

**UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**THE IMPACT OF DOMESTIC VIOLENCE ON THE KENYAN SOCIETY  
AND AVENUES IN ADDRESSING THE PHENOMENON**

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**R40/82973/15**

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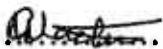
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## DECLARATION

I Grace Nyambura Mwangi hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed..........

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## **ABBREVIATIONS**

**FGM – Female Genital Mutilation**

**PSTD – Posttraumatic Stress Disorder**

**VAWA – Violence Against Women Act**

**DVA – Domestic Violence Act**

**SGBV – Sexual and Gender-Based Violence**

**SOA – Sexual Offenses Act**

**EFA – Education for All**

**PADV – Protection Against Domestic Violence**

**FIDA – Federation of Women Lawyers**

**UDHR – Universal Declaration of Human Rights**

**CEDAW – Convention on Elimination of Discrimination Against Women**

**KNCHR – Kenya National Commission on Human Rights**

**SRGBV – School Related Gender-Based Violence**

## ABSTRACT

Domestic violence is very evident around the world. Indeed, there are cases of domestic violence in every society. The United States for instance witness has an estimated two to four million women annually who fall victims of this vice. This research seeks to identify impacts of domestic violence in Kenya and the available avenues of addressing the phenomenon. To understand the impact of domestic violence, types of domestic violence forms an important part of this discussion since different types of domestic violence present different impacts. This topic is important because domestic violence is one of the most pervasive violations of human rights in the world. The study adopted qualitative research design, an approach which is concerned with describing and interpreting human experience to ensure that social situations and human experience can be understood better. The focus of qualitative research is the perspectives of the participants; it also describes the results using persuasive and expressive language. Data was collected through interviews with victims of domestic violence and experts on this matter. The researcher used open-ended questions which invites lengthier and more descriptive response on a matter of interest. The findings show that Kenya has enacted various policies, laws and regulations to respond to, prevent and manage Sexual and Gender Based Violence (SGBV). Among the policies that were assessed are The National Framework towards Response and Protection of Gender Based Violence in Kenya, 2005. This policy brings together the various state and non-state actors in the responding to domestic violence in Kenya. The second policy was National Guidelines on the Management of Sexual Violence, 2009. This policy provides a framework for the essential services and procedures for managing the survivors of sexual violence. Kenya also has the relevant institutions of dealing with domestic violence. These institutions are government institutions (which include police stations, courts and provincial administration); and traditional institutions. However, there are challenges and opportunities in the current policy, legal and institutional framework that need to be taken into account when developing responses. The full enforcement of the legislation is hampered by the lack of specific policies for addressing gender based violence on one hand and lack of sufficient institutional development in the area of tackling gender based violence at the community level or at the grassroots. It became clear that Kenya has inadequate legal framework for protecting women from domestic violence. This is because offences such as marital rape and widow cleansing, which falls within the realm of domestic violence, are not adequately covered by the country's legal, policy and institutional framework. In respect to institutional framework, Kenya Police service has been enforcing laws dealing with prevention of gender and sexual based violence. The service has also introduced gender desks in most of the country's police posts and stations. Gender desks have led to some improvements in reporting of domestic violence cases and apprehending offenders. The judiciary has been at the forefront in ensuring that there is accountability for human rights violations. Provincial administrations such as county commissioners are deputy commissioners, assistant commissioners, chiefs and assistant chiefs have also been involved in addressing domestic violence cases in the grassroots. However, in many cases they apply customary justice mechanisms when dealing with domestic violence cases something which disadvantages women. Civil society groups such as

FIDA and Gender Violence Recovery Center have also been involved themselves in addressing this phenomenon in Kenya. However, despite their efforts, lapses in the police and judicial system have frustrated the efforts made by civil society organizations in raising awareness about this phenomenon. Traditional institutions for addressing domestic violence were also discussed. Traditional systems are not ideal for addressing domestic violence because they deny women access to formal justice systems that acknowledge that punishment, as opposed to restoration, is the most effective approach towards ensuring justice and deterring crime. Despite the existence of legislations, policies, plans and programs for addressing domestic violence there are many challenges faced in the implementation of various policies and legislations for addressing this phenomenon. These challenges include weak coordination among actors such as the police, health sector and the courts; inadequate resources for implementing the interventions; lack of adequate technical capacity and social cultural issues such as social biases that esteem men over women. The judiciary has made legitimate strides in addressing domestic violence through its interpretation of the constitution and various legislations surrounding domestic violence. Courts have also protected women through the Witness Protection Act, 2006 from further violence.

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## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background to the Study

Domestic violence can be described as abusive behaviour within the confines of an intimate relationship. This phenomenon is used by one partner in an attempt to maintain or gain control over the other. There are two main types of domestic violence; these are physical or sexual violence. Therefore, domestic violence is also generally referred to as physical or sexual violence happening within the family; this includes sexual abuse of children and physical abuse of elderly parents.<sup>1</sup> Domestic violence occurs to people from all age, races, religions, cultures and sexual orientation. It affects both males and females. Moreover, this phenomenon affects people from all educational and economic backgrounds. Couples in same-sex relationships witness domestic violence as much as those in heterosexual relationships. When it occurs, domestic violence has ripple effects. This is because the impacts are felt even by people who were not directly affected such as co-workers, friends, and other family members.<sup>2</sup> If a child grows up in a home where domestic violence is rampant, he or she starts to think of domestic relationship as being a normal way of life. The main problem with the inculcation of such a mindset is that the child is likely to become an abuser in the future since the child sees people who are supposed to provide love, comfort and nurturing engaging in and condoning violence.

Domestic violence is very evident around the world. Indeed, there are cases of domestic violence in every society. The United States for instance witness has an estimated two to four million women annually who fall victims of this vice. A study by Kaysen, et al found out that about 80 percent of accused abusers in that report were

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<sup>1</sup>Etter, Gregg W., and Michael L. Birzer. "Domestic violence abusers: A descriptive study of the characteristics of defenders in protection from abuse orders in Sedgwick County, Kansas." *Journal of Family Violence* 22, no. 3 (2007): 113-119

<sup>2</sup>Bostock, J. A. N., Maureen Plumpton, and Rebekah Pratt. "Domestic violence against women: Understanding social processes and women's experiences." *Journal of Community & Applied Social Psychology* 19, no. 2 (2009): 95-110

while only 19 percent of the accused offenders were female<sup>3</sup>. Indeed, there are cases around the world where females are offenders, nevertheless, the number of male offenders by far outweigh the number of female offenders.<sup>4</sup>

Many studies on this phenomenon have identified three main characteristics of male domestic offenders especially men who engage in wife battering: alcoholism, frustration or stress, socialization and gender roles.<sup>5</sup>Of these three characteristics, the greatest contributor to domestic violence is excessive consumption of alcohol.<sup>6</sup>

Generally, when the subject of domestic violence is discussed, one thinks about physical abuse. However, there are many types of abuse that fall under the umbrella of domestic violence. The major areas of concern with respect to domestic violence are physical abuse, sexual abuse, emotional abuse, economic abuse, and psychological abuse.

## 1.2 Problem Statement

A 2000 survey conducted by a district education office in Kenya whose focus was to gather information regarding cases of domestic violence in the country found out that domestic violence against women is particularly widespread<sup>7</sup>. The report also found that the phenomenon is not selective of one's social economic status. A nationwide survey conducted in the U.S where 6000 families were involved found out that many men abused their spouses.<sup>8</sup>In Kenya, while domestic violence is common in all parts of the country, there are more cases of domestic violence happening in the rural areas compared to the urban areas. A2003 study that sought to unearth the causes of physical and sexual abuse painted a very grim picture about domestic violence in

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<sup>3</sup>Kaysen, D., Dillworth, T.M., Simpson, T., Waldrop, A., Larimer, M.E. and Resick, P.A., 2007. Domestic violence and alcohol use: Trauma-related symptoms and motives for drinking. *Addictive behaviors*, 32(6), pp.1272-1283.

<sup>4</sup>Etter & Birzer, 2007

<sup>5</sup>Ibid., 115.

<sup>6</sup>Kaysen, et al., 2007

<sup>7</sup> Chebagut, J. K. and Godfrey K. N. (2007) The effects of domestic violence in Kenya. *Kenya Association of Professional Counsellors*.

<sup>8</sup>Muchene, Grace "Experiences of women victimized by domestic violence in Kenya." Bachelor's Thesis, *JAMK Univ. Of Applied Sciences*. 2010

Kenya. The study sampled 4,876 married women who were between 15 and 49 years of age.<sup>9</sup> Results from this study found out that almost half of the interviewed women had had at one point in their lives experienced some form of domestic violence. The most common type of domestic violence reported was physical violence at 36 percent and sexual violence at 13 percent.<sup>10</sup>

As a result of many unreported cases of this vice, there is lack of sufficient information on the consequences of domestic violence against women in Kenya. The current study seeks to fill the gap by examining the impact of domestic violence on the Kenyan society; it will also assess the available avenues of addressing this phenomenon.

### **1.3 Objectives of the Study**

The main objective of the study is to examine the impact of domestic violence on the Kenyan society and available avenues in addressing the phenomenon.

The specific objectives of the study are:

1. To understand the existing policy, legal and institutional framework in addressing domestic violence
2. To examine the impact of domestic violence on the Kenyan society with a focus on marriages.
3. To understand the effectiveness of the available avenues in addressing the phenomenon

### **1.4 Research Questions**

1. What policy legal and institutional frameworks are in place for addressing domestic violence?
2. What are the impacts of domestic violence in the society within the context of marriage?

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<sup>9</sup>Kimuna, Sitawa R, and Yanyi Djamba. "Gender based violence: correlates of physical and sexual wife abuse in Kenya." *Journal of family violence* 23, no. 5 (2008): 333-342.

<sup>10</sup>Ibid., 4

3. How effective are the various available avenues in addressing the phenomenon?

### 1.5 Significance of the Study

Domestic violence is a serious problem around the world. This phenomenon has significant impact on the well-being and health of those affected in the immediate as well as in the long-term. Domestic violence also violates the fundamental human rights of women.<sup>11</sup> Domestic violence continues to thrive despite the fact that most countries and societies worldwide uphold freedom from violence as an integral human right. One in every three women in the world has experienced sexual, physical, emotional or other abuse in her lifetime<sup>12</sup>.

Domestic violence is a world phenomenon. This vice is evident in all societies and across all cultures. Like already noted, it does not domestic violence affects and is orchestrated by people from all educational background and economic status. That is why there are cases of domestic violence in developed countries such as the U.S and as well as in developing countries such as Kenya. While statistics on the prevalence of domestic violence differ from country to country, an overwhelming trend on this phenomenon is that women are the majority victims of domestic violence where in some instances, the account for 95 percent of the victims of this phenomenon.<sup>13</sup>

Consequently, this study will help in the provision of data about domestic violence against women and more so its consequences to the society. Information from this study will also attract the attention of policy makers to consider laws and regulations in protecting the women rights. Furthermore, the current research will be carried out in an attempt to describe to what extent women and their children are at risk of different health consequence from violence. It might also generate an attention and motivation for further researches in this area of study.

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<sup>11</sup>Merry, Sally Engle. *Human rights and gender violence: Translating international law into local justice*. University of Chicago Press, 2009.

<sup>12</sup>WHO. Violence against women. <http://www.who.int/mediacentre/factsheets/fs239/en/>

<sup>13</sup>Ibid.

A study on domestic violence would be inconclusive without enumerating the avenue available in dressing the vice in the community, country or region of interest. Therefore, the study will delve into the issue of domestic violence intervention with specific focus on the policy and legal and institutional framework. Besides the policy and institutional framework, the research will explore other initiatives of addressing the phenomenon such as those spearheaded by Non-Governmental Organisations and community based initiatives.

## **1.6 Literature Review**

### **1.6.1 Family**

A family can be defined as a social unit comprising of two or more people who are related by marriage, blood or adoption and share a common commitment to the mutual relationship.<sup>14</sup> All families look different. In most cases, a family unit comprises of a couple; a father, mother and their children; a single parent and his or her child; grandparents and their children; a group of siblings. A family can also be a circle of friends living as a unit. Families are at the very foundation of the society. Indeed, it is from the family that human beings come into this world. It is also from the family that people are nurtured and equipped with the tools needed to thrive in this world and become healthy and capable. While families provide the greatest potential for bringing up healthy individuals, they also have the potential of wounding member (of those families) in ways that they may never heal. The family unit is very important; when a family breaks or when it fails to provide the adequate healthy nurturing needed, the effects are felt not only by the individuals in that family, but also by the community at large. Domestic violence is an example of a factor that contributes to family break down or failure to provide the healthy nurturing needed<sup>15</sup>. Domestic violence affects normal family functioning. Living with domestic violence also causes physical and emotional harm to all family members and especially the one

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<sup>14</sup>Bott, E. and Spillius, E.B., 2014. *Family and social network: Roles, norms and external relationships in ordinary urban families*. Routledge.

<sup>15</sup>Dutton, Donald G. *Rethinking domestic violence*. UBC Press, 2011.



who the violence is directed to. In many cases, women and girls are the majority of victims of domestic violence<sup>16</sup>.

### **1.6.2 Domestic Violence**

Domestic violence is the physical or psychological abuse by a partner towards a spouse or domestic partner. The main reason why individuals resort to domestic violence is to exert control over the other in a relationship. Therefore, a man will want to assert himself in a relationship by abusing his wife or partner. Likewise, a parent will apply extreme levels of physical punishment on their children just to be felt by the child. In later discussion of the family, family dynamics will be mentioned, albeit briefly. Nevertheless, it is important to highlight that there are different types of relationships. For instances, there are partners whose union is through marriage, there are others who are merely living together; there are others who are dating and others who are not living together but are a family for instance those who have been separated. When violence occurs in these relationships can be defined as domestic violence. In any relationship, disagreements often arise. The main types of disagreements are gender-based issues such as division of labour and the rights that each partner believes he or she is entitled to. It is not for instance uncommon to hear of a husband who became violent when the wife or the children felt that he was not adequately providing for them. When it comes to resolution of domestic violence, different cultures have different approaches of solving the phenomenon.

In Kenya, domestic violence against women often goes unnoticed. The common pattern of this vice is that it often used coercively by one partner in an attempt to gain power and control over the partner or spouse. These behaviours can either occur alone or in combination; they can also happen sporadically or continually. Examples of these behaviours are physical violence, psychological abuse, and non-consensual sexual behavior. In many cases, these incidents are initiated by previous episodes. Therefore, they are precursors for future violence.

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<sup>16</sup>Garcia-Moreno, C., Jansen, H.A., Ellsberg, M., Heise, L. and Watts, C.H., 2006. Prevalence of intimate partner violence: findings from the WHO multi-country study on women's health and domestic violence. *The Lancet*, 368(9543), pp.1260-1269.

Psychological abuse is not often mentioned as a form of domestic violence. This is because it is not very noticeable; rarely do the effects of psychological abuse manifest physically. Examples of psychological abuse include threats of physical harm to the spouse or others, coercion, intimidation, humiliation and degradation. It can also come in the form of ridicule and false accusations. Stalking is also a form of psychological abuse. Stalking can occur during a relationship; it can also occur after the relationship comes to an end. Insults remain the most tangible evidence of control and power. In many cases, abusers use insult so as to hurt, control or manage a spouse. More often than not, insults tend to be normalised as a technique for meting punishment. Therefore; insults are a common part of the discipline that seeks to subjugate and dominate the other. About 50 percent of women in violent relationships indicated that men have used insults of offensive words to put them down and humiliate them.<sup>17</sup>

### **1.6.3 Types of Domestic Violence**

#### **1.6.3.1 Physical Abuse**

Physical abuse is one of the most common forms of domestic violence; it is also the most visible. Physical abuse can be defined as the deliberate use of force against the body of another person which can result to pain, physical injury and or harm. There are many types of physical abuse. These include hitting, pushing, slapping, choking, use of an object to hit, squeezing, pulling hair, twisting of a body part and use of a weapon such as a sword or gun. Traditional practices such as female mutilation<sup>18</sup> and wife inheritance also constitute physical abuse because they harm women in unimaginable ways.<sup>19</sup>

#### **1.6.3.2 Psychological Abuse**

Psychological abuse which involves exposure to psychologically harmful behaviour is another type of domestic violence. The use of psychological abuse is often meant to persecute and intimidate. There are many examples of this form of violence. These

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<sup>17</sup>Alhabib, Samia, Ula Nur, and Roger Jones. "Domestic violence against women: Systematic review of prevalence studies." *Journal of family violence* 25, no. 4 (2010): 369-382.

<sup>18</sup>Momoh, Comfort. *Female genital mutilation*. Radcliffe publishing, 2005.

