

**DEGENDERING DOMESTIC VIOLENCE TO ENHANCE IMPLEMENTATION
OF THE PROTECTION AGAINST DOMESTIC VIOLENCE ACT IN KENYA**

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DECLARATION

I, ARARU SAADA AHMED OSMAN, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:

Mr. Jasper Lubeto

ABSTRACT

Domestic violence is violence against a person, or threat of violence or of imminent danger to a person, by any other person with whom a person is, or has been in a domestic relationship. Domestic violence based on socially ascribed differences between men and women is what is termed as gender-based violence. This type of violence is and has been rampant in Kenya and around the globe over several years. Originally, domestic violence was directed towards women due to the historically unequal power relations and the socially construed gender roles. Among many communities, men are/were deemed superior to the women. The men were the pillars of the community and ought not to show any signs of vulnerability or weakness, and the women were the weaker sex who served the men. Spousal battering was tolerated in these communities. Over the years, there has been calls for gender equality and the abolition of the outdated practices. There have been myriad efforts by women to liberate themselves which have influenced forthcoming regulations, domestically, regionally and internationally. This female emancipation has empowered women and has seen a role reverse in many social, economic, cultural and political sectors.

The Protection Against Domestic Violence Act in Kenya serves as an affirmative action for victims of domestic violence. This legislation addresses issues of domestic violence, hand in hand with the ratified conventions on the same. This study seeks to analyse the scope of this legislation in addressing gender-based domestic violence in an evolving society and protecting victims of domestic violence irrespective of their gender. The study shall further analyse other factors that hinder the implementation and enforcement of the Act and draw a comparative study with other jurisdictions.

LIST OF ABBREVIATIONS

- CEDAW – *Convention on the Elimination of All Forms of Discrimination against Women*
- CoK – *Constitution of Kenya*
- CPS – *Crown Protection Service*
- DEVAW – *Declaration on the Elimination of Violence against Women*
- GBV – *Gender-based violence*
- GMEN – *Global Men Empowerment Network*
- IPV – *Intimate Partner Violence*
- PADV – *Protection against Domestic Violence Act*
- MAWE – *Maendeleo ya Wanaume Organization*
- ONS – *Office of National Statistics*
- UDHR – *Universal Declaration of Human Rights*
- UKSC – *United Kingdom Supreme Court*
- UNGA – *United Nations General Assembly*
- UNSC – *United Nations Security Council*
- UNHCR – *United Nations High Commissioner for Refugees*
- VAWG – *Violence Against Women and Girls*
- VAMB – *Violence Against Men and Boys*
- WHO – *World Health Organisation*

LIST OF CASES

- Carmichele v The Minister of Safety and Security and another (The Minister of Justice and Constitutional Development)* (2001), The Constitutional Court of South Africa.
- Centre for Rights Education and Awareness and 2 others v Speaker of the National Assembly and 6 others* (2017) eKLR.
- C.K and 11 others v The Commissioner of Police and 2 others* (2012) eKLR.
- Fraser v Children’s Court, Pretoria North and others* (1996), Constitutional Court of South Africa.
- Jabulane Alpheus Tshabalala and The State and Commission for Gender Equality and another, In the matter between Annanius Ntuli and The State* (2019), Constitutional Court of South Africa.
- The State v Godfrey Baloyi (Minister of Justice and another intervening)* (1999), The Constitutional Court of South Africa.

Omar v The Government of the Republic of South Africa and others (2005), The Constitutional Court of South Africa.

Republic v Collet Thabitha Wafula (2016) eKLR.

Republic v Johana Munyau Mweni (2017) eKLR.

LIST OF LEGAL AND POLICY INSTRUMENTS

The African (Banjul) Charter on Human and Peoples' Rights, 1981.

The Beijing Declaration and Platform for Action, 1995.

The Constitution of Kenya, 2010.

The Constitution of the Republic of South Africa Act (No. 108 of 1996).

The Committee on the Elimination of Discrimination against Women General Recommendation no. 19, 1992.

The Convention on the Elimination of All Forms of Discrimination against Women, 1979.

The Criminal and Related Matters Amendment Bill of 2020 (South Africa).

The Declaration on the Elimination of Violence Against Women, 1993.

The Domestic Violence Act (No. 116 of 1998), South Africa.

The Domestic Violence Amendment Bill of 2020 (South Africa).

The Guidelines on Combating Sexual Violence and its Consequences in Africa, 2017.

The National Policy on Gender and Development, Sessional Paper No. 2 of 2019.

The Penal Code of Kenya Cap 63 (2014).

The Protection Against Domestic Violence Act, Act No. 2 of 2015.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, 2003.

The Sexual Offences Act, Act No 3 of 2006.

The United Nations Declaration on the Elimination of Violence against Women, 1993.

The Universal Declaration of Human Rights, 1948.

The United Nations Security Council Resolution 1820, 2008.

The United Nations Security Council Resolution 1888, 2009.

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

The United Nations High Commissioner for Refugees (UNHCR) defines gender-based violence (hereinafter referred to as 'GBV') as, “*any act that is perpetrated against a person's will and is based on gender norms and unequal power relationships.*” GBV encompasses threats of violence and coercion that may be physical, sexual, psychological or emotional. Gender-based violence within domestic relationships, herein referred to as gender-based domestic violence, is a violation of human rights disaffirming the human dignity of the individual. Domestic violence is defined as the violence against a person, or threat of violence or of imminent danger to that person by any other person with whom that person is or has been in a domestic relationship.¹ Domestic violence based on socially ascribed differences between men and women is what is termed as gender-based violence. This type of violence penetrates various aspects of society, and the extent varies across cultures, religions, and social classes.

Since 1979 when the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was ratified, there have been several attempts to affirm the equal status of men and women in the society. *Article 1 of the Universal Declaration of Human Rights (UDHR)* provides that, “all human beings are born free and equal in dignity and rights”.² This has been reiterated in legal instruments including the *Constitution of Kenya (CoK) under Article 28* which states that every person has inherent dignity and the right to have that dignity respected and protected.³ The Protection Against Domestic Violence Act (hereinafter referred to as 'PADV Act') serves as a basis for affirmative action in the protection of vulnerable groups in the society. The Act deals with violence with relation to those in a domestic relationship, including men, women, and children. With reference to the Constitution and other international instruments, all persons have equal protection under the Act of Parliament regardless of their gender. *Article 27 of the Constitution* captures this. This provision highlights that every person is equal before the law and has the right to equal protection and benefit of the law.⁴

¹ Adebayo A, 'Domestic Violence against Men: Balancing the Gender Issues in Nigeria' 4 *American Journal of Sociological Research* 14, 2014.

² Article 1, *Universal Declaration of Human Rights*, 10 December 1948.

³ Article 28, *Constitution of Kenya* (2010).

⁴ Article 27(1), *Constitution of Kenya*.

In 2015, Kenya enacted the proposed legislation on the Protection Against Domestic Violence of 2012. This is the act of Parliament meant for the protection and relief of victims of domestic violence, to provide for the protection of a spouse and any children or other dependent persons, and to provide for matters connected therewith or incidental to.⁵ Domestic violence is defined, by the legislation, as *violence against a person, or a threat of violence or imminent danger by someone who that person is in or has been in a domestic relationship defined in Section 4 of the Act.*⁶ The Act gives provisions for enforcement and management mechanisms for the protection against domestic violence which includes highlighting the duties of police officers in relation to domestic violence and the criminal nature of domestic violence.⁷ The Act further gives a social responsibility to anyone who suspects cases of domestic violence to report them to the police. This piece of legislation has therefore proposed active mechanisms to curb domestic violence.

The proposal and enactment of this legislation however arises at a time where there is a push for female emancipation to bridge the gender disparities by various social groups across the globe. Domestic violence was ordinarily directed against women, with men as the perpetrators. The *CEDAW Committee in its General Comment 19* defined gender-based violence as a form of discrimination and violence that is directed against a woman because she is a woman or that affects women disproportionately.⁸ This was further elaborated in the United Nations Declaration on the Elimination of Violence against Women (DEVAW).⁹ According to the DEVAW, violence against women is recognized as a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men.¹⁰ Male domination over women has historical roots in many cultural backgrounds in Kenya. These cultural societies are however evolving, and their functions have changed over time. Hailing from a predominantly patriarchal society, the pre-existing cultural stigma is hindering the implementation of the legislation where the victims in question are male.

⁵ Preamble, *Protection Against Domestic Violence Act* (Act No 2 of 2015).

⁶ Section 3, *Protection Against Domestic Violence Act*.

⁷ Section 6 and 7, *Protection Against Domestic Violence Act*.

⁸ *CEDAW General Recommendation No. 19, Violence against women*, 28 January 1992, 6.

⁹ Article 1, *United Nations Declaration on the Elimination of Violence against Women*, 1993.

