



Strathmore Law School

**LEGISLATING ‘COERCIVE CONTROL’ IN KENYA: A STUDY OF  
THE PROTECTION AGAINST DOMESTIC VIOLENCE ACT**

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,  
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## **DECLARATION**

I, Wabia Nganatha Karugu, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not, 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: .....

Supervisor's Name: .....

Date: .....

## **ABSTRACT**

*Coercive control* is a recognised form of domestic violence in Britain, Ireland and Scotland. It denotes the sequence of controlling and intimidating conduct within a domestic relationship. This dissertation seeks to determine to what extent it is necessary to capture coercive control in Kenyan legislation. This discussion will be bolstered by the Power and Control Wheel Theory and the Cycle of Violence Theory which will determine the value—or lack thereof—the recognition of this form of domestic violence. The dissertation will then come to a crescendo with a discussion of the extent to which coercive control is captured in Kenya’s existing domestic violence legislation, specifically the Protection against Domestic Violence Act (Act No 2 of 2015). The latter part of the paper will delve into a comparative study between Kenya and Britain in seeking to establish the applicability of Britain’s coercive control provisions (within the Serious Crime Act 2015) in Kenya.

## **LIST OF ABBREVIATIONS**

PDVA	<i>Protection Against Domestic Violence Act (Act No 2 of 2015).</i>
SCA	<i>Serious Crime Act 2015.</i>
USA	<i>United States of America.</i>
UK	<i>United Kingdom.</i>

## **LIST OF CASES**

*R v R (1991) The United Kingdom House of Lords.*

*Regina v Joshua Reece Berenger (2019), Court of Appeal (England and Wales).*

*Regina v Robert Joseph James Conlon (2017), Court of Appeal (England and Wales).*

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

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

*R v Worth (Jordan Michelle) (2018), Court of Appeal, England.*

## **LIST OF LEGAL INSTRUMENTS**

*Children Act (Act No 8 of 2001).*

*Constitution of Kenya (2010).*

*Marriage Act (Act No 4 of 2014).*

*Protection against Domestic Violence Act (Act No 2 of 2015).*

*Serious Crime Act 2015 (United Kingdom).*

*Sexual Offences Act (Act No 3 of 2006).*

# CHAPTER 1

## INTRODUCTION

### 1.0.BACKGROUND TO THE STUDY

The Protection against Domestic Violence Act (PDVA) (Act No. 2 of 2015) has the ultimate aim of safeguarding persons who have been domestically abused.<sup>1</sup> The existence of this law is ground breaking owing to the absence of legislation that was solely focused on the recognition and criminalisation of domestic violence in pre-2015 Kenya.<sup>2</sup>

Section 3 of the PDVA gives a comprehensive definition of domestic violence. It defines it as violence, or the menace of violence, to persons in a domestic relationship, where person A is threatened with violence by person B.<sup>3</sup> Domestic violence encompasses, *inter alia*, abuse (such as child marriage, female genital mutilation, forced marriage and virginity testing);<sup>4</sup> dispossessing the applicant from the facilities forming part of their place of residence, or limiting their access to aforementioned facilities;<sup>5</sup> economic abuse;<sup>6</sup> psychological abuse;<sup>7</sup> intimidation;<sup>8</sup> stalking;<sup>9</sup> and verbal abuse.<sup>10</sup>

Despite the enactment of the PDVA, domestic violence remains widespread and rampant in Kenya. Regrettably, the most recent Government statistics on domestic violence are confined to pre-2014 figures.<sup>11</sup> The 2014 Kenya Demographic and Health Survey, which was carried out by

<sup>1</sup> Preamble, *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>2</sup> 'The Protection Against Domestic Violence Act (PADV) 2015' Heinrich Böll Stiftung, 27 August 2015, <https://ke.boell.org/2015/08/27/protection-against-domestic-violence-act-padv-2015> on 3 February 2019.

<sup>3</sup> Section 3(2), *Protection against Domestic Violence Act* (Act No 2 of 2015).

Note: a domestic relationship is defined in Section 4 of the Protection against Domestic Violence Act (Act No 2 of 2015). It is where the relationship is that of marriage (whether subsisting or not), or is characterised by the parties living together, being family members, sharing a child, or sharing an intimate personal relationship.

<sup>4</sup> Section 3(a)(i), (ii), (iii), and (vii), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>5</sup> Section 3(a)(c), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>6</sup> Section 3(a)(d), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>7</sup> Section 3(a)(e), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>8</sup> Section 3(a)(i), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>9</sup> Section 3(a)(l), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>10</sup> Section 3(a)(m), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>11</sup> Kenya National Bureau of Statistics, *Kenya Demographic and Health Survey 2014*, 2014, ii.

the Kenya National Bureau of Statistics,<sup>12</sup> displays dismal results. Physical violence was experienced by 45% of women and 44% of men between the ages of 15 to 49. The main culprits of the physical violence perpetuated against women were their husbands, while the main culprits of violence against men included parents and teachers. Spousal violence (whether physical or sexual) had been experienced by 39% of married women and 9% of married men.<sup>13</sup> Both women and men reported that they had experienced emotional abuse. 26% of women and 15% of men provided that this abuse was in the form of insults or actions carried out by their spouse that made them feel worthless. 18% of women and 13% of men narrated experiences where they were made to feel humiliated in front of others because of something that their spouse said or did.<sup>14</sup>

More recent statistics from The Federation of Women Lawyers (FIDA) indicate that the number of cases of domestic violence reported to the organisation in 2018 were the highest it had been in 5 years. Whilst the figures in 2017 during this period were 2,028, the figures in 2018 were 2,182.<sup>15</sup>

It is worth noting that the increase in figures may be due to one or both of the following: there was an increase in domestic violence in the country, or persons feel more comfortable reporting cases of domestic violence in this day and age. Either way, the figures are too high to be ignored.

Determining whether there are key typologies missing in the PDVA's definition of domestic violence will assist in the Act's strife towards protecting and remedying those who fall victim to domestic violence.<sup>16</sup> The typology that will be narrowed down on in this dissertation is that of 'coercive control'.

Coercive control is 'any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate

<sup>12</sup> Kenya National Bureau of Statistics, *Kenya Demographic and Health Survey 2014*, 2014, ii.

<sup>13</sup> Kenya National Bureau of Statistics, *Kenya Demographic and Health Survey 2014*, 2014, 291.

<sup>14</sup> Kenya National Bureau of Statistics, *Kenya Demographic and Health Survey 2014*, 2014, 307 and 309.

<sup>15</sup> Elvis Ondieki, 'Fida raises concern over high cases of domestic violence' Daily Nation, 25 November 2018, <https://www.nation.co.ke/news/Increased-domestic-violence-worries-Fida/1056-4867202-w4wvofz/index.html> on 11 February 2019.

<sup>16</sup> Preamble, *Protection against Domestic Violence Act* (Act No 2 of 2015).

partners or family members, regardless of gender or sexuality'.<sup>17</sup> It is recognised by specialists in the field as an early stage of abuse, which if tackled, will prevent more escalated forms of domestic violence— such as physical abuse. Professor Evan Stark aptly highlights that this abuse focuses primarily on what A keeps B from doing and not what A does to B.<sup>18</sup> For example, *inter alia*, isolating B from friends and family; depriving B from basic necessities such as food; controlling what B can wear; and monitoring B through online communication.<sup>19</sup>

The recognition of coercive control in the law may have the following benefit: due to coercive control being an early stage of abuse, its criminalisation may have the subsequent effect of preventing more heightened and violent forms of abuse.

## **1.1.STATEMENT OF THE PROBLEM**

Although the PDVA consists of an open list of varied forms of domestic violence in its definition of domestic violence,<sup>20</sup> this dissertation seeks to determine whether it inadvertently provides for the offence of 'coercive control' which is a typology of domestic violence—<sup>21</sup> and if not, whether it should.

The statement of the problem is therefore to what extent the PDVA captures coercive control.

<sup>17</sup> Home Office Circular 003/2013, <https://www.gov.uk/government/publications/new-government-domestic-violence-and-abuse-definition/circular-0032013-new-government-domestic-violence-and-abuse-definition>, on 3 December 2018.

<sup>18</sup> Stark E, Surrey PCC, 'Understanding coercive control with Professor Evan Stark', 25 May 2016, <https://www.youtube.com/watch?v=6RCEQplot34>, 3 December 2018. Note: Evan Stark is renowned author in matters to do with coercive control.

<sup>19</sup> Women's Aid, 'What is coercive control?', <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/>, on 3 December 2018.

<sup>20</sup> Section 3, *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>21</sup> Bettinson V and Bishop C, 'Is the creation of a discrete offence of coercive control necessary to combat domestic violence', 66 *Northern Ireland Legal Quarterly* 2, 2015, 182.

## **1.2.RESEARCH QUESTIONS**

This dissertation aims to answer the following questions:

- i. Is coercive control a form of domestic violence that should be criminalised?
- ii. What are the laws on domestic violence in Kenya?
- iii. To what extent does the PDVA criminalise coercive control?

## **1.3.OBJECTIVES OF THE STUDY**

The objectives of this dissertation are as follows:

- i. To determine the significance of recognising coercive control as a form of domestic violence.
- ii. To identify if there are any other laws on domestic violence in Kenya, aside from the PDVA.
- iii. To critique the extent to which the PDVA criminalises coercive control.

## **1.4.HYPOTHESES**

The dissertation aims to test the following hypotheses:

- i. That it is crucial to recognise coercive control, owing to it being a typology of domestic violence that deserves the urgency in which physical abuse and sexual abuse are dealt with.
- ii. That Kenya has robust legislation on domestic violence.
- iii. That the PDVA does not adequately encompass coercive control.

## **1.5.THEORETICAL FRAMEWORK**

This study seeks to adopt two theoretical frameworks in order to investigate the nature of coercive control, and to determine the legitimacy in recognising and criminalising it as a form of domestic violence. The first theoretical framework is ‘the Power and Control Wheel’ theory, a brainchild of Ellen Pence and Michael Paymard.<sup>22</sup> The second theoretical framework is ‘the Cycle of Violence’ theory by Lenore Walker.<sup>23</sup>

### **1.5.1. THE POWER AND CONTROL WHEEL THEORY**

The Power and Control Wheel was birthed from the Duluth Model, which was an ‘adoption of written policies... to guide the intervention of police, jailors, probation officers, prosecutors, judges, human service providers and victim advocates in domestic assault related cases’.<sup>24</sup> The adoption of these instruments followed education campaigns from 1976 to 1980 by Minnesota advocacy groups in the United States of America (USA); ‘to inform both public and policy makers about the extent of domestic violence in the state, its lifelong impact on women and children, and the problems women face when they turn to the system for help in escaping the violence’.<sup>25</sup>

Survivors of domestic violence from Duluth (Minnesota, USA) took part in the formation of the Duluth Model’s Power and Control Wheel, which encompasses behavioural traits that were true to these women’s own experiences in their respective marriages.<sup>26</sup> The Power and Control Wheel evidences the reality endured by victims in relationships characterised by abuse. It highlights the strategies utilised by abusers on victims which manifest in both physical and non-

<sup>22</sup> <https://www.norfolk.gov.uk/safety/domestic-abuse/what-is-domestic-abuse/power-and-control-wheel>, on 11 February 2019.

<sup>23</sup> Berry D.W., *The domestic violence sourcebook*, RGA Publishing Group, Inc., Los Angeles, 1996, 31.

<sup>24</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth: developing effective prosecution strategies from understanding the dynamics of abusive relationships’ 15 *Hamline Law Review* 115, 1991, 128.

<sup>25</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 128.

<sup>26</sup> Rizza J, ‘Beyond Duluth: a broad spectrum of treatment for a broad spectrum of domestic violence’ 70 *Montana Law Review* 1, 2009, 128.

physical violence.<sup>27</sup> These strategies are used to ensure that the victim remains in the abusive relationship, as well as the child shared by the victim and abuser.<sup>28</sup>

In the outer rim of the Power and Control Wheel, physical and sexual violence are succinctly depicted to illustrate their use in exerting power and control over a victim. The elements that often accompany physical and sexual violence in domestic violent relationships are the following:<sup>29</sup> coercion and threats; use of intimidation; emotional abuse; use of isolation from friends and family; denying the existence of abuse or blaming the abuse on the victim; using children to ensure the compliance and obedience of the victim; male privilege; and economic abuse.<sup>30</sup>

<sup>27</sup> <https://www.norfolk.gov.uk/safety/domestic-abuse/what-is-domestic-abuse/power-and-control-wheel>, on 11 February 2019.

<sup>28</sup> Asmus M.E., Ritmeester T, Pence E.L., 'Prosecuting domestic abuse cases in Duluth', 159.

<sup>29</sup> Asmus M.E., Ritmeester T, Pence E.L., 'Prosecuting domestic abuse cases in Duluth', 159.

<sup>30</sup> Gondolf E.W., 'The contributions of Ellen Pence to batterer programming', *Violence against Women*, SAGE Publishing, 2010, 993.

A visual depiction of the Power and Control Wheel is seen in Figure 1 below.



Figure 1.31

John B. Kelly stated the following regarding the Power and Control Wheel:

The Power and Control Wheel provides a useful graphical representation of the major forms of control that constitute Coercive Controlling Violence: intimidation; emotional abuse; isolation; minimising, denying, and blaming; use of children; asserting male privilege; economic abuse; and coercion and threats.<sup>32</sup>

Many countries criminalise the outer rim of the Power and Control Wheel, yet not all of the elements in the inner rim. The inner rim forms the bulk of coercive controlling violence, as

<sup>31</sup> Stopping Violence Services, 'Power and Control Wheel', <https://www.svschch.org.nz/Resources/Power-and-Control-Wheel/>, on 11 February 2019

<sup>32</sup> Kelly J.B., 'Differentiation among types of intimate partner violence: Research update and implications for interventions' 46 *Family Court Review* 3, 2008, 481.

stated by Kelly.<sup>33</sup> Additionally, these 8 tactics inculcate the most amount of fear and are therefore the most effective tactics in getting the victim to submit to the abuser.<sup>34</sup> The theory is thus relevant to this dissertation, as the author will primarily utilise it to prove the importance of criminalising coercive control.

