

THE IMPACT OF GENDER LAW ON DOMESTIC VIOLENCE
(A CASE STUDY OF KENYA)

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APPROVAL BY SUPERVISOR

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of Bachelors of Law of Kampala International University.

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ABSTRACT

The study focused on the Impact of Gender Law on Domestic Violence with particular interest in different communities in Kenya.

The objective of this study sought to find out the causes of domestic violence and assess the impact of gender law on domestic violence. The research also resorts to investigate the possible solution to domestic violence.

The selection and identification of 150 people was based on random selection of different community to represent the entire population.

The results of the study show that cases of domestic violence are high in Kenya. Ignorance and shame have barred many victims from reporting the cases to the police and other government officials. It was therefore recommended that there is need to ensure finalization and promulgation of the family protection Bill which provides protection against domestic violence.

LIST OF STATUTES

International Instruments

The Convention on the Elimination of all Forms of Discrimination against Women 191.I.M 33
(1980)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) G.A.res 2200A
(xx1), 21 U.N. GAOR Supp. (No.16) at 49

National Laws

The Constitution of Kenya 2010

Matrimonial Causes Act, Cap 152 of the Laws of Kenya.

Penal Code Cap. 63 of the Laws of Kenya

The Sexual Offences Act No 3 of 2006

Pending Bills

The Family Protection Bill

The Marriage Bill

LIST OF ACRONYMS

- FIDA: Federation of Women Lawyers
- CEDAW: United Nation Convention on the Elimination of all Forms of Discrimination
against Women
- FIA: Family Independent Agency
- ACORD: Agency for Co – Operational and Research in Development
- FGM: Female Genital Mutilation
- FGD: Focus Group Discussion

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CHAPTER ONE

1.0 INTRODUCTION

The law on domestic violence has been recognized internationally and domestically in international Human Rights Instruments and domestically through various Government Policies. The law in place in relation to domestic violence includes The Constitution of the Republic of Kenya¹, The Sexual Offences Act. There are also organizations like the Federation of Women Lawyers in Kenya (FIDA) and United Nation Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which also joined hands in the protection against domestic violence.

This chapter analyses the background of the study, problem statement, general objective, specific objective, research questions, and scope of the study and the significance of the study.

1.1. Background of the study

Michigan (April 2002)² defines domestic violence as abusive behavior that threatens the health, safety, physical or mental well being or financial security of house hold members. The state's response to incidents of domestic violence depends whether the victim is a child, spouse or elderly person.

The fight against domestic violence in Kenya has not been won because of the countries low levels of social economic development.

¹ The Constitution of the Republic of Kenya 2010

² Council of Michigan Foundation, April 2002

Throughout much of history of Africa's civilization, deep – seated cultural beliefs allowed women to be beaten by their husbands. Many people believed that women had to be beaten as a sign of love by their husbands. This has not changed as such up to date and the violence is now against the men and even the children especially the girl – child.

It is a crying shame that instead of one's home being away from home an unkind world, it has turned into an arena where violence lurks like a pink elephant in the living room.

Domestic violence started since the colonial period but, there were low laws to guide the people although many of these cases were reported to the chiefs to settle them. The government focuses on detecting and protecting them but there has been no improvement. It was because of domestic violence that the topic, the impact of gender law on domestic violence was gotten from.

1.2. Problem statement.

Domestic violence is really a cost to many families in Kenya. Men and women who suffered from domestic violence are less productive in the work place and this has lowered the productivity in Kenya. And is also a direct loss to national production³. Women are less productive and tend to earn lower incomes and majorly depend on subsistence agriculture. 40% of the women are affected by domestic violence, 15% of the men are affected and 18% of the children are also affected as a result of domestic violence. Children performance in schools is are very low and there is no empowerment from the parents. There is low girl child education and this has affected the natural productivity of Kenya.

³ Tony Johnson 2002, 'Domestic Abuse in Kenya' in Population communication Africa Gender Series.

Despite the numerous literatures that focuses on domestic violence, these laws have not been fully provided a protection against domestic related violence or crimes.

1.3. Significance of the study

The research finding of the study will contribute to cumulative knowledge and stimulate formulation of new appropriate policies that will help to prevent domestic violence.

The study will also help the governmental and non – governmental organizations and the district planners to design and lay straight to reduce domestic violence.