<sup>19</sup>Izumi, Kaori. "Gender-based violence and property grabbing in Africa: a denial of women's liberty and security." *Gender & Development* 15, no. 1 (2007): 11-23.

include abandonment, threats, social isolation and verbal aggression. It could also come in the form of humiliation and issuance of threats of intention to reign in and take custody of the children. This form of domestic violence tends to prevent a crippling effect on the recipient of this form of abuse. A common manifestation of this form of domestic abuse is that it deprives the persons of their self-esteem. Moreover, it affects rational thinking and leads to loss of self-confidence.<sup>20</sup>

### **1.6.3.3 Social Isolation**

The third type of domestic violence is Social isolation. Social isolation is however an uncommon type of domestic violence. Those who use form of domestic violence do it with the intention of controlling their victims. They do this by limiting the victim's access and communication with friends and relatives. A fundamental impact of social isolation through lack of social support is that makes the victim or potential victim more vulnerable to abuse. Some victims who find themselves in this situation may opt to justify the abuse.

During one group meetings, a victim of this phenomenon narrated how her husband had subjected her to social isolation and would often humiliate her. For instance, her husband prevented her from communicating with her friends and relatives. Any of her attempts to reach out for help were thwarted. This isolated made it possible for the spouse to constantly abuse her without anyone's knowledge. The victim was literary a hostage in her own home as she was unable to seek for help or treatment when injured ore sick. She was also denied access to money and other basic necessities.

From this victims perspective, a perpetrator of domestic violence can easily isolate a victim from social interaction with the outsiders. Like was her case, one's own house can serve as a place where extreme cases of domestic violence are committed especially where a perpetrator is able to use social isolation.<sup>21</sup>

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<sup>20</sup>Ibid., 18

<sup>21</sup>Sadik 2000, 117

#### **1.6.3.4 Financial Abuse**

Financial abuse is also a form of domestic violence. Examples of how financial abuse occurs include denying the victim access to funds, failure to take financial responsibility and irresponsible handling of money. This is more common in families where one member of the family is the sole provider. Such individuals, who are expected to provide for others use money as a tool or weapon for controlling the victim. This could include ensuring that the victim is financial dependence on one using money as a tool, or abdicating responsibility of providing for the victim or the family.<sup>22</sup>

#### **1.6.3.5 Sexual Abuse**

Social abuse can be described as any sexual act where a person is forced to engage in sexual activities against their consent. Victims of sexual violence may be forced into the intercourse with the abuser with threats of physical violence. The abuser may also use fear to make the victim comply his wishes. Sexual abuse causes great harm or distress to an individual. In addition, sexual abuse can either be actual or attempted and can create physical and emotional damage.<sup>23</sup> Many jurisdictions have expanded their definition of sexual abuse to include sexual abuse within the context of marriage. This type of sexual abuse is referred to as marital rape. Marital rape often goes unreported in many cases; many victims of marital rape do not realise that they are being sexually abused.

The definition of sexual abuse also includes rape which is non consensual sex or engaging in sexual activity with a person against her will. It also involves use of objects to perform the act of sex and forcing someone into having non consensual sex with another person. Sexual abuse also involves sharing of private pictures of a spouse to a third party without their consent and use of demeaning language. It also involves

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<sup>22</sup>Acierno, Ron, Melba A. Hernandez, Ananda B. Amstadter, Heidi S. Resnick, Kenneth Steve, Wendy Muzzy, and Dean G. Kilpatrick. "Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The National Elder Mistreatment Study." *American journal of public health* 100, no. 2 (2010): 292-297.

<sup>23</sup>Ibid., 294

engaging in sexual activity with a person in public or in front of others against their will.<sup>24</sup>

#### 1.6.3.4 Cycle of Violence

Violence within relationships tends to follow a certain pattern.<sup>25</sup> There are various stages involved in the cycle of violence. The changes between these stages are often very minimal; these changes also vary. This is dependent on the nature of the abuser and the type of relationship. The initial phase of an abusive relationship is characterised by some muted of abuses. These abuses can be in the form of physical, emotional or sexual. Nevertheless, abuse at this stage is often in form of accusations and verbal insults.<sup>26</sup> There are however instances where the initial incident gets physical. After this first stage of physical abuse, the abuser gains sufficient power and will thus not need to physically assault his partner to assert himself or gain and maintain control over the victim. The abuser will only need to threaten the victim as a way of reminding her of what he is capable of doing.<sup>27</sup>

The second stage is described as the tension building phase.<sup>28</sup> <sup>29</sup> In this phase, the abuse continues. Some level of physical abuse may be applied; nevertheless the abuse is often more subtle at this phase. Weiss (2000) describes a woman who was boiling a pot of soup when her husband walked by and knocked her forward with his elbow, causing her to fall forward, burning her hand severely in the boiling liquid. Later on, he denied being in the kitchen at all. In this second phase, the abused partner may feel the need to keep the abuser calm, and she may feel as if she is constantly "walking on eggshells"<sup>30</sup> She may also feel that she is at fault for the abuse, and begin to believe that if she were only a "better partner" the abuse would stop. For example, the abused

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<sup>24</sup>Alhabib, 2010.

<sup>25</sup>Pollak, Robert A. "An intergenerational model of domestic violence." *Journal of Population Economics* 17, no. 2 (2004): 311-329.

<sup>26</sup>Acierno, 2000

<sup>27</sup>Acierno, 2000

<sup>28</sup>Pollak, 2004

<sup>29</sup> Pollak, 2004

<sup>30</sup> Ndong, Akumu Susan. Influence of domestic violence on social-economic development of women. 2012

woman may start to imagine if she dressed differently, was a better cook, or was more agreeable her partner would treat her better.<sup>31</sup> In his research, Dr. Weiss discovered that most of the interviewed women averred that tension-building phase was very gradual and almost unnoticeable. The women asserted that during the initial stages, their partners would make seemingly innocent but critical comments about issues such as food and how they conducted themselves. When asked, their partners would retort to saying that they were only looking out for them. Eventually the women would start to believe that they were deserving of these comments and that their partners were pointing out to their mistakes because they cared about them.<sup>32</sup>

The next stage in an abusive relationship is the explosion. It is during this phase that the abuse reaches its climax. This stage may come as a shock after the slow progression of the tension building phase.<sup>33</sup> In documenting stories from women who are victims and survivors of domestic violence, Weiss<sup>34</sup> captured extreme forms of violence experienced during the explosion stage. These include women who were pushed from moving cars, had their ribs broken, who were brutally raped among other forms of extreme violence.

The next stage is the making-up stage. Here, the abuser may apologize to the victim for the abuse. He may also promise to change. There are even instances where the abuser may transfer the blame to abused partner arguing that she made him to hurt her.<sup>35</sup> The abuser can also claim that the abused partner is exaggerating the abuse. Others, in the making up stage, will even deny that abuse actually happened.<sup>36</sup>

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<sup>31</sup>World Health Organization. "WHO multi-country study on women's health and domestic violence against women: summary report of initial results on prevalence, health outcomes and women's responses." (2005).

<sup>32</sup>Ndong, 2012.

<sup>33</sup>Pollak, 2004

<sup>34</sup>Ndong, 2012

<sup>35</sup>Pollak, 2004

<sup>36</sup> Ndong, 2012

The final stage is calmness; it can also be described as the honeymoon stage.<sup>37</sup> During this stage, the victim wishes that her partner meant it when he apologised (making-up stage). The relatively calm abuser will go out of his way to try and make the partner happy; this could come in the form of gifts and other treats. This stage often lasts a few days and could even run for several months.<sup>38</sup>

The features of these stages are as unique just like the women who experience them. Therefore, there are not many academic studies that have been conducted to examine the specifics of these stages. The details come from the voices of the women who have been victims or survivors of domestic violence.

A number of women indicate that their relationships were good until they got married. Immediately after getting married, tension starts to build up; sometimes it happens slowly but at other times it happens quickly.<sup>39</sup> According to most women, this tension building stage in the initial states of the relationship is often an effort by their partners to gain and maintain control over them.<sup>40</sup> The abusers will often try to use social isolation over their partners preventing them from reaching their family and friends and even pursuing their careers.<sup>41</sup> The examples provided by the women were very compelling. One woman stated that her husband prevented her from sharing news about having given birth to her parents, yet this was her first child. The husband lied on having told the lady's parent about the new born and that they were not keen on visiting to see their grandchild. He continued isolating her further and further from her family and friends to a point where she could not reach anyone from the outside world. Another woman narrated how her husband lied to the landlord and a social worker that his wife had become an alcohol addict, which kept them from suspecting anything if they did not see her coming out of the apartment in many days.<sup>42</sup>

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<sup>37</sup>Dutton, 2011

<sup>38</sup>Ndong, 2012

<sup>39</sup>Dutton, 2011

<sup>40</sup>Garcia-Moreno, 2006

<sup>41</sup>Roberts T.A,et al (2003) Longitudal effect of intimate partner abuse on high risk behaviour among adolescents,archives of 878-882 paediatrics and adolescent medicine .159(9):88

<sup>42</sup>Ndong, 2012

During the initial stages of an abusive relationship, the escalating tension can be implied rather than overt violence. The abusive partner may hit, kick; or break furniture or other inanimate objects, while the abused partner watches. Displays of violence such as this are prophetic - the woman watching knows that even though the violence is directed at a piece of furniture this time, it may be her next time.<sup>43</sup> The abuser may also threaten or harm the family pets as well.<sup>44</sup>

In some relationships however, violence escalates without the tension building stage. Weiss recorded the account of a woman whose had been subjected to physical abuse by her husband without some signs this would happen. After physically assaulting her, the husband would apologize; but in his apology, he would shift the blame to her over and over to a point where she started believing that she was often at fault and thus deserving of the abuse.

For this woman and many others, it is only after leaving a violent relationship that many women realize that they had been emotionally manipulated by their spouses into believing that they were at fault.<sup>45</sup>

In other situations, the tension building stage is more apparent, but still subtle. While the abuse may not be physical in nature at this stage<sup>46</sup> it can be more verbal, emotional, or covert. For example, the abuser may accuse his partner of having an affair, which can serve as a means to later "punish" her.<sup>47</sup>

As Weiss illustrated, violent relationships can be broken down in this cyclical nature, nevertheless, it became evident every violent relationship is unique notwithstanding the similarities that they have on the surface. Indeed, just like the way some women opt to stay in abusive relationships while others decide to move away explains this uniqueness that is found in every violent relationship.

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<sup>43</sup>Matthews, 2004

<sup>44</sup>Ndong, 2012

<sup>45</sup>Ibid

<sup>46</sup>Bostock, 2009

<sup>47</sup>Ibid., 106



Weiss' research has been frequently used in this review because it remains one of the few studies on domestic violence in Kenya which capture a firsthand account of the victims themselves. Gaining a full understanding of the intricacies of violent relationship in greater details can be a difficult undertaking. That is why Weiss book is very fundamental since it even highlights the stages of violence that eventually leads to physical violence. The respondents of Weiss' research were women who had been victims of various forms of domestic violence and who had managed to free themselves from those relationships. Weiss also provided her own thoughts at the end of each interview as she reflected on her own experience being a domestic violence survivor.

#### **1.6.4 Impact of Domestic Violence on the Society: Experiences from Other Nations**

Domestic violence presents serious effects on the individual women as well as the society in general. Women play a very fundamental role in the society. These include governance, social development programs, poverty elevation and environmental conservation. Domestic violence suppresses women; it thus denies women a fair chance of realizing their optimal potential.<sup>48</sup>

Moreover, domestic violence against women also negatively affects family ties and future generations. For instance, children, who have been brought up in homes where there is domestic violence tend to have health and behavioural challenges. Examples of these challenges including weight issues, eating problems and sleep patterns. Some children even develop clinical level of anxiety or post traumatic stress disorders (PTSD). Such children may even have difficulty at school; they are also not able to establish and maintain friendships. Such children may also show some regressed behaviors such as whining and clinging; they may even have concentration problems.<sup>49</sup>

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<sup>48</sup>Garcia-Moreno, 2006

<sup>49</sup> Merry, 2009

Violence against women causes far-reaching psychological and physical consequences. In some cases, these consequences tend to have fatal outcomes. Though physical injury accounts for a portion of negative impacts of domestic violence on women, it remains one of the most evident forms of violence. The U.S Department of Justice has reported that of all women who reported to hospitals seeking medical care or in need of emergency attention, up to 37 per cent of them had violence-related injuries most of them being victims of domestic violence. Domestic violence such as assaults leads to injuries such as fractures and bruises; they can also lead to chronic disabilities. Other forms of physical violence such as burns can lead to disfigurement. Female Genital mutilation (FGM), a form of violence meted on women in traditional societies leads to medical complications such as hemorrhage and sterility to severe PTSD.<sup>50</sup>

Studies in many countries have shown high levels of violence during pregnancy resulting in risk to the health of both the mother and the unborn foetus. In the worst cases, all of these examples of domestic violence can result in the death of the woman murdered by her current or ex-partner. Sexual assaults and rape can lead to unwanted pregnancies, and the dangerous complications that follow from the experience. The impact of violence on women's mental health leads to severe and fatal consequences. Battered women have a high incidence of stress and stress-related illnesses such as post-traumatic stress syndrome, Panic attacks, depression, sleeping and eating disturbances, elevated blood pressure, alcoholism, drug abuse, and low self-esteem. For some women, fatally depressed and demeaned by their abuser, there seems to be no escape from a violent relationship except suicide.<sup>51</sup>

Posttraumatic Stress disorder (PTSD) which has been mentioned as one of the consequences of domestic violence is a condition that creates waves of anxiety, aggression, anger, suspicion and depression. PTSD threatens the victim's sense of self. And domestic violence has been proved to be one of the conditions that

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<sup>50</sup>World Health Organization, 2009

<sup>51</sup>Ibid

predispose women to post-traumatic stress disorder.<sup>52</sup> Many victims of extreme cases of domestic violence often show symptoms of PTSD hours after the experience; this can prevail for many years. There are two types of PTSD: acute PTSD where symptoms last for 3 months or less and chronic PTSD, where symptoms last for more than 3 months.

In sum women who have been victims of domestic violence tend to exhibit impairment in occupational, social as well as the overall daily functioning. Moreover, others function optimally with the outside world by hiding their distress. Some women can mask their depression for months and even years. However, sometimes they become overwhelmed by the depression. Women living under violent situations are also less likely to succeed in negotiating for safer sex; they also lack the opportunity to use contraception which leads to sexually transmitted diseases and unwanted pregnancies.

#### **1.6.5 Legal and Institutional Frameworks for Addressing Domestic Violence**

Legal experts, activists and feminist sociologists around the world have often argued that violence against women is linked to the cultural and structural issues that subordinate women. These include limited rights and intersecting inequalities. This section will evaluate the available mechanisms for addressing domestic violence in other countries since this will provide invaluable lessons for the Kenyan situation. The most important avenue of addressing domestic violence in the modern world remains the law. Four countries will be used as case studies to understand the mechanisms for addressing this phenomenon that are available in those countries. These countries are the U.S, India, and South Africa.

##### **1.6.5.1 United States**

The U.S has various federal legal and legislative frameworks that provide redress to victims of domestic violence. The most important legislation on domestic violence in

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<sup>52</sup>Alhabib, 2010

the U.S is the Violence Against Women Act (VAWA) of 1994<sup>53</sup>. This legislation was later expanded in 2000 and in 2005. VAWA provides funds for a variety of critical programs and victim services. These programs and victim services are designed to address domestic violence in the country. Specifically, the legislation has provisions on battering and rape with a focus on prevention, providing funding to the victim; it is also focused on evidentiary matters. However, despite the passage of this important legislation and increased media attention on the issue, cases of domestic violence in the U.S. have gone unreported.

Another important avenue for addressing domestic violence in the U.S is civil protection orders which are fundamental means of protecting women who are victims of domestic violence. All the 50 states of the U.S have enacted legislations on civil protection orders<sup>54</sup> which that allow judges to issue orders of protection to domestic violence victims who have reason to believe that their abuser could subjected them to future harm. If an abuser violates these orders, he is liable to civil contempt and even criminal proceedings.

Besides the legislative framework, the U.S also provides elaborate communication avenues for reporting cases of domestic violence through various help lines. For immediate danger, one can call 911 which make it possible for the police to arrest an abuser and rescue the victim. The benefits of a helpline are that it provides confidential support. Confidential support is very important for victims of domestic violence because of the immediate physical emotional and physical trauma that often causes many victims to shy away from reporting to the authorities. Besides the 911 hotline, the U.S also provides other hotlines specifically dealing with cases of domestic violence. One of these hotlines is the National Domestic Violence Hotline which operates 24 hours a day and offers help using many languages<sup>55</sup>.

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<sup>53</sup>Abolfazli, L., 2006. Violence against women act (VAWA). *Geo. J. Gender & L.*, 7, p.863.

<sup>54</sup>Brewer, John D., Rick Wilford, Adrian Guelke, Ian Hume, and Edward Moxon-Browne. *The police, public order and the state: policing in Great Britain, Northern Ireland, the Irish Republic, the USA, Israel, South Africa and China*. Springer, 2016.

<sup>55</sup>Roberts, Albert R., and DACFE BCETS, eds. *Battered women and their families: Intervention strategies and treatment programs*. Springer Publishing Company, 2007.

The U.S also has domestic violence shelters that offer the victim and her children temporary shelter, food and funding for free. These shelters also provide legal help. The U.S has a very strong legal system. A victim of domestic violence can visit her local domestic violence agency from where she can get help in understanding her options and to find a lawyer.