### 1.5.2. THE CYCLE OF VIOLENCE THEORY

Dr Lenore Walker, a trailblazer in the study of domestic violence, theorised on the Cycle of Violence. She found that there exists a recurring pattern in approximately two-thirds of abusive households. The 3-stage-pattern is strikingly similar in these households:

First, **tension builds**. The man becomes edgy, critical, irritable. The woman may go out of her way to try and keep the peace during this period... Meanwhile, he becomes gradually more abusive, often with 'minor' incidents such as slapping, verbal abuse, and *increase control techniques* [emphasis added]... Then comes the second stage, **the violent outburst** with acute battering. Often the man will fly into a rage and become violent for no apparent reason, or a stated reason that seems petty or irrational, such as his wife's cooking... After the brutality comes **loving contribution**.<sup>35</sup> It is a period of profound relief for both partners. The man is remorseful and apologetic, or, at the very least, nonviolent. He may beg forgiveness, swear it will never happen again, and go out of his way to be kind, tranquil, and loving... This phase explains a great deal about why women stay with abusers. A woman will often believe the man is sincere.<sup>36</sup>

The coercive control features are pertinent in the first stage of the cycle of violence. This is because the first stage involves the rise in control tactics used on the victim (who, contrary to the theory, may either be male or female).<sup>37</sup>

<sup>33</sup> Kelly J.B., 'Differentiation among types of intimate partner violence', 481.

<sup>34</sup> Miller S, TheDuluthModel, 'Physical and sexual violence- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=XkuC3tUgHoY>, on 11 February 2019.

<sup>35</sup> Berry D.W., *The domestic violence sourcebook*, 31-32.

<sup>36</sup> Berry D.W., *The domestic violence sourcebook*, 31-32.

<sup>37</sup> Rizza J, 'Beyond Duluth: a broad spectrum of treatment for a broad spectrum of domestic violence', 134.

## 1.6.LITERATURE REVIEW

*Dawn Bradley Berry* provides a comprehensive exploration of the historical, psychological and legal nuances surrounding domestic violence, whilst citing each nuance's specific scholars. She makes use of *Susan Forward's* definition of domestic violence, which is 'any behaviour that is intended to control and subjugate another human being through the use of fear, humiliation, and verbal or physical assaults... it is the systematic persecution of one partner by another'. It is thus clear that it encapsulates more than physical violence.<sup>38</sup> Berry highlights that the breadth of domestic violence consists of typologies including: physical violence (such as hitting, beating and choking); emotional abuse (including embarrassing, ridiculing, or insulting another, or even threatening to abandon another); and sexual abuse (which comprises of, *inter alia*, forcing a spouse to have sex when they don't want to, or pressuring them to perform sexual acts they do not wish to partake in).<sup>39</sup>

Berry also brings out the fact that all societies have records of domestic violence. It is only in recent history that domestic violence has become illegal and repugnant.<sup>40</sup> For example, 'in ancient Roman times, a man was allowed by law to chastise, divorce, or kill his wife for adultery, public drunkenness, or attending public games—the very behaviour that men were allowed, even expected to pursue'.<sup>41</sup>

However, early on there were enlightened persons who recognised the brutality that branded domestic violence. *Judge William Blackstone*, for example, urged that there ought to be safeguarding from assaults and beatings in his 1799 *Commentaries on the Laws of England*. *John Stuart Mill* was also critical of 'wife torture' in the 19<sup>th</sup> century. Additionally, the Suffragettes in the 1840s (who were striving for the recognition of the right to vote in the USA) placed male brutality as urgent on their agenda.<sup>42</sup> As is stated by Berry, it is no surprise that centuries later, domestic violence gained the moral repugnancy it deserves.<sup>43</sup>

<sup>38</sup> Berry D.W., *The domestic violence sourcebook*, 1.

<sup>39</sup> Berry D.W., *The domestic violence sourcebook*, 2-3.

<sup>40</sup> Berry D.W., *The domestic violence sourcebook*, 31-32.

<sup>41</sup> Berry D.W., *The domestic violence sourcebook*, 16.

<sup>42</sup> Berry D.W., *The domestic violence sourcebook*, 16.

<sup>43</sup> Berry D.W., *The domestic violence sourcebook*, 16.

*Stark Evans*, writes that it is difficult to pinpoint when exactly modes of direct control began to work in tandem with domestic violence situations.<sup>44</sup> Evans continues to pose the following notions about coercive control in his writing:

Whether or not coercive control is new, its deployment today is designed to stifle and co-opt women's gains; foreclose negotiation over the organisation, extent, and substance of women's activities in and around the home; obstruct their access to support; close the spaces in which they can reflect critically on their lives; and reimpose obsolete forms of dependence and personal service by micromanaging the enactment of stereotypic gender roles through "sexism with a vengeance."<sup>45</sup>

He further highlights the negative effects of coercive control, including the deterioration of the victim's personality, low self-esteem, failure to leave owing to the fear of escaping, and 'detachment from violent incidents'.<sup>46</sup>

It is necessary for the author to also rely on the work of *Johnna Rizza*.<sup>47</sup> This is owing to Rizza highlighting that domestic violence often portrays men as the perpetrator and women as the victim. Yet, evidence shows that this form of domestic violence is not always the case, as women too can be abusers.<sup>48</sup>

Despite books and journals being emphatically written on 'coercive control', very few jurisdictions in the world criminalise it. As it stands, only 3 jurisdictions in the world have criminalised coercive control: Britain (in December 2015),<sup>49</sup> Ireland (in January 2019), and Scotland (in April 2019).<sup>50</sup> Britain, for example, recognised coercive control in Section 76 of the United Kingdom's (UK's) Serious Crime Act (SCA) 2015;<sup>51</sup> which includes provisions on

<sup>44</sup>Stark E, *Coercive control: how men entrap women in personal life*, Oxford University Press, New York, 2007, 348.

<sup>45</sup> Stark E, *Coercive control: how men entrap women in personal life*, 349.

<sup>46</sup> Stark E, *Coercive control: how men entrap women in personal life*, 360.

<sup>47</sup> Rizza J, 'Beyond Duluth: a broad spectrum of treatment for a broad spectrum of domestic violence', 134.

<sup>48</sup> Rizza J, 'Beyond Duluth: a broad spectrum of treatment for a broad spectrum of domestic violence', 134.

<sup>49</sup> 'Serious Crime Act 2015', legislative.gov.uk, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/2015-12-29>, on 11 October 2019.

<sup>50</sup> 'Abuse is a pattern. Why these nations took the lead in criminalizing controlling behaviour relationships', TIME, 21 June 2019, <https://time.com/5610016/coercive-control-domestic-violence/>, on 29 September 2019.

<sup>51</sup> Section 76, *Serious Crime Act 2015* (United Kingdom).

the elements of the offence,<sup>52</sup> mitigating factors,<sup>53</sup> defences,<sup>54</sup> the evidential requirements and threshold,<sup>55</sup> placement of burden of proof,<sup>56</sup> and punishment if found guilty.<sup>57</sup>

The Office for National Statistics, UK's national statistical institute,<sup>58</sup> published the statistical bulletin 'Domestic abuse in England and Wales: year ending March 2018'. The statistical bulletin highlights that 599,549 domestic abuse-related crimes were recorded by the police in the year ending March 2018, which was 23% higher than the previous year's figures. Various factors led to this including the enhancement of the police force's efficient 'identification and recording of domestic abuse incidents as crimes'.<sup>59</sup> Moreover, there were 225,714 arrests for these crimes which is analogous to 38 arrests out of 100 recorded domestic abuse-related crimes. Furthermore, the percentage of prosecutions for these crimes that ended in a conviction was a whopping 76%. These figures are impressive.<sup>60</sup>

The dissertation will seek not only to determine whether coercive control as a typology of domestic violence is worth recognising, but also the extent to which coercive control is criminalised in Kenya's legislation.

Although domestic violence is a topic that has been widely explored within legal writing in Kenya, the same is not true for its sub limb— coercive control. Legal writing on coercive control derives primarily from the UK and the United States of America (USA). Therefore, contextualising it to Kenya is a novel endeavour. The dissertation will thus be filling a clear gap in Kenyan legal thought and legal writing.

<sup>52</sup> Section 76(1), *Serious Crime Act 2015* (United Kingdom).

<sup>53</sup> Section 76(3), *Serious Crime Act 2015* (United Kingdom).

<sup>54</sup> Section 76(8), *Serious Crime Act 2015* (United Kingdom).

<sup>55</sup> Section 76(9), *Serious Crime Act 2015* (United Kingdom).

<sup>56</sup> Section 76(9), *Serious Crime Act 2015* (United Kingdom).

<sup>57</sup> Section 76(11), *Serious Crime Act 2015* (United Kingdom).

<sup>58</sup> 'About us' Office for National Statistics, <https://www.ons.gov.uk/aboutus>, on 3 February 2019.

<sup>59</sup> Office for National Statistics, *Domestic abuse in England and Wales: year ending March 2018*, 2018, 2.

<sup>60</sup> Office for National Statistics, *Domestic abuse in England and Wales: year ending March 2018*, 2018, 2.

## **1.7.METHODOLOGY**

The main research methodology that shall be relied on is secondary data. The dissertation shall therefore rely on the works of scholars in the field of domestic violence and coercive control, in seeking to answer the research questions, and achieve the research objectives. These works are, *inter alia*, books, dissertations, theses and journal articles. Legislation and credible newspaper articles shall also be made use of. There will therefore be a wide range of materials utilised, allowing for domestic violence and coercive control to be captured widely and deeply.

Additionally, a comparative framework will be employed between Kenya and Britain in Chapter 4.

## **1.8.CHAPTER BREAKDOWN**

This dissertation is divided into five chapters.

Chapter 1 introduces the subject that will be studied. It therefore gives the background of the study, the statement of the problem, the research question, the objectives of the study, the hypotheses, the theoretical background, the literature review, as well as the research methodology.

Chapter 2 is a theoretical framework which explores the Power and Control Wheel and the Cycle of Violence theories.

Chapter 3 elucidates on the existing domestic violence legislation in Kenya, and determines whether coercive control is adequately captured in either.

Chapter 4 is a comparative study between Kenya and Britain— in seeking to determine whether Britain's provision on coercive control can be used as a guide to formulating Kenya's own provisions.

Chapter 5 summarises the findings of the dissertation and contains a conclusion that follows from the research questions and hypotheses of the study. Recommendations will also be discussed.

## **CHAPTER 2**

### **THEORETICAL FRAMEWORK**

#### **2.0.INTRODUCTION**

Chapter 1 introduced the study, including a succinct exploration of its background, its objectives, hypotheses, and an overview of both the theoretical framework and the literature review. The primary focus of Chapter 2 will be the probing of the main theory that underpins coercive control: the ‘Power and Control Wheel’ theory. There will also be an exploration of the Theory’s critiques, and an establishment of the relationship between the Theory and Coercive Control. Following this, there will be a brief discussion on another theory underlining coercive control, namely the ‘Cycle of Violence’ theory.

The Power and Control Wheel theory will act as a tool to unravel the nature of coercive control and will buttress the argument that it ought to be criminalised as a form of domestic violence.

#### **2.1.THE POWER AND CONTROL WHEEL THEORY**

##### **2.1.1. BACKGROUND**

The Power and Control Wheel (the Wheel) is an analysis originating in the United States of America (USA) used to assist in the fight against domestic violence against women.<sup>61</sup> This educational and intervention tool, created by Ellen Pence and Michael Paymard, illustrates the tactics used by the abuser on the victim in relationships characterised by domestic violence.<sup>62</sup>

Its first version was a product of the Duluth Domestic Abuse Intervention Project (the Duluth Project) which aimed to raise awareness among women who had suffered violence, so as for

<sup>61</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, State University of New York Press, Albany, 2012, 21.

<sup>62</sup> Levine A.R., ‘Coercive control and physical violence at the onset of dating relationships: a prospective longitudinal study’, Published Graduate Dissertation, University of Windsor, Ontario, 2015, 27.

them to understand that violence against women is backed by ‘institutional, structural, economic and cultural forces’.<sup>63</sup> Pence was aware of the importance of showing the nexus between domestic violence and ‘institutions that supported violence against women’, as these institutions (such as mental health centres, courts, the economic system and the society at large) blamed women for the violence that they experienced. One such example is the police force blaming women for being provocative.<sup>64</sup>

The Duluth Model was birthed following the Duluth Project, and was an ‘adoption of written policies, procedures and protocols to guide’ key authorities related to domestic assault cases—such as police, prosecutors and judges.<sup>65</sup> The adoption of these instruments were subsequent to education campaigns from 1976 to 1980 by Minnesota advocacy groups in the USA, ‘to inform both public and policy makers about the extent of domestic violence in the state, its lifelong impact on women and children, and the problems women face when they turn to the system for help in escaping the violence’.<sup>66</sup>

Survivors of domestic violence from Duluth (Minnesota, USA) took part in the formation of the Duluth Model’s Power and Control Wheel, which encompassed behavioural traits that were true to these women’s own experiences in their respective marriages.<sup>67</sup>

The Power Control Wheel evidences the reality endured by victims in relationships characterised by abuse. It highlights and elucidates on the strategies utilised by abusers on victims to ensure that the victim remains in the abusive relationship.<sup>68</sup> According to Pence, this subsequently guarantees control and power over the victim.<sup>69</sup>

<sup>63</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 21.

<sup>64</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 21.

<sup>65</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’ 128.

<sup>66</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 128.

<sup>67</sup> Rizza J, ‘Beyond Duluth: a broad spectrum of treatment for a broad spectrum of domestic violence’, 128.

<sup>68</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 159.

<sup>69</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 30.

## 2.1.2. OVERVIEW OF THE THEORY

The Power and Control Wheel was a product of the focus group of battered women in the late 1970s. The experiences of the women coincided and created a ‘picture of control’.<sup>70</sup> The Wheel highlights the underpinnings of an abusive relationship, and helps to widen the understanding of abuse.<sup>71</sup>



Figure 2.72

The outer rim of the Wheel has the words ‘physical violence’ and ‘sexual violence’.<sup>73</sup> Physical violence entails physical acts of aggression, while sexual violence means that the abuser cures

<sup>70</sup> Gondolf E.W., ‘The contributions of Ellen Pence to batterer programming’, 993.

<sup>71</sup> Gondolf E.W., ‘The contributions of Ellen Pence to batterer programming’, 994.

<sup>72</sup> Stopping Violence Services, ‘Power and Control Wheel’, <https://www.svschch.org.nz/Resources/Power-and-Control-Wheel/>, on 11 February 2019.

<sup>73</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 512.

their sexual desires whenever they wishes to, whether the victim consents or not.<sup>74</sup> These tactics essentially hold the other 8 tactics together as it inculcates the most amount of fear and are therefore the most effective tactics in getting the victim to submit. For that reason, these two tactics are evidently the most powerful tools in effecting power and control over the victim.<sup>75</sup> The reason as to why the tactics are on the outer rim of the Wheel is that they are not habitually used daily by the abuser as oppose to the 8 tactics which are. In this way, they are the periphery tactics of abuse.<sup>76</sup>

The 8 tactics are worth focusing on not solely due to the frequency in which they occur, but also because they often herald physical and sexual violence. Furthermore, most victims of abuse fall prey to these 8 tactics,<sup>77</sup> thus they garner importance.