¹⁰ Article 1, *United Nations Declaration on the Elimination of Violence against Women*.

This prompts the question whether the provisions of the Act envisioned an evolving society and whether these provisions fit that society, where both men and women have equal status in the society. It is therefore important to question whether proper mechanisms are in place in the equal benefit of the law by both genders.

1.1 Statement of the Problem

The Protection Against Domestic Violence Act serves as a basis for affirmative action in the protection of vulnerable groups in the society. The Act deals with violence with relation to those in a domestic relationship, including men, women, and children. With reference to the Constitution and other international instruments, all persons have equal protection under the Act of Parliament regardless of their gender. However, due to the female emancipation movement in the predominantly male society, there has been a cultural hinderance in the enforcement of the legislation. Male domination portrayed perpetrators of domestic violence as primarily male. In response to this problem, this study seeks to investigate the conclusiveness of the legislation, being the primary source of law in gender-based violence cases, in ensuring protection of rights free from gender bias. It is necessary for enforcement mechanisms such as the social departments, police, and the Courts to ensure that all human beings are treated equally, free from any social biases. The study further seeks to look into the mechanisms put in place by the Act and suggests efficient means to reduce the number of GBV cases across the country, especially the remote areas which still enforce customary laws.

1.2 Rationale of the Study

This study has both an academic, constitutional, and social relevance.

From an academic perspective, it shall contribute to a further understanding on the Protection Against Domestic Violence Act and its application in the society. It shall bring further debate on the efficacy of this Act in the protection of constitutional rights such as equality and freedom from discrimination which includes the right to equal protection and equal benefit of the law. The recommendations made herein may be used in future research to improve the systems in place, or in the creation of new systems to reduce cases of gender-based violence.

This study focuses on the domestic social groups of the human society. The systems in place seek to protect the rights of these social groups in relation to gender-based violence. It further touches on issues of the family which is the basic social unit of the society.

1.3 Significance of the Study

Domestic violence is primarily a human rights issue within domestic relationships. The CoK accords every person inherent dignity and the right to have this dignity respected and protected under Article 28. It further gives provisions for equality and freedom from bias under Article 27. This includes provisions stating that every person is equal before the law and has the right to equal protection and benefit of the law. This study analyses the provisions and implementation of the PADV Act in Kenya in line with these constitutional provisions. The results of this study shall promote the equal status of men and women before the law in gender-based violence cases, without bias from past experiences of male domination of the society. Both social groups should have equal benefit of this law. This study shall therefore focus on domestic violence of both genders rather than equating domestic violence to violence against women.

1.4 Hypothesis

The law for the protection against domestic violence in Kenya, to a large extent, is adequate. It provides for the rights of protection of spouses, children, and people in domestic relationships. However, the implementation and enforcement has not significantly protected the rights of these persons due to gender disparities in the application of the law, in line with the cultural background in the dominantly patriarchal society in Kenya. There is therefore a need for reforms in the interpretation and implementation of the law so as to ensure a society free from gender-based violence.

1.5 Aims and Objectives

The aim of this study is to assess the Protection Against Domestic Violence Act No. 2 of 2015 to determine the adequacy in the protection of the right to inherent dignity and the right to freedom and security, which includes the right not to be subjected to any form of violence from private or public, free from gender discrimination or bias.

The following are the objectives of the study.

1. To look into the implementation mechanisms put in place by the Protection Against Domestic Violence Act to reduce the number of GBV cases.
2. To assess the international instruments on domestic violence and the standards set by these instruments to curb gender-based violence.
3. To conduct a comparative study to other jurisdictions such as the United Kingdom and South Africa on their approach to dealing with GBV in evolving societies.

4. To explore and establish educational and legal measures that can be put in place to ensure equal protection of rights to promote human dignity of both men and women.

1.6 Research Questions

The following are the research questions to be considered during the study.

1. Has the cultural background of the Kenyan Society affected the implementation of the Protection Against Domestic Violence Act?
2. To what extent has the cultural background of the society affected the implementation of the Act?
3. How have the gender disparities affected the implementation of the Act?
4. What institutions and social departments are mandated to assist in the protection against gender-based violence? What roles do these institutions play?
5. What measures and policies can the State apply to curb gender-based violence?

1.7 Theoretical Framework

Patriarchy is defined as the male domination and the power relationships by which men dominate over women.¹¹ A broader definition of patriarchy by Lerner as well as Jagger and Rosenberg is the institutionalization and the manifestation of male dominance over women within the family and in the larger social groups.¹²

It is a traditionally held belief that men are habitually the perpetrators of domestic violence. As mentioned above, international instruments such as the CEDAW and the UN DEVAW, gender-based violence was originally directed towards women, with the main perpetrators being male. This is fueled by the belief by some communities across the globe where domestic violence is prevalent and is justified by some cultures, especially in the Third World countries and Asia. For instance, in some African communities, it is deemed a taboo for a woman to raise their hands on their husbands, or in the United Arab Emirates, where a Supreme Court ruled that a man has the right to physically discipline his wife and children as long as he does not leave physical marks.¹³ It is for these purposes that many jurisdictions

¹¹ Bhasin K, 'What is Patriarchy', New Delhi, 2006.

¹² Sultana A, 'Patriarchy and Women's Subordination: A Theoretical Analysis' *The Arts Faculty Journal*, July 2010-June 2011, 4.

¹³ Adebayo A, 'Domestic Violence against Men: Balancing the Gender Issues in Nigeria'.

have passed legislations focusing on violence against women, with little concern given to men.¹⁴

However, over the years, men have become more susceptible to domestic violence in Kenya, characterized by assault and battery cases as reviewed by the Kenya National Crime Research Centre. There has been a shift in the traditional gender roles and positions of different social groups within the society. There is therefore a need to look into the efficiency of the implemented mechanisms in preventing gender-based violence, regardless of the gender, in line with constitutional provisions of equality.

1.8 Literature Review

Domestic violence is a social issue in many countries, Kenya included, thus, several studies have been done to establish means to curb this type of violence. It should be noted that several writers focus on the protection of rights against domestic violence, perpetrated against women. The following section highlights the literal works of various persons in light of gender-based violence.

Adebayo¹⁵ draws the cultural background in different societies across the world and their approach to gender-based violence. Traditionally, many communities did not term instances where a husband uses force or beats their wife as violence. It was a common practice and many women in these societies thought the men were justified to do so.

Goetz and Weeks¹⁶ state that since the late 1980s, both male and female feminists have recognised the need to involve men in the struggle for equality, and to combat notions of masculinity built on the domination of women and gender violence. They establish that domestic violence is a socio-economic issue stating that increased unemployment, isolation, and anxiety among men goes hand in hand with increased violence against women.

Ali¹⁷ highlights that violence against women and girls has been acknowledged as a violation of basic human rights and a form of discrimination against women, reflecting the prevalent imbalance of power between men and women. She analyses gender inequality as a cause and consequence of violence.

¹⁴ Eltahawy M and Jones A, 'Rooted in Tradition: Community-Based Violence Against Women' *Insecure World: Violence against Women Facts, Figures and Analysis*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, 2005, 25-26.

¹⁵ Adebayo A, 'Domestic Violence against Men: Balancing the Gender Issues in Nigeria'.

¹⁶ Goetz AM and Dore-Weeks R, 'What about the men? Frankly, it depends on why you're asking' *The Guardian*, 8 March 2018 —<<https://www.theguardian.com/global-development/2018/mar/08/what-about-the-men-depends-why-youre-asking>> on 10 March 2020.

¹⁷ Ali FA, 'Women's agency and violence against women: The case of the coalition on violence against women in Kenya' *African Conflict and Peacebuilding Review* 1, 2017.

Moraa¹⁸ argues that the Act provides little or no deterrence effect based on the historical definition of violence which has been grounded in looking at women as victims and even though the Act is proper in intent, the lack of willingness of victims to report or prosecute renders it ineffective. She further highlights the need for empowerment of both men and women so as to minimize long-term vulnerability to violence, which currently has only focused on women. She further questions the efficacy in the use of protection orders, as required by the Act to deter domestic violence.

The legal and policy instruments addressing GBV in Kenya are essentially the Constitution of Kenya, the Sexual Offences Act, the Penal Code, and the UN CEDAW.¹⁹ The Ministry of Public Service and Gender highlighted 45% of women and 44% of men having experienced domestic violence. The causes of GBV are deeply rooted in unequal power relations at structural and cultural levels.

1.9 Research Methodology

This study will use a socio-legal research methodology. It is a library-based research with reference made to primary and secondary sources of data. The primary source of the study is the PADV Act No. 2 of 2015 with reference to the 2010 Constitution of Kenya, international conventions such as the Universal Declaration of Human Rights, regional conventions such as the African Charter on Human and Peoples Rights and case law on domestic violence. Secondary sources of data includes books, government publications such as that of the National Crime Research Centre, newspapers, internet sources and journal articles.

