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**A RESEARCH SUBMITTED TO THE UNITED NATIONS SPECIAL RAPPORTUER ON VIOLENCE AGAINST WOMEN ON THE SURGE AND IMPACT OF GENDER-BASED AND DOMESTIC VIOLENCE AGAINST WOMEN AMID THE COVID 19 PANDEMIC AND HOW TO ADDRESS THE MENACE GOING FORWARD.**

**ADDRESSING GENDER-BASED AND DOMESTIC VIOLENCE AGAINST WOMEN AMID THE COVID -19 PANDEMIC.**

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**1.0 Introduction**

Are you a victim of domestic violence? This is a question that should be posed to women around the world during this COVID-19 crisis. Gender Based Violence includes sexual violence within marriage, female genital mutilation, sexual abuse and any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person including children as this study will aim to focus on addressing the surge and providing solutions on the various aforementioned forms of gender-based domestic violence. Domestic violence has become rampant the sad part being that victims of abuse do not have someone to help them through such difficult period, or do not know where to begin looking for help in the first place. They do not only fail to get justice but they also lack moral, financial and emotional support. What is painful is that most of them have to live with the pain for the rest of their life not forgetting the adverse effects they bring on Children causing psychological harm to the children who witness this abuse is also a reality to contend with.

Domestic violence is as a result of many socio-cultural variables such as social position and employment which many lack due to the prevailing circumstances. In Kenya and many other parts of the world women’s economic dependence on men forces them to endure violence in silence with blaming victims being a popular tactic used to dispel the systematic nature of domestic violence and even if they were to seek justice then it may not come to fruition as courts are closed attributed to this pandemic making access to justice difficult. This study will aim to unearth the various forms of Gender Based Violence and how to address the menace going forward with key players in the campaign against Gender Based Violence such as World Vision, Equality Now, The Girl Generation and the United Nations Population Fund coming to aid in combatting Gender Based Violence.

**2.0 Model Laws & Strategies relating to Gender-Based Domestic Violence**

As state’s obligations to address violence against women, including through legislation, have been clarified as different states have developed model laws, strategies and measures to facilitate and encourage action. In 1996, the United Nations Special Rapporteur on violence against women it’s causes and consequences presented a framework for model legislation of domestic violence.[[1]](#footnote-1) The framework urges states to adopt legislation which inter alia: contains the broadest possible definition of acts of domestic violence and relationships within which domestic violence occurs;

Includes complainant’s mechanism and duties of police officers, including that the police must respond to every request for assistance and protection in causes of domestic violence and explain to the victims their legal rights.

Provide for ex-parte restraining orders, protection orders and address both criminal and civil proceedings so that perpetrators perpetuating violence against women are brought to book and prosecuted to deter others from committing the same.

**3.0 International Policy Instruments and jurisprudence in Gender-Based and Domestic Violence**

The main achievement of the International Instruments is to recognize gender based violence as a human rights violation.

The Inter-American Convention on the Prevention, Punishment and Eradication of violence against women is the only convention directed solely at eliminating violence against women and contains detailed provisions regarding the obligations of states to enact legislation under Article 7, state parties are obligated to:

*Adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman.*

*Take all appropriate measures including legislative measures to amend existing laws or modify legal or customary practices which sustain the persistence and violence against women.*

*Establish fair and effective legal procedure for victims of domestic violence.*

Cases heard by the Inter-American Commission on Human Rights and European Court of Human Rights have directed states to:

*Create appropriate criminal legislations*

*Review and revise existing laws and policies and*

*Monitor the manner in which legislation is enforced*.

Domestic violence can include:

1.Domestic abuse

2.Sexual violence and rape

3.Trafficking of women

4.Forced marriage.[[2]](#footnote-2)

Women and girls are most at risk of sexual and gender based violence which occurs even at home leaving them feeling unsafe and insecure. In most cases, women and girls become the target of such mishandled and misplaced stress because of their vulnerabilities. A study of post-crises- humanitarian, disease outbreaks and conflicts such as war indicates that women and girls become more susceptible to the ensuing chaos. They are likely to be hit hardest by specific vulnerabilities that go beyond the risk of being infected.