### **2.1.3. FEATURES OF THE POWER AND CONTROL WHEEL THEORY**

The Wheel depicts various actions, outside of physical and sexual assault, that are considered abusive in and of themselves. In the middle of the Wheel are the words ‘power and control’, which is a portrayal of the centrality of domestic violence.<sup>78</sup> Domestic violence is only possible where the abuser can exert power and control on the victim. The Wheel is segmented into 8 modes of manipulation used by the abuser to ensure that they hold power and control over their victim.<sup>79</sup> Some of these 8 tactics shall be analogised with the story of Leslie Morgan Steiner’s abusive relationship, which she accounted in her book ‘Crazy Love’<sup>80</sup> and TEDx Talk, ‘living

<sup>74</sup> Miller S, TheDuluthModel, ‘Physical and sexual violence- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=XkuC3tUgHoY>, on 9 September 2019.

<sup>75</sup> Miller S, TheDuluthModel, ‘Physical and sexual violence- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=XkuC3tUgHoY>, on 9 September 2019.

<sup>76</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 101 *Kentucky Law Journal* 483, 2013, 512.

<sup>77</sup> Dascalu B.D., ‘Forms and effects of domestic violence’, International Conference Education and Creativity for Knowledge-Based Society, 2013 ,43.

<sup>78</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 512.

<sup>79</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 159.

<sup>80</sup> Morgan Steiner L, *Crazy Love*, St. Martin’s Press, New York, 2009.

through crazy love'.<sup>81</sup> When young, Steiner 'fell in love with and married a man (Conor) who beat [her] regularly and nearly killed [her]'.<sup>82</sup>

### 2.1.3.1.Coercion and Threats

Coercion and threats are the means through which the abuser gets the victim to do as they wish, for example, by using something the victim values. <sup>83</sup> The most frequently cited example is the use of the children, as is explained below (*see '2.1.2.6. Using children to ensure the compliance and obedience of the victim'*). Threats are the amplified route taken by the abuser when coercion doesn't work.<sup>84</sup>

This is evident in the book 'Crazy Love', where Conor made it very clear that if Steiner was not willing to do things his way, then they could not be together. He even went as far as to threaten that they could no longer be together if she did not throw away a love letter that a child had playfully given to her over a year ago.<sup>85</sup> Another occasion included Conor pushing Steiner down a flight of stairs because his laundry had not been done yet.<sup>86</sup> These are clearly means through which he got Steiner to do as he wished.

### 2.1.3.2.Intimidation

Intimidation arises owing to the violence inflicted in the past,<sup>87</sup> for example Conor having punched Steiner on more than one occasion.<sup>88</sup> He often strangled her as well.<sup>89</sup> It is through an

<sup>81</sup> Morgan Steiner L, TEDx Talks, 'Living through crazy love', 3 December 2012, <https://www.youtube.com/watch?v=INJjEZoRKqM> on 12 September 2019.

<sup>82</sup> Morgan Steiner L, *Crazy Love*, 1.

<sup>83</sup> Miller S, TheDuluthModel, 'Minimizing, denying and blaming- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=lx02GEYkAIE>, on 9 September 2019.

<sup>84</sup> Miller S, TheDuluthModel, 'Minimizing, denying and blaming- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=lx02GEYkAIE>, on 9 September 2019.

<sup>85</sup> Morgan Steiner L, *Crazy Love*, 128.

<sup>86</sup> Morgan Steiner L, *Crazy Love*, 184.

<sup>87</sup> Miller S, TheDuluthModel, 'Intimidation- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=JAI9fswf5KQ>, on 9 September 2019.

<sup>88</sup> Morgan Steiner L, *Crazy Love*, 175, 186.

<sup>89</sup> Morgan Steiner L, *Crazy Love*, 83, 213.

instillation of fear in the relationship that the abuser successfully intimidates the victim, for example, by kicking the dog or slapping the victim.<sup>90</sup> It can even be something as drastic as pointing a gun at the victim as Conor did to Steiner.<sup>91</sup>

Intimidation is interwoven with the abuser's capacity to outmanoeuvre any resistance to his or her demands. It can be as subtle as a stare from across the room, or as intense as yelling inches away from the victim's face. Intimidation makes it easier for the abuser to have his or her way in the relationship.<sup>92</sup>

### **2.1.3.3. Emotional Abuse**

This form of abuse is more frequent than physical violence, and is a tool through which the abuser instils in the victim the belief that they are superior. This is achieved through the relentless act of putting the victim down and making the victim feel as if nothing they do is good enough for the abuser, that they are not worthy, and that there is no way they could survive without them. An example of emotional abuse is name calling— where the abuser uses harsh words to replace the victim's given name. Calling one by their given name is an acknowledgement that the two are equals and that there is equal respect. However, the abuser cannot extend this respect to their partner, and there is a superiority complex that they are not equal to them.<sup>93</sup> Emotional abuse is exemplified in 'Crazy Love'. Frequently in the book, Conor refers to Steiner as a 'bitch'<sup>94</sup>, 'crazy'<sup>95</sup> and a 'retard'.<sup>96</sup>

<sup>90</sup> Miller S, TheDuluthModel, 'Intimidation- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=JAI9fswf5KQ>, on 9 September 2019.

<sup>91</sup> Morgan Steiner L, *Crazy Love*, 179.

<sup>92</sup> Miller S, TheDuluthModel, 'Intimidation- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=JAI9fswf5KQ>, on 9 September 2019.

<sup>93</sup> Miller S, TheDuluthModel, 'Emotional abuse- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=wO6BXV6Yxgo>, on 9 September 2019.

<sup>94</sup> Morgan Steiner L, *Crazy Love*, 77, 250.

<sup>95</sup> Morgan Steiner L, *Crazy Love*, 129.

<sup>96</sup> Morgan Steiner L, *Crazy Love*, 148, 173, 180.

It is often the case that emotional abuse is harder for the victim to overcome than physical abuse, as they end up losing themselves and doubting their worth.<sup>97</sup>

#### **2.1.3.4. Isolation from Friends and Family**

This tactic's aim is to prevent the victim from hearing ideas contrary to the abuser's. It is based on the notion that if the abuser is ultimately in charge of what the victim thinks, what the victim does, and how they act, then it will be easier to control him or her. An example is spurring an argument each time the victim wishes to meet with family or friends, ensuring that the victim isn't speaking with anyone by having access to all their communication devices, or making the victim move away from family and friends to another city.<sup>98</sup>

In 'Crazy Love', Conor was keen on isolating Steiner from her friends,<sup>99</sup> as well as her family.<sup>100</sup> He even went as far as convincing Steiner to relocate with him from New York to Vermont.<sup>101</sup>

#### **2.1.3.5. Minimising or Denying the Existence of Abuse**

Minimising or denying the existence of abuse is synonymous with the term 'gaslighting'. This is a form of abuse named after the film 'Gaslight', 'in which a woman is driven to doubt her sanity by a predatory partner who... sets the gas lights in the house to flicker, and then when she comments on it, he tells her [that she is] seeing things'.<sup>102</sup> Gaslighting is therefore essentially

<sup>97</sup> Miller S, TheDuluthModel, 'Emotional abuse- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=wO6BXV6Yxgo>, on 9 September 2019.

<sup>98</sup> Miller S, TheDuluthModel, 'Isolation- understanding the power and control wheel', 2 May 2016, <https://www.youtube.com/watch?v=ECKkCUWDx7w>, on 9 September 2019.

<sup>99</sup> Morgan Steiner L, *Crazy Love*, 90-91, 97, 182.

<sup>100</sup> Morgan Steiner L, *Crazy Love*, 112-113

<sup>101</sup> Morgan Steiner L, *Crazy Love*, 118.

<sup>102</sup> Domestic Violence Resource Centre Victoria, 'Gaslighting, stalking and intimate partner violence', <http://www.dvrcv.org.au/knowledge-centre/our-blog/gaslighting-stalking-and-intimate-partner-violence> on 11 September 2019.

the manipulation of the victim by the abuser, by giving faulty information that makes ‘them doubt their own memory and perception’.<sup>103</sup>

Frequently, the abuser will also blame the abuse on the victim. An example of this is the abuser shifting the blame to the victim whenever things do not go their way, even in instances where it was the abuser’s fault, a third parties’ fault, or the fault of unforeseeable circumstance. For example, when their children misbehave in a relative’s home, the abuser will blame it on the victim’s inability to parent well.<sup>104</sup>

The victim soon learns that trying to rebut his minimising, denying or blaming only leads to more violence as the abuser tries to bend the victim into submission. The victim soon learns that the best way to navigate the abuser is by embracing their thinking, but this culminate in the victim losing him or herself and adopting the mentality that it is their fault whenever abuse is inflicted on them.<sup>105</sup>

#### **2.1.3.6.Using Children to Ensure the Obedience of the Victim**

Children are used as a pawn to ensure the victim’s compliance to the abuser. The abuser will use the victim’s love for their children against them. For example, by using threats that he or she will take the children away if the victim doesn’t bend to their will, the abuser will get their way. Although it may be the case that the abuser too loves their kids, this love is superseded by the wish to control their partner or punish them for a wrong done.<sup>106</sup>

<sup>103</sup> Ballou Kate, ‘Failure to protect: our civil system’s chronic punishment of victims of domestic violence’ 31 *Notre Dame Journal of Law, Ethics & Public Policy* 2, 2017, 358.

<sup>104</sup> Miller S, TheDuluthModel, ‘Minimizing, denying and blaming- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=lx02GEYkAJE>, on 9 September 2019.

<sup>105</sup> Miller S, TheDuluthModel, ‘Minimizing, denying and blaming- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=lx02GEYkAJE> on 9 September 2019.

<sup>106</sup> Miller S, TheDuluthModel, ‘Using children- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=PxAQduCP4c&t=1s>, on 9 September 2019.

### 2.1.3.7.Patriarchy

The Power and Control Wheel indicates ‘male privilege’ as one of the tactics, which is essentially the embodiment of ‘patriarchy’. A ‘privilege’ is a due granted to an individual, owing to their social status within the society, be it due to their race, financial status, gender, *et cetera*. It is possible for a privileged person to be aware of advantages acquired owing to their social status, but they also believe that these advantages accrue rightfully.<sup>107</sup> Privilege in this case manifests itself in advantages men believe rightly accrue to them owing to their gender.<sup>108</sup> This undoubtedly encompasses the more socially accepted term ‘patriarchy’ which sociologist Sylvia Walby defined as ‘a set of structured and institutionalised social relations in which certain men dominate, oppress, and exploit women’.<sup>109</sup>

This tactic is a crucial driving force of abusive relationships. It focuses on the more frequent male abuser who has strong convictions that he owns his partner and is therefore entitled to dominate and control her.<sup>110</sup> In ‘Crazy Love’, the notion of ownership was evident. Conor went as far as to say to Steiner, “I... own... you” as he strangled her.<sup>111</sup>

The abuser clearly believes that his partner is expected to submit to him using the tactics (including physical and sexual violence). The abuser believes that him and his partner are not on equal footings.<sup>112</sup>

Furthermore, in the case of male abusers, there is a strict belief in the delineation of roles between men and women. Examples include men believing that sex is owed to them whenever they want it, expecting that their partners will ‘be the primary-care-givers and nurturers’, and

<sup>107</sup> ‘Using male privilege’ *Mending the Sacred Hoop*, 1-2, <https://mshoop.org/wp-lib/wp-content/uploads/2017/09/11-Male-Privilege.pdf> on 11 September 2019.

<sup>108</sup> ‘Using male privilege’ *Mending the Sacred Hoop*, 1-2, <https://mshoop.org/wp-lib/wp-content/uploads/2017/09/11-Male-Privilege.pdf> on 11 September 2019.

<sup>109</sup> Stark L, *The limits of patriarchy*, 1 ed The Finnish Literature Society, 2016, 18.

<sup>110</sup> Miller S, TheDuluthModel, ‘Using children- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=PxAQduCP4c&t=1s>, on 9 September 2019.

<sup>111</sup> Morgan Steiner L, *Crazy Love*, 83.

<sup>112</sup> Miller S, TheDuluthModel, ‘Using children- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=PxAQduCP4c&t=1s>, on 9 September 2019.

believing that men go to work while women should not as they should instead take care of their children and the home.<sup>113</sup>

Patriarchy is palpably reflective of ‘intimate-partner violence in a male-dominated society’, which is every society. However, owing to intimate-partner violence not only being restricted to relationships where men are the abuser, or where men are one of the parties in the relationship, the Wheel has been modified to omit the term ‘male privilege’, and instead read ‘privilege’. This creates a gender-neutral outlook on domestic violence, such as in lesbian violence.<sup>114</sup>

### **2.1.3.8. Economic Abuse**

Economic abuse deals with the power that financial control affords the abuser. This is applicable whether the abuser is making money or not. The latter may be exemplified where the victim is the sole breadwinner of the home, yet the abuser is the only party in the relationship that has access to the debit card and cheque book. This tactic effectively cripples the victim’s autonomy as their purchases, movement, and even their ability to leave is determined by money, yet this is all controlled by their abusive partner.<sup>115</sup>

### **2.1.4. UTILITY VALUE OF THE THEORY**

The utility value of the Wheel is its portrayal of the varied methods employed by the abuser (psychological, physical and sexual violence) to instil power and control, making it that more difficult for the victim to leave the abusive relationship or to seize the violence. The Wheel brings to light just how integral each tactic is to the abuser, including the subtle tactics in the inner rim of the Wheel, which the Wheel identified as abuse for the first time in domestic violence literature. ‘While physical and sexual abuse are crimes, acts such as intimidating the

<sup>113</sup> ‘Using male privilege’ *Mending the Sacred Hoop*, 1-2, <https://mshoop.org/wp-lib/wp-content/uploads/2017/09/11-Male-Privilege.pdf> on 11 September 2019.

<sup>114</sup> Wormer K.V., *Human behavior and the social environment: micro level individuals and families*, Oxford University Press, Oxford, 2007, 105.