1.10 Limitations

Being a library-based research, this study is limited to the primary and secondary sources of data. This factor therefore limits my research to accessible sources. With the onset of the COVID-19 pandemic, the court registries are inaccessible, thus limiting my case reports to those available on the Kenya Law Reports site online. My research is based on already available materials readily available in the library and on the internet. With regards to the use of the internet, I have filtered the materials and used verified and reliable sources.

1.11 Chapter Breakdown

Chapter 1: Introduction. This chapter explains the background and aim of the study.

¹⁸ Isaboke WM, 'What about men: Questioning the deterring efficacy of Kenya Protection against Domestic Violence Act (2015) in addressing violence against men in Kenya' Social Science Research Network, 2018.

¹⁹ Gender Based Violence in Kenya, National Crime Research Centre Report, *Final Draft*, 2014.

Chapter 2: The legal and policy framework on domestic violence. This chapter highlights the provisions for gender-based violence in Kenya, regionally and internationally.

Chapter 3: Implementation and enforcement mechanisms of the legal provisions in Kenya. This chapter shall highlight how Kenyan Courts have implemented the Protection Against Domestic Violence Act.

Chapter 4: Comparative study of the legal framework in Kenya and other jurisdictions. The analysis in this chapter shall look into the legal and policy framework of the United Kingdom and South Africa, drawing a comparison with that of Kenya as discussed in the previous chapter.

Chapter 5: Conclusion. This chapter shall highlight the findings of the study and the recommendations to curb gender-based violence

CHAPTER TWO

2.0 THE LEGAL AND POLICY FRAMEWORK OF DOMESTIC VIOLENCE

This chapter analyses the legal framework and policy framework of gender-based violence in Kenya (domestically), in Africa (regionally), and internationally, focussing on the legal provisions of various instruments of law and the policy framework in various institutions with regards to protection and elimination against domestic violence.

2.1 THE INTERNATIONAL APPROACH TO THE PROTECTION AGAINST DOMESTIC VIOLENCE

The section shall look into the international human rights law on domestic violence and the obligation of States in protecting persons against domestic violence. The following instruments give provisions to prevent acts of, and elimination of domestic violence.

2.1.1 The Universal Declaration of Human Rights

The *Universal Declaration of Human Rights (UDHR)* sets out the fundamental human rights to be universally protected. The Preamble of the UDHR recognises the inherent dignity and the equal inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.²⁰ Article 1 and 2 of this Convention establishes this by addressing that all human beings are born free and equal in dignity and rights without distinction of any kind such as sex or any other status.²¹ Gender-based violence is deemed as an act attacking and demeaning the dignity of a person. It is a violation of the abovementioned Articles.

Everyone under this Convention is entitled in full equality to fair hearing in the determination of their rights and obligations and of any criminal charge against them as per Article 10.²² Therefore, where a case of sexual violence is reported, everyone regardless of their gender is entitled to a fair hearing. Sexual violence is highlighted as a crime against humanity in the Rome Statute of the International Criminal Court.²³

2.1.2 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the UNGA in 1979 to define what constitutes discrimination against women and

²⁰ The Preamble, *The Universal Declaration of Human Rights*, 10 December 1948, UNGA Resolution 217A.

²¹ Article 1 and 2, *The Universal Declaration of Human Rights*.

²² Article 10, *The Universal Declaration of Human Rights*.

²³ Article 7(g), *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 38544.

sets up an agenda for national action to end such discrimination.²⁴ This Convention primarily concerns addressing domestic violence with regards to women. It is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.²⁵ Article 1 of the CEDAW highlights violence against women as a form of discrimination.²⁶

The CEDAW establishes the Committee on the Elimination of Discrimination Against Women which monitors the implementation of the Convention.²⁷ The 1992 General Recommendation No. 19 affirms gender-based violence as discrimination within the meaning of Article 1 of the Convention.²⁸ General Recommendation 19 requires State Parties to report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken to protect women against all kinds of violence.²⁹ General Recommendation 19 further requires the member states to adopt effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family.³⁰

2.1.3 The Beijing Declaration and Platform for Action

The Beijing Declaration reaffirms the United Nation's commitment to the equal rights and inherent human dignity of women and men and other principles enshrined in the United Nations Charter, the Universal Declaration of Human Rights and other international human rights instruments, in particular the CEDAW and the Declaration on the Elimination of Violence against Women.³¹ The prevention and elimination of all form of violence against women and girls by signatories is highlighted in Annex I of the Beijing Declaration.³²

One of the strategic objectives of the Beijing Declaration is for Governments to take integrated measures to prevent and eliminate violence against women.³³ The State Parties are required to adopt and implement and periodically review and analyse legislation to

²⁴ Convention on the Elimination of All Forms of Discrimination against Women, United Nations Entity for Gender Equality and the Empowerment of Women - <<https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>> on 18 September 2020.

²⁵ The Preamble, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, UNGA Resolution 34/180.

²⁶ Article 1, *Convention on the Elimination of All Forms of Discrimination against Women*.

²⁷ Article 17, *Convention on the Elimination of All Forms of Discrimination against Women*.

²⁸ Paragraph 7, *Committee on the Elimination of Discrimination against Women General Recommendation No. 19*, 1992.

²⁹ Paragraph 24s, *Committee on the Elimination of Discrimination against Women General Recommendation No. 19*.

³⁰ Paragraph 24t, *Committee on the Elimination of Discrimination against Women General Recommendation No. 19*.

³¹ Article 8, *Beijing Declaration and Platform for Action*, 15 September 1995.

³² Annex I, *Beijing Declaration and Platform for Action*.

³³ Article 124, *Beijing Declaration and Platform for Action*.

ensure the effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders, take measures to ensure the protection of women subjected to violence, access to just and effective remedies including compensation and indemnification and healing of victims.³⁴ This objective includes the implementation of CEDAW, taking into account General Recommendation 19 as highlighted above.

2.1.4 United Nations Security Council Resolutions

Various United Nations Security Council (UNSC) Resolutions address gender-based violence. The *United Nations Security Council Resolution 1820* reaffirms the obligations of State Parties to the Convention of the Elimination of All Forms of Discrimination against Women.³⁵ Article 4 of this Resolution calls on states to end impunity for sexual violence and ensure that all victims, particularly women and children have equal protection under the law and equal access to justice.³⁶

The *UNSC Resolution 1888* continues the full implementation of Resolution 1820, the Beijing Declaration and the CEDAW.³⁷ Article 6 of this Resolution urges States to undertake comprehensive legal and judicial reforms in conformity with international law, without delay and with a view to bringing perpetrators of sexual violence in conflicts to justice and to ensuring that survivors have access to justice, are treated with dignity throughout the justice process, receiving redress and protection for their suffering.³⁸

2.2 THE REGIONAL POLICY FRAMEWORK AGAINST DOMESTIC VIOLENCE

This section outlines some of the instruments and institutions established by regional states to condemn all acts of gender-based violence and pursue guiding policies and principles to eradicate this type of violence. These include but not limited to the following.

2.2.1 The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women commits State Parties to the adoption of specific measures to combat violence against women, especially sexual violence.³⁹ Article 2 of the African Charter on Human and Peoples'

³⁴ Article 124, *Beijing Declaration and Platform for Action*.

³⁵ UNSC S/RES/1820 (2008) Sexual Violence as a Weapon of War, 2.

³⁶ UNSC S/RES/1820 (2008) Sexual Violence as a Weapon of War, 4.

³⁷ UNSC S/RES/1888 (2009) Women, Peace and Security, 2.

³⁸ UNSC S/RES/1888 (2009) Women, Peace and Security, 4.

³⁹ The Preamble, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 1 July 2003.

Rights further enshrines the principle of non-discrimination on the grounds of, among others, sex.⁴⁰ The Protocol considers Article 18 of the African Charter which calls on State Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations.⁴¹

The Protocol aims at eliminating all forms of discrimination and at promoting equality between women and men bearing in mind other instruments such as the UNSC Resolutions.⁴²

Article 3 highlights the adoption and implementation of appropriate measures to ensure the protection of women's rights to respect for her dignity and protection of women from all forms of violence, particularly sexual violence.⁴³ Article 8 highlights the principle of gender equality which requires the law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights.⁴⁴

2.2.2 Guidelines on Combating Sexual Violence and its Consequences in Africa

The African Commission on Human and Peoples' Rights adopted the Guidelines on Combating Sexual Violence and Its Consequences in Africa recognizing the urgency and need to combat sexual violence and its consequences through coordinated measures aimed at preventing these violations, by attacking their root causes, providing protection and support to victims, bringing perpetrators to justice in compliance with States' obligations under regional and international human rights instruments such as the Solemn Declaration on Gender Equality in Africa.⁴⁵

The Guidelines define sexual violence as any non-consensual sexual act, a threat or attempt to perform such an act, or compelling someone to perform such an act on a third person.⁴⁶ It further states that this definition must be applied irrespective of the sex or gender of the victim and the perpetrator, and of the relationship between the victim and the perpetrator.⁴⁷ In defining gender-based violence, the Guidelines on Victims of Sexual Violence states that women and girls are particularly vulnerable to sexual violence due to ongoing discrimination

⁴⁰ Article 2, *The African (Banjul) Charter on Human and Peoples' Rights*, 27 June 1981 OAU Doc. CAD/LEG/67/3.

