibid*, 4.

[87] *ibid*, 5.

[88] *ibid*.

[89] *ibid*,3.

[90] Nassaka M., zoom transcript., WC8(n₁). 04.03.2021., Masaka Main Prison, personal video conferenced communication, March 04, 2021. She consented to the disclosure of her identity after due caution by researcher.

[91] *ibid*, 38.

[92] *ibid*, 35.

[93] *ibid*, 36.

[94] *ibid*, 37.

[95] Anonymous, WC2(n₁)., transcript, 15.02.2019, Kampala (Luzira Women) Prison, personal communication, February 02, 2019.

[96] *ibid*, at 5.

[97] *ibid*, 4

[98] *ibid*.

[99] See: Uganda. *Penal Code Act*. 1950. Cap 120, Vol.7, *Laws of Uganda* 2000, s.194. Where a person is found guilty of the murder or of being a party to the murder of another, and the court is satisfied that he or she was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind, or any inherent causes or induced by disease or injury, as substantially impaired his or her mental responsibility for his or her acts and omissions in doing or being a party to the murder, the court shall make a special finding to the effect that the accused was guilty of murder but with diminished

responsibility. The defence has the burden to prove this abnormality of mind.

[100] Anonymous, WC2(n₁), transcript, 15.02.2019, *op. cit.*, n.95, at 4.

[101] Anonymous., zoom transcript. WC9(n₁). 10.03,2021, Masindi Prisons, personal video conferenced communication, March 10, 2021.

[102] *ibid*, 23.

[103] *ibid*, 19

[104] *ibid*, 21.

[105] See: Uganda Penal Code Act, *op. cit.*, n.99, s. 9(1)., provides for the defence of Mistake of fact thus;

A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he or she believed to exist.

[106] Tubuhairwe. R., zoom transcript. WC10(n₁). 10.03,2021, Masindi Prisons, personal video conferenced communication, March 10, 2021. The researcher sought her permission thus; ‘... Should I give you a pseudo name or should your name really appear in my write ups?’ She responded; ‘... I wish my name to appear in your report.’

[107] *ibid*, 30.

[108] *ibid*, 30.

[109] *ibid*, 34.

[110] *ibid*, 28.

[111] *ibid*, 29.

[112] *ibid*,33.

[113] *ibid*,35.

[114] *ibid*,35.

[115] *ibid*, 35.

[116] Anonymous., zoom transcript, WC14(n₁),02.04.2021, Mubende (Kaweri) Prison, personal video conferenced communication, April 02, 2021,

[117] *ibid*, 20.

[118] See: Domestic Violence Act, 2010, *op. cit.*, n.14, s. 2. Failure to provide necessities for the victim and her children, is tantamount to ‘economic abuse’; ‘ridicule’ is a pattern of degrading or humiliating conduct towards a victim that constitutes ‘emotional, verbal and psychological abuse’. See also: WHO Report, WHO/RHR/12.36, *op. cit.*, n.39. acts such as insults, and belittling from a partner demonstrate Intimate Partner Violence.

[119] Akongo. Scovia., zoom transcript. WC16(n₁). 10.04,2021, Soroti Prison, personal video conferenced communication, April 10, 2021. She allowed her name to be indicated in the report.

[120] *ibid*, 26.

[121] *ibid*, 15.

[122] Under the Domestic Violence Act, 2010, *op. cit.*, n.14, s. 2, the offence of domestic violence encompasses ‘a pattern of degrading or humiliating conduct towards a victim [including] repeated exhibition of possessiveness or jealousy which is such as to constitute a serious invasion of the victim’s privacy, liberty, integrity or security; [and] any act or behaviour constituting domestic violence within the meaning of this Act where it is committed in the presence of a minor member of the family and which is considered as abuse against the minor member and likely to cause him or her injury;(…)’ amounts to “emotional, verbal and psychological abuse”. See also: WHO Report, WHO/RHR/12.36, *op. cit.*, n.39, where the WHO has cited intimate partner violence(IPV) to include emotional (psychological) abuse exhibited through; insults, belittling, constant humiliation, intimidation (e.g. destroying things), threats of harm, and threats to take away children. IPV is also demonstrated by controlling behaviours of a partner, which includes isolating victims from family and friends and monitoring their movements.

[123] According to Sheff, Alex. *Conflict, Justice and Reconciliation in Teso: Obstacles and Opportunities*. Faculty of Law, Makerere University, 2008, at 7-9, in most cases in Teso region located in Eastern Uganda this commonly used general dispute resolution mechanism is practiced mostly through clan meetings resulting in reparations or material compensation, and in specific cases such as sexual offences calling for rituals that include cleansing. See also Law Insider, <https://www.lawinsider.com/dictionary/ailuc> [Accessed September 27, 2023], where [Ailuc](#) is defined as a set of traditional rituals performed by the Iteso to reconcile parties formerly in conflict, after full accountability.