The need to review and revise the existing laws and policies to eliminate discrimination against women was addressed by the Inter-American Commission on Human Rights in *Maria Mamerita v Peru* which dealt with forced sterilization[[3]](#footnote-3)

*In X&Y v the Netherlands*, the European court on human rights found that Netherlands had breached it’s human rights responsibilities under the European Convention for the Protection of Human Rights & Fundamental Freedoms by failing to create appropriate criminal legislation applicable to the rape of a mentally handicapped woman.[[4]](#footnote-4)

In *MC v Bulgaria,* the European Court of Human Rightshighlighted the importance of monitoring the manner in which the legislation is enforced. The case found that although the article prohibiting rape in Bulgaria’s Penal Code did not mention any requirement of physical resistance by the victim, it appeared to be a required practice to pursue a charge of rape.[[5]](#footnote-5)

With the closure of schools and colleges having to suddenly have all the children and sometimes even siblings and other blood relatives back home abruptly, cases of incest are imminent and to prevent this parents need to take charge by monitoring any unusual behaviors among their children.

The Importance of appropriately enforcing legislation was also emphasized by the *Inter-American Commission on Human Rights in Maria Da Pemba v Brazil* in which the commission found the Brazilian government in breach of it’s human rights obligations due to significant judicial delay and Incompetence in the investigation of domestic violence.[[6]](#footnote-6)

The Council of Europe Convention on preventing and combatting violence against Women and Domestic Violence otherwise known as the *Instabul Convention* aims at prevention of violence, victim protection and to end the impunity of perpetrators.[[7]](#footnote-7)

The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa addresses violence against women within many of it’s provisions and establishes obligations related to legal reform. Under the Protocol, state parties are required to enact and enforce laws to prohibit all forms of violence against women[[8]](#footnote-8) and to take all necessary legislative and other measures to eliminate harmful practices such as violence. In some African societies women are considered second class citizens hence making them prone to violence. Legislations should protect all women by recognizing gender inequality and addressing them by creating gender sensitive legislations.

**4.0 A Comparative Study on Gender-Based Domestic Violence Against Women amid COVID-19 Pandemic.**

Domestic violence abuse and killings have become rampant around the world amid the COVID -19 pandemic. At least 16 suspected domestic abuse killings in the United Kingdom have been identified by campaigners since the COVID-19 lockdown restrictions were imposed far higher than the average rate for the time of the year.[[9]](#footnote-9) This is according to the pioneering project that records the killing of women by men in the United Kingdom headed by Ingala Smith. In Sub-Saharan Africa women are facing human rights abuses unparalleled than elsewhere in the world with lockdowns piling more misery on the victims.

**4.1.1 Uganda**

Violence Against Women in Uganda is predominantly domestic and it’s reference as Domestic Violence is at epidemic level worldwide. Recent statistics in Uganda shows that 30% of women or one of every 3 women is a victim of domestic violence.[[10]](#footnote-10) With the total lockdown experienced in Uganda matters are only going to get worse. In response to this emerging trends of domestic violence in these trying times, the Uganda Episcopal Conference came up with programs to fight against domestic violence through strengthening of families to finding solutions for people who have difficulty with their marriages and relationships.[[11]](#footnote-11)

**4.1.2 South Africa**

Ranks as the most affected nation in Africa with Covid-19 cases which made the government to declare a total lockdown makes domestic violence to be rampant, there have been reform policies to reduce the occurrences of domestic violence especially among the vulnerable groups.[[12]](#footnote-12)The Domestic Violence Act of 1998 also emphasizes on the protection of women and children who form part of the vulnerable groups in South Africa with it’s domestic violence legislation describing violence as any other abusive behavior towards a complainant including any child in the care of the complainant.[[13]](#footnote-13)

**4.1.3 Libya**

The only Libyan law addressing domestic violence is law number 10 of 1984.[[14]](#footnote-14) This does not appropriately reflect the nature of the crime and gender based violence should be considered a crime against the individual rather than against a specific norm/value. It has been reported that domestic violence in Libya is a problem that is serious.[[15]](#footnote-15)

Over the last year, thousands have lost their jobs or had their salaries slashed akin in Kenya. On march 15, the government announced a lockdown limiting all non-essential economic activities and locking families. Libya law does not criminalize domestic violence particularly with respect to marriage making more women vulnerable to violence, even the United Nations Human Rights Council notes that Libya culture contains entrenched discriminatory norms regarding gender. [[16]](#footnote-16)It is clear that violence cases expose the government’s priority in keeping families intact rather than safeguarding women’s safety.

**4.1.4 Bangladesh**

The government of Bangladesh has made strides in harmonizing national legislation with International commitments to protecting the rights of women and eliminating violence against women. Every year thousands of women and children are exposed to domestic violence at home. Research indicates that 66% of women in Bangladesh have been victims of domestic violence and 73% have never disclosed their experiences to others. In 2019 alone from January to July,112 women had been murdered by their husbands.[[17]](#footnote-17) On April 15 a Bangladeshi man livestreamed the murder of his wife on Facebook using a Machete in his home reportedly over a financial dispute. The incident took place amid a countrywide lockdown in Bangladesh to slow the spread of the novel coronavirus.