#### **1.6.5.2 India**

Many sources contend that violence against women in India has been on the rise.<sup>56</sup> A report by the country's National Crime Records Agency (NCRA) states that in 2013, a total of 309,536 cases of crime against women were reported; and in the same year, over 8,000 women were killed in dowry-related incidents.<sup>57</sup>

The Indian constitution delivers a powerful message in its preamble where it emphasizes on equality and the rights of women. Among the specific legal provisions that have been put in place to address domestic violence in India is the Criminal Law (Amendment) Act of 2013 that further expanded the definition of rape. Rape is one of the most common types of violence against women in India. Another fundamental legislation is the Protection of Women from Domestic Violence Act of 2005<sup>58</sup>. This legislation protects women and females who live with male partners from violence in the hands of their husbands and male partners who they live with.

The second legislation that seeks to address domestic violence in India is 'protection officers' who were appointed under the comprehensive DVA of 2005. These protection officers are mandated to provide effective redress on all reported cases of violence. Protection officers are provided for in Section 4 of the Act. In this section, the Act encourages all citizens to be vigilant and report all looming or ongoing cases of domestic violence to the concerned Protection Officer.

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<sup>56</sup>Ghosh, Biswajit. "How does the Legal Framework Protect Victims of Dowry and Domestic Violence in India? A Critical Review." *Aggression and Violent Behavior*. 18.(2015)

<sup>57</sup>Ibid., 82.

<sup>58</sup>Kaur, Ravneet, and Suneela Garg. "Addressing domestic violence against women: An unfinished agenda." *Indian Journal of Community Medicine* 33, no. 2 (2008): 73.

On the legal recourse available to deal with cases of domestic violence in India has been hampered by the inadequate legal avenues and law enforcements for the victims. Law enforcement officers have even worked to try and reconcile victims and their attackers even in rape cases. In some cases, law enforcement officers have even encouraged rape female rape victims to marry their attackers. Unfortunately, some victims who present themselves to the authorities to report the attack have been further abused by doctors who use the “two-finger test” in an attempt to deduce the victim’s sexual history. India also lacks well defined legal recourse for women who have been subjected to marital rape. Therefore, victims of domestic rape are left with no option but filing for a divorce or filing a case under the Domestic Violence Act<sup>59</sup>. One of the main reasons why India has particularly high cases of domestic violence is due to the fact that the country has a very dismal conviction rates; the conviction rate is only 26 percent.<sup>60</sup>

### 1.6.5.3 South Africa

The origin of South Africa’s interventions for addressing domestic violence is relatively recent. The country only introduced its first legal framework for addressing the phenomenon in the year 1993. This culminated in the recognition of rape within the context of marriage as a crime. South Africa’s initial attempt to address domestic violence through legislation came with the passage of the Prevention of Family Act. This Act, which was passed in 1993, was further strengthened and developed in 1998 through the passage of the Domestic Violence Act (DVA)<sup>61</sup>. This legislation is recognized worldwide as one of the best examples of dealing with domestic violence. South Africa also protection orders from their intimate partners through the DVA. Figures from the Department of Justice and Constitutional Development show that between 2009 and 2011, there are over 200,000 individuals annually seeking

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<sup>59</sup> Minhaz, Ayesha. “Marital rape victim loses faith in country’s law”. *Deccan Chronicle* <http://www.deccanchronicle.com/150223/nation-crime/article/marital-rape-victim-loses-faith-country%E2%80%99s-law>

<sup>60</sup> D’Almeida, Kanya. “For Women in Asia, ‘Home’ Is a Battleground.” <http://www.ipsnews.net/2015/03/for-women-in-asia-home-is-a-battleground/>

<sup>61</sup> Artz, Lillian Melinda. “An examination of the attrition of domestic violence cases within the criminal justice system in post-apartheid South Africa.” PhD diss., Queen’s University of Belfast, 2008.

protection orders<sup>62</sup>. Protection orders help in ensuring that victims or potential victims are protected from further abuse. While protection orders do not stop an attacker from hurting a victim, they allow the victim to raise an alarm to the authorities and have the victim arrested.

Like already noted, South Africa's main legal response to domestic violence is the Domestic Violence Act (DVA). This act is also referred to in another important Act in the country's justice system: the Firearm Control Act, 2000. The role of this Act is to ensure that those with a history of domestic violence do not own firearms. The country also has other general pieces of legislation for combating this phenomenon. These include the Children's Act of 2005, the Older Person's Act of 2006 and Protection from Harassment Act, 2011.

## **1.7 Theoretical Framework**

### **1.7.1 Social Learning Theory**

Social learning theory – is one of the most popular explanatory perspectives in the marital violence literature. Often conceptualized as the “cycle of violence” or “intergenerational transmission theory” when applied to the family, the theory states that people model behavior that they have been exposed to as children. Violence is learned through role models provided by the family (parents, siblings, relatives, and boyfriends/girlfriends), either directly or indirectly (i.e., witnessing violence), is reinforced in childhood, and continues in adulthood as a coping response to stress or as a method of conflict resolution.<sup>63</sup>

The primary hypothesis for the intergenerational cycle of violence is that violent and abusive adults learned this behavior as a result of being the victims of or witnesses of aggressive and abusive behavior as children. If children are abused by their parents, they may internalize beliefs and patterns of behaviors that lead them to abuse their

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<sup>62</sup>Watson, J. “Justice for domestic violence victims? Key findings of the oversight interventions by the PC and SC on women, children and persons with disabilities with respect to the Department of Justice and Constitutional Development.” *Parliament of the Republic of South Africa*, 2012

<sup>63</sup>Acierno, 2000

own children; if children observe parents who hit each other, they may develop a greater propensity toward abusing their own spouses. Transmission of violent behavior occurs through processes of modeling, failure to learn appropriate ways to manage conflict, and reinforcement for violent behavior. Normal coping mechanisms may not be learned or may become impaired, leading to violence as the ultimate resource.

## 1.8 Methodology

The study adopted a qualitative research design. There is no consensus on a single definition of qualitative research. In part, this can be attributed to the fact this research methodology is a field of enquiry as opposed to being a single entity. Qualitative research is a broad term for a variety of research approaches, just as quantitative research is not a single entity but encompasses a variety of research designs, such as clinical trials and surveys.<sup>64</sup> The various types of qualitative research involve the use of description and interpretation of human experience so that social situations or human experience can be better understood.<sup>65</sup> Qualitative research is usually conducted in a natural setting by a researcher. Ideally, the researcher needs to be involved in the process of data collection. Data collected in qualitative research can be in the form of words or pictures. Unlike quantitative research, the data collected in qualitative research should not be in form of numbers, and that the analysis is inductive (i.e. variables, relationships and theories are constructed after reflecting on the data gathered rather than testing to see if the data support pre-established definitions and theory), focuses on participants' perspectives, and describes the results using expressive and persuasive language.<sup>66</sup> Grey<sup>67</sup> holds that compared to other forms of research in qualitative research, experiential design provides greater

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<sup>64</sup>Bryman, Alan. "Integrating quantitative and qualitative research: how is it done?." *Qualitative research* 6, no. 1 (2006): 97-113.

<sup>65</sup> Ibid., 99.

<sup>66</sup>Knowles, J. Gary, and Ardra L. Cole. *Handbook of the arts in qualitative research: Perspectives, methodologies, examples, and issues*. Sage, 2008.

<sup>67</sup>Ibid., 57



evidence. However, some researchers argue that quantitative data provides greater evidence than qualitative research.<sup>68</sup>

Data was collected through questionnaires and interviews. Open-ended questionnaires will be used as the data gathering method. Maggi<sup>69</sup> describes open-ended questions as questions that elicit answers compared to close-ended questions. Additionally, open-ended questions are often lengthier so as to set the stage for an even lengthier response.

### **1.9 Thesis Outline**

Chapter one has looked at domestic violence in general, where types and impacts of domestic violence were discussed. Also included in this chapter was a discussion of the experiences of other countries in addressing this phenomenon.

Chapter two will look at the existing policy, legal and institutional framework in addressing domestic violence

Chapter three will look at the impact of domestic violence on the Kenyan society with a focus on marriages

Chapter four will look at the effectiveness of the available avenues in addressing the phenomenon

Chapter five will present a summary, conclusion and recommendation of the thesis.

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<sup>68</sup>Bryman, 2006

<sup>69</sup>Knowles, 2008.

## **CHAPTER TWO**

### **THE EXISTING POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK IN ADDRESSING DOMESTIC VIOLENCE**

#### **2.1 Introduction**

Mobilization by victims of domestic violence, media attention, and policy, legal and institutional framework have increased awareness on domestic violence and helped in addressing this phenomenon in Kenya. However, the effectiveness of the various programs and interventions is mixed. This can be partly attributed to the methodological difficulties of assessing their effectiveness. The most important avenue of addressing domestic violence in the modern world remains the law. In Kenya, addressing domestic violence against women has often been confounded by the fact that many of the victims lack a good understanding of the law and failure of the legal framework in addressing the conditions and experiences of victims of this phenomenon. The Kenyan government has nevertheless performed admirably in the enactment of policies, laws and regulations to respond to, prevent and manage Sexual and Gender Based Violence (SGBV). Yet, there are challenges and opportunities in the current policy, legal and institutional framework that needs to be taken into account when developing responses.

#### **2.2 Policy Framework**

##### **2.2.1 The National Framework towards Response and Protection of Gender Based Violence in Kenya, 2005**

The purpose of this framework is to bring together the various state and non-state actors in the responding to domestic violence in Kenya. The policy was created after the realization that there are many actors in the fight against gender-based violence yet their response remained uncoordinated. The policy thus provides guidance for coordination mechanisms among the various actors in the fight against gender based violence. The coordination mechanisms provided by this policy are multi-sectoral coordination among all the relevant stakeholders and sectors from the grass-roots to the national levels. This approach to coordination is vital as it helps in translating national legislation (that touches on domestic violence) into action. This is important

as it helps in ensuring that individuals who suffer from domestic violence can get access to quality health care and safety and protection measures. Indeed, access to safe services for survivors and adequate protection is fundamental in addressing this phenomenon. As such these coordination mechanisms are put in place for the victims and fostering holistic inter-agency and inter-organizational efforts that promote participation of all people of concern or actors. These actors include the government, the police, non-governmental organizations and the civil society. The policy helps in the creation of an environment for understanding this phenomenon by enumerating the various forms of sexual and gender based violence witnessed in Kenya.

### **2.2.2 The National Guidelines on the Management of Sexual Violence, 2009**

This policy provides a framework for the essential services and procedures for managing the survivors of sexual violence. The interventions provided by this policy include ensuring that victims of sexual violence are accorded high quality counselling as well as timely and adequate medical attention. The counselling services are also provided to the families and friends of victims of sexual violence. This is fundamental in helping the individuals and their families/friends of those affected to overcome the impacts of the abuse. According to Fernandez<sup>70</sup> sexual assault leads to a variety of psychological complaints which include rape trauma syndrome, social phobias and anxiety. This demonstrates the importance of counselling because of its impact in addressing post sexual violence needs and the prevailing effects of sexual assault. Moreover, the policy recognizes sexual violence as a fundamental health and human right issue which calls for the attention of all concerned. The National Guidelines on the Management of Sexual Violence also provides critical information on the how sexual violence should be managed in a multi prolonged manner. These include managing any life threatening injuries on the victim and providing the necessary post-rape services which is critical in protecting the survivor from contracting any sexually

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<sup>70</sup>Fernandez, Pablo A. "Sexual assault: An overview and implications for counselling support." *The Australasian medical journal* 4, no. 11 (2011): 596.

transmitted infection and pregnancy.<sup>71</sup> It also provides critical information to medical practitioners on the steps they need to take in handling and treating a victim of sexual violence. In addition, the policy outlines the procedures of managing sexual violence. These procedures include obtaining medical history, conducting a thorough examination of the survivor, taking medical and forensic specimens and recording findings in the Post Rape Care (PRC) form. It also involves the medical practitioner introducing himself or herself formally to the victim, and reassuring the survivor that he or she is safe in the hands of the medical team. Other aspects of the procedures are explaining to the victim the procedures that will be undertaken in dealing with the condition and obtaining a written informed consent.<sup>72</sup>

The policy also contains a very comprehensive procedure for forensic management of sexual violence. In Kenya, forensic science is still at its infancy. It was only in the year 2006 that the government established its first forensic laboratory.<sup>73</sup> Yet forensics is a very fundamental aspect of the criminal justice. Therefore, the policy is important because it emphasizes the collection and scientific examination of physical evidence in sexual violence cases. The introduction of the forensic management section of the bill states that proper management of evidence helps in putting together credible evidence which is then presented to a Court of law<sup>74</sup> to prove guilt in the accused.

### **2.2.3 Gender in Education Policy, 2007**

The Gender in Education Policy, 2007 seeks to prevent and respond to school related gender based violence (SRGBV). The policy is designed to ensure that schools are safe learning environments by providing modalities on how to deal with school related gender based violence.<sup>75</sup> This policy was created after the government recognized the

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<sup>71</sup>National Guidelines on Management of Sexual Violence in Kenya 2nd Edition, 2009. [https://www.k4health.org/sites/default/files/REVISED%20NATIONAL%20GUIDELINES%20ON%20MANAGEMENT%20OF%20SEXUAL%20VIOLENCE%202009\\_1.pdf](https://www.k4health.org/sites/default/files/REVISED%20NATIONAL%20GUIDELINES%20ON%20MANAGEMENT%20OF%20SEXUAL%20VIOLENCE%202009_1.pdf)

<sup>72</sup>Ibid., 2.

<sup>73</sup>Oeri, W. I am a forensic scientist: this is what my job involves. *Daily Nation*. <http://www.nation.co.ke/lifestyle/myNetwork/I-am-a-forensic-scientist--this-is-what-my-job-involves/3141096-3242114-chhwv5/index.html>

<sup>74</sup>National Guidelines on Management of Sexual Violence in Kenya, 2nd Edition, 2009.

<sup>75</sup>Wango, Musomi and Akinyi, 2012.

need for promoting gender equality in every sphere of development. The policy was thus a legitimate measure towards addressing the existing gender inequalities in the country. The need to eliminate gender disparities was articulated in the Education For All (EFA) goals and targets at the Jomtien Conference which was then reemphasized during the World Education Forum in Dakar. The EFA goals and targets were to eliminate gender disparities and promote gender equality in education. The key focus of the EFA goals and targets was to ensure that girls got a full and equal access to basic education and good education. The implementation of the Gender Policy in Education, 2007 was informed by the EFA goals and targets and among the policy's highlights is to ensure that stereotyping in learning material (as well as in the classrooms) is eliminated.

The elimination of gender stereotype is a critical step towards gender based violence and specifically, domestic violence. Indeed, the root cause of discrimination and gender based violence remains gender stereotypes. Gender stereotypes can be defined as the over-generalization of characteristics of an entire group based on their gender. According to Bishop,<sup>76</sup> stereotypes have both positive and negative value. Therefore, in the discussion on how stereotypes contribute to gender based violence, it is important to identify the ones that are meritorious and the ones that lack merit. For instance, one of the most important causes of domestic violence is the deep-rooted beliefs about marriage, family and gender roles. Kenya has been a patriarchal society. In a patriarchy society, is often recognized as one of the ways that a husband can discipline his wife. The traditional Kenyan society even socialized women to anticipate being physically disciplined.<sup>77</sup>

Education is very important in deconstructing stereotypes that demean, degrade, and create distorted views about women which lead to violence against women. The Gender in Education Policy, 2007 addresses gender concerns in the Kenya's education by ensuring that the curriculum being taught in Kenyan schools is gender sensitive. It

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<sup>76</sup>Bishop, Julia. "Gender-based violence and gender stereotyping in international law." (2012).

<sup>77</sup>The Effects of Domestic Violence in The Family in Kenya Association of Professional Counselors Conference Safari Park 7th – 9th September 2010

is a well known fact that education is a subsystem of societies; as such, it is a reflection of the culture and values of that society. Besides ensuring that the curriculum debunks the preexisting gender stereotypes, the policy recognizes the important role of teachers in the holistic development of their students to be gender sensitive.

## **2.3 The Legal Framework**

### **2.3.1 Kenyan Constitution 2010**

The basic tenet of all human rights holds that they are inalienable, inherent and indivisible in all persons. Indeed, this fact is well captured in the Kenyan Constitution (Article 28) which states that every individual has inherent dignity and the right to have this dignity upheld and respected.<sup>78</sup> In addition, Kenya's expansive Bill of Rights under the Constitution in Chapter 4 provides guarantees for many rights and fundamental freedoms.<sup>79</sup>

The Constitution, which was promulgated in the year 2010, also provides a very well elaborated clause on freedom from discrimination and equality. This clause is impressive from a gender equality standpoint for four reasons. The first one is that the clause unequivocally states that both men and women should be treated equally and that they should be given equal opportunities in the economic, political and social spheres. Secondly, the 2010 Constitution also expanded the grounds on which the state is not to discriminate compared to the grounds provided in the old constitution. Thirdly, the Constitution also provides that prohibition of discrimination does not only apply to the state, it also applies among all persons. Therefore, one shall not discriminate against the other on whichever grounds. Finally the Constitution places an obligation on the state and all its organs to ensure that the rights and fundamental freedom articulated in the Bill of Rights are protected, respected and promoted.