<sup>115</sup> Miller S, TheDuluthModel, ‘Using children- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=PxAQduCP4c&t=1s>, on 9 September 2019.

survivor, using the children, or controlling finances are much subtler and difficult to conceptualise as abuse but are just as insidious'.<sup>116</sup> These inner rim tactics are also the more frequent modes of abuse.<sup>117</sup> The value of the Power and Control Wheel is also evident from it being the most frequently used model to demystify domestic violence as is seen in literature on Domestic Violence Law.<sup>118</sup>

### **2.1.5. CRITICISMS OF THE THEORY**

All theories have their critiques which allow for the birthing of a better version of the same theory.

The Power and Control Wheel is criticised for creating the picture of a unanimous experience of domestic violence. Joshua M. Price believes that this is not the case. Abuse is a different experience for each person (despite similarities in cases), therefore, the Power and Control Wheel should not be used as a one-size-fits-all model. It is thus argued that there should be an undoing of the notion that 'women's experiences of violence are uniform'.<sup>119</sup> A possible harm of this uniform notion of abuse is that the traits found in the Wheel are the only ones deemed to exist, which may lead all others to not being considered forms of abuse. 'For example, the Wheel does not encompass many aspects of HIV-related domestic violence, such as the abuser's... threat to publicise his or her HIV-positive status'.<sup>120</sup> There is an argument that the Wheel should be more dynamic, having an ability to morph into its user's circumstances.<sup>121</sup> The author wishes to dispel this critique as the Wheel is in fact dynamic, for it has been used to apply to all sorts of people including the lesbian and gay community in the USA.<sup>122</sup>

Moreover, the Wheel was a product of information collected from interviews conducted on battered women within Duluth. Owing to this, it has been argued that it is best representative of

<sup>116</sup> Stoever J.K., 'Transforming Domestic Violence Representation', 512.

<sup>117</sup> Dascalu B.D., 'Forms and effects of domestic violence', International Conference Education and Creativity for Knowledge-Based Society, 2013 ,43.

<sup>118</sup> Stoever J.K., 'Transforming Domestic Violence Representation', 512.

<sup>119</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 22.

<sup>120</sup> Stoever J.K., 'Transforming Domestic Violence Representation', 515.

<sup>121</sup> Stoever J.K., 'Transforming Domestic Violence Representation', 516.

<sup>122</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 33.

those specific women who were interviewed.<sup>123</sup> Others argue that it was created ‘for use primarily with white, heterosexual battering, so other types of controlling behaviour may be more common in other groups’.<sup>124</sup> These two criticisms have been rebutted by the activists behind the Wheel, who affirm that the tactics are the same as the those prevalent amongst all oppressed persons in society, such as poor people and women. In fact, the Power and Control Wheel has been used with women of colour, Latinas,<sup>125</sup> Muslims, disabled persons, lesbians and gay men,<sup>126</sup> bisexual, transgender, and nonconforming persons. No matter who is part of the relationship, the tactics used to obtain power and control are still primary in the relationship.<sup>127</sup>

Moreover, the primary focus on a male abuser is characteristic of the original Power and Control Wheel,<sup>128</sup> which is its greatest criticisms. Scholars in the field argue that the theory ‘dismisses female-perpetrated or mutual violence’.<sup>129</sup> Sophie E. Register writes that the society views domestic violence ‘within “patriarchal and heterosexual assumptions..., including the appeal to the laws of nature”’. Society’s view of domestic violence is therefore centred on a man’s advantaged societal status, and his larger frame which gives him a natural ability to inflict violence as compared to females. However, domestic violence ought not be restricted to a ‘gendered power imbalance’.<sup>130</sup> It assumes that only men can inflict violence, when this is not always the case. ‘Studies suggest that domestic violence within lesbian relationships occur nearly as often as it does in heterosexual relationships’,<sup>131</sup> therefore the tactic of ‘male privilege’ in the Power and Control Wheel is inapplicable to homosexual couples,<sup>132</sup> where instead the

<sup>123</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 33.

<sup>124</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 34.

<sup>125</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 33.

<sup>126</sup> Stoeber J.K., ‘Transforming Domestic Violence Representation’, 514.

<sup>127</sup> Walker L.E.A., *The battered woman syndrome*, 4 ed, Springer Publishing Company, New York, 2017, 8.

<sup>128</sup> <https://www.norfolk.gov.uk/safety/domestic-abuse/what-is-domestic-abuse/power-and-control-wheel>, on 11 February 2019.

<sup>129</sup> Rizza J, ‘Beyond Duluth: a broad spectrum of treatment for a broad spectrum of domestic violence’, 129.

<sup>130</sup> Register S.E., ‘Maybe it’s just different with girls: a social-ecological analysis of intimate partner violence in female-on-female relationships’ 94 *International Social Science Review* 2, 2018, 1.

<sup>131</sup> Register S.E., ‘Maybe it’s just different with girls: a social-ecological analysis of intimate partner violence in female-on-female relationships’, 2.

<sup>132</sup> Register S.E., ‘Maybe it’s just different with girls: a social-ecological analysis of intimate partner violence in female-on-female relationships’, 6.

Wheel indicates ‘using privilege’.<sup>133</sup> The term ‘male privilege’ signifies that only men can have this privilege, or in lesbian relationships, the party who is ‘the more masculine member of the partnership’,<sup>134</sup> this meaning that the abuser adheres to the society’s perceived traditional norms that embody masculinity— for example the party who has a larger build (the ‘butch’ party). This is a perpetuation of stereotypes of who could be an abuser.<sup>135</sup> However, within the field of psychology, the ‘oldest and still widely adopted perspective [to look at domestic violence] is psychology based’ which focuses on violent behaviours having a direct link to personality disorders and occurrences taking place early in life. Zlatka Rakovec-Felser speaks to this:

Moffitt et al. report that while men exhibit more aggression overall, gender is not a reliable predictor of interpersonal aggression, including psychological aggression. Their study found that whether male or female, aggressive people share a cluster of traits, including high rates of suspicion and jealousy, sudden and drastic mood swings, poor self-control, and higher than average rates of approval of violence and aggression.<sup>136</sup>

Owing to this, the outdated view that *only* men can be abusers shall be omitted in this research paper.

Critiques have further argued that the use of the Power and Control Wheel, as a tool to eliminate abuse, focuses on the private sphere of domestic violence. That is, the Power and Control Wheel only narrows down on the ‘private dynamic of the couple in the home’, despite there being public nature to domestic violence— as stated by Price. The public sphere of domestic violence recognises that abuse is also facilitated by factors outside of the domestic setting, such as bureaucratic organisations, friends who have suspicions but don’t act on them, the law, and the society at large. The author shall therefore bear in mind the public nature of the Power and Control Wheel, and in so doing, recognise that the law must recognise the coercive behaviours

<sup>133</sup> Wagers MS, ‘Deconstructing the “power and control motive”’: developing and assessing the measurability of internal power’, Published Graduate Thesis and Dissertations, University of South Florida, Tampa, 2012, 18.

<sup>134</sup> Register S.E., ‘Maybe it’s just different with girls: a social-ecological analysis of intimate partner violence in female-on-female relationships’, 7.

<sup>135</sup> Register S.E., ‘Maybe it’s just different with girls: a social-ecological analysis of intimate partner violence in female-on-female relationships’, 8.

<sup>136</sup> Rakovec-Felser Z., ‘Domestic violence and abuse in intimate relationship from public health perspective’ *Health Psychology Research*, 2014, 2019.

gravity in domestic violence. This failure of the law would facilitate abuse, as aptly stipulated by Price.<sup>137</sup>

### **2.1.6. COERCIVE CONTROL AND THE POWER AND CONTROL WHEEL THEORY**

As was explained, the Power and Control Wheel depicts 8 tactics that are abusive in and of themselves and are key to ensuring power and control against the victim of abuse. The central placing of the words ‘power and control’ in the Wheel is a portrayal of its centrality in domestic violence.<sup>138</sup> Domestic violence gains its clout where power and control tactics are utilised.<sup>139</sup>

Coercive control is a pattern of ‘controlling or coercive behaviour’ transpiring in a relationship that takes place over a period of time, allowing for one party of the relationship to employ ‘power, control, or coercion’ over the other party. This relationship is either between ‘intimate partners, former partners who still live together or family members’.<sup>140</sup> Coercive control can be exemplified through a variety of actions, which may not necessarily amount to criminal offences in and of themselves: isolation the victim from loved one, monitoring the victim (such as through the use of spyware), dictating what they can wear, where they can go, who they can meet meet, what time they should sleep, raping the victim, calling them names, threatening them, *et cetera*.<sup>141</sup>

It is evident that the Wheel and coercive control are inexplicably related. Coercive control gains its notoriety for the controlling behaviours it entails, and this is essentially what the 8 tactics of the Power and Control Wheel are: behaviours that enforce power and control over the victim.<sup>142</sup> These are the tools of abuse that are in fact more frequent in the daily experience of the victim.<sup>143</sup> The tactics ensure that power and control is effectively imposed in an abusive relationship in

<sup>137</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 32.

<sup>138</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 512.

<sup>139</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 159.

<sup>140</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 3.

<sup>141</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 4.

<sup>142</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 512.

<sup>143</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 512.

order to effectively prolong the relationships lifespan.<sup>144</sup> The elements are clearly the backbone to the destructive relationship, for if it were not for the power and control that these tactics render, the victim would not be paralysed to the thought of leaving. Consequently, the criminalisation of these coercive elements (and more specifically, the criminalisation of coercive control) would allow the law to come head-to-head with the destructive behaviour that underpins abusive relationships and fuels its prolongation.

## **2.2.OTHER OUTLOOKS ON COERCIVE CONTROL: THE CYCLE OF VIOLENCE THEORY**

It is worth noting that despite the Power and Control Wheel being the primary and most cited theory, there is another theory cited in domestic violence literature called The Cycle of Violence Theory.<sup>145</sup> Lenore Walker is the positor of the Cycle of Violence theory.<sup>146</sup>

This theory views domestic violence as following key stages in a repetitive cyclical manner: (1) the tension building period (where the man is irritable and inflicts relatively low-grade forms of abuse such as verbal abuse and *controlling techniques*), (2) the violent outburst period (here, the violence is intensified),<sup>147</sup> and (3) the honeymoon or loving contribution phase (the phase in the violence where the abuser's penitence leads the victim to stay in the relationship, as he or she remain hopeful that the abuser will change their ways.) The more the cycle repeats itself, the more helpless the woman feels to leave the abusive relationship.<sup>148</sup> Coercive control is evident from the controlling techniques within the tension building period. The tension building period would also entail the inner rim tactics within the Power and Control Wheel theory—<sup>149</sup> as these are comparable to the low-grade forms of abuse that Walker anticipated.<sup>150</sup>

<sup>144</sup> Asmus M.E., Ritmeester T, Pence E.L., 'Prosecuting domestic abuse cases in Duluth', 159.

<sup>145</sup> Stoever J.K., 'Transforming domestic violence representation', 483.

<sup>146</sup> Stoever J.K., 'Transforming domestic violence Representation', 506.

<sup>147</sup> Berry D.W., *The domestic violence sourcebook*, 31-32.

<sup>148</sup> Stoever J.K., 'Transforming domestic violence Representation', 507.

<sup>149</sup> These include intimidation, emotional abuse, and isolation from friends and family. See: Stopping Violence Services, 'Power and Control Wheel', <https://www.svschch.org.nz/Resources/Power-and-Control-Wheel/>, on 11 February 2019.

<sup>150</sup> Berry D.W., *The domestic violence sourcebook*, 31-32.

Walker's theory has been refuted in respect to the implied passiveness that the women experiences within the relationship. Researchers in the field have proved that the victims 'are vigorously engaged in seeking help as well as terminating and ultimately surviving violence',<sup>151</sup> and Walker's theory's inability to show this is owing to the downfalls of her research methodology— such as 'the lack of control groups, [and] problems with interviewing methods'.<sup>152</sup>

Additionally, Walker has been criticised for viewing the passiveness, or 'psychological impairment or pathology',<sup>153</sup> as the sole outcome of abusive relationships. This has a twofold effect. Firstly, it creates a fallacious helpless image of the victim. What is viewed as helplessness might alternatively be a response to inadequate government resources, for example, lagged and ineffective 'police responsiveness and protection, [or] limited childcare options'. Secondly, Walker's view of a psychologically impaired victim disregards the victims whose experiences aren't reflective of the theory.<sup>154</sup> It is fervently argued that Walker's theory is reflective of only a portion of abusive relationships, her work itself 'suggest[ing] that the Cycle exists in only twenty-three to fifty-eight percent of relationships with intimate partner violence'.<sup>155</sup> However, Walker's theory must be commended for its applicability to both heterosexual and homosexual relationships.<sup>156</sup>

### **2.3.CONCLUSION**

Most of the modes of manipulation in the inner rim of the Power and Control Wheel are reflective of a relationship plagued with abuse. These tactics of Power and Control embody what coercive control is and ensure effective and prolonged domestic violence.<sup>157</sup> This Chapter thus served to provide a theoretical basis on which the author argues that the criminalisation of the

<sup>151</sup> Stoever J.K., 'Transforming domestic violence Representation', 508.

<sup>152</sup> Stoever J.K., 'Transforming domestic violence Representation', 508.

<sup>153</sup> Stoever J.K., 'Transforming domestic violence Representation', 509.

<sup>154</sup> Stoever J.K., 'Transforming Domestic Violence Representation', 509.

<sup>155</sup> Stoever J.K., 'Transforming Domestic Violence Representation', 510.

<sup>156</sup> Register S.E., 'Maybe it's just different with girls: a social-ecological analysis of intimate partner violence in female-on-female relationships', 6.

<sup>157</sup> Asmus M.E., Ritmeester T, Pence E.L., 'Prosecuting domestic abuse cases in Duluth', 159.

Power and Control Wheel tactics (that is, the criminalisation of coercive control) is essential in allowing the law to intervene in the destructive behaviour that underpins abusive relationships and fuels its prolongation.<sup>158</sup>

<sup>158</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 32.

## **CHAPTER 3**

### **COERCIVE CONTROL AND KENYAN LEGISLATION**

#### **3.0.INTRODUCTION**

Chapter 2 discussed the main theory underpinning coercive control in domestic violence discourse: the ‘Power and Control Wheel Theory’.<sup>159</sup> The exploration of the theory introduced various tactics that are implemented by abusers (and are a reflection of coercive control in its entirety) in order to ensure power and control is exuded in the relationship; thereby making it easier for them to inflict abuse and ensure its prolongation.<sup>160</sup> Chapter 2 consequently answered the third research question by proving that coercive control is a form of domestic violence, owing to its centrality in the manifestation of extreme forms of abuse, such as sexual and physical abuse.<sup>161</sup>

Chapter 3 seeks to determine what the law on coercive control in Kenya is, and to what extent this law criminalises coercive control. Prior to this endeavour, there must be a recapitulation of coercive control, and what it entails. The knowledge of its constituents will allow a critical inspection of whether Kenyan legislation has provisions dealing with the crux of coercive control.