**4.1.5 China**

The surge of domestic violence in China amid COVID-19 lockdown points to the Ineffectiveness of it’s Anti-Domestic Law. Abuse can happen behind closed doors, and this is especially so for women in China. Domestic violence has increased threefold in Hubei province, the heart of the initial coronavirus outbreak, from 47 in 2019 to 162 in 2020 which is merely halfway. Domestic violence in China has become a more visible issue in recent years, but the first law that specifically targets the problem was only passed in 2015.[[18]](#footnote-18)

**5.0 Gender- Based Domestic Violence and Human Rights**

Domestic violence is a violation of fundamental human rights and one of the most important steps in addressing violence against women is to assess government compliance with International standards relating to this human right abuse. Violence against women is one of the most widespread, persistent and devastating human rights violations in our world today and most cases remain unreported mainly due to impunity, silence and stigma surrounding it especially during this trying times of COVID-19. Depending on the violation it can deprive a woman of; her right to health and physical and mental integrity, her right to be free from torture, inhuman and degrading treatment, and her right to life. The Implementation of laws pertaining to domestic violence is an important focus when making such an assessment. Kenya has a comprehensive law that deals with the issues regarding domestic violence the current law being the Protection Against Domestic Violence Act 2015, Unlike Kenya that has taken a broad step to criminalize domestic violence including Female Genital Mutilation, the oldest African country Liberia has not done so as currently there is no law that expressly criminalizes the practice. More than 50% of girls and women in Liberia have been mutilated but no perpetrator has ever been prosecuted. On 19th January 2018, former Liberian president Ellen Johnson signed Executive Order 92, temporarily banning the practice of Female Genital Mutilation in Liberia for one year. Although this has been a step in the right direction, it only covered girls below the age of 18 years and imposed lenient penalties on perpetrators. The temporary ban came to end on January 19 leaving Liberian girls and women open to the risk of undergoing Female Genital Mutilation once again with the sections removed from the Domestic Violence Bill 2019, girls and women in Liberia are at seriousrisk. Putting in place a law that prohibits the practice would ensure that women and girls in the country are protected as their right to life is also threatened and with many girls and women at home during the COVID 19 pandemic it is predictable that girls are likely to be subjected to this evil practice hence prohibition of Female Genital Mutilation would ensure that Liberia adheres to it’s regional and International Human Rights Commitment. This will only take if there is government commitment in combatting the vice as it is not in all cases the International community can get involved[[19]](#footnote-19) Women have the right to security of persons and freedom from torture, cruel and Inhuman treatment. The Committee on the Elimination of Discrimination Against Women in its general recommendation 19 has explained that violence against women constitutes discrimination and seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

The Declaration on the Elimination of Violence Against Women sets forth specific steps a country should take in combatting domestic violence especially in these trying times. These steps include; Investigating and punishing acts of domestic violence and developing comprehensive legal programs to prevent violence against women.

The Convention on the Elimination of All Forms of Discrimination Against Women often described as the International bill of rights for women provides the essential rights of women adopted by the United Nations General Assembly in 1979, defines how United Nations member states should define and act to stop discrimination against women.

Domestic violence is a violation of the right to dignity and this is provided under Article 3 of the Maputo Protocol which states that every woman shall have the right to dignity inherent in human being and to the recognition and protection of her human and legal rights. Ultimately, a culture that is embedded in gender inequality is the root cause of the evil that is domestic violence.

**6.0 What are the best approaches to preventing and responding to Gender-Based Domestic Violence**?

Many studies have found an association between domestic violence against women and negative social, health consequences in presenting a challenge to children. This means there is a need for comprehensive, multi-sectoral, long-term collaboration between governments and civil society at all levels of ecological framework. The World vision, an Non –governmental organization based in the United States aimed at advocating against domestic violence especially where children are involved and it’s advocacy of continuing working for girls through implementation of support programs so that they can have a reason to live is a testament to this. It’s objective is to move towards a future free from violence against women with activities to increase awareness about gender-based violence. World vision program has supported many victims worldwide in the past and now that COVID-19 is in our midst then it should continue with this commendable act.

The Health Sector can play a vital role in preventing violence against women by helping to identify abuse early, providing victims with necessary treatment and referring women to appropriate care thereafter with guidance and counselling being one of the options.