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<sup>78</sup>Constitution, Kenya. "Government Printer." *Nairobi, Kenya* (2010).

Another important aspect of the Kenyan constitution in addressing this phenomenon is the fact that it gives the right to anyone who has reason to believe that their rights have been violated to instate legal proceedings. Therefore, an individual can move to court with a claim that a fundamental right of freedom has been infringed or denied. The constitution has given the high court the mandate to hear and determine such cases of redress, denial or threat to fundamental freedoms or rights.<sup>80</sup>

The impact of these provisions is that the state has been given the responsibility of combating, prevent and prosecute sexual and gender based violence by the constitution. Moreover, survivors of gender based violence have also been given the right to have their attackers taken to court. Importantly also, they also have the right to institute legal proceedings against public officers who are tasked with the role of handling the cases if they feel that these public officers fail to uphold their rights in dealing with the cases.

Nevertheless, in respect to the violence against women and girls, the Kenyan Constitution does not contain a specific provision for it. Rather, like already noted, it provides for protection from all forms of in human treatment and torture as well as all forms of degrading punishment. As contained in Section 74 of the Bill of Rights, protection from inhuman treatment applies to both men and women.

### **2.3.2 Sexual Offenses Act, 2006**

The Sexual Offense Act (SOA) was enacted into law in 2006.<sup>81</sup> The journey to the enactment of this Act began in December 2004 when nominated Member of Parliament Hon. Njoki Ndung'u introduced the private members motion. The main purpose of the SOA was to ensure that victims of sexual offenses got justice that is equal to the kind of harm inflicted on them. Among the punishments contained in the first draft of the motion was chemical castration of rapists. The motion was however passed in April 2005 with some amendments on some of the most contentious clauses.

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<sup>80</sup>Article 22(1) of the Constitution

<sup>81</sup>The Sexual Offenses Act No. 3 of 2006.

The Act is a comprehensive law on Sexual and Gender Based Violence (SGBV). The law protects women and girls from sexual offenses, which remain one of the most common type of gender based violence against women. The Act introduced stiffer penalties for sexual offenses. These penalties are informed by the magnitude and type of sexual offense committed. According to the SOA, a person guilty of rape shall be liable to a jail term of not less than ten years after being successfully convicted of the crime. The act also provides that a person who commits attempted rape will be liable for a term of not less than five years. The following table provides a breakdown of 12 of the most common types of sexual offenses and their penalties as provided by the Sexual Offenses Act, 2006.

<b>Sexual Offence</b>	<b>Penalty</b>
Rape	Imprisonment for a term of not less than 10 years
Attempted rape	Imprisonment for a term of not less than 5 years
Sexual assault	Imprisonment for a term of not less than 10 years
Compelled or indecent acts	Imprisonment for a term of not less than 5 years
Acts that cause penetration and indecent acts committed within the view of a family member, child or a person with metal disabilities	Imprisonment for a term of not less than 5 years
Defilement	Defiling a child who is less than 7 years: Life Imprisonment Defiling a child who is between 12 and 15 years: Imprisonment for a term of not less than 20 years Defiling a child between 16 and 18 years: Imprisonment for a term of not less than 15 years
Attempted defilement	Imprisonment for a term of not less than 10 years
Gang rape	Imprisonment for a term of not less than 10 years which could be enhanced to life imprisonment
Indecent act with a child	Imprisonment for a term of not less than 10 years
Indecent act with an adult	Imprisonment for a term of not less than 5 years
Promotion of sexual offences with a child	Imprisonment for a term of not less than 5 years
Child sex tourism	Imprisonment for a term of not less than 10 years and a fine of not less than 2 million shillings if the accused is a juristic person

**Table 2.1: Penalties proposed by the Sexual Offenses Act, 2006**



Another critical highlight of the bill is that it provides an expansion of the definition of sexual offenses which are rape and defilement and included both sexes. The Act also introduced 14 new sexual offenses. These new sexual offenses include exploitation of prostitution, tests of relationship, prostitution of persons with mental disabilities, incest, sexual offenses relating to position of authority, administering a substance with intent, deliberate transmission of HIV and other life threatening STIs, distribution of a substance by juristic person and non-disclosure of convicted sexual offenses.<sup>82</sup> Besides introducing minimum and mandatory sentences for sexual offenses as seen in the table able, the Act It also put a limit to the requirement on burden of proof for victims. The Act also established a paedophile registry as well as a DNA data bank. The paedophile registry is meant to keep all children within Kenya and their families safe; and one ways of being proactive about safety is making information on previous sex offenders living or working near one's vicinity accessible to the public. However, this provision is yet to be fully implemented in Kenya. The DNA data bank is meant to keep the DNA profiles or bodily substances of repeat sexual offenders in one databank which facilitates the police in solving and investigating cases of sexual offenses.

The Penal Code Previously, domestic violence was covered under the Penal Code<sup>83</sup>. The effect of having domestic violence covered under the Penal Code is that acts of assault were treated as criminal cases which mean that they had to be reported to the police station. The trauma and embarrassment of having to report the incident at a police station made many victims to refrain from reporting it. Moreover, many victims who reported the cases at the police station would be dismissed as domestic issues which were better handled privately. The Penal Code provides prohibition on all forms of violence.<sup>84</sup> The Penal Code it does not sufficiently address SGBV; however, through this law, an inference can be made when interpreting gender based violence.

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<sup>82</sup>The Sexual Offenses Act No. 3 of 2006.

<sup>83</sup>Turshen, 2000

<sup>84</sup> The Penal Code Cap 63 Laws of Kenya

### **2.3.3 Protection Against Domestic Violence (PADV), 2015**

For many years, domestic violence has been rampant in Kenya where women and children, predominantly, have been victims of this phenomenon. Nevertheless, there have been cases where domestic violence has been meted against men. Yet, for many years, Kenya lacked a specific law dealing with such a crime. In 2015, Kenya made a significant stride towards addressing domestic violence with the passage of a legislation addressing domestic violence: Protection Against Domestic Violence (PADV) Act<sup>85</sup>. This legislation is historical since it remains the only legislation that specifically deals with domestic violence within the family set up.

The journey towards the enactment of this legislation was long; it involved cooperation within members of the civil society who were the originator of the bill and the Members of Parliament who would debate and pass the bill into law. The law was perceived as a formidable force for challenging the preexisting patriarchal power in the Kenyan society. Understandably therefore, when it was tabled and debated in parliament, some male MPs were opposed to it. The Act was eventually passed after successful lobbying.

PADV Act brought protection and relief to victims of domestic violence. This is because besides harassment, verbal and physical abuse, the Act introduced some new and nonconventional offenses which can now be prosecuted. These unconventional offenses captured in the Act include, stalking, intimidation, financial abuse, sexual abuse within marriage and emotional abuse. PADV Act also outlaws intrusive practices such as virginity testing which are common in communities that generally castigate fornication or sex before marriage. This Act of Parliament provides for the protection and relief of domestic violence victims and to provide for protection of the victims and those directly affected by violence such as the children and those who depend on the victim.<sup>86</sup>

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<sup>85</sup>Protection Against Domestic Violence Act No. 2 of 2015. *Kenyan Gazette Supplement: Acts*, 2015

<sup>86</sup>*Ibid.*, 15

In addition, the Act introduced a very important clause which provides that a person can report a case of domestic violence on behalf of the victim. Before this legislation was enacted into law, reporting domestic violence was limited to the victim. The Act provided measures for protecting victims, and an individual can make an application on behalf of another person. Indeed, Section 11 of Part II of this legislation states that a person can apply for protection orders on behalf of another person, where the person entitled to protection is incapable of applying for protection.<sup>87</sup> The Act provides measures to ensure protection of not only the victims, but also their dependants. Therefore, the act mandates the Court to provide protection orders for the victims. The Court can also order for the counseling and compensation of the victim.

Moreover, the bill also protects victims of domestic violence from traditional activities that constitute abuse within the family such as wife inheritance and 'cleansing' of widows. Previously, such acts were not provided for by the law.

#### **2.3.4 Children's Act, 2001**

The Children's Act of 2001 makes provisions to safeguard the welfare and rights of children. The Act was enacted with the intention of consolidating the various legislation that affect children and brings to effect various international instruments that the country has ratified as far as the rights of children is concerned<sup>88</sup>. The Act states that all activities done on behalf of the children need to be done in the child's best interest. Therefore, it prohibits acts that do not representative of the children's best interests such as violence. The Children's Act is very relevant in the Kenyan situation since many girls are married before they reach adulthood.<sup>89</sup> Section 14 of the Act protects children from harmful practices such as early marriages, genital mutilation and other cultural rites.

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<sup>87</sup> Ibid. 25.

<sup>88</sup>Wabwile, Michael Nyongesa. "Rights Brought Home: Human Rights in Kenya's Children Act 2001." *Int'l Surv. Fam. L.* (2005): 393.

<sup>89</sup>UNAIDS (2006)

## **2.4 The International Instruments and their Implementation in Kenya**

### **2.4.1 International Treaties and Agreements**

The international community recognizes the importance of upholding inherent dignity and equality of all members of the human race. This is the foundation of justice, freedom and peace in the world<sup>90</sup>. Contempt or disregard for human rights has led to the orchestration of barbaric acts that have caused disorder in the world. There are a number of international instruments that have been formulated to deal with SGVB. Many of these instruments are recognized and applied in Kenya. These include the Universal Declaration of Human Rights (UDHR) of 1948. Kenya is a signatory to the UDHR and, like other UN member states, is committed to promoting the thirty articles of the UDHR. This is a fact that is seen in Chapter four of the Kenyan constitution which expressly states the rights and fundamental freedoms of the Kenyan citizens.

The second international instrument that Kenya is a signatory is the Convention on the Elimination of Discrimination Against Women (CEDAW) of 1979. CEDAW is a very fundamental instrument in dealing with gender based violence because it establishes international standards for the promotion of gender equality between men and women within the family. In addition, CEDAW has been used in Kenya as a tool, for securing equal rights for women since the national constitution does not have elaborate and strong anti-discrimination provisions.

Kenya has also ratified the United Nations Declaration on the Elimination of Violence Against Women (DEVAW) of 1993. DEVAW remains the first international instrument that specifically addressed the issue of violence against women. DEVAW can be defined as the women's international bill of rights. This is because this instrument enumerates the actions that are considered discriminatory and provides a list of action that needs to be taken to correct the situation. DEVAW is also important

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<sup>90</sup>Universal Declaration of Human Rights. Kenya Law.  
<http://kenyalaw.org/treaties/treaties/164/Universal-Declaration-of-Human-Rights>

for a country like Kenya which has many customary practices that are discriminatory against women in nature.

These international instruments have been domesticated in Kenya through the Kenyan constitution which states in Article 2 (5) and (6) that the general rules of international law and any treaty or convention that Kenya has ratified forms part of the law of Kenya. This can be interpreted to mean that the international law becomes directly applicable by Kenyan Courts, notwithstanding whether parliament has passed certain legislation to incorporate the international law in question. Of note is Article 21(4) of the Kenyan Constitution which requires the state to enact and implement legislation to fulfil its international obligations in respect to fundamental freedoms and human rights. Kenya also made progress in the implementation of international treaties and agreements by establishing the Kenya National Commission on Human Rights (KNHCR) in the year 2003. Part of KNCHR mandate was to ensure that the country complies with international human rights standards. 2.4.2 Regional Treaties and Agreements.

There are a number of human rights instruments specifically or generally directed to the issue of domestic violence at a regional level. One of these instruments is the African on Human Rights and People's Rights. This instrument was adopted in 1981 by the then Organization of Africa Unity to ensure that every member state commits to the elimination of all forms of discrimination against women and to ensure that the rights of women and the child are protected as provided for by the various international conventions and declarations.

Kenya is also a signatory to the African Charter on Human and People's Rights on the Rights of Women in Africa, also known as the Maputo Protocol of 2003. Those who support the Maputo Protocol cite the fact that it provides a mechanism for preventing female genital mutilation<sup>91</sup>, a practice that is very rampant in Kenya particularly among the pastoralist communities. The protocol specifically provides that member

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<sup>91</sup>The Maputo Protocol <http://maputoprotocol.com/about-the-protocol>

states need to ensure the right and health of all women which includes the respect and promotion of reproductive health. These include the right to control their fertility, the right to choose their preferred method of contraception and the right to decide whether to have children or not.

Another critical regional instrument that seeks to address gender based violence is the African Union Gender Policy of 2006. The policy was adopted with a focus on bridging the equality gap between men and women<sup>92</sup>. Particularly, this policy seeks to eliminate gender inequalities that have led to women becoming disempowered.

Kenya has ratified these aforementioned regional human rights instruments. For instance, African on Human Rights and People's Rights African Charter was adopted on June 27, 1981 in Nairobi. Kenya ratified the African Charter on January 23, 1992 and has since largely succeeded in domesticating most of provisions contained in the Charter through legislations.

## **2.5 Institutional Framework**

Kenya recognizes that it has obligations under international law to tackle violence against women. Kenya prides itself as a country that is keen on exercising due diligence in preventing acts of violence against women by among others, investigating those acts, prosecuting and punishing perpetrators. Moreover, as noted in earlier sections, the country has measures in place to provide redress and relief to victims of domestic violence. Policy, legal and institutional framework are formed through various interlinked components. Having unearthed the country's policy and legal framework, it is imperative to enumerate the institutions that provide technical and human capacities required to address domestic violence and put the policy and legal framework into practice. Kenya has the relevant institutions for dealing with this phenomenon. These institutions are government institutions (which include police stations, courts and provincial administration); and traditional institutions.

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<sup>92</sup>Omosho, Babatunde Joshua. "AFRICAN UNION AND GENDER EQUALITY IN THE LAST TEN YEARS: SOME ISSUES AND PROSPECTS FOR CONSIDERATION." (2015).

### **2.5.1 Government Institutions**

State structures remain the most important institutions in addressing domestic violence in Kenya. Indeed, most cases of domestic violence are reported to the police who conduct investigations before presenting evidence in Court to facilitate prosecution of perpetrators. One of the most legitimate developments in addressing domestic violence in Kenya was the establishment of police gender desks which are units within the country's security institutions. These special desks handling gender and children abuse cases are confidential spaces in police stations across the country that facilitate victims of domestic violence to file their complaints to specially trained policewomen. Initially, a victim of domestic violence was required to file their complaints at the occurrence book (OB) which made many victims refrain from reporting their cases. These special desks are an attempt by Kenya's police service to encourage victims of domestic violence to speak out in an environment where they feel comfortable safe and supported. Besides the law enforcement agencies, the state administration of justice in Kenya also includes prosecutors and medical doctors who gather scientific evidence in cases of domestic violence, and the courts. The country has a formal criminal justice system which is guided by the Kenyan constitutions, international statutes and relevant legislation on the issue such as the Sexual Offenses Act (SOA). The Kenyan constitution and the various legislations have served to end the courts' discretion, which was previously exercised very leniently. In addition, since the enactment of legislation on gender based violence and the enactment of a new constitution, the court system no longer refers sexual offenses cases to mediation by local leaders. Nevertheless, the courts have been reluctant to give life sentences to perpetrators even in cases where the victim was infected with HIV after being raped or defiled as required by the Sexual Offenses Act<sup>93</sup>.

### **2.5.2 Traditional Institutions**

When Kenya attained its independence in 1963, many of its citizenry used to resolve disputes using traditional as well as informal justice forums. Many of the sentences handed were very lenient largely because the traditional Kenyan culture did not regard

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<sup>93</sup>Sexual Offenses Act, 2006

domestic violence as a crime. This traditional culture has prevailed in many societies in modern Kenya particularly the rural areas. This demonstrates why Kenya accounts for remarkably high cases of domestic violence. Indeed, approximately 39 percent of women in Kenya have been victims of some form of SGBV as the Kenya Demographic and Health Survey of 2008-2009 found out.<sup>94</sup> There are many intricate and interconnected social and cultural factors in Kenya that have made women continually vulnerable to violence particularly in homes. Many of these factors can be attributed to the fact that traditional forums and mechanisms are inefficient in dealing with domestic violence. As Kenya developed, it would have been expected that these traditional institutions for dealing with a serious issue such as domestic violence would die out. However, this has not happened; traditional interventions to disputes have survived<sup>95</sup>. The main aim of traditional justice in Kenya is to restore peace by bringing together the parties involved and the community at large. As such, in traditional institutions of addressing disputes, justice is less retributive and more restorative. Traditional justice is important in communities where there is an unavailability of formal law apparatus and in areas which remain largely ungoverned in the conventional sense. Communities such as Turkana (through the Turkana elders), Mijikenda (through the Kaya elders) have used traditional methods of addressing sexual and gender-based violence. The main undoing of traditional institutions in addressing domestic violence is that they often discriminate on the basis of social status, family circumstances, gender and age. In addition, traditional justice has weak linkage to the formal justice system and other formal institutions. Another critical disadvantage of traditional justice systems is the fact that they lack uniformity – different ethnic groups have different traditional justice systems. As such, they are open to different interpretations.