⁴¹ Article 18, *The African (Banjul) Charter on Human and Peoples' Rights*.

⁴² The Preamble, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.

⁴³ Article 3, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.

⁴⁴ Article 8, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.

⁴⁵ The Preamble, *Guidelines on Combating Sexual Violence and its Consequences in Africa*, 22 May 2017.

⁴⁶ Paragraph 3.1(a), *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

⁴⁷ Paragraph 3.1(b), *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

against them entrenched in legislation, that is perpetuated by customs and traditions which contribute to the patriarchal attitudes, gender-based stereotypes and violence.⁴⁸

The Guidelines highlight sexual violence affecting men and boys which similarly to women and girls, is used as a means of dominating, subordinating or humiliating the victim and or the group to which the victim belongs. Furthermore, due to the stereotypes pinned against masculinity, men and boys who are victims of sexual violence face challenges in reporting such violence and receiving appropriate assistance.⁴⁹ It recognises that this phenomenon remains largely undocumented.⁵⁰

States have the obligation to take the necessary measures to prevent all forms of sexual violence and its consequences by eliminating the root causes of that violence, including stereotypes based on gender identity.⁵¹ States further have the obligation to take necessary measures to guarantee that victims are protected from any new act of sexual violence.⁵² The States must adopt legislative measures to provide effective remedy and reparation for the victims of sexual violence, including effective access to justice, fair and equitable treatment during legal proceedings and timeous reparation for any damages sustained.⁵³

2.3 THE LEGAL AND POLICY FRAMEWORK ON DOMESTIC VIOLENCE IN KENYA

This section highlights the domestic legal and policy framework on gender-based violence in Kenya. The following are the guiding policy instruments and institutions on domestic violence.

2.3.1 The Constitution of Kenya, 2010

The CoK highlights various principles to protect individuals from harmful acts such as gender-based violence, and to promote human dignity and gender equality. This is in line with the provisions of Article 28 which states that every person has inherent dignity and the right to have that dignity respected and protected.⁵⁴ Article 10 of the Constitution gives the provision on the national values and principles of governance which include human dignity, equity, social justice, inclusiveness, equality, human rights and non-discrimination.⁵⁵ The

⁴⁸ Paragraph 3.2(b), *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

⁴⁹ Paragraph 3.2(c), *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

⁵⁰ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Report on the work of the United Nations Workshop on Conflict-Related Sexual Violence Against Men and Boys*, 26 July 2013, 11.

⁵¹ Paragraph 7, *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

⁵² Paragraph 8, *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

⁵³ Paragraph 10, *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

⁵⁴ Article 28, *Constitution of Kenya* (2010).

⁵⁵ Article 10(2)(b), *Constitution of Kenya* (2010).

national values and the principles of governance bind all persons in the enactment, application, and implementation of any law. Article 27 echoes the principle of equality and non-discrimination. Under this Article, every person is equal before the law and has the right to equal protection and equal benefit of the law.⁵⁶ Furthermore, women and men have the right to equal treatment in political, economic, cultural, and social spheres.⁵⁷

Chapter 4 of the 2010 Constitution houses the Bill of Rights which states the fundamental rights and freedoms of all persons.⁵⁸ The purpose of the Bill of Rights is to preserve the dignity of individuals and communities and to promote social justice.⁵⁹ The Bill of Rights provides that every person has the right to freedom and security of the person, which includes the right not to be treated in a cruel, inhuman or degrading manner.⁶⁰ This provision safeguards persons against gender-based violence which can be deemed as cruel, inhuman and degrading treatment.

The Constitution establishes the Kenya National Human Rights and Equality Commission under the Bill of Rights.⁶¹ One of the functions of the Commission is to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development.⁶² The Commission acts as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating too human rights.⁶³

2.3.2 Protection Against Domestic Violence Act, No. 2 of 2015

The Protection Against Domestic Violence Act (PADV Act) was enacted by Parliament to provide for the protection and relief of victims of domestic violence, to provide for the protection of a spouse and any children or other dependent persons, and to provide for matters connected therewith or incidental thereto.⁶⁴ The Act defines domestic violence as *violence against a person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.*⁶⁵ Section 4 of the Act states the meaning of a domestic relationship. A person is deemed to be in a domestic with another person if the person is or has been married to that person, is living in the same household with that person, is a family member of that other person, has been

⁵⁶ Article 27(1), *Constitution of Kenya* (2010).

⁵⁷ Article 27(3), *Constitution of Kenya* (2010).

⁵⁸ Chapter Four, *Constitution of Kenya* (2010).

⁵⁹ Article 19(2), *Constitution of Kenya* (2010).

⁶⁰ Article 29(f), *Constitution of Kenya* (2010).

⁶¹ Part 5, Chapter Four, *Constitution of Kenya* (2010).

⁶² Article 59(2)(b), *Constitution of Kenya* (2010).

⁶³ Article 59(2)(g), *Constitution of Kenya* (2010).

⁶⁴ Introduction, *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁶⁵ Section 3(2), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

engaged to get married to that other person, is a coparent, or has a close personal relationship with the other person.⁶⁶ The description extends the scope of domestic relationships beyond spouses, as commonly misunderstood. This points out the fact that both male and female persons may be victims and perpetrators of domestic violence. Section 8 of the PADV Act further provides that any person who falls within the scope of a domestic relationship with another person may apply to the Court for a protection order in respect of another person.⁶⁷ The jurisdiction for proceedings is vested in the Resident Magistrates' Courts.⁶⁸

The Act also gives an obligation to the Inspector-General of Police to ensure development of procedures regarding matters under the Act such as training police officers to deal with family related matters or domestic violence.⁶⁹ The police officers are obliged to advise a complainant of domestic violence of all relief measures available to them⁷⁰ and how the complainant may lodge a criminal complaint.⁷¹ The Court may make a protection order if it is satisfied that the respondent has used or is using domestic violence against the applicant and that the making of that order is necessary for the protection of the applicant.⁷² The Court may further take into account the circumstances of each case and direct the parties to participate in counselling and conciliation programmes or any other programme which is acceptable to the Court.⁷³ The counselling is aimed at ensuring respect for the law prohibiting domestic violence, the promotion of a protective environment for all within the family and the promotion of harmonious domestic relations between and among the parties.⁷⁴

2.4 CONCLUSION

By virtue of Article 2 of the Constitution, the general rules of international law form part of the law of Kenya.⁷⁵ Any treaty or convention ratified by Kenya forms part of the law of Kenya under the Constitution.⁷⁶ For instance, Kenya is a signatory to international and regional instruments such as the CEDAW and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women. Therefore, the obligations stated in these instruments need to be domesticated to address related issues in promoting gender equality in the protection against domestic violence.

⁶⁶ Section 4(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁶⁷ Section 8(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁶⁸ Section 24(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁶⁹ Section 6(4)(a), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁷⁰ Section 6(1)(a), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁷¹ Section 6(1)(b), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁷² Section 13(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁷³ Section 14(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁷⁴ Section 14(2), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁷⁵ Article 2(5), *Constitution of Kenya* (2010).

⁷⁶ Article 2(6), *Constitution of Kenya* (2010).

Article 21 of the Constitution obligates the State to enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.⁷⁷ This is seen through the enactment of legislation such as the PADV Act which addresses issues of domestic violence. The provisions of the Act extend to all persons, irrespective of their gender. The Act further guides law enforcement officers on protective measures for the victims of domestic violence. However, there is need to address further issues of domestic violence to promote gender equity and gender equality in the legislation as per the international agreements. There is also a need to give clear punitive measures for the accused persons in domestic violence cases as the Act is vague on this, leaving much discretion to the judges.

The next chapter shall analyse the implementation and the enforcement of the abovementioned provisions in Kenya and the efficacy in preventing domestic violence and protecting victims of this type of violence.

⁷⁷ Article 21(4), *Constitution of Kenya* (2010).