Similarly, the information which will be gotten from this study will act as data base for those who wish to carry out further research on this or related topics .The study will be useful to all organizations like Non governmental organizations, community based organizations, civil society for improving their services.

The study will also help the government to find out the challenges the communities are going through. This will thus help the governments to plan for the sustainable development in Kenya as a whole. The study will also help to enlighten those who have been facing the same problem in other nations after the study findings on the improvement of the problem.

The study will also keep the tacticians to improve with their statistics and to plan for the better results of their research.

It will also help the researchers who have the challenges in fight against domestic violence in Kenya by using the immediate solutions before the problem goes beyond control and this can be done basing on change in awareness, transformation on behavior which is one of the control mechanisms.

And finally it will help the researcher herself to acquire new knowledge, test hypothesis, improve the research study, and develop measures to address the problem.

1.4. Objectives

1.4.1. General objectives

To examine in depth the impact of gender laws on domestic violence with an aim to establish where there is adequate protection and if not what hindrance stand on the way.

1.4.2. Specific objectives

1. To examine the causes of domestic violence.
2. To examine the impact of gender law on domestic violence.
3. To investigate the possible solutions to domestic violence.

1.4.3. Importance of research objectives

They specify the particular issues to be examined during the research study.

They guide the researcher in formulating the questionnaires that will be administered.

They help to discover new knowledge, facts, correct interpretation and deviations of the truth in a particular area of interest to the researcher.

To solve the existing problems in working.

1.5. Scope of the study

The study is to examine the impact of gender law on domestic violence. It will be carried out in different Kenyan communities. Thus the sample population will consist of 150 people,

involving men, women and children that are both boys and girls. Men 40, Women 60, children 20 and 30 key informant. The key informants will include the police officials, district officials, community leaders and others.

1.6. Research question

1. What are the causes of domestic violence?
2. What are the impacts of gender law on domestic violence in Kenya?

1.7. Study variables

The research will use two types of variables that is to say, independent variables which are the causes and dependent variables.

CHAPTER TWO

LITERATURE REVIEW

2.1. Introduction

This chapter reviews some of the important ideas in the existing literature on domestic violence and the impact of gender law on domestic violence.

Domestic violence is usually extreme steps to take in the name of trying to resolve marital problems. But it will not surprise point blank that there are jaded individuals who will try and justify these criminal acts in the name of a twisted kind of love. Whatever happened to the simple acts of packing one's bags and hitting the road instead of killing?⁴

2.2. Causes of domestic violence

Michigan (April 1 2002) defines domestic violence as abusive behavior that threatens the health, safety, physical or mental well being or financial security of house hold members. The state's response to incidents of domestic violence depends whether the victim is a child, spouse or elderly person⁵.

Domestic violence is also the physical assault to human beings. This mostly affects the children, women and men constituting a very small percentage.

Alcoholism in the family promotes unnecessary fighting in a home for example, when a man comes home drunk, the only thing he does is to beat the wife and children. Most cases of domestic violence are beating, battering, physical abuse, sexual violence, marital rape confiscation or destruction, stabbing. Due to alcoholism a man hacked his mother to death

⁴ Kenya Daily Nation, 'Domestic Violence in Rift Province'

⁵ Council of Michigan Foundation, April 2002

at Maraba Location in Tenderet, Nandi County and in Nyamira; after taking alcohol a man set his wife of ten years a blaze for allegedly failing to bear him a child⁶.

Gender inferiority is also another cause of domestic violence, in most cases a woman does not want to prosecute the man, and she will still share the children with the husband. It tends up not being worth it if your provider is arrested, who will look after the children? This really spoils most of the relationships. There is also a lot of peer pressure that make most people to involve in such violence.

Domestic violence is also caused by cultural barriers. A classical example of such cases is the recent incident where a father routinely defiled his three daughters and sodomised his son. The law eventually caught up with the man who has been charged in a local court with the offences.

Ignorant and shame to the families have barred many victims from reporting the cases to the police and other government officials. Such incidences are seen as normal occurrences. Cases of out of court settlements through traditional courts and mistrust in the judicial system are some of the reasons that have made victims to condone the beastly acts.

According to Michigan (2002), bride price is a widely cherished practice, but is not necessary to constitute a marriage, women's disempowerment from this practice is very strong women have no control over their bodies or their abilities, lives after this bride price promotes domestic violence in a way that it legitimizes women subordination to men

⁶ Report of the Commission of Marriage (1970)