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<sup>94</sup> Kenya National Bureau of Statistics 'The Demographic and Health Survey 2008-2009' June 2010 Kenya National Bureau of Statistics 240

<sup>95</sup>Penal Reform International, *Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems*. (2009), 19.



## **2.6 Conclusion**

In Kenya just like in other parts of the world, domestic violence remains a complex issue that is deeply rooted in the structural inequalities that exist between men and women. These structural inequalities lead to the existence of power differentials between the sexes. Attaining equilibrium between men and women can only happen in ideal situations. Kenya has progressively made attempts aimed at creating equal opportunities between men and women through the ratification international instruments and establishment of various national legal provisions. While Kenya has made tremendous steps in developing adequate legislation for addressing the phenomenon which includes specific legislation on protection, the full enforcement of the legislation is hampered by the lack of specific policies for addressing gender based violence on one hand and lack of sufficient institutional development in the area of tackling gender based violence at the community level or at the grassroots. As a result, there has been momentum loss in the fight against gender based violence since this phenomenon mainly happens in the communities. It should be understood that violence against women in Kenya and other parts of the world is often a result of profound social systems that work by advancing and proliferating it.

## **CHAPTER THREE**

### **IMPACT OF DOMESTIC VIOLENCE ON THE KENYAN SOCIETY WITH A FOCUS ON MARRIAGES**

#### **3.1 Introduction**

Domestic violence injures and kills. The short-term and long-term effects of this phenomenon are far reaching; they also devastate the victims who in many cases are women and children. Domestic violence causes a myriad of health problems that range from physical and sexual injuries to psychiatric and psychological disorders. However, while domestic violence is largely a private, family affair, its impacts are felt across the society in surprising ways. Indeed, this phenomenon is known to rip the very fabric of the society by wrecking families units and causing ripple effects that are felt for many years. This chapter will discuss the impacts of domestic violence in Kenya, a developing country, where partner violence remains the most common form of violence in the lives of Kenyan women. In addition, the chapter will present an empirical research on domestic violence against women by partners whom they live with. To do this, the study will focus on the abused women themselves where it will investigate their experiences and perceptions regarding the violence and in particular, what they regard as the consequences of such abuses in their lives and the lives of their children and families at large. Domestic violence against women is particularly prevalent in Kenya where according to the Kenya Domestic Household Survey (KDHS) of 2014, 38 percent of women between the ages of 15 and 49 had been victims of physical violence; of these, 14 percent experienced sexual violence.<sup>96</sup> Domestic violence against women has been comprehensively studied in the past. Indeed, there have been thousands of publications on the issue. As such, this paper is does not provide significantly new information on the topic. However, being an empirical study, the paper provides new information on the impact of domestic violence in Kenya – within the context of marriage.

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<sup>96</sup> Kenya Domestic Household Survey (KDHS) of 2014  
<https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>

### 3.2 Demographic Characteristics of the Respondents

The Social Demographic Characteristics of the respondents are described below.

#### 3.2.1 Age

All respondents in this study were above the age of 18 which is the legal age of marriage (for both men and women) according to the Marriage Act of 2014. Most of the respondents were below 50 years of age.

Age Bracket	Frequency	Percent (Rounded Off)
18-25	19	31
25-35	20	33
35-50	11	18
Above 50	10	16
Total	60	100

**Table 3.1: Age of Respondents**

#### 3.2.2 Marital Status of Respondents

Like already noted, the inclusion criteria of this study was that only women who are married or have been married at one point in their lives would be included. The following table shows the marital status of the respondents. As is captured in the table, majority of the respondents (70 percent) are married. The rest are divorced, separated or widowed.

Status	Frequency	Percent (Rounded off)
Married	42	70
Separated	8	13
Divorced	7	11
Widowed	3	5
Total	60	100

**Table 3.2: Marital status of the respondents**

### **3.2.3 Education Level of Respondents**

Most of the respondents' highest education level was secondary school, followed by primary school and a few who had attained college or university level.

Education Level	Frequency	Percentage
Primary school	13	21
Secondary school	37	61
College or university	10	16
Total	60	100

**Table 3.3: Education Level of respondents**

## **3.3 Respondents' Perception of the Impacts of Domestic Violence against women**

### **3.3.1 Introduction**

This section will detail the respondents' perception on domestic violence with a special focus on the impacts. These women are married and were selected on the basis of having been victims of domestic violence. This was confirmed by the women themselves during the selection process. Since the topic was on the impacts of domestic violence, it was important to ensure that only women who had been victims of domestic violence were involved. To identify these women, the researcher inevitably gathered information from a number of sources such as witnesses, complains, experts and emergency services including information within the criminal justice system.

This section will begin by presenting qualitative information on the most common forms of domestic violence among women in Kenya and the direct impact they had on the victims, having briefly presented this information in form of tables the section will venture into the general impacts of domestic violence against women in Kenya. Here, the focus will be on the impacts of domestic violence on the society and the economy. Additionally, the section will conclude with a discussion on these consequences in details.

### 3.3.2 Most Common Form of Domestic Violence

60 percent of the respondents indicated that physical abuse was the most common form of domestic violence that they were subjected to by their husbands.

Form of domestic violence	Frequency	Percent
Physical abuse	31	51
Sexual abuse	15	25
Emotional abuse	8	13
Financial abuse	3	5
Psychological abuse	5	8
Total	60	100

**Table 3.4: Most common form of domestic violence**

Since the most common form of domestic violence as captured on the previous section is physical abuse, the most common impact of domestic violence on the victims was physical injuries as seen in the following table.

Impact	Frequency
Physical injury	33
Miscarriages and early delivery	2
Sexual injury	12
Psychological and emotional distress	10
Total	60

**Table 3.5: Consequences of domestic violence**

### **3.4 General Impacts on Domestic Violence Against Women**

Many people believe that domestic violence is largely a private, family affair; its impacts are felt across the society in surprising ways.<sup>97</sup> Indeed, the ripple effects of domestic violence do not end with the physical, mental and family wellbeing issues. There is need for understanding and coming into terms with the impacts of domestic violence not just on the victims and their immediate families, but also on how this phenomenon affects the society and the economy.

The effects of domestic violence do not end within the house; it spreads beyond the front door, Many times, it permeates through the community and into places that are essentially supposed to provide safe havens for everyone therein. For instance, an abuser may decide to go and attack the victim to her place of work and may even harass or attack the victim's colleague. It is thus advisable for a woman who is in an abusive relationship to strategically make other people in her life aware of her situation. This is because domestic violence puts people who are not part of the family's private life to become victims of potentially harmful situations.<sup>98</sup> However, when such people are forewarned, they can become proactive and even put in place safety parameters.

The most profound impact of domestic violence on the society is that this phenomenon tears the very fabric of family. Domestic violence against women dismantles family units whose repercussions are felt for many years. Family is very important in the society; family is the unit of society. The way in which the family succeeds in creating and fostering human relationships is something that not other institution can replicate. Therefore, the health of two partners in marriage or who form a family affects the future and prosperity of the society.

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<sup>97</sup>Ellsberg, M., Arango, D.J., Morton, M., Gennari, F., Kiplesund, S., Contreras, M. and Watts, C., 2015. Prevention of violence against women and girls: what does the evidence say?. *The Lancet*, 385(9977), pp.1555-1566.

<sup>98</sup>Devries, K.M., Mak, J.Y., Garcia-Moreno, C., Petzold, M., Child, J.C., Falder, G., Lim, S., Bacchus, L.J., Engell, R.E., Rosenfeld, L. and Pallitto, C., 2013. The global prevalence of intimate partner violence against women. *Science*, 340(6140), pp.1527-1528.

Another significant societal consequence of domestic violence is how this phenomenon affects children. Children who witness domestic violence often find it difficult to trust adults, something that continues even when they become adults.<sup>99</sup> This experience complicates their relationship or attachment to the person they should love or protect. As a result, the family unit becomes weakened. Children who are exposed to violence tend to develop remarkably high levels of anxiety, anger, aggression, disobedience and hostility. When they become adults, these health issues also manifest themselves in their lives in the form of mental health and behavioral issues, sleep disorder and anxiety.<sup>100</sup> As a result, their school performance is affected. When the normal functioning of these children is affected to the extent that their grades suffer, it becomes a social problem. Additionally, children also pose a lingering consequence of domestic violence. Children who had been exposed to domestic violence tend to use violence to solve problems.<sup>101</sup> This becomes a serious challenge when these children become adults; they often use violence and intimidation to get their way just like their fathers used to do.

The effects of domestic violence against women on the economy and workplace are also profound. For instance, it has been proven that both the victim of this phenomenon and the abuser tend to struggle at their workplace.<sup>102</sup> In many instances, such people become very unreliable at work. Victims and perpetrators of domestic violence often have a problem concentrating and often get irked by petty issues. Many times, such people often respond with aggression. As a result of these behaviors, some of them get terminated because behaviors that emanate from their home environments. While this puts a strain on these individuals, it affects businesses as a result of low productivity and the overall costs of hiring new employees after dismissals.

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<sup>99</sup>Geffner, R., 2014. *The effects of intimate partner violence on children*. Routledge.

<sup>100</sup>Holt, S., Buckley, H. and Whelan, S., 2008. The impact of exposure to domestic violence on children and young people: A review of the literature. *Child abuse & neglect*, 32(8), pp.797-810.

<sup>101</sup>Moylan, C.A., Herrenkohl, T.I., Sousa, C., Tajima, E.A., Herrenkohl, R.C. and Russo, M.J., 2010. The effects of child abuse and exposure to domestic violence on adolescent internalizing and externalizing behavior problems. *Journal of family Violence*, 25(1), pp.53-63.

<sup>102</sup>Garcia-Moreno, C. and Watts, C., 2011. Violence against women: an urgent public health priority. *Bulletin of the World Health Organization*, 89(1), pp.2-2.

Domestic violence also causes absenteeism, where many victims of domestic violence miss days of work due to medical reasons which could be mental or physical. In Kenya, medical costs are often covered by the victims and perpetrators. This is because not many employees in Kenya are insured. Families that are struggling financially may find this to be too expensive depending on the extent of injury. When victims of domestic violence have to spend significantly on medical expenses, it means that they will be having lesser money at their disposal. They could even be terminated which would leave them with no earnings. Both victims and perpetrators also miss days of work due to legal reasons, where they have to appear in court if the cases are taken up by the legal system.

### **3.5 Response from Key Informants**

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#### **3.5.1 Physical Injuries**

As the study found out, physical abuse remains the most common form of domestic violence against women in Kenya. Physical injuries include cuts, bruises, burns, broken limbs and bones among others. One of the main factors that have led to the remarkably high cases of physical abuse in Kenya is due to cultural ideologies.<sup>103</sup> Some of these cultural ideologies provide legitimacy for violating women in marriages and in other spheres of the society. Historical traditions in Kenya have supported the beating of women.<sup>104</sup> In addition, the Kenyan culture does not specifically view domestic violence within the context of marriage where women are on the receiving end as a crime.

#### **3.5.2 Sexual Abuse**

Sexual injuries are caused by severe sexual abuse such as forced penetration of the penis or other body parts and objects into the penis, rectum or the mouth. Sexual abuse within the context of marriage, which has been a contentious issue in Kenya since it is not provided for by the law, is the second most common form of domestic

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<sup>103</sup>Lawoko, S., 2008. Predictors of attitudes toward intimate partner violence: A comparative study of men in Zambia and Kenya. *Journal of Interpersonal violence*, 23(8), pp.1056-1074.

<sup>104</sup>Lawoko, S., Dalal, K., Jiayou, L. and Jansson, B., 2007. Social inequalities in intimate partner violence: a study of women in Kenya. *Violence and victims*, 22(6), p.773.



violence among the respondents. Understandably therefore, sexual injuries rank as the second most common impact of domestic violence against women in Kenya; this is according to the respondents. Like already noted in the discussion of marital or spousal rape in Kenya, forced sex within marriage is not categorized as criminal by the various legislations such as the Sexual Offences Act of 2006.<sup>105</sup> In addition, the high cases of sexual injuries in the country can also be attributed to the fact that Kenya has patriarchal ideologies that tend to reinforce male superiority in marriage.

### **3.5.3 Miscarriages and Early Delivery**

Women experiencing verbal, physical or sexual abuse are at an increased risk of having miscarriages and early delivery. Indeed, violence against women has been known to lead to negative pregnancy outcomes. There is a general misconception that it is only physical abuse that causes miscarriages and early delivery, verbal and sexual abuse can also cause negative pregnancy outcomes. Two out of sixty women who were the respondents indicated that they had experienced miscarriages and early delivery. One of these was due to physical injury caused by the spouse hitting her repeatedly on her tummy when she was five months pregnant. The second woman reported to have miscarried as a result of emotional and physiological abuse.

### **3.5.4 Homicides**

According to the response from the study's key informants, approximately half of all female homicide victims are killed by their husbands or intimate partners. Homicide can be described as the deliberate and unlawful murder of one person by another. Homicide rarely generates national headlines in Kenya compared to other killings that do not happen within homes. A major reason for this is the fact the deeply engrained cultural beliefs where historical traditions in Kenya have sanctioned violence against women particularly within marriage. Bride wealth payment is also a major contributor

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<sup>105</sup> Sexual Offences Act, 2006

to domestic violence. <sup>106</sup>Unfortunately, at the extreme levels, this violence can lead to deaths.

### **3.5.5 Social Consequences**

Domestic violence against women presents some significant social consequences. According to the responses of key informants in this study, children learn from such abusive relationships especially where their parents are involved. Children learn violence. Indeed, children who have seen their mothers being abused grow up to be abusive. Such children are also more likely to be involved other criminal activities such as violent robberies. They are also likely to abuse drugs and alcohol and experience psychological challenges.

### **3.5.6 Psychological and Emotional Distress**

10 out of 60 women reported to have experienced psychological and emotional distress as a result of domestic violence. While bruised, battered and broken features are the most recognizable signs of domestic abuse. However, domestic violence carries significant psychological and emotional trauma that interferes with a victim's ability to function properly as they would in normal circumstances. The challenge of capturing this impact among Kenyan women is the fact that from their socialization and society's expectation, women are construed to be submissive and passive and are supposed to accept violence as a normal part of a woman's life. <sup>107</sup>

## **3.6 Conclusion**

The study has explored the impacts of domestic violence in Kenya. Specifically, the study has ventured into the prevalence of the various forms of domestic violence so as to typify the severity of this phenomenon. The study concludes gender based violence including domestic and sexual abuse as well as other harmful cultural practices such as beading and widow cleansing are still very endemic in Kenya. Additionally, the

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<sup>106</sup>Bowman, C.G., 2002. Theories of domestic violence in the African context. *Am. UJ Gender Soc. Pol'y & L.*, 11, p.847.

<sup>107</sup>Kimuna, S.R. and Djamba, Y.K., 2008. Gender based violence: Correlates of physical and sexual wife abuse in Kenya. *Journal of Family Violence*, 23(5), pp.333-342.

study found out that physical abuse is the most common form of domestic violence against women in Kenya. Correspondingly, physical injuries are the most common impacts of domestic violence against women in Kenya. While physical injuries such as burns, bruises and cuts are the most obvious signs of domestic violence, sexual injuries, emotional and psychological distress are demand much care and attention since they often go unaddressed. The aim of gaining an understanding on the impact of domestic violence against women in Kenya has been achieved through the empirical study as well as the information gained from review of literature on this topic. The information gathered from this research supports the notion that the society and the policy, legal and institutional framework remain the underlying repressors of domestic violence against women. Going by this concept, to reduce violence against women within the institution of marriage, these women need to be embraced by the society and protected by the policy, legal and institutional framework. The effectiveness of the legal and institutional framework to address this phenomenon will form the basis of the next Chapter.

## **CHAPTER FOUR**

### **EFFECTIVENESS OF THE AVAILABLE AVENUES IN ADDRESSING DOMESTIC VIOLENCE**

#### **4.1 Introduction**

Domestic violence remains one of the most widespread and socially accepted human rights violations. This phenomenon cuts across race, class, religion and ethnicity. Kenya is not exempt from this brutality which is known to negatively affect women and girls. Over the past decade, Kenya has made significant progress in creating mechanisms to prevent sexual and gender based violence (SGVB). Indeed, as was captured in Chapter 2, Kenya has policies, laws and legislative reforms for addressing gender based violence. However, Kenya's current protection environment is fraught with numerous challenges. Despite those challenges, the country's protection environment is filled with realistic opportunities which need to be carefully considered when creating responses. Further, though the country has a legal, policy and institutional framework for dealing with SGBV and domestic violence in particular, the levels to which these frameworks serve as a deterrent to domestic violence and address the plight of survivors is debatable. This Chapter seeks to examine the evidence base on the effectiveness of various mechanisms or avenues in addressing domestic violence, and how these avenues have succeeded or failed in preventing the occurrence of recurrence of domestic violence. In addition, the Chapter will evaluate the pace of implementation and how this helps in deterring the phenomenon.

#### **4.2 Inadequate Legal Framework for Protection**

Though Kenya has passed many legislations and enacted policies to address sexual and gender based violence, there are various offenses that fall within the range of domestic violence which are not adequately covered by the legal, policy and institutional framework. Some of these offences that are yet to get legal recognition include widow inheritance, marital rape and disinheritance.