[124] *ibid*, 25.

[125] *ibid*.

[126] *ibid*.

[127] *ibid*, 26.

[128] Anonymous., zoom transcript. WC11(n₁). 17.03,2021, Arua Main Prison, personal video conferenced communication, March 17, 2021, at 16. WC11 opted for anonymity. While she plea bargained, she believes that she was unfairly implicated in a robbery that was committed by the father to her child.

[129] Anonymous., zoom transcript. WC12(n₁). 17.03,2021, Arua Main Prison, personal video conferenced communication, March 17, 2021. WC 12 was charged at a tender age of 17 years. She claims that she was staged in a robbery case by her jilted boyfriend. She plea bargained. She said at 27- 28;

I pleaded that I was sorry, and that I was young and would not commit such an offence again. I was trying to impress the judge so that he gives me a lenient sentence. I have no baby yet, so I also wanted to leave prison early so that I bear children. ...The judge deducted the three years’ prior detention period from my bargained sentence, and sentenced me to five years...I will complete my sentence on 27th October, 2023.

[130] *ibid*, 16.

[131] Anonymous., transcript. JAP2(n6). 15.02.2019, Kampala. Luzira Women’s Prison, personal

communication, February 15, 2019.

[132] *ibid*, 3.

[133] *ibid*.

[134] *ibid*.

[135] See: Uganda. *Prisons Act, 2006*. (Act 17, 2006), *Uganda Gazette XCVIX* (42) July 14, 2006., s.2, A “justice of peace” means a justice of the peace appointed under the Justices of the Peace Act. This is the only time this title is mentioned under the Prison’s Act; See also: Justices of the Peace Act, Cap 15, Laws of Uganda, entry in force February 15, 1915, s.2. ‘A justice of the peace shall, (...), have and exercise within the limits for which he or she is appointed such powers, rights, duties and jurisdictions as are vested in a justice of the peace by this Act or by or in virtue of any other Act for the time being in force in Uganda.

[136] Anonymous., transcript. JAP2(n6). 15.02.2019, *op. cit.*, n.131, at 4.

[137] Oyugi, Q., transcript, JASB3 (n₅)., 01.09.2019, Lira. Advocate, ULS, personal communication, September 01, 2019, at 4.

[138] Adriko. L., transcript, JACSO1 (n8).18.06.2021, Executive Director FIDA-Ug. Mbuya, Kampala, n.48 at 11.

[139] *ibid*.

[140] Anonymous, transcript. MC12(n₁).,14.02.2019, Kampala (Luzira Upper) Prison, personal communication, February 14, 2019.

[141] *ibid*, 4

[142] *ibid*, 3.

[143] *Constitution of the Republic of Uganda, op.cit.*, n.8, Art.23(8).

[144] The Judicature (Plea bargain) Rules., *op.cit.*, n.1, r. 12 (1) (g)

[145] *Agaba and 2 Others v Uganda* (Criminal Appeal 139 of 2017) [2020] UGCA 2143 (13 October 2020) at 7.

[146] Anonymous, transcript. MC12(n₁).,14.02.2019, Kampala (Luzira Upper) Prison, *op.cit.*, n.140, at 3.

[147] *ibid*,4

[148] Anonymous, transcript. MC2(n₁). 14.02.2019, Kampala. Upper Maximum Security Prison, personal communication, February 14, 2019.

[149] *ibid*, 4.

[150] *ibid*.

[151] *ibid*.

[152] *Agaba and 2 Others v Uganda, op.cit.*, n.145, at 7.

[153] *ibid.*

[154] Anonymous, zoom transcript, WC21(n₁). 23.04,2021 Kabale (Ndorwa) Prisons, personal video conferenced communication, April 23, 2021. She implored the researcher ‘not [to] reveal [her] name’.

[155] See: Domestic Violence Act, 2010, *op. cit.*, n.14, s.2. “Emotional, verbal and psychological abuse” is an act of domestic violence when the perpetrator acts in a ‘pattern of degrading or humiliating conduct towards a victim, including (...) repeated threats to cause emotional pain (...).’

[156] Anonymous, zoom transcript, WC21(n₁). 23.04,2021 Kabale (Ndorwa) Prisons, *op. cit.*, n.154, at 32.

[157] *ibid*

[158] *ibid*, 30.

[159] *ibid*, 31.

