



**NATIONAL UNIVERSITY
OF LESOTHO**

**THE NEED FOR DOMESTIC VIOLENCE LEGISLATION IN LESOTHO IN A QUEST TO CURB
GENDER BASED VIOLENCE**

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A Dissertation Submitted in Partial Fulfillment of the Requirement for the Award of the Bachelor of
Laws Degree(LLB)

June 2020

DECLARATION

By submitting this dissertation, I declare that the entirety of the work contained therein is my own original work, that I am the original author (unless to the extent explicitly stated otherwise) and that it has not previously in its entirety or in part, been submitted for obtaining any qualification.

.....

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June 2020

DEDICATION

This project is dedicated to my late father Mr. Khethang Johannes Molefi. I will always be thankful for his immeasurable love and constant support.

ACKNOWLEDGEMENTS

First and Foremost, I want to thank the divine universe for always being with me, throughout my entire academic studies. I also want to extend my heartfelt gratitude to my mother Mrs. 'Makhahliso Molefi and my grandparents Mr. Moreboli Motaung and Mrs. Elizabeth Motaung, their support to me has been incredible and no words can fully describe how grateful I am. My gratitude is further extended to my uncle Andrew Motaung, sister Khahliso Molefi, my brother Thlokomelo Molefi and to Mr. and Mrs. Maoba, without their support this project would not have seen the light of day.

I also want to immensely thank my friends Kamohelo Khoboko, Poppy Riet, Manthatisi Sebeta and Tshepo Lipholo for always encouraging me to focus on my studies and perform to the best of my abilities at all times. I further want to thank my mentor Advocate Letsatsi Masoeu for being there at all times to help me with my studies, for believing in me and for his massive and unconditional support. My gratitude is also extended to my dear classmates and every person that has made my academic studies bearable even in the hardest of times.

Lastly and most importantly I want to thank my supervisor Doctor Itumeleng Shale for her patience and guidance in this project, for coming through for me and agreeing to be my supervisor at the very last minute when I had lost all hope on supervision. Without her massive and unwavering support I would not have completed this project. I therefore thank her categorically.

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ABBREVIATION LIST

WHO	World Health Organization
UNICEF	United Nations Children’s Fund
USAID	United States National Agency for International Development
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
SADC	South African Development Community
CAT	Convention Against Torture
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UN	United Nations
UNHRC	United Nations Human Rights Commission
UK	United Kingdom
US	United States
GBV	Gender Based Violence

CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.1 Introduction

Gender Based Violence (GBV) refers to violence that is inflicted on people on the basis of their sex.¹ GBV is deeply rooted in patriarchy and culture. It is thus the existing imbalance of power in societies and acts as a strategy to maintain the status quo by the power holders.² GBV is mostly common where there is a clear and rigid definition and enforcement of gender roles and where the concept of masculinity is linked to toughness, male honor, or dominance.³ It affects people of all societies, races, cultures, religion, socio-political and economic backgrounds. Men and women can be victims of gender based violence. However, this research will focus on women only because they are disproportionately affected by GBV.

Women, because of their lack of physical strength, their biological make up and because of culture and tradition are subjected to this type of violence and are more vulnerable. Moreover, there are strong linkages between GBV and issues of health, for in many African countries it is widely accepted that a man can have more than one wife and many sexual relationships.⁴ GBV is therefore a complex challenge that is heightened by cultural, patriarchal and political factors. In its study, the World Health Organization (WHO) has stated that the proportion of ever partnered women who had experienced physical and sexual violence by an intimate partner in their lifetime, ranged from 15% to 71% of women interviewed, with most research sites averaging 29% to 62%.⁵ GBV is thus a harmful act

¹ United Nations, Handbook for legislation on violence against women, advance Version, New York, p13

² *ibid*

³ Heise, L, Ellsberg and Gottmoeller, 2002. A global overview of gender based violence. *International Journal of Gynecology and Obstetrics* 78(Suppl.)1;S5-S14.

http://www.researchgate.net/publication/11038601_A_global_overview_of_gender_based_violence/file/9c960521645db0a167(Accessed 26 March 2014).

⁴ Gender Links for equality and justice Southern Africa Gender Protocol Alliance 2011

⁵ WHO, 2005;15

that is perpetrated against the person's will and that is socially ascribed.⁶ General recommendation No 19 on violence against women, adopted by the Committee at its eleventh session in 1992 states that discrimination of women as defined in article 1 of the Convention that is, 'violence which is directed against a woman because she is a woman or that affects women disproportionately', and, as such, is a violation of their human rights.

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GBV is any act of violence against a woman that is likely to result in physical, mental, sexual suffering or harm including threats such as coercion or arbitrary deprivation of liberty whether occurring in public or private. GBV occurs in all spheres where there is human interaction, this can be at home, at work, at school, the place may either be private or public.⁸ GBV has been defined into four broad categories being; sexual violence, physical violence, economic violence and emotional abuse which will be briefly discussed below.