#### **3.1.COERCIVE CONTROL IN THE LAW**

Coercive control is a pattern of ‘controlling or coercive behaviour’ transpiring in a relationship that takes place over a period of time. It entails one party to the relationship employing ‘power, control, or coercion’ over the other party. This relationship is either between ‘intimate partners, former partners who still live together or family members’.<sup>162</sup> Coercive control can be

<sup>159</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 101.

<sup>160</sup> Stoever J.K., ‘Transforming Domestic Violence Representation’, 512.

<sup>161</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 159.

<sup>162</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 3.

exemplified through a variety of actions, which may not necessarily amount to criminal offences in and of themselves: isolating the victim from loved ones, monitoring the victim (such as through the use of spyware), dictating what they can wear, where they can go, who they can meet, what time they should sleep, raping the victim, calling them names, threatening them, *et cetera*.<sup>163</sup>

In order to delve into this discussion, it is pertinent to mention that in December 2015,<sup>164</sup> England and Wales were the first jurisdictions in the world to criminalise coercive control.<sup>165</sup> Ireland and Scotland followed suit in January and April 2019 respectively.<sup>166</sup> After the exploration of the Kenyan legal framework, it may be discovered that those four jurisdictions are the only ones in the world that criminalise coercive control.

The Home Office of the UK highlights four elements that must be met in order for coercive control to apply as an offence. These four elements will be used as the lens through which the author determines whether Kenyan legislation indeed criminalises coercive control. These elements are: that there is a repeated or continuous carrying out of the controlling or coercive behaviour; there is a grave effect that the pattern of behaviour has on the victim; the perpetrator of the actions is aware, or ought to have been aware, that the behaviour has grave effects on the victim; and there is a personal connection between the perpetrator and the victim.<sup>167</sup>

### **3.2.LAWS RELATING TO COERCIVE CONTROL AS A FORM OF DOMESTIC VIOLENCE**

Domestic violence is often synonymous with such terms as ‘wife abuse, marital assault, woman battery, spouse abuse, wife beating, conjugal violence, intimate violence, battering, partner

<sup>163</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 4.

<sup>164</sup> ‘Serious Crime Act 2015’, legislative.gov.uk, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/2015-12-29>, on 11 October 2019.

<sup>165</sup> ‘It’s time ‘coercive control’ was made illegal in Australia’, The Conversation, 30 April 2019, <http://theconversation.com/its-time-coercive-control-was-made-illegal-in-australia-114817> on 29 September 2019.

<sup>166</sup> ‘Abuse is a pattern. Why these nations took the lead in criminalizing controlling behaviour relationships’, TIME, 21 June 2019, <https://time.com/5610016/coercive-control-domestic-violence/>, on 29 September 2019.

<sup>167</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 5.

abuse’,<sup>168</sup> intimate partner relationship *et cetera*.<sup>169</sup> Evidently, the abuser and victim have an intimate relationship, thus the term often refers to persons in a romantic relationship with one another.<sup>170</sup> However, domestic violence is not only applicable to partner abuse. It also captures child and elder abuse,<sup>171</sup> as well as the abuse of person who is a family member of the abuser. Therefore, it could include an abuser inflicting violence on their parent or sibling.<sup>172</sup>

Domestic violence takes various forms: physical abuse, emotional abuse, sexual violence,<sup>173</sup> controlling or coercive behaviour,<sup>174</sup> *et cetera*. This section shall be narrowing down on the laws in Kenya that could be interpreted as shunning coercive control. The laws that generally do so are the Constitution of Kenya,<sup>175</sup> the Sexual Offences Act,<sup>176</sup> the Children’s Act,<sup>177</sup> and the Marriage Act.<sup>178</sup>

### **3.2.1. GENERAL LAWS DEALING WITH COERCIVE CONTROL AS A FORM OF DOMESTIC VIOLENCE**

#### **3.2.1.1.CONSTITUTION OF KENYA, 2010**

The Bill of Rights of the Constitution of Kenya consist of various rights and freedoms that relate to coercive control. These are Article 25, 28, 29 and 45.<sup>179</sup>

<sup>168</sup> Schechter S. and Ganley A., *Domestic violence: a national curriculum for family preservation practitioners*, Family Violence Prevention Fund, 1995, 16.

<sup>169</sup> World Health Organisation, *Understanding and addressing violence against women*, 2012, 1.

<sup>170</sup> Schechter S. and Ganley A., *Domestic violence: a national curriculum for family preservation practitioners*, 17.

<sup>171</sup> World Health Organisation, *Understanding and addressing violence against women*, 2012, 1.

<sup>172</sup> Section 5 & 4, *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>173</sup> Section 3, *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>174</sup> Bishop C. and Bettinson V., ‘Evidencing domestic violence, including behaviour that falls under the new offence of ‘controlling or coercive behaviour’ 22 *The International Journal of Evidence and Proof* 1, 2017, 3.

<sup>175</sup> *Constitution of Kenya* (2010).

<sup>176</sup> *The Sexual Offence Act* (Act No 3 of 2006).

<sup>177</sup> *Children Act* (Act No 8 of 2001).

<sup>178</sup> *Marriage Act* (Act No 4 of 2014).

<sup>179</sup> Article 225, 28, 29, 45, *Constitution of Kenya* (2010).

Article 28 highlights that all persons have an innate dignity, and therefore this dignity is to not only be respected, but to also be protected.<sup>180</sup> Coercive control is a clear violation of this dignity, as the coercive behaviour carried out is often carried out to ‘humiliate, degrade or dehumanise the victim’.<sup>181</sup> Ultimately, a great deal of the controlling or coercive behaviour is inhumane and degrading, and therefore contravenes the non-derogable freedom featured in Article 25 of the Constitution: the ‘freedom from... inhuman or degrading treatment or punishment’.<sup>182</sup>

Furthermore, according to Article 29 of the Constitution of Kenya, all have the right to freedom and security. This is an umbrella right that in turn includes rights relevant to domestic abuse:<sup>183</sup> the right not to undergo psychological torture;<sup>184</sup> and the right to be free from any treatment or punishment that is ‘cruel, inhuman or degrading’.<sup>185</sup> One can see the psychological torture imbedded in coercive control; as is exemplified in the case *R v Worth (Jordan Michelle)* (2018),<sup>186</sup> which is the first case in England in which a female was convicted for coercive behaviour.<sup>187</sup> In this case, the psychological torture included Worth lying to her boyfriend (Alex Skeel) that his grandfather, who he was very close to, was dead. This, however, was merely a lie that was conjured up.<sup>188</sup>

Article 45 of the Constitution provide that persons involved in a marriage enjoy equal rights when the marriage takes place, throughout its duration, and at its termination. Therefore, all rights in the Bill of Rights accrue to both members of a marriage equally, and thus the contravention of these rights– through domestic violence– aggregates to a violation of the equal weighting of rights in marriage.<sup>189</sup> Although domestic violence is not solely restricted to married

<sup>180</sup> Article 28, *Constitution of Kenya* (2010).

<sup>181</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 4.

<sup>182</sup> Article 25, *Constitution of Kenya* (2010).

<sup>183</sup> Article 29, *Constitution of Kenya* (2010).

<sup>184</sup> Article 29(d), *Constitution of Kenya* (2010).

<sup>185</sup> Article 29(f), *Constitution of Kenya* (2010).

<sup>186</sup> *R v Worth (Jordan Michelle)* (2018), Court of Appeal, England.

<sup>187</sup> BBC Three, ‘Abused By My Girlfriend: The Teenage Romance That Descended Into Terrible Violence’, 18 February 2019, [https://www.youtube.com/watch?v=3\\_dr9y41J38&list=PLF0pXC6uSFWCgFnH2dBh6Hw1grS3txd1z&index=16&t=0s](https://www.youtube.com/watch?v=3_dr9y41J38&list=PLF0pXC6uSFWCgFnH2dBh6Hw1grS3txd1z&index=16&t=0s) on 27 September 2019.

<sup>188</sup> BBC Three, ‘Abused By My Girlfriend: The Teenage Romance That Descended Into Terrible Violence’, 18 February 2019, [https://www.youtube.com/watch?v=3\\_dr9y41J38&list=PLF0pXC6uSFWCgFnH2dBh6Hw1grS3txd1z&index=16&t=0s](https://www.youtube.com/watch?v=3_dr9y41J38&list=PLF0pXC6uSFWCgFnH2dBh6Hw1grS3txd1z&index=16&t=0s) on 27 September 2019.

<sup>189</sup> Article 45(3), *Constitution of Kenya* (2010).

parties,<sup>190</sup> it is worth driving home that controlling behaviour is a violation of many rights that both parties to the marriage share. For example, the right to be free from psychological torment in Article 29(d).<sup>191</sup>

### **3.2.1.2.THE SEXUAL OFFENCE ACT (ACT NO 3 OF 2006)**

It should be noted that his act does not apply specifically to domestic set-ups as domestic violence often does. Nonetheless, its provisions are relevant to controlling or coercive behaviour.

Section 2 of the Act provides that any offence within the Act itself is a sexual offence. Examples of these offences include:<sup>192</sup> rape,<sup>193</sup> and defilement.<sup>194</sup> Section 3 provides the elements of rape. The first is that the offender intentionally and unlawfully used his or her genital organs to penetrate the other party.<sup>195</sup> ‘An act is intentional and unlawful if it is committed– (a) in any *coercive* circumstance; (b) under *false pretences*...; or (c) the consent is obtained by *force* or by means of threats or intimidation’.<sup>196</sup> The second element of rape is that the other party did not consent to the penetration;<sup>197</sup> while the third element is that the consent was acquired ‘by *force* or by means of threats or intimidation of any kind’.<sup>198</sup> It is clear that coercive control is a key element in rape, and is evidently a tool that is used to sexual abuse victims in domestic relationships. The Act speaks to rape involving coercive circumstances, situations where false pretences are involved, or circumstances where the consent is coerced through threat and intimidation.<sup>199</sup> Rape is indeed an example of coercive behaviour in domestic relationships.<sup>200</sup>

<sup>190</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 3.

<sup>191</sup> Article 29(d), *Constitution of Kenya* (2010).

<sup>192</sup> Section 2, *The Sexual Offence Act* (Act No 3 of 2006).

<sup>193</sup> Section 3, *The Sexual Offence Act* (Act No 3 of 2006).

<sup>194</sup> Section 8, *The Sexual Offence Act* (Act No 3 of 2006).

<sup>195</sup> Section 3(1)(a), *The Sexual Offence Act* (Act No 3 of 2006).

<sup>196</sup> Section 3(2) & 43, *The Sexual Offence Act* (Act No 3 of 2006).

<sup>197</sup> Section 3(1)(b), *The Sexual Offence Act* (Act No 3 of 2006).

<sup>198</sup> Section 3(1)(c), *The Sexual Offence Act* (Act No 3 of 2006).

<sup>199</sup> Section 3(2) & 43, *The Sexual Offence Act* (Act No 3 of 2006).

<sup>200</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 4.

Section 8 stipulates on the offence of defilement, which is where an individual carries out an action which leads to the penetration of a child.<sup>201</sup> This, too, is related to coercive control because it is often the case that children are sexually abused to manipulated persons (whether the children themselves or their partner) into doing what the abuser wishes.<sup>202</sup>

### **3.2.1.3.CHILDREN ACT (ACT NO 8 OF 2001)**

Coercive control is evident in this Act as well. According to Section 2 of the Act, child abuse includes a plethora of forms of domestic violence: ‘physical, sexual, psychological and mental injury’.<sup>203</sup> Section 13 protects children from physical and psychological abuse.<sup>204</sup> It is clear that coercive control is unquestionably linked to psychological abuse; which is evident from the 8 tactics of power and control utilised to maintain a relationship between the abused and abuser (see the Power and Control Wheel in Chapter 2).<sup>205</sup> Additionally, as was seen in the Crazy Love theory in Chapter 2, coercive control tactics (in this theory, predominantly the isolation from friends and family) precedes threats of violence.<sup>206</sup> Therefore, the protection of children from physical violence is also linked to coercive control. This is because protecting children from physical violence would entail first and foremost protecting them from coercive control (as seen in psychological violence).

<sup>201</sup> Section 8, *The Sexual Offence Act* (Act No 3 of 2006).

<sup>202</sup> Miller S, TheDuluthModel, ‘Using children- understanding the power and control wheel’, 2 May 2016, <https://www.youtube.com/watch?v=PxAQduCP4c&t=1s>, on 9 September 2019.

<sup>203</sup> Section 2, *Children Act* (Act No 8 of 2001).

<sup>204</sup> Section 13, *Children Act* (Act No 8 of 2001).

<sup>205</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 159.

<sup>206</sup> Morgan Steiner L, TEDx Talks, ‘Living through crazy love’, 3 December 2012, <https://www.youtube.com/watch?v=lNJjEZoRKqM> on 12 September 2019.

### **3.2.1.4.MARRIAGE ACT (ACT NO 4 OF 2014)**

The Marriage Act contains a semblance of coercive control in Section 11(1)(e) which provides that a marriage will be void where either party's consent is lacking.<sup>207</sup> The lack of consent may be for various reasons according to the Act, including coercion of the party.<sup>208</sup> This coercion may include threatening the victim, which is an example of controlling or coercive behavior.<sup>209</sup>

### **3.2.2. THE PROTECTION AGAINST DOMESTIC VIOLENCE ACT (ACT NO 2 OF 2015)**

Prior to 2015, Kenya lacked legislation that specifically dealt with domestic violence.<sup>210</sup> This had to change owing to the levels of domestic violence in the country, more so against women.<sup>211</sup> It was a difficult journey to accent such a law, as there were many male Members of Parliament who were against it. Nonetheless, the Act was successfully lobbied.<sup>212</sup> The PDVA was assented by President Uhuru Kenyatta in May 2015.<sup>213</sup> As was stated by Hon (Justice) Nancy Baraza during the gender forum in 2015 to create public awareness of the PDVA, 'by enacting [the PDVA], Kenya [is] not only fulfilling international conventions that protect individuals against violence, Kenya [is] also implementing its Constitution as stated in Article 10, 28, 29, 43 and 45'.<sup>214</sup>

<sup>207</sup> Section 11(1)(e), *Marriage Act* (Act No 4 of 2014).

<sup>208</sup> Section 11(2)(a), *Marriage Act* (Act No 4 of 2014).

<sup>209</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 4.