[160] Olinawe. V., zoom transcript. WC19 (n₁).18.04.2021, Fort Portal (Katogyo) prison., personal video conferenced communication, April 18, 2021. She explicitly agreed to disclose her identity thus: ‘I have no problem. I have learnt a lot from the program; I have changed my attitude to life, so mentioning my name in your report will be a given by God’s grace, and I would just praise him in return.’

[161] See: Domestic Violence Act, *supra*, n.14., s.2. “Economic abuse” can occur when the perpetrator deprives the victim of all or any economic or financial resources to which the victim is entitled under any law or custom, whether payable under an order of a court or otherwise or which the victim requires out of necessity. These resources include, but are not limited to; household necessities for the victim and his or her children.

[162] Olinawe., zoom transcript. WC19 (n₁).18.04.2021, Fort Portal (Katogyo) prison., *op. cit.*, n.160, at 26.

[163] *ibid*, 25.

[164] *ibid*.

[165] *ibid*, 12.

[166] *ibid*, 13.

[167] *ibid*.

[168] *ibid*, 14.

[169] *ibid*.

[170] *ibid*, 21.

[171] *ibid*, 26.

[172] Mukundane. W., zoom transcript. WC18(n₁).18.04.2021, Fort Portal (Katogyo) prison, personal video conferenced communication, April 18, 2021. Winnie agreed to be identified in the report, because she was

delighted to know that her name can appear in a report, when attributed to her prison experience. She believed that this would encourage her and her fellow inmates who would read the report to serve their sentences as a testimony of their resolve to plea bargain.

[173] *ibid*, 12.

[174] See: Domestic Violence Act, *op.cit*, n.14, s.2. “Emotional, verbal and psychological abuse” means a pattern of degrading or humiliating conduct towards a victim, including but not limited to (...) repeated insults, ridicule or name-calling (...).’

[175] See: Domestic Violence Act, *supra* note14, s.2. “economic abuse” includes (...) disposal of household effects, alienation of assets whether movable or immovable, (...) which the victim has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or his or her children or any other property jointly owned or separately held by the victim (...),’

[176] Mukundane. W., zoom transcript. WC18(n₁).18.04.2021, *op.cit*, n.172, 9.

[177] *ibid*, 7.

[178] *ibid*.

[179] Mukundane., zoom transcript. WC18(n₁).18.04.2021, Fort Portal (Katogyo) prison., *op. cit.*, n.172, at 8.

[180] During the interview, *Mukundane* did not disclose her ailment to me, but, explained that at the time of her detention at police she was indeed very sick and did not have her drugs on her.

[181] Mukundane., zoom transcript. WC18(n₁).18.04.2021, Fort Portal (Katogyo) prison., *op. cit.*, n.172, at 11.

[182] *ibid*.

[183] See: Domestic Violence Act, 2010, *op. cit.*, n.14, s.2. “[P]hysical abuse” means any act or conduct which is of such a nature as to cause (...) danger to (...) health or which impairs the health (...) of the victim (...).

[184] Nshabenta. M., zoom transcript, WC20(n₁).23.04.2021, Kabale (Ndorwa) Prisons., personal video conferenced communication, April 23, 2021. The researcher wary that she was a young adult, sought permission to use her name or stick to her ascribed pseudo name of WC20. She agreed to disclosure, despite a caution statement, thus:

PI: (...) As they explained to you in the consent document, (...), we are handling all the information I’m getting from you so discreetly. This is for purposes of confidentiality (...) to protect you from any stigma. So, would you wish me to identify your name in my report, or should I clandestinely cover you up and continue with my findings without disclosing [it] your name in my report; what do you opt for?

WC20: Since I pleaded guilty, and the incident was widely publicised in the media, and everyone got to know about it, not using my name will not improve my image. So you can use it if you so wish.

PI: Okay Marion, are you giving me permission to disclose your name or I anonymise it?

WC20: Yes, I am.

[185] Govender, D., Naidoo, S. & Taylor, M. “I have to provide for another life emotionally, physically and financially”: understanding pregnancy, motherhood and the future aspirations of adolescent mothers in KwaZulu-Natal South, Africa. *BMC Pregnancy Childbirth* 20, 620 (2020). <https://doi.org/10.1186/s12884-020-03319-7>

[186] Leese, Maggie. “The bumpy road to ‘becoming’: capturing the stories that teenage mothers told about their journey into motherhood.” *Child & Family Social Work* 21, no. 4 (2016): 521-529, at 521.

[187] See: Govender, *et. al.*, *op.cit.*, n.185, on the discussion on psychological distress.

[188] Leese, Maggie. “The bumpy road to ‘becoming’, *op.cit.*, n.186, at 2.