#### **4.2.1 Widow Cleansing and Wife Inheritance**

Widow cleansing and wife inheritance are practiced worldwide. In Kenya, these practices are common in a number of communities. It is particularly common among communities that reside in Western Kenya such as Luhya, Abasuba and Luo.<sup>108</sup> Like it emerged in Chapter 3, wife inheritance constitutes domestic violence. However, Kenyan laws and policies that seek to address this phenomenon are silent on these practices. The passage of Protection Against Domestic Violence Act (PADV), 2015,<sup>109</sup> provided a perfect opportunity to criminalize widow cleansing and wife inheritance. It also provided the framers an opportunity to prefer changes that are reasonable for a suspect convicted of committing these crimes. Since the family is a fundamental unit in the society and critical basis of social order, it needs to be protected from all forms of domestic violence to foster its development.

#### **4.2.2 Marital Rape**

In the discussion of available mechanisms for preventing domestic violence in Chapter 2, it emerged that while the Sexual Offenses Act, 2006 is a legitimate legislation for addressing this phenomenon, it does not prohibit, nor does it criminalize marital rape. Marital rape can be described as the forced sex within marriage. Section 43(5) of the Sexual offenses Act states sexual abuse such as rape does not apply within the context of marriage.<sup>110</sup> In other words, the Act does not criminalize rape, which is a very common form of domestic violence within marriage. Therefore, while the drafters of this important piece of legislation had an opportunity of making marital rape an offense in Kenya, they chose to disregard it. Criminalizing marital rape in the country is a necessity; nevertheless, since the law is silent on this form of domestic violence, there are insufficient means or avenues of addressing forced sex within marriage.

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<sup>108</sup> Ayikukwei, Rose Mmboga, Duncan Ngare, John E. Sidle, David O. Ayuku, Joyce Baliddawa, and James Y. Greene. "Social and cultural significance of the sexual cleansing ritual and its impact on HIV prevention strategies in western Kenya." *Sexuality and Culture* 11, no. 3 (2007): 32-50.

<sup>109</sup> Protection Against Domestic Violence Act No. 2 of 2015. *Kenyan Gazette Supplement: Acts, 2015*

<sup>110</sup> Sexual Offenses Act, 2006.

### **4.2.3 Disinheritance**

Disinheritance can be described as the act of preventing someone from having the legal rights to receive property or money after the death of their heir spouses or parents. For the sake of this paper, disinheritance is used to describe the act of denying widows the properties of their late husbands. The applicable law in Kenya on matters of succession or inheritance is the Law of Succession Act.<sup>111</sup> The law was enacted on July 1, 1981. This legislation allows a female person to make a will, whether she is married or not. Additionally, the legislation allows daughters (whether married or unmarried) to receive inheritance. According to the Succession Act, when a person passes away without leaving a will behind, the surviving spouse is entitled to the household and personal effects of the deceased.

In addition, the Kenyan Constitution of 2010 in Article 60(f) provides for the elimination of all forms of gender discrimination related to land.<sup>112</sup> In her February 17, 2011 ruling, Lady Justice Mary Kasongo of the High Court reaffirmed the constitution by stating that the marital status cannot deny a daughter the right to inherit her father's properties.<sup>113</sup> Disinheriting a woman is a form of financial abuse since like was enumerated in Chapters 1 and 2; financial abuse can be described as illegal and unauthorized use of another person's money, property and other valuables. Traditionally, the land tenure in Kenya is usually vested on clans and the men folk. In addition, until recently, women had usufruct rights and were not considered as heirs in inheritance. This culture has prevailed in many parts of Kenya despite the fact that the Succession Act has been in place for more than three decades and the fact that the Constitution of Kenya, 2010 outlaws gender discrimination based on land. There have been very many cases where women were forcefully evicted from their land or disinherited by members of their own families. The Law of Succession Act and the Kenyan Constitution do not provide adequate prevention of women from being disinherited. This is because, despite the fact that the Law of Succession Act still

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<sup>111</sup> Law of Succession Act, 1981

<sup>112</sup> Constitution, Kenya. "Government Printer." *Nairobi, Kenya* (2010).

<sup>113</sup> Ayodo, Harold. Daughters too can inherit property.

<https://www.standardmedia.co.ke/business/article/2000068667/daughters-too-can-inherit-property>

exists, customary laws are prevalent. Customary law prohibits women from owning and inheriting properties. For instance, in many Kenyan communities, when a woman is married, she is not expected to get any inheritance from her father because it is assumed that she will get property from the family she is married to. Yet, even after the husband dies, customary law permits the family of the deceased man to evict a widow from her own matrimonial home. The Law of Succession Act fails to adequately protect widows because it does not create a system where women have equal rights to men to inherit property due to three fundamental weaknesses in that statute. The first weakness is that the drafters of his Act fail to provide sufficient protection for widows from destructive cultural practices after the death of their husband. These practices include widow eviction, widow inheritance and widow cleansing. These practices should be criminalized under law something with the Law of Succession Act failed to do. The second failure of the Act is that it fails to recognize the fact that many women do not know their legal rights and that they lack access to legal process. The third area that the Act does not provide for is that it excludes a very important category of people. These are people living in rural agricultural land and the Muslims. In the Islam community, such matters are dealt with by Islamic law. These are exemptions that only sacrifice or negate the principle uniformity in law. There is an urgent need to amend these exemptions in a way that will safeguard the cultures and beliefs of the minorities while at the same time upholding Kenya's fidelity to a egalitarian and uniform legal system.

#### **4.3 Institutional Framework**

There are various institutional responses to domestic violence. The institutional framework in respect to domestic violence refers to those institutions that provide technical and human capacities required to address domestic violence and put the policy and legal framework into practice. Kenya has the relevant institutions for dealing with this phenomenon. These institutions are government institutions (which include police, courts and provincial administration); and traditional institutions. These institutions are very fundamental in addressing this phenomenon.

### **4.3.1 The Government**

#### **4.3.1.1 The Police**

State structures remain the most important institutions in tackling domestic violence. Preventing gender based violence does not begin and end with legislation. Effective enforcement of the law is paramount. The function of the police is clearly outlined in the National Police Service Act (Part III Section 24). These functions include maintaining peace and order and enforcing laws and regulations. Therefore, the police are bound by the law to ensure they enforce the law. And like was discussed in Chapter 2, some of these laws deal with prevention of gender and sexual based violence. One of the most important laws in the prevention of domestic violence is the Protection Against Domestic Violence Act, 2015 which provides various protection orders in Section 6. The Act stipulates the duties of the police in relation to domestic violence as facilitating reporting process to ensure that the complainant can be comfortable in reporting to the police, and to do that without fear. The Act also states that the police have the power to enter a premise to make arrest, prevent or investigate cases of domestic violence. To facilitate the reporting process, the Inspector General of Police has implemented several procedures and measures. An example of this the police gender desks which are stationed within Kenya's security institutions. The police desks have proved to be a very helpful as an intervention for addressing sexual and gender-based violence. These special desks provide focal points for reporting SGBV cases such as sexual exploitations, sexual harassments and physical abuse, and are thus a critical intervention in tackling domestic violence.

Yet while these gender desks have led to some improvements, what is lacking in Kenya is specialized training for police officers who are stationed in these Gender Desks. It is important to provide regular and effective training to the police about the dynamics of sexual and gender-based violence. Specialized training of police on domestic violence and violence against women in general including training on their roles in protecting women is one of the most fundamental factors in ensuring the effectiveness of these gender desks. Another area that is inevitably compromising the effectiveness of these Gender Desks is the fact that they are not located in private and



secure settings. A random visit in a number of police stations revealed that the Gender Desks are located at one corner of the common reception where all other cases are reported. Many women find it difficult to present their cases in such settings preferring to do it in a private place where they will feel comfortable.

#### **4.3.1.2 Judiciary**

The constitution of Kenya provides that every person is entitled to rights and fundamental freedoms as provided for in the Bill of Rights. In applying the Bill of Rights, Kenya courts are obligated to develop the law to the extent that this law protects and upholds fundamental freedom. In addition, the courts are obligated to adopt interpretations that favor the enforcement of fundamental freedom. High Court judges have a very important role in interpreting the constitution. This involves among others, ensuring that there is accountability for human rights violations. Indeed, the court ensures that all human rights violations brought before it do not go unpunished. This is a very important role in preventing sexual and gender based violence such as domestic violence because it punishes those involved in human rights violations, it reinforces public confidence on the effectiveness of the judicial systems. This effectiveness will be further interrogated in the “Judicial Decisions” section of this Chapter. Another fundamental role of the courts is to protect vulnerable groups. Indeed, the Constitution of Kenya 2015 in Article 21(3) obligates the state to address the needs of the most vulnerable in the population. It is the role of the courts to ensure that proper investigations of crime happen and to pronounce itself to instances where acts of the investigators violated the claimant’s constitutional rights. The judiciary also has the right to ensure non-discrimination. This means that the judiciary needs to ensure that there is equal delivery of justice and that this right is availed to everyone irrespective of their status or gender. One of the most important roles of the courts is to inform the legal system’s response to sexual and gender based violence. Judges and magistrates remain the final authority in criminal and civil matters involving violence against women. It is the role of the courts to ensure that justice is applied equally. In addition, cruelty remains one of the ground for seeking separation or divorce. The courts have played a vital role in stepping away from conservatism and apply

provisions of international human rights instruments so as to safeguard the rights of women. An in depth analysis of judicial decisions is provided in further sections of this chapter.

#### **4.3.1.3 Provincial Administration**

Under the current 2010 constitution, the Provincial Administration represents the national government at the county level. It is thus required to implement and oversee national government policies. Under the new dispensation, each county bureaucracy is headed by the County Commissioner. Other members of the provincial administration that serve under the county commissioners are deputy commissioners, assistant commissioners, chiefs and assistant chiefs. Chiefs and assistant chiefs remain the most important members of the provincial administration in addressing domestic violence; they operate at the grassroots. This is because chiefs and their assistants are the closest members of the provincial administration to the people. According to the Chief's Act, Chiefs and their assistants have a duty to maintain order in their areas. Section 8 of Act spells out the powers of chiefs and their assistants in preventing crime.<sup>114</sup> These powers include preventing an offence that is being committed. They are also allowed to order the arrest of a person committing an offense in instances where it is difficult to prevent those offenses. In the Kenya context, chiefs play a huge role in preventing domestic violence. In many cases they are the custodians of traditional laws since they are often chosen from among the population that they serve. However, many times chiefs apply customary justice mechanisms when dealing with domestic violence cases. Chiefs and their assistants have converted their offices into quasi courtrooms where they deal with cases of domestic violence and other matters brought before them. Customary justice will be discussed in the "Traditional Justice" section, where it will emerge that the use of customary mechanisms and traditional institutions by chiefs is detrimental to the rights of women. This is because they traditional dispute mechanisms often contravene the Bill of Rights and are repugnant to morality and justice.

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<sup>114</sup> Chief's Act , Chapter 128. Laws of Kenya

### **4.3.2 The Civil Society**

Civil society organizations have also been making many interventions in the country to address this phenomenon. Among the civil society organizations that have involved themselves in tackling sexual and gender-based violence include the Coalition on Violence Against Women (COVAW), Federation of Women Lawyers (FIDA) Kenya, Gender Violence Recovery Center and Africa Unite Kenya. Interventions by these civil society organizations have slowly opened up a very conservative and significantly patriarchal society in talking about and reporting sexual and gender-based cases. FIDA Kenya, which has been one of the most vocal civil societies on matters of injustices and discrimination against women, has been creating improved legal status as well as access to justice for Kenyan women. Moreover, the civil society organization, whose membership is women lawyers and women law students, has also been involved in raising public awareness on the rights of women. FIDA Kenya has also focused on public interest litigation in matters of inheritance and ensuring that the government takes affirmative action by advocating and lobbying for the passage of various legislations key among the Family Protection Bill of 2012 and Marriage Bill of 2012.

While there have been numerous programs launched by these and other civil society organizations geared towards preventing gender based violence and ensuring early reporting of these crimes, there have been remarkably few convictions recorded. Additionally, there have been huge lapses by the police and the country's justice system in responding to the plight of survivors. In many cases, domestic violence is treated just like any other case without some special attention paid to the gendered nature of such crimes which only eliminated critical evidence. In other instances, cases of domestic violence are treated as lesser crimes resulting to the reluctance by the police to conduct serious investigations. The inaction and indifference by families, communities and duty bearing institutions sadly frustrates the efforts made by civil society organizations in opening the deeply conservative and patriarchal society in reporting violence against women cases.

### **4.3.3 Traditional Institutions**

The drafters of the current Kenyan constitution in their wisdom encouraged the use of alternative dispute resolutions. Therefore, the use of traditional institutions in addressing domestic violence cases is protected by the constitution. However, traditional justice systems is not the most ideal approach in dealing with domestic violence cases because as was earlier mentioned, traditional mechanisms contravene the Bill of Rights and is retrogressive to justice. Traditional and customary justice systems are thus parallel accountability institutions that serve to manage and codify community attitudes regarding sexual violence. Traditional institutions are often not comprehensive neither are they coherent. Rather, they are a set of traditions and processes governed by a group of individuals of influence at the grassroots level, who are tasked with the responsibility of resolving disputes.

These individuals resolve disputes brought before them using local concepts of justice. They also use apply subjective ideas on what constitutes an ideal outcome. In many cases, these processes are conducted without reference to or guidance from the relevant legislation on domestic violence or the constitution. The use of traditional justice thus forms a locus by which cultural norms are codified which may develop or perpetuate gender inequality, something that the constitution and other legislations are against. The main imperative behind traditional and customary justice systems in addressing issues such as domestic violence is to restore social harmony. Therefore, these non-state justice systems are restorative and not retributive. Indeed, these institutions are not focuses on punishing since in this system, punishment is seen as being disruptive to the harmony of the community.

Often, women who seek to pursue formal justice in communities that largely rely on traditional and customary judicial systems like in the rural areas are often perceived as rejecting their own community, culture and value systems. As such, many of them are pressured not to take the formal justice route, but rather “settle” the issue locally. Therefore, many women who have been victims of domestic violence will turn to traditional institutions since it is the only solution accessible to them or because the

community and culture pressures them to do so. Since traditional and customary judicial institutions often encourage gender inequality and practices that could be harmful to women and girls. As such, traditional systems are not ideal for addressing domestic violence because they deny women access to formal justice systems that acknowledge that punishment, as opposed to restoration is the most effective approach towards ensuring justice and deterring crime. In addition, traditional justice tends to subordinate men to women and also consider women as inferior; therefore, they are often skewed when dealing with gender related issues. Therefore, although they are encouraged by the current Kenya constitution, the same constitution puts a caveat on traditional justice systems that contravene the Bill of Rights and those that are a travesty of justice and morality.

#### **4.4 Activities and Campaigns**

Kenya has implemented many activities and campaigns aimed at addressing this phenomenon. Many of the activities and campaigns have been very effective since they have received national coverage.

One of the most effective of such campaigns is Jitokeze, which is a joint program by the Ministry of Gender and United Nations Women. The Kenyan government recognizes that the consequences of this phenomenon are huge. Besides the fact that it violates the human rights of the survivor, this phenomenon also leaves a huge financial burden on the survivor and the family. Moreover, it leads to time lost at the national level when one takes into account the many people who have to miss work to seek medical attention or attend court sessions. It is against this backdrop that the government through the Ministry of Public Service and Gender in conjunction with the United Nations sought to address the underlying gaps in the fight against gender-based violence in Kenya. The joint program campaign is set to run for four years having been launched in the year 2016. The program has three main aims. The first one is to ensure that the legislative and policy environment is aligned to the international and regional gender based violence standards. The second goal of the campaign is to ensure that the country has appropriate and favorable attitudes and

social norms in prevention of gender based violence. Besides being a nationwide campaign, Jitokeze is also meant to break the silence on gender based violence. As such, they have also activated a hotline number (1195) to go with the program. Victims of SGBV can call this number and report such cases.

16 Days of Activism Against Gender Based Violence is yet another campaign spearheaded by the government to address this phenomenon. The campaign which has been going on every year beginning from the International Women's Day is centered on the theme of "safe cities for women." The aim of the campaign was to highlight the issue of violence against women was to highlight that violence against women is a violation of human rights. This campaign was initiated by the United Nations and runs in most of the UN member nations Kenya included. The campaign seeks to galvanize action to end all forms of violence against women and girls. The campaign originated from the 1991 Women's Global Leadership Institute. The 2016 edition of this campaign sought to increase sustainable financing to efforts aimed at ending violence against women and girls which is in line with the realization of the noble 2030 Agenda for Sustainable Development. Efforts towards prevention of gender based violence in Kenya have often been hampered by lack of substantial funding. As such, resources for initiatives aimed at preventing and addressing gender based violence have been lacking. The campaign, which was launched at the United Nations offices in Nairobi, brought together more than 200 participants drawn from the UN, the government, judiciary and the civil society. The event sought to dialogue on the way forward in terms of addressing gender based violence before taking the message nationally. This campaign also sought to engage men and boys to be advocates of change in achieving gender equality and women's rights.