<sup>210</sup> Heinrich Böll Stiftung, 'The Protection Against Domestic Violence Act (PADV) 2015, 27 August 2015, <https://ke.boell.org/2015/08/27/protection-against-domestic-violence-act-padv-2015> on 22 November 2019.

<sup>211</sup> Vanessa Bwale, 'The rising trend of gender based violence in Kenya: a call for urgent action', Urgent Action Fund Africa, <https://www.uaf-africa.org/fr/the-rising-trend-of-gender-based-violence-in-kenya-a-call-for-urgent-action/>, on 22 November 2019.

<sup>212</sup> Heinrich Böll Stiftung, 'The Protection Against Domestic Violence Act (PADV) 2015, 27 August 2015, <https://ke.boell.org/2015/08/27/protection-against-domestic-violence-act-padv-2015> on 22 November 2019.

<sup>213</sup> LVCT Health Head Office Nairobi, *Consolidated popular version of gender based violence laws of Kenya 2015*, 2015, 9.

<sup>214</sup> Heinrich Böll Stiftung, 'The Protection Against Domestic Violence Act (PADV) 2015, 27 August 2015, <https://ke.boell.org/2015/08/27/protection-against-domestic-violence-act-padv-2015> on 22 November 2019.

As was seen above, it is arguable that Kenya has laws that broadly discourage coercive control, as evinced in the Constitution of Kenya,<sup>215</sup> the Sexual Offences Act,<sup>216</sup> and the Children's Act.<sup>217</sup> However, it is pertinent to look at the specific law that legislates on domestic violence in order to truly determine to what extent coercive control is criminalised in Kenya. This discussion will determine whether the PDVA provides for and criminalises the offence of coercive control.

The question of whether the PDVA has provisions related to coercive control will be determined by analysing whether the Act consists of the elements of coercive control aforementioned: a repeated or continuous carrying out of the controlling or coercive behaviour; a grave effect that the pattern of behaviour has on the victim; the perpetrator is aware, or ought to be aware, that the behaviour has grave effects on the victim; and there is a personal connection between the perpetrator and the victim.<sup>218</sup>

### **3.2.2.1. REPEATED CARRYING OUT OF CONTROLLING OR COERCIVE BEHAVIOUR**

The habitual carrying out of such behaviour is highlighted in Section 2 of the PDVA where the Act defines emotional, verbal and psychological abuse as 'a *pattern* of degrading, or humiliating conduct towards the applicant, including but not limited to the following — (a) *repeated* insults, ridicule or name-calling; and (b) *repeated* threats to cause emotional pain'.<sup>219</sup>

Section 3(4)(1) continues to provide that despite abuse being evinced in a single act,<sup>220</sup> it is also clear from acts that cumulate to form a 'pattern of behaviour'; even when these acts seem insignificant when considered separately.<sup>221</sup>

<sup>215</sup> *Constitution of Kenya* (2010).

<sup>216</sup> *The Sexual Offence Act* (Act No 3 of 2006).

<sup>217</sup> *Children Act* (Act No 8 of 2001).

<sup>218</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 5.

<sup>219</sup> Section 2, *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>220</sup> Section 3(4)(1)(a), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>221</sup> Section 3(4)(1)(b), *Protection against Domestic Violence Act* (Act No 2 of 2015).

Although both Section 2 and 3 clearly highlighted the repetitiveness element, there is no clear emphasis on the behaviour that amounts to controlling or coercive. Nonetheless, it may be argued that there is an insinuation of control behaviour throughout the Act, such as in its exploration of emotional abuse. The Act defines economic abuse as denying the victim ‘economic or financial resources to which [the victim] is entitled or... requires, including household necessities, medical expenses, school fees, rent...; and the denial... of the right to seek employment or engage in any income-generating activity’.<sup>222</sup> However, cherry picking different controlling behaviours scattered across the Act does not equate to a clear provision of controlling or coercive behaviours.

This then means that this element of coercive control is not clearly identifiable, and thus coercive control is not represented clearly in the Act.

### **3.2.2.2.PATTERN OF BEHAVIOUR HAS A GRAVE EFFECT ON THE VICTIM**

Due to the Act’s failure to have a clear delineation of controlling or coercive behaviour, it is impossible to speak of the Act specifying the grave effects from this sort of behaviour. One could go a step further to solely begging the question: does the act provide for grave effects of domestic violence as a whole? The answer is no. The only grave effect prescribed by the Act is ‘a fear of imminent harm’ in relation to the abuser intimidating the victim.<sup>223</sup>

### **3.2.3. PERPETRATOR OF THE ACTIONS IS AWARE, OR OUGHT TO HAVE BEEN AWARE, THAT THE BEHAVIOUR HAS GRAVE EFFECTS ON THE VICTIM**

Since the Act fails to highlight coercive behaviour and the specific grave effects that result from it, it is difficult to clearly pinpoint these negative effects that the perpetrator is or ought to be

<sup>222</sup> Section 2, *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>223</sup> Section 2, *Protection against Domestic Violence Act* (Act No 2 of 2015).

aware of with relation to coercive behaviour. Moreover, there is no plain provision in the Act highlighting the abuser's awareness of the effects of his or her actions in domestic violence.

### **3.2.4. A PERSONAL CONNECTION BETWEEN THE PERPETRATOR AND THE VICTIM**

This is the only element of coercive control that is apparent from the Act. This personal connection is expressly provided for in the Act's definition of a domestic relationship,<sup>224</sup> of which domestic violence pertains to.<sup>225</sup> The PDVA highlights what amounts to a domestic relationship in Section 4:

... person shall be in a domestic relationship with another person if the person- (a) is married to that other person-, (b) has previously been married to that other person; (c) is living in the same household with that person; (d) has been in a marriage with the other person which has been dissolved or declared null; (e) is a family member of that other person; (f) is or has been engaged to get married to that person; (g) has a child with that other person; or (h) has a close personal relationship with the other person.<sup>226</sup>

Section 4(1)(e) is unfolded in Section 5 which explains that a family member is a: spouse, child (which includes an adopted, step or foster child), parent, sibling, other relatives.<sup>227</sup> Relatives include parents, grandparents, stepparents, uncles, aunts, fathers, mothers, uncles and aunts-in-law, nephews or nieces, or cousins.<sup>228</sup>

When the Court is required to determine whether persons are in a domestic relationship, it shall take into consideration the 'nature and intensity of the relationship' (which does not perforce a sexual relationship), the time the persons in the relationship spend with one another, where they spend this time together, how this time is spent, and 'the duration of the relationship'.<sup>229</sup>

<sup>224</sup> Section 2, *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>225</sup> Section 3(2), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>226</sup> Section 4(1), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>227</sup> Section 5(1), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>228</sup> Section 5(2), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>229</sup> Section 4(4), *Protection against Domestic Violence Act* (Act No 2 of 2015).

### 3.3. CHALLENGES

Aside from the last element of coercive control (a personal connection between the abuser and the victim), the other elements of coercive control barely, if at all, exist in the PDVA. There is no such offence as coercive controlling behaviour, and thus coercive control is not an offence in the PDVA. Nor is it an offence in any of the other laws in Kenya. Kenya is therefore in dire need of its criminalisation.

Another challenge is that as of now, Kenya's database for cases— Kenya Law— does not have a single case that has looked into the question of coercive behaviour. More surprisingly, there are no cases where the court has explored domestic violence in depth and utilised the PDVA in coming to its decision. In fact in the few cases that touch on domestic violence—albeit barely and hurriedly— it is common place for them to not even mention the PDVA once.<sup>230</sup> This means that the Act is not being properly utilised for more common forms of domestic violence like physical abuse, which will make it a whole lot harder for it to be implemented to tackle more abstruse forms of domestic violence, like emotional abuse and coercive control. This neglect of the Act is tragic since domestic violence often escalates to the murder of the victim as was seen in *Republic v Johana Munyau Mweni* (2018);<sup>231</sup> or the murder of the abuser as evinced in *Republic v Collet Thabitha Wafula* (2016).<sup>232</sup> The High Court of Kenya in *Republic v Johana Munyau Mweni* provided that, 'the court is alive to the rise in the number of death arising out of domestic violence...<sup>233</sup> 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 if not by society then by this court'.<sup>234</sup> Yet, how does the court reasonably believe that it can effect change when no real effort has made in the courts to demystify domestic violence in Kenya in the few cases of domestic violence that have come before it. It will clearly be a real challenge to implement coercive control in court.

<sup>230</sup> See *Republic v Johana Munyau Mweni* (2018) eKLR, and *Republic v Collet Thabitha Wafula* (2016) eKLR.

<sup>231</sup> *Republic v Johana Munyau Mweni* (2018) eKLR, para 9.

<sup>232</sup> *Republic v Collet Thabitha Wafula* (2016) eKLR, para 7.

<sup>233</sup> *Republic v Johana Munyau Mweni* (2018) eKLR, para 10.

<sup>234</sup> *Republic v Johana Munyau Mweni* (2018) eKLR, para 11.

### **3.4. CONCLUSION**

Overall, it is transparent that Kenyan law does not provide for the crime of coercive control. Therefore, the author shall proceed to utilise the guidance of foreign legislation to create a suitable framework for Kenya on how coercive control ought to be included in the PDVA.

## **CHAPTER 4**

### **A COMPARATIVE STUDY**

#### **4.0. INTRODUCTION**

Chapter 3 probed Kenya's plethora of laws in order to discover what Kenya's laws were on domestic violence, and whether there was any provision for the offence of coercive control. It was found that the sole legislation on domestic violence is the Protection Against Domestic Violence Act (PDVA),<sup>235</sup> and that this law fails to substantively provide for the offence of coercive control.

This Chapter of the research paper will explore how Kenya can adopt the crime of coercive control into its legal framework. As it stands, only 3 jurisdictions in the world have criminalised coercive control: Britain (in December 2015),<sup>236</sup> Ireland (in January 2019), and Scotland (in April 2019).<sup>237</sup> The author shall proceed to utilise the guidance of foreign legislation to create a suitable coercive control framework for Kenya, namely Britain's (England's and Wales') Serious Crime Act 2015 (SCA).<sup>238</sup>

#### **4.1. BRITAIN'S SERIOUS CRIME ACT 2015: SECTION 76**

The SCA,<sup>239</sup> inter alia, is 'an Act to make provision about serious crime prevention orders... [and] to create offences in respect of the encouragement or assistance of crime'.<sup>240</sup> The Act received royal assent in March 2015. It notably created the novel offence of controlling or

<sup>235</sup> *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>236</sup> 'Serious Crime Act 2015', legislative.gov.uk, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/2015-12-29>, on 11 October 2019.

<sup>237</sup> 'Abuse is a pattern. Why these nations took the lead in criminalizing controlling behaviour relationships', TIME, 21 June 2019, <https://time.com/5610016/coercive-control-domestic-violence/>, on 29 September 2019.

<sup>238</sup> *Serious Crime Act 2015* (United Kingdom).

<sup>239</sup> *Serious Crime Act 2015* (United Kingdom).

<sup>240</sup> *Serious Crime Act 2007* (United Kingdom).

coercing behaviour under Section 76,<sup>241</sup> thereby closing the gap in law around patterns of such behaviour.<sup>242</sup> This gap had led to great difficulty by the Courts ‘in proving a pattern of behaviour amounting to harassment within an intimate relationship’.<sup>243</sup> Section 76 moreover furthered the aim of stamping out domestic abuse, which was a priority for the former Prime Minister of the United Kingdom, Theresa May, whilst she was Home Secretary.<sup>244</sup>

Section 76 of the SCA shall be explored and extrapolated to the Kenyan jurisdiction.

#### 4.1.1. JUSTIFICATION

The reason as to why Britain’s SCA is being utilised is threefold.

Firstly, Britain has been selected owing to its track-record in matters to do with the elimination of violence against women. Section 76 (the provision that creates the offence for controlling or coercive behaviour) is only but one example of the ‘developments in England and Wales over the last quarter of a century which seeks to protect women in an intimate or family relationship’. Such developments are evident from two of many milestones.<sup>245</sup> The first milestone is *R v R*.<sup>246</sup> This was the case that finally dissolved the ‘marital exemption for rape or attempted rape on the presumption that the state of matrimony implied irrevocable consent to sexual intercourse’, thus allowing for the charging and conviction of rape or attempted rape in marriages where no consent was given. The second milestone is Clare’s Law in 2014,<sup>247</sup> more formally known as The Domestic Violence Disclosure Scheme. It was introduced across the UK to enable potential

<sup>241</sup> Home Office, *Controlling or coercive behaviour in intimate or family relationship: statutory guidance framework*, 2015, 2.

<sup>242</sup> Home Office, *Controlling or coercive behaviour in intimate or family relationship: statutory guidance framework*, 2015, 3.

<sup>243</sup> ‘Controlling or coercive behaviour in an intimate of family relationship: Legal guidance, Domestic abuse’, The Crown Prosecution Service, 30 June 2017, <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship> on 9 September 2019.

<sup>244</sup> ‘Controlling and coercive behavior figures: no surprise’, Kingsley Napley, 2 September 2016, <https://www.kingsleynapley.co.uk/insights/blogs/criminal-law-blog/controlling-and-coercive-behaviour-figures-no-surprise> on 9 September 2019.

<sup>245</sup> Keren L.B., ‘Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales’ 11 *Journal of Commonwealth Law and Legal Education* 1, 2016, 2.

<sup>246</sup> *R v R* (1991) The United Kingdom House of Lords.

<sup>247</sup> Clare Wood, a victim of domestic abuse, was murdered by her ex-boyfriend. She was not aware of his past records of violence against prior partners.

victims of domestic abuse to acquire information about a possible perpetrator's history of abuse or violence, through an application to the police.<sup>248</sup>

Secondly, Section 76 was adopted in December 2015,<sup>249</sup> and its success has been evident within the years that have followed. The only other jurisdictions that have adopted legislation on coercive control did so in 2019,<sup>250</sup> and hence one cannot conclude that it has resulted in favourable results just yet. Owing to this, it is worth highlighting the successes of Section 76.<sup>251</sup> Following its coming into force in December 2015, there had only been five prosecutions of coercive or controlling behaviour as March 2016 came to an end. One of these five cases involved Mohammed Anwaar, who 'pleaded guilty to the Section 76 offence... (in addition to other offences of assault and criminal damage) and was given a prison sentence of 28 months'. The controlling or coercive behaviour had spanned across a two-year period, and included such actions as dictating what his partner could eat and wear, which was done through isolating her from her friends and family members.<sup>252</sup> Within the first six months since the coming into force of Section 76, the offence had been only used '62 times to charge perpetrators'.<sup>253</sup> However, from the most recent figures on prosecutions relating to Violence against Women and Girls crimes (VAWG), 960 cases of controlling or coercive behaviour were charged in 2018.<sup>254</sup>

Thirdly, Kenya is a member of the Commonwealth.<sup>255</sup> The Commonwealth is a political association of states that were historically ruled by the British Empire.<sup>256</sup> Following Kenya having formerly been a colony of the British Empire, there are evident similarities in the legal

<sup>248</sup> Keren L.B., 'Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales' 11 *Journal of Commonwealth Law and Legal Education* 1, 2016, 2.