[189] Nabugoomu, J., Seruwagi, G.K. & Hanning, R. “What can be done to reduce the prevalence of teen pregnancy in rural Eastern Uganda?: multi-stakeholder perceptions.” *Reprod Health* 17, 134 (2020). <https://doi.org/10.1186/s12978-020-00984-x>

[190] See: Govender, *et. al.*, *op.cit.*, n.185.

[191] Nabugoomu, *et. al.*, *op.cit.*, n. 189.

[192] Nshabenta., zoom transcript, WC20(n₁).23.04.2021, Kabale (Ndorwa) Prisons., *op. cit.*, n.184, at 19.

[193] Anonymous., transcript., WC4(n₁).15.02.2019, Kampala. Luzira Women’s prison, personal communication, February 02, 2019. She preferred anonymity given the horrific facts of her story. Her mental injury was still fresh.

[194] WHO Report, WHO/RHR/12.36, *op. cit.*, n.39, at 1.

[195] She showed me visible scars on her body that she claimed to have sustained from the effects of the ropes.

[196] Anonymous., transcript., WC4(n₁).15.02.2019, Kampala. Luzira Women’s prison., n.193, at 7.

[197] Roberts, Gwenneth L., Gail M. Williams, Joan M. Lawrence, and Beverley Raphael. “How does domestic violence affect women’s mental health?.” *Women & health* 28, no. 1 (1999): 117-129.

[198] Levendosky, Alytia A., and Sandra A. Graham-Bermann. “Parenting in battered women: The effects of domestic violence on women and their children.” *Journal of family violence* 16, no. 2 (2001): 171-192, at 171-172, citing (Cascardi, Michele, and K. Daniel O’Leary. “Depressive symptomatology, self-esteem, and self-blame in battered women.” *Journal of family Violence* 7, no. 4 (1992): 249-259; Khan, Fariha I., Toni L. Welch, and Eric A. Zillmer. “MMPI-2 profiles of battered women in transition.” *Journal of Personality Assessment* 60, no. 1 (1993): 100-111; Newman, Karen D. “Giving up: Shelter experiences of battered women.” *Public Health Nursing* 10, no. 2 (1993): 108-113; and Sato, Robin A., and Elaine M. Heiby. “Correlates of depressive symptoms among battered women.” *Journal of family violence* 7, no. 3 (1992): 229-245.

[199] American Psychiatric Association. “Treating women who have experienced intimate partner violence.” (2020), 1.

[200] Kwagala, Betty, Olivia Nankinga, Stephen Ojiambo Wandera, Patricia Ndugga, and Allen Kabagenyi. “Empowerment, intimate partner violence and skilled birth attendance among women in rural Uganda.” *Reproductive health* 13, no. 1 (2016): 1-9; Kwagala, Betty, Stephen Ojiambo Wandera, Patricia Ndugga,

and Allen Kabagenyi. “Empowerment, partner’s behaviours and intimate partner physical violence among married women in Uganda.” *BMC public health* 13, no. 1 (2013): 1-10.; Wandera, Stephen Ojiambo, Betty Kwagala, Patricia Ndugga, and Allen Kabagenyi. “Partners’ controlling behaviors and intimate partner sexual violence among married women in Uganda.” *BMC Public Health* 15, no. 1 (2015): 1-9; Gubi, Derrick, Elizabeth Nansubuga, and Stephen Ojiambo Wandera. “Correlates of intimate partner violence among married women in Uganda: a cross-sectional survey.” *BMC Public Health* 20, no. 1 (2020): 1-11.

[201] Anonymous., transcript., WC4(n₁).15.02.2019, Kampala. Luzira Women’s prison., n.193, at 5.

[202] *ibid*, 6.

[203] *ibid*, 5-6.

[204] *ibid*, 6.

[205] *ibid*.

[206] Anonymous., transcript., JASB1(n₅). 18.02.2019, Kampala. ULS, personal communication, February 18, 2019.

[207] *ibid*, 7.

[208] *ibid*.

[209] By the time of this interview she had unfortunately lost too her other child that she produced while in prison. Her in-laws came for its body, and even took the baby she had been imprisoned with. So at home she had two children whom she was looking forward to see again.

[210] Mukundane., zoom transcript. WC18(n₁).18.04.2021, Fort Portal (Katogyo) prison., *op. cit.*, n.172, at 11.

[211] Nshabenta., zoom transcript, WC20(n₁).23.04.2021, Kabale (Ndorwa) Prisons., *op. cit.*, n.184, at 19.

[212] See, Persaud, Shiv Narayan. “Conceptualizations of Legalese in the Course of Due Process, from Arrest to Plea Bargain: The Perspectives of Disadvantaged Offenders.” *North Carolina Central Law Review* 31 (2008), at 149, on a similar recommendation.

[213] *Woolmington v. DPP*, AC 462 (House of Lords 1935)., at 481.