There have also been several campaigns spearheaded by individuals and NGOs and activists such as "Justice for Liz" started by Saida Ali – a campaign which has gained

worldwide attention.<sup>115</sup> The campaign was started after a 15 year old girl was gang raped in Busia Kenya. The girl was left with serious bodily harm that could almost have killed her. Liz (not her real name – her real name is protected for legal reasons) received support from millions of people around the world after her story was made public. Initially, the attackers, who it had been proven beyond reasonable doubt, were let off the hook after slashing glass at a local police station (as punishment). This was an example of how restorative non-state justice system is a travesty of justice and treats women and girls inferior to men. It took two years as well as a global petition and campaign for the attackers to face justice in a formal court of law. The gang was sentenced to 15 years in prison. Liz finally received justice, however, had her story not been covered by the media, her's would be one among such cases where retrogressive systems are used in disputes and where local authorities fail to adequately address such cases.

Another similar campaign in Kenya that received huge media attention is #JusticeForFatuma. This campaign was started after Fatuma Ibrahim (30) a wife and mother of four was attacked by her husband who pierced her with a knife that was left lodged in her cheek. Fatuma had been described by neighbors and friends as a hardworking woman, who though married, did not depend on her husband to put food on the table. She used to trek for many kilometers daily to be able to provide for her children. Her husband was jobless and would occasionally engage insome manual jobs. The couple was described as not having shown any signs of disagreements in the duration they were married. They often led a quiet life, and went on with their daily life, like any other family would, until the incident happened. Details of what lead to the attack have remained scanty; however, Fatuma was airlifted by AMREF to Nairobi for specialized treatment where the knife was successfully removed. The incident led to the creation of the #JusticeForFatuma campaign that sought to create awareness about the scourge of domestic violence in Kenya and beyond. When she was being discharged, Fatuma confessed to have been a victim of domestic violence

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<sup>115</sup> Gander, Kashmira. (2015) Justice for Liz: Rapists jailed for 15 years following protests over grass-cutting punishment. <http://www.independent.co.uk/news/world/africa/justice-for-liz-rapists-jailed-for-15-years-following-protests-over-grass-cutting-punishment-10174293.html>

countless times, and that she had never reported any of the past cases. Therefore, were it not this life threatening attack, her husband would never have faced justice for the crime of domestic violence. This case demonstrates that very few women seek psychological and medical support after being subjected to domestic violence. The campaign, which began on Facebook and Twitter, was meant to break the silence so that people can begin talking about the issue.

Another NGO MenEngage Kenyan Network (MenKen), which operates internationally, also launched its Kenya network. The aim of this network is to call on men themselves, and especially those in leadership positions, to make concerted efforts towards challenging violence against women and advocating for non violent means of conflict resolution. When the initiative, which is still ongoing, was launched in 2012, the activity culminated in the climbing of Africa's biggest mountain Kilimanjaro. Climbing Mt Kilimanjaro was symbolic in nature because it signified the raising of a voice to end the scourge of domestic violence. MenKen's initiative is very important in combating sexual and gender based violence by bringing men and boys on board. Men and boys need to play a pivotal role in promoting gender equity. It has also been the aim of this campaign to work alongside existing plans seeking to address this phenomenon and tackle other forms of violence against women that happen in Kenya such as Female Genital Mutilation.

These campaigns and activities have helped to improve attitudes on violence against women. As a result of these and many other campaigns and activities more and more people in the country regard gender equality as a fundamental human right. However, due to unavailability of qualitative data, the overall impact of these campaigns and activities can only be generalized. Nevertheless, such campaigns and activities are important in addressing the current practices that have tended to bolster cultural and traditional values that undermine the status of women in the society.



#### **4.5 Challenges in Implementation of Policy and Legislation**

Despite the existence of legislations, policies, plans and programs for addressing domestic violence, there are some disparities at the legal, economic and social level that impede participation in decision making. Further, there exist disparities in access to resources and opportunities. This section will explain the challenges faced in the implementation of various policy and legislation such as Sexual Offenses Act and the Children's Act. These challenges relate to level of coordination, resources, technical capacity, and social cultural issues.

##### **4.5.1 Weak Coordination among Actors at all Levels**

A coordinated response is very critical in supporting women who are apprehensive about going through the justice system and women who have been victims and are marginalized or are fundamentally vulnerable. Coordination at the formal criminal justice system needs to be enhanced. There are various players involved in the criminal justice system. These include the police, prosecutors, medical doctors and the courts. There are various strategies and collaborative models to domestic violence that have been proved to be successful. These include inter-agency coordination, coordination committees, domestic violence units, community level coordination and court response steering committees. The full participation of all relevant players helps in effectively dealing with issues related to SGBV.<sup>116</sup> This calls for the government, community levels players and private entities to engage each other consistently so as to deal with this phenomenon. In Kenya, this coordination has not been fully realized. Nevertheless, there have been few disjointed efforts aimed at dealing with this vice. The government has not succeeded or made legitimate efforts towards engaging other relevant players such as the civil society and private actors in dealing with this phenomenon.

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<sup>116</sup>Morrison, Andrew. "Addressing gender-based violence in the Latin American and Caribbean region: a critical review of interventions." (2004).

#### **4.5.2 Inadequate Resources**

Human and capital resources are needed to address sexual and gender based violence. The lack of adequate resources has negated efforts of dealing with SGBV. In other words, the lack of sufficient resources has made the avenues available in dealing with domestic violence ineffective. The government has not allocated enough manpower and fiscal resources to deal with this phenomenon. Moreover, only a very small portion of international aid is currently channeled towards reducing domestic violence or improving the country's justice systems. Besides improving the country's justice system, resources are needed to help in the dissemination of information through training programs, organizing workshops and sponsoring gender-related courses in school. These efforts are essential in creating awareness on SGBV and its consequence to the entire country. However, with limited resources, this cannot be achieved.

#### **4.5.3 Lack of Adequate Technical Capacity**

In addressing domestic violence, the ability of various actors to adequately meet legal and policy requirements needs to be underscored. In addition, it is also important to consider how lack of technical capacity hampers the fight against gender-based violence. Technical capacity includes personnel capability and technical knowledge. The process of investigating cases of domestic violence and creating awareness about this phenomenon requires highly skilled and trained personnel. In Kenya, it becomes difficult in many cases to have someone who can completely take part in the implementation of policy and program seeking to address domestic violence. As a result, existing policies and laws dealing with this phenomenon get frustrated. Kenya is particularly at its infancy in the use of forensic evidence.<sup>117</sup> The country lacks enough forensic scientists and laboratories to investigate cases of SGBV. This puts to question the reliability and credibility of evidence presented in court by these experts.

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<sup>117</sup>Muriuki, Peter Ndichu. "Pathological Truth: The Use of Forensic Science in Kenya's Criminal Justice System." In *Proceedings of World Academy of Science, Engineering and Technology*, no. 78, p. 1. World Academy of Science, Engineering and Technology (WASET), 2013.

#### **4.5.4 Social Cultural Issues**

Kenya, just like any other society has social-cultural biases that tend to water down the implementation of policy and legal framework that seek to address domestic violence. Kenya has social-cultural biases that favor men over women and the girl child. Females have traditionally been viewed as the property of a 'benevolent' male protector.<sup>118</sup> Tied to this are various other myths that seem to support violence on women. These myths include the notion of male superiority and religious and cultural justifications for male hegemony over women. These beliefs have over time become the main basis that explains the violence meted against women. When they become internalized, it becomes difficult to address cases of SGBV. There have been many instances to date where traditional justice systems have been used to resolve gender violence. Where these traditional mechanisms are used in place of formal legal systems to address this phenomenon, justice is rarely well served. This is because of the fact that traditionally, women were viewed as being lesser being compared to men. Therefore, the use of traditional mechanisms in resolving domestic violence subverts justice for the victims of domestic violence since these mechanisms are often restorative as opposed to punitive or retributive.

#### **4.5.5 State of Insecurity**

Gender based violence is very rife during times of conflict. This is due to the underlying lawlessness and lack of police protection during such times. At other times, people who are supposed to protect these women during a time of crisis such as military personnel, police officers and relief workers among others may themselves perpetrate SGVB on these women. While state of insecurity increases sexual and gender based violence in general, there are instances where it contributes to domestic violence. For instance, women who have been sexually exploited during state of insecurity often face rejection and further violence from their husbands or partners. Due to the underlying lawlessness, some of the women who are exploited or taken advantage of have been rejected by their husbands. For instance during the post

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<sup>118</sup>Bishop, Julia. "Gender-based violence and gender stereotyping in international law." (2012). Constitution, Kenya. "Government Printer." *Nairobi, Kenya* (2010).

election violence in January 2008, some husbands living in internally displaced people (IDP) camps believed that their wives were prostitutes because there was a believe that many of them were being used for sex by security forces so that they can be given protection and money.<sup>119</sup> Many of these women, some innocent, were further subjected to domestic violence by their husbands.

#### **4.5.6 Misconception of the Concept of Gender**

There is a general misconception in Kenya that gender is a women's issue. Therefore, many efforts towards eradicating gender based violence are spearheaded by women. Gender based violence is a pandemic whose solutions needs to be more than simply punishing the perpetrators. Indeed, there is need to have a change in the mentality of seeing gender as being synonymous with women. Kenya needs more and more men participating in the feminist movement because women cannot do it on their own. Gender based violence are cultural problems related to power imbalance between the two sexes. It is thus a problem that needs to be addressed by entire community and men need to be part of the solution. When more and more men are involved or involve themselves in being part of the solution, they become more aware of this phenomenon and will be at the forefront of standing against domestic violence being the gender that mostly orchestrates this vice.

#### **4.6 Judicial Decisions**

Like already discussed, Kenya has legislations and policies dealing with sexual and gender-based violence. However, despite these legislations and policies addressing SGBV, there are some inconsistencies when it comes to judicial actions. Today, the average Kenyan woman is not aware of her rights. As such enforcing such rights has been a challenge due to this very fact. There have however been attempts to come up with legislations that are gender sensitive. These efforts have not fully received adequate support because of the traditional practices and cultures and the fact that Kenya's legislature is largely male dominated; it is also unresponsive and insensitive.

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<sup>119</sup>Ohanga-Too, Appelles. "KENYA POST ELECTION VIOLENCE IN 2007." (2014).

Since marital rape is not provided for in under the law, it remains a main source of controversy in sexual violence legislation as well as court's interpretation of the issue.<sup>120</sup> Customary laws in Kenya and other countries are founded on the notion that women are a property of their husbands. Therefore, sex within the context of marriage has often been defined as consensual. This has lead to the notion that it is conceptually impossible for a man to rape his own wife. The principle of 'marital rape exception' exists in Kenya as well as many other jurisdictions.<sup>121</sup> In Kenya and tens of other countries, 'defence of marriage' is recognized as a legal defence. Nevertheless, many courts have been trying to understand what is meant by rape and whether forced sex within marriage needs to be made a criminal offense. This section will be very important to this topic since it discusses judicial actions and how the judiciary has made decisions in cases of domestic violence before it.

#### **4.6.1 Kenya's SGBV Jurisprudence**

Kenya's sentencing practices on sexual and gender based violence vary greatly. This is something that has attracted much criticism on various grounds. Despite the challenges, Kenya's jurisprudence of SGVB is continually evolving to between knowledge as it seeks to provide better redress to the awful experiences of sexual and gender violence victims. With the help of courts, Kenya's SGBV jurisprudence is becoming more and more developed.

#### **4.6.2 The Approach Taken by Kenyan Courts in Protecting Women**

The Kenyan courts have held that the state has a duty to protect people against violent crime. In addition, the courts have indicated that the police have a duty to care for victims of violence. Additionally, the courts have held that the state is obliged to protect individuals by taking the necessary steps for preventing violations of the constitutional rights to security and freedom of the individual. The Kenyan courts have also given effect to international human rights law by giving effect to the

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<sup>120</sup>Kamu Winfred, et al. THE LEGAL IMPUNITY FOR MARITAL RAPE IN KENYA: A WOMEN'S EQUALITY ISSUE. Equality Effect, 2007

<sup>121</sup> Federation of Women Lawyers – Kenya, Gender Based Domestic Violence in Kenya, 2008 pp 26-27

doctrine of due diligence. This was as was seen in *C.K (A Child) & 11 others vs. The Commissioner of Police & 2 others*.<sup>122</sup> In this case, the petitioners were asking the court to declare that the actions of the respondents (in this case the police) failed to undertake effective, prompt, professional and proper investigations into the petitioners' complaints of defilement was in violation of the fundamental freedoms and rights of the petitioner. The court agreed with the petitioner citing the Constitution of Kenya, 2010 and the general rules of international law, conventions or treaty as ratified by the country.

Courts can also, through the Witness Protection Act, 2006 protect a victim of domestic violence from further violence.<sup>123</sup> Victims of intra-family violence often suffer in silence. Witness protection is vital for women who are being subjected to domestic violence by their husbands and partners since most of them are living under the same roof with the abusers.

#### 4.5.3 Case Laws

Before the passage of the Sexual Offenses Act, 2008 and Protection against Domestic Violence Act, 2015 domestic violence was not recognized in its true form under Kenyan law. Domestic violence cases used to be prosecuted as regular cases of assault. They would also be classified as cases of “causing grievous bodily harm” as provided for in the country’s Penal Code. During those days, domestic violence used to be prosecuted without the gravity it deserved. Additionally, the sentences given were often less than satisfactory; they were also not consistent with the seriousness of the crime. For instance, in *Ndugi v Republic*, the court sentenced the accused person to four years imprisonment for causing serious bodily harm on his girlfriend.<sup>124</sup> The sentence was further reduced to one year on appeal where in her verdict; the judge noted that “domestic violence is a common occurrence in our homes.” In *R v Mudala Okuku Odindo*, the accused was charged with manslaughter – having caused his wife’s death by beating. The two had been married for 20 years. After finding that the

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<sup>122</sup> Petition 8 of 2012 <http://kenyalaw.org/caselaw/cases/view/89322/>

<sup>123</sup> Witness Protection Act, 2006

<sup>124</sup> Criminal Appeal 390 of 2009 <http://kenyalaw.org/caselaw/cases/view/75427>

prosecution had succeeded in proving the case beyond reasonable doubt, he convicted the accused. But after pleading for mercy, the court heard him and sentenced him to only 18 months.

With the passage of the Sexual Offenses Act, 2008 and Protection against Domestic Violence Act, 2015, the court stood guided by these legislations since they created their own provisions. In addition, they expanded SGBV crimes by introducing new offences. For instance, the SOA obliges courts to impose specific minimum terms for those convicted of sexual and gender based violence with rape attracting a minimum of five years up to life imprisonment as captured in Chapter 2. Though marital rape is not recognized or treated as a criminal offence, the Courts in their wisdom have considered forced sex within marriage as a form of cruelty which constitutes ground for divorce. Moreover, many courts have cited marital rape under the ground of cruelty in seeking the marriage's dissolution even though it is not expressly provided for under Kenyan law. In *Esther Nagwana Nandi versus John Chewo Bobo*, the plaintiff sought the dissolution of the marriage because the husband had been cruel, adulterous and had assaulted her. She also indicated that the husband had forced her to have sex with him while he was drunk. In its ruling the court stated that the husband's actions constituted cruelty and that it endangered the wife's life. The court also termed non-consensual sex as cruel, even when it was within the context of marriage.

#### **4.6 Conclusion**

This research was based on the understanding that the state is accountable to its citizens. This accountability is of great importance when cases of domestic violence continue due to the inability of state organs to provide security, protection and deterrence to this phenomenon. The role of the government to provide this protection is a fundamental principle anchored on the social contract between the government and its citizens. Legal, policy and institutional frameworks remain the most important avenues for addressing domestic violence. However, as has emerged in this discussion, sexual and gender-based violence do occur even where there are working legal systems and institutions. While Kenya is progressively ensuring that there are

equal opportunities for both men and women, challenges relating to level of coordination, resources, technical capacity, and social cultural issues continue to negate efforts made towards mitigating domestic violence. Underling these challenges are great opportunities that need to be exploited so as to address this scourge. These opportunities lie with the constitution and the existing legislations. In addition, there is need for increased awareness on domestic violence and creation of care centers intended to provide the necessary services for victims under one roof.



## **CHAPTER FIVE**

### **SUMMARY, CONCLUSION AND RECOMMENDATION**

#### **5.1 Introduction**

The overriding purpose of this study was to evaluate the impacts of domestic violence in Kenya, and available avenues of addressing this phenomenon. Therefore, the objectives of the study were to examining the prevalence of domestic violence in the country and the impact that this phenomenon have on the victims, families, the economy and the country at large. Additionally, the study sought to assess the available legal, policy and legislative framework, unearthing the gaps in these available avenues for addressing this phenomenon and making recommendations on these gaps. This topic is important because domestic violence is one of the most pervasive violations of human rights in the world. Domestic violence occurs in various forms as was enumerated in Chapter 1. Current statistics on domestic violence in Kenya demonstrate that there is an urgent need for addressing this phenomenon. Additionally, the impacts of domestic violence are devastating. Unfortunately, addressing this phenomenon is faced with many challenges. One of these challenges is that domestic violence is a very common narrative in Kenya's society where the abuses rage on and it is not uncommon for them to go unreported. Kenya, just like many other patriarchal societies has a system of oppression that places shame on the abused (women) while protecting the abuser (man). Therefore, many women who have been victims of domestic violence in Kenya bare the shame in silence, unwilling to speak about it or report it to the relevant authorities. However, in a civilized democracy like Kenya, the law is both a tool and a driving force where everyone, irrespective of their gender, religion, ethnicity or culture must abide by the rule of the law. Even the words of the reverential national anthem articulate that justice should be the country's shield and defender.