<sup>249</sup> 'Serious Crime Act 2015', legislative.gov.uk, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/2015-12-29>, on 11 October 2019.

<sup>250</sup> That is, Ireland and Scotland. See: 'Abuse is a pattern. Why these nations took the lead in criminalizing controlling behaviour relationships', TIME, 21 June 2019, <https://time.com/5610016/coercive-control-domestic-violence/>, on 29 September 2019.

<sup>251</sup> Keren L.B., 'Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales', 6.

<sup>252</sup> Keren L.B., 'Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales', 6.

<sup>253</sup> Keren L.B., 'Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales', 7.

<sup>254</sup> 'Annual violence against women and girls report published', Crown Prosecution Service, 26 September 2018, <https://www.cps.gov.uk/cps/news/annual-violence-against-women-and-girls-report-published> on 14 October 2019.

<sup>255</sup> 'Kenya', The Commonwealth, <https://thecommonwealth.org/our-member-countries/kenya> on 22 November 2019.

<sup>256</sup> 'Our history', The Commonwealth, <https://thecommonwealth.org/our-history> on 22 November 2019.

structures of the two jurisdictions. This makes Britain's laws an ideal piece of legislation which Kenya could resonate with. The similarity in legal structures is evident from various examples, including both countries having a common law system,<sup>257</sup> there existing bicameral parliaments,<sup>258</sup> the similarity in their legislations such as the Company Act,<sup>259</sup> and more.

Owing to both Britain's track record of working towards the elimination of violence against women, and the success of Section 76 of the SCA, it is pertinent to use England and Wales as a guide as to how Kenya could implement the offence of coercive control into the PDVA.

#### **4.1.2. EXPLORATION OF SECTION 76**

It was made evident in Chapter 3 of this research paper that Kenyan law does not provide for the crime of coercive control. Therefore, the author wishes to get inspiration from the SCA in creating the offence of coercive control in the Kenyan legal framework. Amendments ought to be made to the PDVA (Kenya's primary law on domestic violence) to include coercive control as a form of domestic abuse.<sup>260</sup> These amendments can only be suggested after thoroughly examining Section 76 of the SCA.

Section 76 came into force on 29 December 2015 and introduced a new offence: controlling or coercive behaviour. Despite the UK Home Office recognising that perpetrators of controlling or coercive behaviour tend to be men— which is 'underpinned by wider societal gender inequality— this behaviour 'is not the sole province of either gender'.<sup>261</sup> Nevertheless, the provision of Section 76 in the law is just one of the developments in Britain seeking to eliminate violence

<sup>257</sup> Britain has a common law system. See: Judicial Office, *The Judicial System of England and Wales: A visitor's guide*, 2016, 23-24. This is the same for Kenya. See: Ghai Y.P. and Ghai J.C., *The legal profession and the new constitutional order in Kenya*, 1 ed, Strathmore University Press, Nairobi, 2014, 16.

<sup>258</sup> Britain's parliament is bicameral. See: Barnett J.D., 'The bicameral system in state legislation', 9 *American Political Science* 3, 1915, 449. Kenya, too, has a bicameral legislature. See: Mbondenyi M.K. and Ambani J.O., *The new constitutional law of Kenya: principles, government and human rights*, Claripress LTD Nairobi, Nairobi, 2012, 108.

<sup>259</sup> Harney R, 'The New Companies Act 2015 has come into operation in Kenya', *Bowman Gilfillan Africa Group's Coulson Harney Office*, 2016, 1.

<sup>260</sup> Preamble, *Serious Crime Act 2015* (United Kingdom).

<sup>261</sup> Keren L.B., 'Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales', 1.

against women, and more specifically to ‘to protect women in an intimate or family relationship.’<sup>262</sup>

Section 76 of the SCA reads as follows:<sup>263</sup>

- (1) A person (A) commits an offence if—
  - (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
  - (b) at the time of the behaviour, A and B are personally connected,
  - (c) the behaviour has a serious effect on B, and
  - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
  - (a) A is in an intimate personal relationship with B, or
  - (b) A and B live together and—
    - (i) they are members of the same family, or
    - (ii) they have previously been in an intimate personal relationship with each other.
- (3) But A does not commit an offence under this section if at the time of the behaviour in question—
  - (a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and
  - (b) B is under 16.
- (4) A’s behaviour has a “serious effect” on B if—

<sup>262</sup> Keren L.B., ‘Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales’, 2.

<sup>263</sup> Section 76, *Serious Crime Act 2015* (United Kingdom).

(a) it causes B to fear, on at least two occasions, that violence will be used against B, or

(b) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities.

(5) For the purposes of subsection (1)(d) A "ought to know" that which a reasonable person in possession of the same information would know.

(6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—

(a) they are, or have been, married to each other;

(b) they are, or have been, civil partners of each other;

(c) they are relatives;

(d) they have agreed to marry one another (whether or not the agreement has been terminated);

(e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(f) they are both parents of the same child;

(g) they have, or have had, parental responsibility for the same child.

(7) In subsection (6) —

"civil partnership agreement" has the meaning given by section 73 of the Civil Partnership Act 2004;

"child" means a person under the age of 18 years;

"parental responsibility" has the same meaning as in the Children Act 1989;

"relative" has the meaning given by section 63(1) of the Family Law Act 1996.

(8) In proceedings for an offence under this section it is a defence for A to show that—

(a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and

(b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if—

(a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and

(b) the contrary is not proved beyond reasonable doubt.

(10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

(11) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.<sup>264</sup>

This Section is an express acknowledgement of the grievous damage that can be caused by emotional, financial and psychological harm 'to an intimate partner or family member by a perpetrator'.<sup>265</sup> This abuse is not tantamount to physical and sexual violence but is nonetheless recognised as abuse. Indeed, Kenya's very own PDVA too recognises non-physical forms of abuse in Section 2, such as 'emotional, verbal or psychological abuse'.<sup>266</sup> Nonetheless, coercive behaviour is not included as an offence.

Section 76 in the SCA also acknowledges that coercive behaviour can take place as a pattern of behaviour, sometimes involving separate events that may seem harmless *prima facie*. However, considered holistically, these incidents gain weight and refute the notion that abuse is solely

<sup>264</sup> Section 76, *Serious Crime Act 2015* (United Kingdom).

<sup>265</sup> Keren L.B., 'Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales', 2.

<sup>266</sup> Section 2, *Protection against Domestic Violence Act* (Act No 2 of 2015).

restricted to isolated incidents of violence.<sup>267</sup> Section 3(4)(b) of the PDVA too recognises this same patterned nature of abusive relationships,<sup>268</sup> however this is not inclusive of coercive behaviour.

According to Section 76(1), the commission of controlling or coercive behaviour is fulfilled where the following four elements are met: (1) a repeated or continuous carrying out of the controlling or coercive behaviour against another; (2) there is a personal connection between the perpetrator and the victim; (3) there is a grave effect that the pattern of behaviour has on the victim; and (4) the perpetrator of the actions is aware, or ought to have been aware, that the behaviour has grave effects on the victim—<sup>269</sup> meaning that a reasonable individual with the same information as the perpetrator would have known of the serious effects that their behaviour has on the victim.<sup>270</sup> These elements were discussed in briefly in Chapter 3 (see 3.3. The Protection Against Domestic Violence Act (Act No. 2 of 2015)).

With regards to the second element of controlling or coercive behaviour,<sup>271</sup> Section 76(2) defines a personal connection. A personal connection is one of two things: (a) where the perpetrator and victim are in an intimate partner relationship (IPR),<sup>272</sup> or (b) where the perpetrator and victim live together and are either family members or have previously been in an IPR with one another.<sup>273</sup> Family members are persons who are currently— or have previously— been married to one another or civil partners, who have agreed to get married (including where the agreement has been terminated), who are in a civil partnership agreement (even in the event it has been terminated), who are relatives, who share the same child<sup>274</sup> or ‘have, or have had, parental responsibility for the same child’.<sup>275</sup> This personal connection in Section 76(2) is mirrored in Section 4 of the PDVA in the term ‘domestic relationship’.<sup>276</sup> This term was defined

<sup>267</sup> Keren L.B., ‘Controlling or coercive behaviour in an intimate or family relationship: A new domestic abuse offence in England and Wales’, 1.

<sup>268</sup> Section 3(4)(b), *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>269</sup> Section 76(1), *Serious Crime Act 2015* (United Kingdom).

<sup>270</sup> Section 76(5), *Serious Crime Act 2015* (United Kingdom).

<sup>271</sup> Section 76(1)(b), *Serious Crime Act 2015* (United Kingdom).

<sup>272</sup> Section 76(2)(a), *Serious Crime Act 2015* (United Kingdom).

<sup>273</sup> Section 76(2)(b), *Serious Crime Act 2015* (United Kingdom).

<sup>274</sup> A child is any person below 18 years of age. See: Section 76(6), *Serious Crime Act 2015* (United Kingdom).

<sup>275</sup> Section 76(6), *Serious Crime Act 2015* (United Kingdom).

<sup>276</sup> Section 4, *Protection against Domestic Violence Act* (Act No 2 of 2015).

in Chapter 3 of the research paper (see: 3.2.4. A Personal Connection between the Perpetrator and the Victim).

The third element of coercive behaviour in the SCA speaks of a ‘serious effect’ that the behaviour had on the victim.<sup>277</sup> That is, the victim fears that violence would be used on them on at least two occasions,<sup>278</sup> or the victim suffers ‘serious alarm or distress’ which subsequently affects their daily activities.<sup>279</sup> There is no reflection of the same in Kenya’s PDVA.

A defence of this offence is successful where the alleged perpetrator proves (with the use of sufficient evidence)<sup>280</sup> that their behaviour was reasonable and was carried out in the best interest of the other party.<sup>281</sup> This will be a successful defence where ‘the contrary is not proved beyond reasonable doubt’.<sup>282</sup> This defence, however, will not hold where the victim feared the infliction of violence on them.<sup>283</sup>

Further the offence is not committed under Section 76 where the behaviour is against a child under the age of 16 by an individual who is 16 or above, and has responsibility over the child.<sup>284</sup> ‘This is because the criminal law, in particular... section 1 of the Children and Young Persons Act 1993 as amended by section 66 of the 2015 Act, already covers such behaviour’.<sup>285</sup>

Section 76(11) provides that where an individual is found guilty of the offence, they are liable ‘on conviction or indictment, to imprisonment for a term not exceeding five years, or a fine, or both; [or] on summary conviction, to imprisonment for a term not exceed 12 months, or a fine, or both’.<sup>286</sup>

<sup>277</sup> Section 76(1)(c), *Serious Crime Act 2015* (United Kingdom).

<sup>278</sup> Section 76(4)(a), *Serious Crime Act 2015* (United Kingdom).

<sup>279</sup> Section 76(4)(b), *Serious Crime Act 2015* (United Kingdom).

<sup>280</sup> Section 76(9)(a), *Serious Crime Act 2015* (United Kingdom).

<sup>281</sup> Section 76(8), *Serious Crime Act 2015* (United Kingdom).

<sup>282</sup> Section 76(9)(b), *Serious Crime Act 2015* (United Kingdom).

<sup>283</sup> Section 76(10), *Serious Crime Act 2015* (United Kingdom).

<sup>284</sup> Section 76(3), *Serious Crime Act 2015* (United Kingdom).

<sup>285</sup> Home Office, *Controlling or coercive behaviour in intimate or family relationship: statutory guidance framework*, 2015, 6.

<sup>286</sup> Section 76(11), *Serious Crime Act 2015* (United Kingdom).

## 4.2. PRACTICAL IMPLEMENTATION OF SECTION 76 OF THE SERIOUS CRIME ACT

As previously stated, Kenya's courts have unfortunately steered away from utilising the PDVA in the few cases that involve domestic violence, and more specifically have veered away from the question of coercive control. The same is not true to English Courts. There are an array of cases that have implored Section 79 of the SCA. In 2016, a year after the coming into force of Section 76 of the SCA, there had been 59 convictions for coercive behaviour.<sup>287</sup> Between 2015 and 2018, there has been an increase in police recorded cases of coercive control. In March 2018, cases involving coercive control had been recorded as totalling 960 offences, which was a 'three-fold increase from 309 in the year ending March 2017'. In December 2017, a whopping 486 defendants were prosecuted for coercive and controlling behaviour (96% were male).<sup>288</sup> 51% of these cases features coercive and controlling behaviour as the principal offence.<sup>289</sup> 235 were convicted and 223 were sentenced for the offence, out of the 486 cases. '[T]he average custodial sentence given was 17 months.'<sup>290</sup>

One such case imploring Section 76 of the SCA is *R v Conlon (Robert Joseph James)*.<sup>291</sup> In 2015, Conlon entered a relationship with the complainant, which from the very onset was plagued with controlling and violent behaviour.<sup>292</sup> The violent behaviour entailed assault, which can be exemplified by an occasion where Conlon, while on police bail for a second assault against the complainant, punched her face and kicked her body. He carried out these actions owing to the complainant having talked to another man at a bar during a night out. Police officers 'noticed the complainant had injuries to her cheeks, arms and fingers, her back was in a brace and clumps of her hair had been pulled from her head'. With regards to the controlling behaviour, it was made clear by the complainant that Conlon 'controlled every aspect of her life. He told her what to wear, how to style her hair, limited her contact with friends and work colleagues and checked

<sup>287</sup> Wiener C., 'Seeing what is 'invisible in plain sight': policing coercive control', 56 *The Howard Journal* 4, 2017, 501.

<sup>288</sup> Office for National Statistics, *Domestic abuse in England and Wales: year ending March 2018*, 2018, 40.

<sup>289</sup> Office for National Statistics, *Domestic abuse in England and Wales: year ending March 2018*, 2018, 41.

<sup>290</sup> Office for National Statistics, *Domestic abuse in England and Wales: year ending March 2018*, 2018, 40.

<sup>291</sup> *Regina v Robert Joseph James Conlon* (2017), Court of Appeal (England and Wales).