**6.1.1 Use of Mediation in solving Gender-Based Violence**

The goal of promoting family harmony and social stability makes mediation the preferred method to handle domestic violence. The use of mediation has it’s advantages such as confidentiality, flexibility and it’s ability to sustain and save relationships.[[20]](#footnote-20) Ultimately the goal of mediation is to revive and save the damaged family relationships and protect the victims from suffering from long-drawn court litigations.

However multiple studies have shown that mediation is ineffective in curbing domestic violence. During mediation periods victims regularly erase the violence against them out of fear and intimidation by glossing over the reality of violence in their descriptions or leaving out significant aspects of the violent incidences.[[21]](#footnote-21)

**6.1.2 Reforming Legal Frameworks**

Reforming legal frameworks may include strengthening women’s civil rights and improving existing laws and their Implementation. Whatever the situation is in the world domestic violence remains socially unacceptable and strengthening sanctions against perpetrators is the only way to curb it.

In recent years the United Nations General Assembly has addressed violence against women in general including crime against women committed in the name of “honour”.[[22]](#footnote-22) In relevant resolutions, the General Assembly has routinely called on member states to strengthen their legal frameworks.[[23]](#footnote-23)

Resolution 63/155 of 18/12/08 on the same topic urges states to use best practices to end impunity and a culture of tolerance towards violence against women, including by evaluating and assessing the impact of legislation, rules and procedures regarding violence against women, reinforcing criminal law and procedure relating to all forms of violence against women and incorporating into law measures aimed at preventing violence against women during this period. South African president Cyril Ramaphosa promised 11 new courts, a review on cold cases and harsher penalties for perpetrators to end the crisis of violence perpetrated by men against women, in September 2019 women had called for the reinstatement of the death penalty to deter other perpetrators from violating women’s rights[[24]](#footnote-24), even though the setting up of new courts had not been effected yet, this sheds some light in addressing matters domestic violence now that the lockdown is in place domestic violence is likely to go from bad to worse.

**7.0 Recommendations and Conclusion**

I don’t believe that Corona virus creates violent men what we are seeing across the globe is a window into the levels of abuse that women live all the time. COVID 19 may exacerbate triggers due to the challenges it presents, though I might prefer to call them excuses. Lockdown may restrict some women’s access to support or escape and it may even curtail measures some men take to keep their violence under control. All is not lost however as there are a number of organizations such as United Nations Women, United Nations Population Fund, United Nations Children’s Fund Human Rights Watch, World Vision and Equality Now who give voice to the voiceless and fight for the wellbeing of abused victims by providing numerous support at their capacities, for instance Equality Now is calling on President George Weah, Vice president Jewel Taylor along with the 54th legislature to ensure that women and girls in Liberia are permanently protected from Female Genital Mutilation. The government should also support educational outreach to relevant communities and educate local chiefs on the harms of Female Genital Mutilation. Women’s rights and health matters must be treated as a national priority. [[25]](#footnote-25)They also tend to protect the vulnerable before they turn into victims. Equality Now specifically was founded with the mission of using legal advocacy to protect and promote the human rights of women and this is the period these organizations should show their commitment by coming out and fighting violence against women and ensuring perpetrators are prosecuted. World Vision has also not been left out as earlier stated it prioritizes gender as a critical area of a programmatic focus which will enable it to continue deepening it’s commitment to the most vulnerable in the society especially in times of crisis. Some countries such as Kenya have established gender based recovery centers making this a commendable advance. Furthermore, in trying how to determine how to deal with violence Against Women, the government in a joint initiative with the United Nations signed in April 2019 a 4 year $ 11.5 Million contract for the prevention and response to gender-based violence. Collaboration between governmental and non-governmental bodies is called for during this trying period.

The surge we are observing in domestic violence cases globally during lockdowns proves that the home behind closed doors is often the most violent space for women. [[26]](#footnote-26)The Corona virus lockdown has shown us how Inadequate the Anti-Domestic Violence laws are. Domestic violence cases also expose the government’s priority in keeping families intact rather than safeguarding women’s safety. Violence against women is a serious cause of death and incapacity among women of reproductive age and a greater cause of ill-health than traffic accidents and malaria combined with the situation likely to get even worse in the coming days. At the core of it all, nations have to structurally modernize its deeply entrenched patriarchal culture. Only then will women realize that they can stand up to their male partners when their rights are violated, demand equal treatment, respect from their partners, and report any instances of abuse to trustworthy personnel or to relevant authorities.