CHAPTER THREE

3.0 IMPLEMENTATION AND ENFORCEMENT MECHANISMS OF THE LEGAL PROVISIONS IN KENYA

The previous chapter highlighted the legal and policy framework on domestic violence nationally, at a regional level and internationally. This chapter shall analyse the implementation of the abovementioned legal provisions by Kenyan courts and other governmental institutions in preventing domestic violence, punishing the perpetrators and protection of the victims of this type of violence. The analysis shall make reference to the National Crime Research Centre reports on gender-based violence, the State of the Nation Study on Violence Against Men and Boys in Kenya and decided cases in the Kenyan Courts. The Protection Against Domestic Violence Act was adopted in 2015 to provide protection and relief of victims of domestic violence. Prior to the adoption of this legislation, the courts relied on the Penal Code and other legislations such as the Sexual Offences Act. However, these instruments did not adequately address, extensively, issues of domestic violence. The reports herein analysed expose some of these issues, including gender-based domestic violence. This chapter discusses issues relating to gender-based domestic violence and further seeks to show the effect of social constructs of gender on the enforcement of the Act primarily and other laws addressing domestic violence.

3.1 The National Crime Research Centre Report, 2018

The National Crime Research Centre Report of 2018 defines GBV as an umbrella term for *any harmful act that is perpetrated against a person's will that is based on socially ascribed differences between men and women.*⁷⁸ Furthermore, the Report defines gender as the socially construed roles, behaviour, activities and attributes that a particular society considers appropriate for men and women, which give rise to gender inequalities that systematically favour one group.⁷⁹ The World Health Organisation (WHO) in 2005, as cited in the Report, acknowledged that the common victim of GBV is the female gender.⁸⁰

The National Crime Research Centre Report highlights the legal provisions addressing gender-based violence within domestic relationships to include the 2010 Constitution of Kenya, the Penal Code and the Gender Policy of 2011.⁸¹ It further highlights international legal and policy framework addressing this type of violence in Kenya through the provisions

⁷⁸ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, ix.

⁷⁹ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 1.

⁸⁰ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 1.

⁸¹ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 13.

of the CEDAW. The Report reiterates the provisions of the Constitution under Article 27 on equality before the and the right to equal benefit of the law, and the provisions of Article 28 which states that every person has inherent dignity and the right to have that dignity respected and protected.

The National Crime Research Centre Report is based on a survey with individual respondents selected randomly targeting a sample of 80% women and 20% men.⁸² The key findings in the Report included 73.8% of the female respondents and 68.9% of the male reporting that the most common description of what constitutes GBV was “bodily harm inflicted by man on a woman”. However, more men than women reported GBV to be bodily harm inflicted by woman on man, and psychological harm inflicted by woman on man.⁸³ The Report highlights a gender bias in which women trivialize the experiences of men and a cultural change in which men admit being victimized by women.

The Report further stated in the findings that the most common forms of GBV mentioned by both men and women were inflicting bodily harm or physical assault, verbal abuse, and rape.⁸⁴ There are clear differences indicated by more women than men identifying bodily harm as a common form of GBV, and more men than women identifying discrimination. The Report, however, recognises women as the main victims of gender-based violence within the domestic setting due to the cultural norms in place. The community setting which over a long period of time has justified the violence towards women through the domination of men through the prescribed societal gender roles.⁸⁵ Although these communities have evolved, recognising some norms are against the laws of the country because they violate the rights of the victim, some people within these communities are still holding on to outdated cultures such as spousal abuse.⁸⁶ These gender norms scripted by the communities have further intimidated men who have experienced any form of gender-based violence to report these incidents.⁸⁷

3.2 The State of the Nation Study on Violence Against Men and Boys in Kenya, 2017

This study was conducted by the Maendeleo ya Wanaume (hereinafter referred to as ‘MAWE’) Organization or the Global Men Empowerment Network (GMEN) in 10 counties

⁸² National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, x.

⁸³ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 24-25.

⁸⁴ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 25-26.

⁸⁵ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 4.

⁸⁶ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 50.

⁸⁷ National Crime Research Centre, *Gender Based Violence in Kenya*, 2014, 59.

in Kenya in 2017.⁸⁸ This study by MAWE highlights that violence against men is prevalent in every society, and encompasses different forms of physical, sexual, economic and emotional abuse.⁸⁹ It is important to note that men and boys can be victims of violence at the hands of both sexes and that the results of the survey show that violence against men is predominantly perpetrated by both men and women.⁹⁰ This type of violence is highlighted and discussed as gender-based violence.

It is reported that the average citizen and media view domestic violence as a manmade social problem against the female gender due to the ill assumption that the male gender is automatically empowered throughout his livelihood and the belief that one will suffer misfortune if he shares his marital problems with anyone.⁹¹ The study highlights that the UN is biased on violence against men and boys in defining and addressing issues of domestic violence.⁹² This is as highlighted in the previous chapter through the definitions in the conventions such as CEDAW. The UN conventions address domestic violence as any act of gender based violence that is directed against a woman, because she is a woman, or violence that affects women disproportionately, failing to address violence against both genders.

Furthermore, men and women commit violence in equal measures.⁹³ However, women continue to be seen as victims and are often treated benignly from the societal level, at the police stations and in the law courts. The study reports that majority of the men suffer due to cultural aspects such as the African culture not allowing a man to show weakness.⁹⁴ For instance, it is a taboo in some communities to see a man crying or showing any signs of vulnerability.

The study by MAWE highlights the need for laws in Kenya to emphasize respect for the right of every person to live in a secure and dignified manner, prevention and control of violence occurring within domestic relationships, and making such violence punishable, as

⁸⁸ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 1.

⁸⁹ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 8.

⁹⁰ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 8.

⁹¹ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 10.

⁹² Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 26.

⁹³ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 38.

⁹⁴ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 33.

well as providing legal remedies irrespective of their gender.⁹⁵ Gender inequality is accentuated by the fact that governments worldwide are committed to safeguarding women and girls from all forms of domestic violence and abuse, and have not done the same to men and boys.⁹⁶

3.3 The Implementation of the Legal and Policy Framework in Kenya

This section shall look into the implementation of the gender-based violence and the domestic violence laws mentioned in the previous chapter by Kenyan Courts. Section 24 of the PADV Act vests jurisdiction for any proceedings under the Act in the Resident Magistrates' Courts.⁹⁷ Section 8 of the PADV Act in Kenya provides that a person who is in a domestic relationship with another person may apply to the Court for a protection order in respect of that other person.⁹⁸ The Resident Magistrates' Court⁹⁹ in turn, may make a protection order if it is satisfied that the respondent is using, or has used, domestic violence against the applicant.¹⁰⁰

The Constitution grants the High Court unlimited original jurisdiction in criminal and civil matters¹⁰¹ and the jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened¹⁰² under Article 165. Furthermore, this Court has jurisdiction to hear any question respecting the interpretation of the Constitution including the determination of the question whether any law is inconsistent with or in contravention of the Constitution.¹⁰³

In the case of *Centre for Rights Education and Awareness and 2 others v Speaker of the National Assembly and 6 others*,¹⁰⁴ the judgment recognises that the Constitution of Kenya gives prominence to national values and principle of governance under Article 10(2) which include the rule of law, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. These principles are binding on all State organs and all persons whenever any of them applies, or interprets the

⁹⁵ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 40.

⁹⁶ Maendeleo ya Wanaume (MAWE) or Global Men Empowerment Network (GMEN), *State of the Nation Study on Violence Against Men and Boys*, 2017, 85.

⁹⁷ Section 24(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁹⁸ Section 8(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁹⁹ Section 24(2), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

¹⁰⁰ Section 13(1), *The Protection Against Domestic Violence Act* (Act No. 2 of 2015).

¹⁰¹ Article 165(3)(a), *Constitution of Kenya* (2010).

¹⁰² Article 165(3)(b), *Constitution of Kenya* (2010).

¹⁰³ Article 165(3)(d)(i), *Constitution of Kenya* (2010).

¹⁰⁴ *Centre for Rights Education and Awareness and 2 others v Speaker of the National Assembly and 6 others* (2017) eKLR.

Constitution, and enacts, applies or interprets any law. The Constitutional Court of South Africa affirms the principle of equality at the very heart of the Constitution which permeates and defines the ethos which the Constitution is premised, in the case of *Fraser v Children's Court, Pretoria North and others*.¹⁰⁵ The principle of gender equality and social justice applies in the implementation to protect persons against domestic violence.

In the case of *R v Collet Thabitha Wafula*,¹⁰⁶ the accused had been charged with manslaughter for unlawfully killing Lukas Oduor Abok, her husband. The case was brought before the High Court at Siaya. The couple engaged in a domestic quarrel after the deceased returned home drunk and accused his wife of infidelity. The argument turned violent and the accused proceeded to another room, picked a kitchen knife and stabbed her husband from the back. The Court took into account the circumstances surrounding the commission of the offence and that the incident arose out of domestic violence. The accused is a young, widowed mother and the Court noted that she is both a victim of domestic violence and the accused in this matter. The accused was therefore sentenced to non-custodial sentence.