<sup>292</sup> *Regina v Robert Joseph James Conlon* (2017), Court of Appeal (England and Wales), para 2.

her phone regularly'.<sup>293</sup> Previous to the court proceedings in the Court of appeal, the trial judge noted that the relationship was characterised as coercive on Conlon's part 'and one which was deeply toxic'.<sup>294</sup> Owing to the coercion characteristic of the relationship, Section 76 of the SCA was employed,<sup>295</sup> and the Court noted that this case of coercive control was 'one of the more serious offences of its kinds to come before the courts'.<sup>296</sup> Conlon was imprisoned for 4 ½ years 'comprising 4 years for the offence of controlling or coercive behaviour in an intimate family relationship, 16 months concurrent for assault occasioning actual bodily harm and 6 months' imprisonment consecutive for two specific incidents of perverting the course of justice'.<sup>297</sup>

*R v Joshua Reece Berenger*<sup>298</sup> is yet another coercive control case. The appellant court, in concurring that a four-year custodial term was justified,<sup>299</sup> discussed the gravity of the counts that Berenger was found guilty of. The first count was that of coercive behaviour,<sup>300</sup> while the second was assault.<sup>301</sup> In discussing coercive behaviour, the court notes the following:

[Berenger] checked her mobile phone; he restored deleted photographs; he told her what she he could and could not wear; challenged her about her make-up; made her close or refrain from using social media accounts and controlled the contacts she had on her mobile phone. That controlling behaviour took a number of forms of an essentially non-violent, but nevertheless, coercive kind... He had on occasions pulled her hair, ripped her clothing punched her to the face, threatened her with a knife, spat in her face, stamped on her, thrown a drink on her, elbowed her to the face and head butted her...<sup>302</sup> these serious offences of violence were charged as coercive or controlling behaviour which is a new offence designed to capture conduct of that description specifically when it does not involve some other more serious substantive offence.<sup>303</sup>

<sup>293</sup> Dickson S., 'Court of Appeal: Coercion, control and assault: the importance of proactive policing and judicial standards in s.76 prosecutions, *R v Conlon (Robert Joseph James)*', 82 *The Journal of Criminal Law* 2, 2018, 123.

<sup>294</sup> *Regina v Robert Joseph James Conlon* (2017), Court of Appeal (England and Wales), para 22.

<sup>295</sup> *Regina v Robert Joseph James Conlon* (2017), Court of Appeal (England and Wales), para 25.

<sup>296</sup> *Regina v Robert Joseph James Conlon* (2017), Court of Appeal (England and Wales), para 31.

<sup>297</sup> *Regina v Robert Joseph James Conlon* (2017), Court of Appeal (England and Wales), para 1.

<sup>298</sup> *Regina v Joshua Reece Berenger* (2019), Court of Appeal England and Wales).

<sup>299</sup> *Regina v Joshua Reece Berenger* (2019), Court of Appeal (England and Wales), para 21.

<sup>300</sup> *Regina v Joshua Reece Berenger* (2019), Court of Appeal (England and Wales), para 3.

<sup>301</sup> *Regina v Joshua Reece Berenger* (2019), Court of Appeal (England and Wales), para 4.

<sup>302</sup> *Regina v Joshua Reece Berenger* (2019), Court of Appeal (England and Wales), para 3.

<sup>303</sup> *Regina v Joshua Reece Berenger* (2019), Court of Appeal (England and Wales), para 12.

### **4.3.CONCLUSION**

Britain's success with Section 76 of the SCA will not automatically have the same results in Kenya. Chapter 5, *inter alia*, will explore means through which Kenya could ensure the same success.

## **CHAPTER 5**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.0.INTRODUCTION**

Chapter 1 introduced the study which consisted of a succinct exploration of its background, objectives, hypotheses, and an overview of both the theoretical framework and the literature review. Chapter 2 discussed the main theory underpinning coercive control in domestic violence discourse: the ‘Power and Control Wheel Theory. With this theory surfaced various tactics implemented by abusers (which are a reflection of coercive control in its entirety) in order to exude power and control over the victim. The Cycle of Violence Theory was also briefly discussed and related to coercive control. Chapter 3 sought to determine what the laws of domestic violence in Kenya are, and whether any may contain provisions on coercive control. Finally, Chapter 4 utilised foreign legislation— namely Britain’s SCA 2015— as guidance on how Kenya can adopt the crime of coercive control into its legal framework.

This final Chapter seeks to answer the research questions presented in Chapter 1, and to offer recommendations.

#### **5.1.CONCLUSION OF THIS STUDY**

The first research question of the study sought to determine whether coercive control is a form of domestic violence that should be criminalised. This was answered in Chapter 2 primarily through the Power and Control Wheel Theory. The Theory provides the modes of manipulation within the inner rim of the Wheel that are reflective of a relationship plagued with abuse.<sup>304</sup> Chapter 2 therefore proved that owing to these tactics underpinning abusive relationships and fuelling its prolongation, they should be criminalised.<sup>305</sup> In criminalising these tactics, one

<sup>304</sup> Asmus M.E., Ritmeester T, Pence E.L., ‘Prosecuting domestic abuse cases in Duluth’, 159.

<sup>305</sup> Price J.M., *Structural violence: hidden brutality in the lives of women*, 32.

would essentially be criminalising coercive control (as is logically evident from the relationship established between the Theory and coercive control in Chapter 2).<sup>306</sup> All in all, the first hypothesis posed in Chapter 1 was correct, as indeed it is crucial to recognise coercive control in itself—owing to it being a typology of domestic violence that deserves the urgency in which physical abuse and psychological abuse are dealt with.

The second research question posed was what the law on domestic violence in Kenya is. Following a brief discussion of all the laws in Kenya that briefly provide for domestic violence (namely the Constitution of Kenya, 2010,<sup>307</sup> the Sexual Offences Act,<sup>308</sup> and the Children Act),<sup>309</sup> the Protection Against Domestic Violence Act (PDVA) was selected as being Kenya's main legislation on domestic abuse.<sup>310</sup> This discussion took place in Chapter 3. The hypothesis with regards to this research question was that Kenya has a robust legislation on domestic violence. Perhaps the word 'robust' might be slightly exaggerated, considering only one Act focuses primarily on domestic abuse, while the other three merely allude to it.

The final research question sought to establish whether the PDVA's provisions include coercive control as a form of domestic violence. Chapter 4 highlighted the four elements of coercive control (repeated carrying out of controlling or coercive behaviour, pattern of behaviour that has a grave effect on the victim, the perpetrator of the action is aware or ought to have been aware that the behaviour has grave effects on the victim, and a personal connection exists between the perpetrator and the victim),<sup>311</sup> and concluded that the PDVA consists of none of these elements aside from the last. Owing to this, coercive controlling behaviour is not an offence in the PDVA, nor any of Kenya's other laws. It was hypothesised that the PDVA does not adequately encompass coercive control. This is correct, as the PDVA merely caters for the fourth element of coercive controlling behaviour, but none of the other three.

<sup>306</sup> See *Coercive Control and the Power and Control Wheel Theory* under Chapter 2.

<sup>307</sup> Article 25, 28, 29, 45, *Constitution of Kenya* (2010).

<sup>308</sup> Section 3, 8, *Sexual Offences Act* (Act No 3 of 2006).

<sup>309</sup> Section 13, *Children Act* (Act No 8 of 2001).

<sup>310</sup> *Protection against Domestic Violence Act* (Act No 2 of 2015).

<sup>311</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 4.

## 5.2.RECOMMENDATIONS

### 5.2.1. LEGAL REFORMS

Amendments ought to be made to the PDVA (Kenya’s primary law on domestic violence) to include coercive control as a form of domestic abuse.<sup>312</sup> The offence should be added under Section 3,<sup>313</sup> which consists of a list of types of domestic violence– including abuse,<sup>314</sup> damage to property,<sup>315</sup> economic abuse,<sup>316</sup> sexual abuse,<sup>317</sup> *et cetera*. This is important because the list is close ended. Therefore, domestic violence ought to include coercive control, perhaps as Section 3(o).

Section 3(7) can be added to the PDVA to delineate what the offence of coercive control entails:

(7) The offence of coercive control

(a) For the purposes of this Act, person A has committed the offence of coercive control where–

(i) there is a repeated or continuous carrying out of the controlling or coercive behaviour against person B;

(ii) there is a domestic relationship between persons A and B;

(iii) there is a grave effect that the pattern of behaviour has on person B;

(iv) person A is aware, or ought to have been aware, that the behaviour has grave effects on person B

<sup>312</sup> Preamble, *Serious Crime Act 2015* (United Kingdom).

<sup>313</sup> Section 3, *Serious Crime Act 2015* (United Kingdom).

<sup>314</sup> Section 3(a), *Serious Crime Act 2015* (United Kingdom).

<sup>315</sup> Section 3(b), *Serious Crime Act 2015* (United Kingdom).

<sup>316</sup> Section 3(d), *Serious Crime Act 2015* (United Kingdom).

<sup>317</sup> Section 3(k), *Serious Crime Act 2015* (United Kingdom).

(b) Repeated or continuous carrying out of controlling or coercive behaviour will be made evident from such actions as listed under Section 3(a) to (n). Other examples include—

(i) isolation from loved ones;

(ii) deprivation of basic necessities, support services, or medical services;

(iii) monitoring through means such as spyware;

(iv) dictating where person B can go, what they can wear, when they may sleep, and other day-to-day activities;

(v) using humiliating, degrading or dehumanising treatment;

(vi) threats to reveal private information; or

(vii) threats to hurt or kill them or anyone else, such as their children.<sup>318</sup>

(c) For the purposes of this Act, a domestic relationship is as defined in Section 4.

(d) The behaviour of person A has a grave effect on person B where—

(i) On at least two separate instances, person B feared that violence would be used against them; or

(ii) Person B's daily activities are affected owing to the suffering of serious distress caused.

(e) Person A is aware, or ought to have been aware, that the behaviour has grave effects on person B where—

<sup>318</sup> This is the Home Office's inexhaustive list of types of coercive behavior. See: Home Office, *Controlling or coercive behaviour in intimate or family relationship: statutory guidance framework*, 2015, 4.

(i) a reasonable individual with the same information as person A would have known of the serious effects that their behaviour would have on another individual.

(f) The burden of proof of this offence rests upon person A.

(g) It is a defence for person A to prove, with the use of sufficient evidence, that—

(i) their behaviour was reasonable; and

(ii) their behaviour was carried out in the best interest of Person B.

This defence may be dispelled where the contrary is proven beyond reasonable doubt; and/or where person B proves that there was a legitimate fear of the infliction of violence on them.

(h) If found guilty, person A will be liable to imprisonment for two years.

### **5.2.2. POLICY AND INSTITUTIONAL REFORMS**

A statutory guidance framework of the newly proposed amendments to Section 3 of the PDVA ought to be created.<sup>319</sup> A statutory guidance framework is a comprehensive outline of procedures underpinning legislation as well as details on the substantive elements of the legislation;<sup>320</sup> and would be for the benefit of police, judges, advocates and legal practitioners, nongovernmental organisations, and any other relevant parties. It would allow these parties to understand how to generally recognise domestic violence, and more specifically identify controlling or coercive behaviour. The statutory guidance framework would also assist them to understand the situations in which the offence could be applicable to, what evidence is needed to prove the offence, and what the defences are.<sup>321</sup> All in all, it would ensure the thorough and clear

<sup>319</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 1.

<sup>320</sup> Abrahamson L., *The early years teacher's book*, 1ed, SAGE Publications Inc., London, 2018, 329.

<sup>321</sup> Home Office, *Controlling or coercive behaviour in an intimate or family relationship*, 2015, 1.

understanding of domestic violence and the new offence of coercive behaviour, in the hopes that it would increase its success.

The statutory guidance framework would translate into an alteration of the Judiciary's perception of the gravity of the offence of domestic violence, which would lead to an institutional reform that creates the recurrent use of the PDVA and its amendments. The institutional reform would also be tangible in the police force, as it would be clear why domestic violence laws are crucial to the betterment of society, and how to detect these crimes as well as its constitutive forms (such as coercive control).

Additionally, there should be mass public awareness that spreads knowledge of this form of domestic abuse across the country. The increase in police recorded cases of coercive control in Britain between 2015 and 2018 is partly contingent not only by increased knowledge by police and legal practitioners, but members of the public as well. This allows persons to 'recognise such criminality in society and to use the new law accordingly'.<sup>322</sup>

### **5.2.3. ADVOCACY WORK**

Advocacy within Kenya would be key in garnering a movement to criminalise controlling or coercive behaviour. In the words of Marlies Glasius and Doutje Lettinga,

Global or transnational networks of human rights groups and defenders play a crucial role as 'norm entrepreneurs' in the processes leading from norm evaluation... to norm compliance. Their human rights advocacy helps swaying state and international organisations to endorse a norm and to codify it in domestic, regional, and international law. If the norm obtains a critical mass of supporters, it implies a 'tipping point' has been reached, and the norm can cascade through the population... Before states and other powerful actors start complying with human rights law [as one could argue coercive controlling behaviour provisions to be] and change their behaviour, much ongoing pressure, coercion, persuasion, and support is needed by both state and non-state actors.<sup>323</sup>

<sup>322</sup> Office for National Statistics, *Domestic abuse in England and Wales: year ending March 2018*, 2018, 40.

<sup>323</sup> Goodhart M., *Human rights: politics and practice*, 3 ed, Oxford University Press, Oxford, 2016, 151.

### 5.3.CONCLUSION

It is deplorable that only Britain (England and Wales),<sup>324</sup> Ireland and Scotland have criminalised coercive controlling behaviour.<sup>325</sup> This is striking considering that coercive control is ‘the most common context in which [persons] are abused’, and it is also the most dangerous form of abuse—<sup>326</sup> owing to coercive control comprising of destructive behaviour that underpins abusive relationships and fuels its prolongation.<sup>327</sup> It is high time that countries around the world, including Kenya, recognise it in their laws.

<sup>324</sup> ‘Serious Crime Act 2015’, legislative.gov.uk, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/2015-12-29>, on 11 October 2019.

<sup>325</sup> ‘Abuse is a pattern. Why these nations took the lead in criminalizing controlling behaviour relationships’, TIME, 21 June 2019, <https://time.com/5610016/coercive-control-domestic-violence/>, on 29 September 2019.

<sup>326</sup> Stark E., *Coercive control. How men entrap women in personal life*, Oxford University Press, Oxford, 2007.

<sup>327</sup> ‘Serious Crime Act 2015’, legislative.gov.uk, <http://www.legislation.gov.uk/ukpga/2015/9/section/76/2015-12-29>, on 11 October 2019.

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