Women empowerment through skills building to enable them become self-reliant and providing adult literacy on daily operations like understanding and managing their money. This calls for a lot of sensitization and raising awareness on ways of preventing violence which calls for interactive talks that enables victims and the perpetrators listen and also contribute to the dissemination of information on domestic violence prevention.

**7.1Publish Hotlines**

Sexual based gender violence survivors need access to protection and health services amid the measures to contain Corona including quarantines. The ministry of public service and gender in Kenya has been outstanding in matters gender by publishing hotlines and helplines where in Kenya, Nairobi the helpline for adults is 21094 and 116 for child care centers. This makes it possible for survivors and Kenyans of goodwill to report sexual gender based violence against women and girls. Other countries that have not yet published hotlines should follow suit so that the vulnerable women and children can be secured. [[27]](#footnote-27)

Rights advocates and other organs should be vigilant, reach out and be on hand to deal with possible risks and escalation of Sexual Gender Based Violence at this time when all the attention and focus is on COVID 19.

*The Way Forward*

Different types of violence are linked to each other in many different ways often sharing similar risk factors. The overlap between the set of risk factors for different types of violence suggests a strong potential for partnerships between groups with a major interest in both primary and secondary preventions which include local government and community officials, the police, women’s and human rights groups, the medical profession and researchers working in specific fields particularly those concerned in gender issues not forgetting legal experts.

There is need for **exploiting linkages** such as improving the effectiveness of interventions, avoiding a duplication of efforts, increasing the resources available through a pooling of funds and personnel in joint actions, this calls for Involvement of Community Based Organisations, youth groups, women groups, the use of various research based interventions, public participation, partnerships between state and non-state actors as well as village or community approaches are some of the Interventions that can be adopted with the goal of eliminating violence against women in these trying times as mobilization of stakeholders both women and youth will enable them put their issues across into a policy document. Unfortunately, research and prevention efforts have often been developed in isolation from one another as even men experience violence during this trying time of COVID-19. If this fragmentation can be overcome, there is a considerable scope in the future for more comprehensive and effective interventions.[[28]](#footnote-28) Violence like many health problems is not neutral while all social classes experience violence research consistently suggests that people with the lowest socioeconomic status are at a greater risk hence whenever programs are planned, the context of violence must be understood in order to tailor the interventions to the targeted populations [[29]](#footnote-29)beginning with those of lower social class who find it hard to escape domestic violence and also departing from retrospective cultural practices that men have a right to discipline their wives through the use of force.

That being said violence is not an inevitable part of the human determination and ingenuity, this research has shown how public health interventions can be applied in an attempt to reduce both their occurrences and their consequences. It reiterates a case for a public health approach and provides a set of recommendations for decision makers and practitioners at all levels. Violence is both predictable and preventable, certain factors appear to be strongly predictive as this study has shown as since the emergence of COVID-19 it was expected that domestic violence against women will increase globally. This is the picture we are seeing today, Equality amongst men and women and freedom from discrimination is captured clearly in the Constitution of Kenya 2010 as well as the right to inherent dignity[[30]](#footnote-30) and the right to have that dignity respected and protected meaning all state organs these include the judiciary, executive and the judiciary must ensure these rights are guaranteed in order to prevent violence against women by upholding the superior law being the Constitution.

While all is not lost countries are taking measures to curb the prevalence of domestic violence amid the COVID 19 pandemic. Some have set up hotlines, banned the sale of Alcohol, provided safe houses whilst others like France have set up centers in grocery stores with secret passwords where victims can seek help in one of the few places they still are not allowed to visit. France is also paying for hotels and other accommodations as shelters exceed capacity.[[31]](#footnote-31) Kenya has set up a national Emergency COVID 19 Response Committee to aid COVID 19 patients and to provide funds to the most vulnerable members of the society which include women in deplorable conditions who in many cases may not have anyone to run to as a result of the violence meted out by their husbands.

The teachings of Pope Francis to the catholic church is that in order to resolve problems in relationships men and women need to speak to each other and love one another more. The catholic church is behind families and it’s goal is to turn men into role models so that they can work hand in hand with women to break the cycle of gender -based violence. A number of activities have been carried out mainly trainings have been conducted for the clergy and laity on domestic violence prevention. However, emphasis has been put on women leaders to sensitize other women in their respective levels of leadership at provincial levels and down to grassroots. The United Nations Population Fund (UNFPA), which has been advocating gender-sensitive responses in the face of the COVID-19 urges policymakers to include women’s perspectives in pandemic planning and decision making.

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