In the case of *R v Johana Munyau Mweni*,¹⁰⁷ the accused was charged with murder where the offence was committed as a result of domestic violence. The deceased and the accused had a disagreement on whether to employ a house help or to stay with the daughter of the accused from a previous marriage which led to a physical fight resulting to him inflicting fatal injuries on the deceased. In mitigation, the accused stated that he undertook to be a changed person should he be granted a chance and will attend Anger Management Counselling. The High Court in Nairobi stated that the Court is alive to the rise in number of deaths arising out of domestic violence and therefore any judgment meted out by the court should send a warning that the home is a city of refuge and not a place where one has to be on his or her guard. Justice Wakiaga, having considered the conduct of the accused upon the conviction of the offence and the nature of the injuries of the deceased and whereas the court had been urged to look upon the accused with mercy, the blood of the deceased and any other victim of domestic violence cries to the court to send out a warning that enough is enough and a stop must be put to it. The Court therefore held that a sentence of 35 years in jail will send an adequate just signal to any person including the convict.

Contrasting the approach taken by the courts in these two cases, one can draw a conclusion that the courts have granted more punitive measures to men accused of domestic violence in

¹⁰⁵ *Fraser v Children's Court, Pretoria North and others* (1996), Constitutional Court of South Africa.

¹⁰⁶ *Republic v Collet Thabitha Wafula* (2016) eKLR.

¹⁰⁷ *Republic v Johana Munyau Mweni* (2018) eKLR.

comparison to women accused of the same. The court considered child-care and the accused being victim in the *Collet Wafula case* in mitigation, granting her probation, while convicted the accused in the *Johana Munyau case* to send out a message to perpetrators of domestic violence. This calls for a just and fair hearing for the accused persons of domestic violence, irrespective of their gender. Judges should reasonably consider the mitigating factors, without fully relying on social norms. The government needs to establish means to create awareness on domestic violence without sacrificing any gender as the perpetrators. Furthermore, with reference to Section 14 of the PADV Act, counselling and conciliation programmes and other programmes acceptable to the Court should be made available to ensure the respect for the law prohibiting domestic violence and promote harmonious domestic relations among the parties.

It is important to note that many cases of domestic violence go unreported due to the social stigma surrounding men showing any signs of weakness. This is worsened by the fact that some men who have reported incidences of domestic violence have had these issues downplayed by enforcement institutions such as the police. This is a violation of one's fundamental rights and freedom as established in the case of *C.K. and 11 others v The Commissioner of Police and 2 others* where the petitioners sought the assistance of the Court to declare that the effect of the respondents' failure to conduct prompt, effective, proper and professional investigations into the complaints of the petitioners as a violation of the petitioners' rights and freedoms.¹⁰⁸

3.4 Media Reports on Gender-Based Domestic Violence in Kenya

In December 2019, Mr John Mutinda died after driving into the Indian Ocean at the Likoni channel in Mombasa County. The deceased had allegedly threatened to kill himself on several occasions over marital woes. He had undergone abuse at the hands of his wife. Mr Mutinda, the deceased had been scalded by hot water and attacked using a kitchen knife by his wife. Following these assaults, he made a report at Likoni Police Station stating that he was fearing for his life. However, his wife made another report, and Mr Mutinda was detained instead, without prior investigation to the matter.¹⁰⁹ This shows a fault in the law enforcement agents who took action without investigating the matter. Even after the

¹⁰⁸ *C.K. and 11 others v The Commissioner of Police and 2 others* (2012) eKLR.

¹⁰⁹ Ahmed M, 'Man who plunged into the ocean had vowed to kill himself' Daily Nation, 12 December 2019 <<https://nation.africa/kenya/news/man-who-plunged-into-ocean-vowed-to-kill-self--231634>> on 26 December 2020.

deceased was released, no further action was taken to protect him as a victim of domestic violence, and the torment led him to kill himself.

An Isiolo County official recently stated that men who have been labelled as perpetrators are victims too of gender-based violence but they bottle up their pain due to unfriendly institutions to deal with their issues. The Deputy County Commissioner, Mr Andrew Mutua, emphasised on the need to focus on violence meted on men in the fight against gender-based violence, stating that many men are suffering abuse in silence. Furthermore, the Isiolo Gender Watch, is educating the men on the need to report the cases.¹¹⁰

The Chairperson of the Isiolo Interfaith Network, Mr Ahmed Sett, lamented that bodies involved in the fight against GBV only focussed on women and girls, giving little attention to the male victims. Mr Sett stated that the men prefer to bottle up abuse by their relatives and spouses including physical torture and the denial of conjugal rights for fear of embarrassing their families and being branded failures. He reiterated the need for the County residents to be continually educated on how to report GBV cases for justice to be served to the victims.¹¹¹

3.5 CONCLUSION

In conclusion, men and boys may be victims at the hands of both sexes, within a domestic relationship. Kenya has adopted national laws and ratified international conventions for the protection against gender-based violence within these domestic relationships. However, the international conventions have a primary focus in protecting the rights of women, who have been the primary victims of GBV over the years.

This chapter has highlighted the approach by Kenyan courts in protecting victims of domestic violence and punishing the perpetrators of this type of violence. On analysing two contrasting cases, one can conclude that a more punitive approach is taken where the victims are women rather than where they are the perpetrators. The courts need to establish an approach, free from the socially construed bias.

The police, who under PADV Act, have the duty to protect victims of domestic violence by providing advice on all available reliefs once victims report incidents of domestic violence. They further have the duty to conduct investigations upon complaint. As highlighted above,

¹¹⁰ Wairimu W, 'Men experiencing GBV in silence, says county official' Daily Nation, 15 December 2020 -< <https://nation.africa/kenya/gender/men-experiencing-gbv-in-silence-says-county-official-3229208>> on 26 December 2020.

¹¹¹ Wairimu W, 'Report when your wife abuses you, Isiolo clergy urges men' Daily Nation, 18 December 2020 -< <https://nation.africa/kenya/gender/report-when-your-wife-abuses-you-isiolo-clergy-urges-men--3232936>> on 26 December 2020.

this has not been the case. There is therefore a need to train the police officers at the gender desk of the police station on how to handle complaints of domestic violence and on the means of providing relief to these victims.

Conclusively, there is a need to educate the society on GBV and the protection measures available for victims of this type of violence, irrespective of their gender. Cultural patriarchal beliefs, social stigma and historical norms prove a major hinderance in the implementation of the legal and policy framework for protection against domestic violence already in place. The society needs to not only create awareness programmes, but also counselling and conciliation centres to restore harmonious domestic relations for those affected by domestic violence.

The next chapter shall discuss the implementation of domestic, regional and international framework in other jurisdictions, drawing comparisons with the implementation of the same in Kenya.

CHAPTER FOUR

4.0 COMPARATIVE STUDY OF THE IMPLEMENTATION OF THE LEGAL FRAMEWORK IN KENYA AND OTHER JURISDICTIONS

The previous chapter looked into the implementation and enforcement of the legal and policy framework domestically. This chapter shall draw an analysis between the gender-based domestic violence legal and policy framework in Kenya and that of other jurisdictions, focussing on that of the United Kingdom and South Africa. The United Kingdom has an unwritten constitution which is comprised of sources such as written statutes and other constitutional conventions. The South African legal system is a mixed legal system comprising of a hybrid Dutch civilian law, the English common law, customary law and religious personal law.¹¹² The analysis shall look into these statutes and conventions in place, addressing gender-based domestic violence issues. The study focusses on South Africa and the United Kingdom (UK) as both countries have a common law system, similar to that of Kenya. Furthermore, the United Kingdom was one of the first countries to ratify conventions against domestic violence. This chapter shall analyse the domestic violence framework of the abovementioned jurisdictions within a progressive society and the attempt to address the emerging issues of domestic violence against men.

4.1 The Domestic Violence Framework in the United Kingdom

The United Kingdom, under *the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act* adopts the definition of domestic violence as all the acts of physical, sexual, psychological, or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.¹¹³ The Act further defines gender as the socially construed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.¹¹⁴ This Act ratifies the Istanbul Convention. The 1996 Housing Act defines domestic violence as violence or threats of violence from a person associated with the victim.¹¹⁵ The UK Supreme Court in the case

¹¹² Barrat A and Snyman P, 'Researching South African Law - The South African Legal System' The University of Melbourne, 2018 - <<https://unimelb.libguides.com/c.php?g=929734&p=6718215#:~:text=The%20Republic%20of%20South%20Africa,law%20and%20religious%20personal%20law.>> on 17 December 2020.

¹¹³ Article 3(b), *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, 12 April 2011.

¹¹⁴ Article 3(c), *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, 12 April 2011.