The study adopted qualitative research design, an approach which is concerned with describing and interpreting human experience to ensure that social situations and human experience can be understood better. The focus of qualitative research is the perspectives of the participants; it also describes the results using persuasive and

expressive language. Data was collected through interviews with victims of domestic violence and experts on this matter. The researcher used open-ended questions which invites lengthier and more descriptive response on a matter of interest.

This thesis is divided into five Chapters. The first chapter was an introduction to the topic where the problem to be discussed was described. The problem statement laid emphasis on the staggering statistics of domestic violence in Kenya. Almost half of the women have experienced domestic violence at one point in their life. In addition, it emerged that the most common type of domestic violence in Kenya is physical violence, followed by sexual violence. Alcoholism was found to be the greatest contributor to domestic violence; the other major causes are frustrations or stress, gender roles and learned behavior. The chapter also ventured on the impacts of domestic violence where it emerged that the family (which is supposed to provide a safe haven and nurturing environment) is the most affected. The impacts permeate to the community at large.

The Chapter also discussed types of domestic violence which are physical abuse, psychological abuse, social isolation, financial abuse and sexual abuse. When addressing the issue of domestic violence, it is important to consider the cycles involved before the violence takes place. The chapter explained the four steps starting from the first step which is never violent; it is often characterized by threats of violence. The second phase is the tension building phase, the third step is explosion – where the abuse reaches the fever pitch and the abuse happens. The final phase is referred to as the honeymoon stage. Here, the abuser tries to reconcile with the partner and treat her kindly.

This Chapter also discussed the experiences of other countries namely United State, South Africa and India in dealing with domestic violence being under the wider subtopic of impacts of this phenomenon on the society. Among the impact of this phenomenon on the society covered in this chapter include the fact that it affects family ties and future generations. Children in such families also tend to have

behavioral and health challenges such as weight loss and sleeping disorders. Domestic violence also presents serious physical and psychological consequences on the victims. These include chronic disabilities fractures and bruises In the US, approximately 37 percent of women who reported to hospitals with cases that needed emergency attention were victims of domestic violence. Therefore, this phenomenon is global issue with cases reported in all countries. The chapter thus sought to also find out the legal and institutional frameworks for addressing this phenomenon that are available in other countries. The United States has various legal and legislative frameworks that provide redress to victims of domestic violence. These include Violence Against Women Act (VAWA) of 1994.<sup>125</sup> This legislation has thus not deterred domestic violence in the country. The country also has enacted protection orders in all the 50 states; these protection orders allow Courts to protect victims of domestic violence from their abuser. Another critical avenue for addressing domestic violence in the US is communication lines where one can call when in danger and get prompt assistance. The avenues for preventing domestic violence in India includes the Criminal Law Amendment Act of 2013 which sought to expand the definition of rape – being the most common type of violation against women in the country. The country also has a specific legislation targeted at domestic violence referred to as Protection of Women from Domestic Violence Act of 2005<sup>126</sup>. Under this Act, the country introduced the appointment of “protection officers” whose role is to provide redress on all reported cases of domestic violence. However, the main challenge that the country faces is lack of sufficient legal avenues and law enforcement for the victims, where as a result, law enforcement officers have tried to reconcile victims and their attackers in cases of violence against women.

The Chapter also ventured into South Africa, where like Kenya, it emerged that the interventions for addressing this phenomenon are relatively recent with the first legislation on domestic violence being enacted in 1993. South Africa boasts one of the most progressive legislation for addressing domestic violence: Domestic Violence Act

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<sup>125</sup> Ahoifazli, L., 2006. Violence against women act (VAWA). *Geo. J. Gender & L.*, 7, p.863.

<sup>126</sup> Kaur, Ravneet, and Suneela Garg. "Addressing domestic violence against women: An unfinished agenda." *Indian Journal of Community Medicine* 33, no. 2 (2008): 73.

(DVA).<sup>127</sup> Just like in the U.S, South Africa also has an elaborate protection orders system, which helps in protecting victims of domestic violence from further abuse. Since firearms are a common weapon for use in domestic violence cases, the country has regulated possession of firearms for individual who have a history of domestic violence through the Firearm Control Act, 2000.

Chapters 2-4 sought to respond to the research questions as provided in Chapter 1. These research questions as outlined at the onset of this study were:

4. What policy, legal and institutional frameworks are in place for addressing domestic violence?
5. What are the impacts of domestic violence in the society within the context of marriage?
6. How effective are the various available avenues in addressing the phenomenon?

#### **Policy, legal and institutional frameworks are in place for addressing domestic violence**

This question was responded to in Chapter 2 of the thesis. This Chapter assessed the existing policy, legal and institutional framework for addressing domestic violence. As was discussed in the Chapter, Kenya has enactment of various policies, laws and regulations to respond to, prevent and manage Sexual and Gender Based Violence (SGBV). However, there are challenges and opportunities in the current policy, legal and institutional framework that need to be taken into account when developing responses. Among the policies that were assessed are The National Framework towards Response and Protection of Gender Based Violence in Kenya, 2005. This policy brings together the various state and non-state actors in the responding to domestic violence in Kenya. The second policy as discussed in the Chapter was National Guidelines on the Management of Sexual Violence, 2009. This policy provides a framework for the essential services and procedures for managing the survivors of sexual violence. The third policy is the Gender in Education Policy, 2007. The policy designed to ensure that schools are safe learning environments by

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<sup>127</sup>Artz, Lillian Melinda. "An examination of the attrition of domestic violence cases within the criminal justice system in post-apartheid South Africa." PhD diss., Queen's University of Belfast, 2008.

providing modalities on how to deal with school related gender based violence.<sup>128</sup> The Chapter then delved into Kenya's legal framework, with the Kenyan Constitution 2010 providing a starting point. The Constitution holds that every individual has inherent dignity and the right to have this dignity upheld and respected.<sup>129</sup> It also provides well elaborated clauses on freedom from discrimination and equality such as no one should be discriminated based on gender – that all genders are equal. It also allows anyone who feels that his or her rights have been infringed upon to seek legal redress. Other specific legislations touching on domestic violence include the Sexual Offences Act, 2006. The main purpose of the SOA was to ensure that victims of sexual offenses got justice that is equal to the kind of harm inflicted on them. The Act also introduced stiffer penalties for sexual offenses. The second legislation is the Protection Against Domestic Violence (PADV), 2015 which is the main legislation that specifically addressed domestic violence.

The other legislation is the Children's Act, 2001 that seeks to safeguard the rights and welfare of children even at home where they could be victims of domestic violence. Kenya has also implemented various regional and international meant to protect women and girls against sexual and gender based violence. Examples of these instruments that Kenya has ratified include Universal Declaration of Human Rights (UDHR) of 1948, Convention on the Elimination of Discrimination Against Women (CEDAW) of 1979 and the United Nations Declaration on the Elimination of Violence Against Women (DEVAW) of 1993. Among the regional instruments that the country has ratified include the African on Human Rights and People's Rights and the African Charter on Human and People's Rights on the Rights of Women in Africa, also known as the Maputo Protocol of 2003. Kenya also has the relevant institutions of dealing with domestic violence. These institutions are government institutions (which include police stations, courts and provincial administration); and traditional institutions. In conclusion, the Chapter noted that the full enforcement of the legislation is hampered by the lack of specific policies for addressing gender based

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<sup>128</sup>Wango, Musomi and Akinyi, 2012.

<sup>129</sup>Constitution, Kenya. "Government Printer." *Nairobi, Kenya* (2010).

violence on one hand and lack of sufficient institutional development in the area of tackling gender based violence at the community level or at the grassroots.

### **Impacts of domestic violence in the society within the context of marriage**

Chapter 3 was centered on the impacts of domestic violence in Kenya, where the short-term and long-term impacts were evaluated. The Chapter began by looking at the prevalence of various forms of domestic violence from the victims sampled in the study. The researcher found out that up to 51 percent of victims of domestic violence reported to have undergone physical violence. Sexual violence was the second most prevalent form of domestic violence at 21 percent. Not surprisingly therefore, that the most common impact of domestic violence was physical injury at 33 percent while sexual injury constituted 12 percent. The impacts of domestic violence also spread into the community and it puts people who are not part of the family in potentially harmful situations. This phenomenon also affects children who can develop high levels of anxiety, anger, aggression, disobedience and hostility. Other impacts of this phenomenon as discussed in this Chapter are miscarriages and early delivery (as a result of verbal, physical or sexual abuse) and homicides. Domestic violence also leads to psychological and emotional distress which affects a victim's ability to function properly as they would in normal circumstances.

### **How effective are the various available avenues in addressing the phenomenon?**

The focus of Chapter 4 was the effectiveness of the available avenues in addressing domestic violence. The mechanisms addressed were legal framework, institutional frameworks and the judiciary. It became clear from this Chapter that Kenya has inadequate legal framework for protecting women from domestic violence. This is because offences such as marital rape and widow cleansing, which falls within the realm of domestic violence, are not adequately covered by the country's legal, policy and institutional framework. In respect to institutional framework, Kenya Police service has been enforcing laws dealing with prevention of gender and sexual based violence. The service has also introduced gender desks in most of the country's police posts and stations. Gender desks have led to some improvements in reporting of

domestic violence cases and apprehending offenders. The judiciary has been at the forefront in ensuring that there is accountability for human rights violations. Provincial administrations such as county commissioners are deputy commissioners, assistant commissioners, chiefs and assistant chiefs have also been involved in addressing domestic violence cases in the grassroots. However, in many cases they apply customary justice mechanisms when dealing with domestic violence cases something which disadvantages women. Civil society groups such as FIDA and Gender Violence Recovery Center have also been involved themselves in addressing this phenomenon in Kenya. However, despite their efforts, lapses in the police and judicial system have frustrated the efforts made by civil society organizations in raising awareness about this phenomenon. The Chapter also discussed traditional institution for addressing domestic violence. Traditional systems are not ideal for addressing domestic violence because they deny women access to formal justice systems that acknowledge that punishment, as opposed to restoration, is the most effective approach towards ensuring justice and deterring crime. Despite the existence of legislations, policies, plans and programs for addressing domestic violence there are many challenges faced in the implementation of various policies and legislations for addressing this phenomenon. These challenges include weak coordination among actors such as the police, health sector and the courts; inadequate resources for implementing the interventions; lack of adequate technical capacity and social cultural issues such as social biases that esteem men over women. The judiciary has made legitimate strides in addressing domestic violence through its interpretation of the constitution and various legislations surrounding domestic violence. Courts have also protected women through the Witness Protection Act, 2006 from further violence.<sup>130</sup>

## **5.2 Conclusion**

Domestic violence and gender-based violence does not only occur when there is a crisis or national strife; this phenomenon is prevalent even when the policy, legal and institutional frameworks are working. Kenya, like many other societies has for eons grappled with the problem of sexual and gender-based violence. However, for many

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<sup>130</sup> Witness Protection Act, 2006

years, Kenya has learnt how to normalize practices and various forms of domestic violence. When considering the phenomenon of domestic violence, it is imperative to put a feministic critical lens so as to achieve an encompassing form of analysis. As this paper found out, the prevalence of domestic violence and violence against women in Kenya is alarming. This is especially true for a country which is struggling with issues of poverty, illiteracy, strong cultural beliefs and customs and corruption that permeates every sector of the society including in the mechanisms that have been created to address this phenomenon such as the judiciary.

Though in recent years, statistics on domestic violence have shown that men are increasingly becoming victims of this phenomenon in places such as Nyeri county, statistics show that the number of women who are victims of this *faux pas* is disproportionately high compared to that of men. This has been caused largely by biased cultural norms such as beading, wife inheritance, widow cleaning and disinheritance of widows. However, gender insensitive legislation that has been enacted in the country is also to blame for the prevalence of domestic violence. This thesis has consistently maintained that the most important avenue of addressing domestic violence in the modern world remains the law. The legislative framework was significantly addressed in Chapter 3; the effectiveness of this legislative framework was the foundation of Chapter 4. It was thus the objectives of this study to find out the existing policy, legal, and institutional framework for addressing domestic violence. This objective was concerned with understanding the current legislative framework on upholding the rights of women and girls and specifically, preventing them from gender-based violence. To do this, the study examined provisions found in the constitution on matters of freedom of an individual and the Bill of Rights. Moreover, this objective also evaluated the legislative framework and various laws. Kenya has moved with sluggish pace in its efforts to ensure that both men and women are accorded equal opportunities. This was largely because of systems of discriminations that have existed even in the law. However, this position changed with the promulgation of a new Constitution in 2010. This constitution has since sought to ensure that the playing field is even for both men and women. After realization of the



new constitution Kenya made a landmark stride towards protecting the women even further by enacting the Protection Against Domestic Violence Act, 2015. This Act became the very first attempt by the country to have a particular legislation addressing the societal menace of spousal abuse. Yet, this legislation fails to provide adequate prevention of various acts that constitute domestic violence such as marital rape and disinheritance and other harmful cultural practices. When legislation is inadequate in providing protection, it gives courts discretionary powers to be lenient on some of these aspects of domestic violence.

While traditional systems provide for compensation for victims of this phenomenon, they do not provide sufficient repatriation; these traditional mechanisms are also skewed to favor the men making them inappropriate for dealing with gender-based issues such as domestic violence.

In addition, it emerged that the available mechanisms for addressing violence against women are ineffective due to the lack of legal protection within the sanctity of home, and the use of retrogressive alternative dispute resolution mechanisms that protects perpetrators from facing the law. These remain a major factor in perpetuating domestic violence.

Many cases of domestic violence often go unreported due to the fact that many survivors of this phenomenon take their experiences as their fate. Many fear disclosing their experiences even to doctors attending to them. As such many of them suffer in silence. While the police service has introduced gender desks to facilitate confidential reporting of cases of violence against women, officers stationed at these desks often lack the expertise of how to handle the dynamics of domestic violence. Some of the women have reported to receiving scorn and ridicule from the officers who often taunt them of wanting to destroy their marriages. And while the country has one of the most trusted judiciary in Africa, most Kenyan women are unaware of their rights or lack legal literacy to pursue their cases through the legal process. Additionally, poor investigations make many domestic violence cases very weak

ending in acquittals, dismissal and release of the accused person. Overall, there is need for ensuring that retrogressive dispute resolutions are used sparingly because they contravene the bill of rights. There is also need for amendment of the existing laws touching on domestic violence such as the Sexual offenses Act, 2006 and Protection Against Domestic Violence Act, 2015 to ensure that they provide adequate for offences such as disinheritance, widow cleansing and marital rape. Finally, government institutions such as the police need to be facilitated to deal with domestic violence through training of its officers and improving its investigation capacity.

### **5.3 Recommendation**

Kenyan women need to be empowered by equipping them with legal literacy. Most of the women are not aware of the realities of the country's legal environment. Equipping them with legal literacy will give them power; it will also help them in self-realization. It will help them to exercise their legal right and fully assume it. Since many women are not aware of their rights, the situation has become a ground for which many forms of injustices can be perpetuated. This makes them the biggest victims in the hand of their husbands and families who can take advantage of their vulnerability. This is particularly evident among women living in the rural areas or among marginalized groups.

While the Courts have protected women from further violence through the Witness Protection Act, 2006, there is need to have legislation that provides for the establishment of special shelters in for domestic violence victims. Currently, there is no such legislation in Kenya, neither is there a government funded shelter where victims of this phenomenon can seek refuge so as to avert further abuse. Nevertheless, there are a few such shelters that are run by NGOs and private and mission hospitals. Due to the high demand for such facilities, their capacities are not adequate. Availability of such safe shelters is critical in addressing domestic violence, because this phenomenon forces many women to bear the suffering and pain because of lack of a temporary refuge or accommodation away from their abusers.

Creation of networks for addressing sexual and gender-based violence can help in giving great impetus to efforts aimed at addressing this phenomenon. These alliances can be national and international and work by fostering cooperation between agencies and bodies in different parts of the country and the sharing of ideas of how to address violence against women. Such cooperation will lead to a united front and a stronger capacity to deal with this phenomenon. It will also give these efforts more visibility countrywide which is crucial in creating awareness about the issue. Such cooperation will also help in data collection of SGBV in different areas of the country which will ensure that there is availability of accurate and current data on trends of violence against women.

The legislature needs to implement laws criminalizing harmful cultural practices such as widow cleansing and disinheritance of widows which constitute domestic violence. The law is also silent on forced sex within marriage which is a common cause of sexual injuries and violation of human rights. Lack of such legislation tends to legalize these acts and institutionalize them within the Kenyan society. Such legislation is fundamental because it will dismantle the patriarchal ideologies that perpetuate male superiority in the society and in marriage. It will also rectify myths surrounding such practices.

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