¹¹⁵ Section 177(1A), *The United Kingdom Housing and Regeneration Act* (1996).

of *Yemshaw v Hounslow* recognises that physical violence is not necessary to fulfil the definition of domestic violence and that it should be interpreted as the use of emotional, psychological or financial abuse.¹¹⁶

The United Kingdom Home Office defined domestic violence and abuse, also termed intimate partner violence (IPV),¹¹⁷ as any incident or pattern of incidents of controlling, coercing or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality.¹¹⁸ This abuse can encompass but is not limited to psychological, physical, sexual, financial and emotional abuse.¹¹⁹

A British Crime Survey conducted by Walby and Myhill found that men made about 40% of domestic violence victims each year. More than one in four women and around one in six men had experienced domestic abuse from the age of 16.¹²⁰ 6% of the women reported that they experienced domestic abuse, while 4% of the men reported abuse against them. The Office of National Statistics in 2016 reports that in England and Wales, an equivalent of 1.3 million female victims and 600,000 male victims reported domestic abuse.¹²¹ The ONS further stated that women are more likely to be affected by all types of abuse and are at significantly higher risk of harm, yet substantial numbers of men are also affected.¹²²

Various scholars recognise that many societies are shaped by a patriarchal belief system which have established hegemonic masculinity and the likelihood of men to cause more harm than women and the scattered acknowledgement of female-perpetrated violence.¹²³ To battle these systems, feminist activism has facilitated means to adopt conventions to tackle violence against women.¹²⁴ These international conventions have greatly shaped the domestic abuse policy within the United Kingdom, including the Istanbul Convention.

¹¹⁶ *Yemshaw v The London Borough of Hounslow* (2011), The United Kingdom Supreme Court.

¹¹⁷ Perryman S and Appleton J, 'Male victims of domestic abuse – Implications for health visiting practice' March 2016 -<<https://core.ac.uk/download/pdf/288219173.pdf>>, 1.

¹¹⁸ The United Kingdom Home Office, *Information for Local Areas on the change to the definition of Domestic Violence and Abuse*, March 2013, 2.

¹¹⁹ The United Kingdom Home Office, *Information for Local Areas on the change to the definition of Domestic Violence and Abuse*, 2.

¹²⁰ Walby S and Myhill A, 'New survey methodologies in researching violence against women' 3 *British Journal of Criminology* 41, 201,

¹²¹ The Office of National Statistics, *Crime Survey for England and Wales*, 2.

¹²² The Office of National Statistics, *Crime Statistics, focus on violent crime and sexual offences, intimate personal violence and partner abuse*, 3.

¹²³ Perryman S and Appleton J, 'Male victims of domestic abuse – Implications for health visiting practice' 3-5.

¹²⁴ Perryman S and Appleton J, 'Male victims of domestic abuse – Implications for health visiting practice' 4.

The Crown Prosecution Service (CPS) is an independent body which prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales.¹²⁵ The CPS recognises that men, women and children can all be victims of domestic violence. However, it follows the United Nations conventions which the United Kingdom has ratified such as the CEDAW. Domestic abuse is prosecuted under the CPS Violence Against Women and Girls (VAWG) Strategy.¹²⁶ This is the overarching framework to address crimes that have been identified as being committed primarily but not exclusively by men against women.¹²⁷ However, the CPS is progressive on gender-based domestic violence as it includes data on all perpetrators and victims, irrespective of their gender. The CPS acknowledges that the experiences of male victims of offences are not reported to the police due to the fear that their masculinity may appear to be diminished if they report domestic abuse.¹²⁸ This is similar to the experiences of male victims in Kenya.

The United Kingdom is however, taking steps in ensuring protection against domestic violence, free from gender bias in an attempt to establish a degendered domestic violence framework which establishes that any person of any gender can be a perpetrator. The Domestic Violence and Abuse Bill proposes a statutory definition of domestic violence which highlights perpetrators to include intimate partners or family members regardless of gender. However, it is questionable whether these steps are adequate in ensuring the same as many activists of organisations such as the Women’s Aid and the End Violence Against Women Coalition still call for the recognition of domestic violence as a gendered crime.

4.2 The Domestic Violence Framework in South Africa

Article 1 of the South African Constitution states that, “the Republic of South Africa is one, sovereign, democratic state founded on values including human dignity, the achievement of equality and the advancement of human rights and freedoms.”¹²⁹ The Constitution further states that everyone is equal before the law and has the right to equal protection and benefit of the law which includes the full and equal enjoyment of all rights and freedoms.¹³⁰ Human dignity is a non-derogable right which is protected entirely.¹³¹

¹²⁵ The Crown Protection Service, ‘About CPS’ -<<https://www.cps.gov.uk/about-cps>> on 19 December 2020.

¹²⁶ The Crown Protection Service, ‘Domestic Abuse’ -<<https://www.cps.gov.uk/crime-info/domestic-abuse>> on 19 December 2020.

¹²⁷ The Crown Protection Service, *Violence Against Women and Girls (VAWG) Strategy Statement*, September 2017-2020, 1.

¹²⁸ The Crown Protection Service, ‘CPS makes commitment to male victims of sexual and domestic violence’ 6 September 2017 -<<https://www.cps.gov.uk/cps/news/cps-makes-commitment-male-victims-sexual-and-domestic-abuse>>

¹²⁹ Section 1, *Constitution of the Republic of South Africa Act* (No. 108 of 1996).

¹³⁰ Section 9, *Constitution of the Republic of South Africa Act* (No. 108 of 1996).

¹³¹ Section 37, *Constitution of the Republic of South Africa Act* (No. 108 of 1996).

The South African Parliament enacted the Domestic Violence Act to provide for the issuing of protection orders with regard to domestic violence and for matters connected therewith. The Constitutional Court in the case of *Omar v The Government of the Republic of South Africa and others*¹³² noted that the Act serves an important purpose in addressing South Africa's obligations under its Constitution and international law to combat domestic violence. The Court, in the abovementioned case, highlighted the *Carmichele case*¹³³ which pointed out that the South African government has a duty under international law to prohibit all gender-based discrimination that has the effect or purpose of impairing the enjoyment by women of fundamental rights and freedoms and to take reasonable and appropriate measures to prevent the violation of those rights.¹³⁴

The Preamble of the Domestic Violence Act recognises the constitutional right to equality and to freedom and security of the person, and the international commitments and obligations of the State towards ending violence against women and children, including obligations under the United Nations Conventions on the Elimination of all Forms of Discrimination Against Women and the Rights of the Child.¹³⁵ Domestic violence, as defined in the Act, means physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, entry into the complainant's residence without consent, where the parties do not share the same residence or any other controlling or abusive behaviour towards any person who is or has been in a domestic relationship with a respondent and who is or has been subjected or allegedly subjected to an act of domestic violence.¹³⁶

Tsoaledi Thobejane, a South African scholar, states that gender based violence comes in different forms such as physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment and stalking.¹³⁷ It is therefore crucial to note that domestic violence affects both men and women. He established that it is generally accepted that there is an under-reporting of domestic violence in general wherein men are

¹³² *Omar v The Government of the Republic of South Africa and others* (2005), The Constitutional Court of South Africa.

¹³³ *Carmichele v The Minister of Safety and Security and another (The Minister of Justice and Constitutional Development)* (2001), The Constitutional Court of South Africa.

¹³⁴ *Omar v The Government of the Republic of South Africa and others* (2005), The Constitutional Court of South Africa, para 17.

¹³⁵ Preamble, *Domestic Violence Act* (No. 116 of 1998).

¹³⁶ Section 1, *Domestic Violence Act* (No. 116 of 1998).

¹³⁷ Thobejane T and Luthada V, 'An investigation into the trend of Domestic Violence on Men: The Case of South Africa' *OIDA International Journal of Sustainable Development*, 2019, 11-12 - https://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journalbrowse&journal_id=1650801> on 21 December 2020.

victims wherein women and other men are the perpetrators.¹³⁸ Thobejane in his study questions organizations such as the CEDAW, the Beijing Platform for Action, SADC Gender Protocol and the South African Constitution, that seem to be turning a blind eye on GBV where the men are the victims.

South Africa, like many other African countries including Kenya, is a predominantly patriarchal society in which men are seen as superior to women. This is seen through unequal power relations which have stemmed to the domestic relationships. For instance, in the case of *Tshabalala v The State; Ntuli v The State*,¹³⁹ in the Constitutional Court of South Africa, the judges state that for far too long rape has been used as a tool to relegate the women of South Africa to second class citizens, over whom the men can exercise their power and control, stripping them off their rights to equality, human dignity and bodily integrity. The high incidences of sexual violence suggested that male control over women and the sexual entitlement feature strongly in the social construction of masculinity in South Africa.

The legal framework against domestic violence in South Africa is similar to that of Kenya. The provisions in the South African Domestic Violence Act fail to mention men and boys as victims, and protection measures accorded to them, unlike the mention of women and children. The South African President, Cyril Ramaphosa has recently reported that the country will tighten laws on gender based violence and sexual offences which have been widespread in the nation.¹⁴⁰ The President further states that citizens are frustrated that sentencing is often not proportionate to the crimes committed against women and children. President Ramaphosa discusses three proposed amendment bills which are designed to fill the gaps that allow some perpetrators of domestic violence crimes to evade justice and to give full effect to the rights of women and children.

The Criminal and Related Matters Amendment Bill proposes an amendment to Section 60 of the 1977 Criminal Procedure Act, stating thereafter that those accused of GBV could only be granted bail under exceptional circumstances and if these circumstances were accepted, the court would then have to consider a number of things before granting them bail, including whether or not the survivor would feel safe with the decision.¹⁴¹ The Domestic Violence

¹³⁸ Thobejane T and Luthada V, 'An investigation into the trend of Domestic Violence on Men: The Case of South Africa' *OIDA International Journal of Sustainable Development*, 13.

¹³⁹ *Jabulane Alpheus Tshabalala and The State and Commission for Gender Equality and another, In the matter between Annanius Ntuli and The State* (2019), Constitutional Court of South Africa.

¹⁴⁰ Isilow H, 'South Africa announces gender based violence law – Country has one of the highest incidences of rape and domestic violence' 7 September 2020 -< <https://www.aa.com.tr/en/africa/safrica-announces-gender-based-violence-law/1965718#>> on 23 December 2020.

¹⁴¹ Section 4(f), *Criminal and Related Matters Amendment Bill of 2020* (South Africa).

Amendment Bill extends the definition of domestic violence to include victims of assault in those engaged to be married, those who are dating, those in customary relationships, and those in actual or perceived romantic, intimate, or sexual relationships of any duration.¹⁴² This exposes the extent of domestic violence in South Africa. The proposed amendments on the legislations still fail to address the domestic violence perpetrated against men as the primary focus is still on the “vulnerable” groups of the society. One is left to assume that the men are protected under the victims of assault.

4.3 CONCLUSION

In conclusion, many countries have established their legal and policy framework based on international conventions which have brought light to emerging issues over the years such as domestic violence against vulnerable groups in the community. As established in the analysis above, domestic violence is deemed a gendered crime. Like the Kenyan patriarchal background, there has been stereotypical thinking towards domestic violence within the United Kingdom and the South African societies. Most of the victims over the years are known to have been women and the perpetrators primarily male. The international conventions call for gender equality, pushing for the agenda to protect any forms of violence against women. The most recent convention which has been ratified into local legislation in United Kingdom being the Istanbul Convention.

African countries such as South Africa and Kenya, are signatories to the international treaties which advocate the protection of all persons against all forms of violence, but women and children in particular due to historical suffering of these categories of people. The legislations passed in Kenya and South Africa against domestic violence are therefore hindered from adequately protecting all persons due to the cultural stigma, societal norms and beliefs on gender.

One can further draw a conclusion that due to the fact that more women have reported or are recorded as victims to this type of violence over the years and are the focal point across many jurisdictions for the protection against domestic violence. It is important to note that the patriarchy within the society has affected the men. Due to the social and cultural expectations, fewer men are reporting incidences of domestic violence. The evolving society, globally, requires measures to ensure protection of all persons against domestic violence. There is a further need for reforms to include addressing domestic violence, not only regionally but also at the international level. The international conventions should call

¹⁴² Section 2(h), *Domestic Violence Amendment Bill of 2020* (South Africa).

for a degendered policy framework on domestic violence, as has been proposed in the United Kingdom, to further meet the gender non-discrimination policies.

The next chapter discusses the findings of the study. Upon drawing conclusions from the study of the legal and policy framework in Kenya on domestic violence and that of comparative jurisdictions as highlighted in this chapter, the chapter includes the recommendations to be considered for the prevention of domestic violence and the protection of victims of gender-based domestic violence.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

Chapter 1 of the study highlighted the background of the study, defining terms used in the study and establishing the problem statement, the rationale of the study and the significance of the research. Chapter 2 analysed the legal and policy framework on domestic violence and highlighted the provisions for gender-based domestic violence domestically, regionally and internationally. Chapter 3 focussed on the implementation and enforcement mechanisms of the legal provisions in Kenya. The previous chapter highlighted the domestic violence framework in the United Kingdom and South Africa, in comparison to the domestic framework.

This chapter shall summarize the findings of the study and give recommendations to ensure the protection of all persons against domestic violence.

5.1 Findings of the Study

Domestic violence is defined as violence against a person, or threat or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship. This is as defined under the 2015 Protection Against Domestic Violence Act. This definition is highlighted from international conventions which require nationalisation of domestic violence laws to protect victims from domestic violence, irrespective of their gender. By virtue of Article 2 of the 2010 Constitution of Kenya, the general rules of international law form part of the law of Kenya. Therefore, any treaty or convention ratified by Kenya forms part of the law of Kenya under the Constitution. Kenya is a signatory to and has ratified international and regional instruments such as the CEDAW, the ICCPR and the Protocol to the African Charter on Human and People's Rights on the Right of Women.

The domestic violence legal framework recognises certain fundamental constitutional rights such the right to inherent dignity accorded to all persons which should be respected and protected, as stated in Article 28. Article 10 of the Constitution gives the provision on the national values and principles of governance which include human dignity, equity, social justice, inclusiveness, equality, human rights and non-discrimination. These values and principles bind all persons in the enactment, application and implementation of any law. This paper focussed on whether the constitutional values, rights and principles are met in the PADV Act.

The Protection Against Domestic Violence Act extends protection against violence that occurs within domestic relationships. Section 4 of the Act defines a domestic relationship

which extends to not only spousal relationships, but also family members, and any person who has a close personal relationship with another person. Family members include spouses, an adult son or daughter, a child, and any other relative of that person who in the circumstances of the case, is regarded as a member of the family. This draws a conclusion that both sexes, male and female, can be victims of violence at the hands of both sexes. The Act therefore gives protection measures against domestic violence irrespective of the gender. However, there has been a cultural hinderance in protecting victims of domestic violence. The gender disparities within the society have impeded the implementation and enforcement of the Act.

The international conventions on domestic violence and national legislation were adopted at a time when female emancipation is at its peak. The society has been predominately patriarchal, with women being the main victims of domestic violence. This society is evolving over time as men are also reported victims of domestic violence through surveys conducted by institutions such as the National Crime Research Centre and MAWE. The social stigma surrounding men being victims of domestic violence is a hinderance to the enforcement of the PADV Act. The patriarchy within the society has therefore, not only affected the women, but also the men. The men are unable to access available remedies under the law due to the historically and culturally unequal relations between men and women.

The analysis in the previous chapter established that many jurisdictions have established their protection against domestic violence framework based on the international conventions which have adopted a gendered approach to this type of violence. The cultural stigma and the societal norms and beliefs on gender and gender roles have hindered the protection of all persons against domestic violence.

5.2 Recommendations

In conclusion, the following recommendations should be put into consideration to ensure protection of *all* persons against domestic violence.

1. An inclusive legal and policy framework

Kenya should include a legal and policy framework that specifically addresses domestic violence against men and boys. The Maendeleo ya Wanaume Organization in conjunction with other international men and boys organizations organized the launching of the 2020 South Africa Men Declaration and Platform for Action (SAMPDA). The objective of the conference was to address the UN General Assembly on the elimination of violence against men and boys. The conference would oversee the implementation of a new convention for

the elimination of VAMB as a separate legislation. Kenya should consider ratifying the convention to address the domestic violence against men and boys. This would enhance the recognition of the rights of men as victims, just as those of women addressed by other legislations.

2. Taking measures to change cultural attitudes

This requires the government to take measures to eliminate the social stigma surrounding gender-based domestic violence. As already established in this study, domestic violence is a violation to one's human rights which is grossly under reported due to the socially prescribed expectations of men. These measures should include civic education on protection measures for the victims of domestic violence, measures on how to report all cases of domestic violence and the remedies for survivors of domestic violence. Creating awareness on gender-based domestic violence within local communities should include addressing not only women but also men on remedies available to those experiencing this type of violence. Male counselling should further be encouraged to eliminate this social stigma.

3. Declaring domestic violence as a degendered crime

While recognising that women have been more likely to be victims of domestic violence, it is important to note that men can also be victims of this crime. Moreover, the enforcement institutions and the courts in implementing the legislation on domestic violence should maintain a gender neutral perspective.

4. Clarity on the provisions of the PADV Act

The Protection Against Domestic Violence Act should expound on its definitions on victims to include women, girls, men and boys as well as children. This leaves no room for vagueness in the interpretation and implementation of the provisions.

5. Training of enforcement institutions

This involves the education of enforcement institutions such as the police and the chiefs in the wards on how to handle domestic violence cases and ensure the efficient implementation of policies without gender biases. This is to ensure that this type of violence is not under reported by victims and downplayed by officials.

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