1.1.1 Sexual and physical violence

Sexual violence refers to any form of sexual activity that takes place or is performed on an individual without their consent. It may take a form of rape or sexual assault. It is an unwanted sexual intimacy forced on one individual by another. Sexual abuse occurs when there is an unwanted physical invasion of an individual's body in a sexual nature.⁹ This involves any sexual conduct that does not take into consideration other person's feelings and is aimed at humiliating, degrading or otherwise violating an individual's integrity. It can further be described and linked to marital rape whereby a person or rather one party assumes that the right and privilege to sex whenever they so wish, in any form he desires, without taking into consideration their partner's feelings. Sexual abuse or violence often goes hand in hand with physical and emotional abuse but is not reported

⁶ Inter Agency Standing Committee Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action 2015

⁷ Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992)

⁸ Study on all forms of violence against women. Report of the Secretary-General (2006)

⁹ Domestic Violence Act 116 of 1998 South Africa

as frequently by victims.¹⁰ There are often high difficulties in dealing with reported sexual abuse cases and incidents as they are emotionally exhausting for victims especially when these sexual acts are done by the victim's family members or very close relatives.

Physical violence refers to an act that causes harm as a result of unlawful physical force. It includes any act of physical assault that harms the recipient in any way¹¹It involves any behavior that has to do with the intentional use of force against the body of another person that risks physical injury, harm or pain¹². For some women physical abuse can affect the way they raise their children and have a very detrimental effect on their relationships with their children. Not only is their parenting capacity likely to be affected, but also there is heightened probability that their children may be abused¹³. It has been found that in three of five cases where children had suffered physical abuse, neglect or emotional abuse their mothers were also victims¹⁴.

1.1.2 Economic abuse

Economic abuse refers to any act or behavior that causes economic harm to another individual. It may occur through restriction or denial to economic resources, damage to one's property, or none compliance with one's economic responsibilities. In a domestic setting or in a domestic situation, economic abuse occurs where an intimate partner prohibits the other from acquisition of their own resources. This is whereby a partner is forced to depend on the other financially as the victim is unable to support herself and is thereby forced o depend on the partner financially¹⁵.

¹⁰ Parezee P and Smythe D(2003)Domestic violence development

¹¹ supra@footnote 18

¹² Dutton D.G(1990 April)Risk Makers for family violence in a federally incarcerated population

¹³Hester, M, Westmarland, N(2008) Early Evaluation of the Domestic Violence.

¹⁴ ibid

¹⁵Brewster, M. P. (2003). "Power and Control Dynamics in Pre-stalking and Stalking Situations". *Journal of Family Violence*. 18 (4): 207–217.

This occurs when the abuser restricts the victim's ability to find employment, and further restrict their ability to acquire assets of their own or to better or advance and maintain their careers. The victim is further prevented from obtaining education. This is because the abuser feels that they need to possess a certain level of financial control over the victim. At times economic abuse occurs where the abuser recklessly spends the victim's money without their consent or completely spends the victim's money so as to limit the available resources or making an exploitation of such resources¹⁶.

Economic abuse may be used as a larger part of domestic violence because by restricting the victim's access to economic resources the abuser has made it very hard for the victim to leave the abusive relationship and the victim's recourses to exit the abusive relationship thus get limited. Additionally it leads to the economic disadvantage being exploited hence it is very difficult for one in an abusive relationship to leave without having economic or financial backup. It is for this reason that when most victims are asked why they stay the common response will be that it is due to lack of income or due to lack of financial resources¹⁷.

1.1.3 Emotional abuse

Sometimes just because people are not being beaten in their relationships or families that think that they are not abused not being aware that they can be abused emotionally, which is even more serious and dangerous as it occurs without the victim being aware. Emotional abuse is aimed at making people think very less of themselves and their feelings, it diminishes their self confidence and leaves them with little self worth thus making it very difficult for them to leave the relationship.

Emotional abuse may be experienced further through verbal abuse which includes shaming, name calling and controlling behavior even over very small matters. Intimidation

¹⁶Sanders, Cynthia K.; Schnabel, Meg (2004). "[Organizing for Economic Empowerment of Battered Women: Women's Savings Accounts](#)"

¹⁷[Economic Abuse](#). February 28, 2013, at the [Wayback Machine](#) National Coalition Against Domestic Violence.

is one of the ways in which emotional abuse may manifest itself, Intimidation is described as any verbal or written death threats as well as overt or covert behavior displayed by the perpetrator which results in the victim being fearful¹⁸. This creates a very huge inequality between the spouses and is thus in contravention with the General Recommendation 19 of the ICCPR. General Recommendation 19 read with 18 ensures the equality of spouses in a marriage, and at its dissolution¹⁹.

Women may be subjected to various forms of violence in different settings however this study shall only focus on violence that occurs in private settings only, that is within the home and typically involving the violent abuse of one spouse or of one partner to another, which is commonly referred to as domestic violence and takes place in a domestic setting such as a marriage or cohabitation and as well as within families.

1.3 Statement of the problem

Domestic violence is a multifaceted problem that requires proactive mitigation strategies by the society, government, families and individuals. The significance of the problem emanates from the fact that the devastating effects of domestic violence not only lower quality of life but also leads to physical harm, emotional and psychological torture and sometimes even death. Domestic violence is a problem in society due to the fact that its victims, mostly women and children suffer from it in places where they should be safest, being their homes or within their families and at the hands of those that are close to them, being someone that they trust.

Domestic violence can be linked to a regime of terror and violence and has far reaching consequences in family and social relationships.²⁰ This problem is exacerbated by the fact that in Lesotho, there are no specific laws which address domestic violence. Within the criminal justice system, domestic violence does not exist as a crime on its own but it is dealt with, charged and prosecuted under the Penal Code Act as assault and

¹⁸ Domestic Violence Act 116 of 1998 South Africa.

¹⁹[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6f97648603f69bc12563ed004c3881?http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6f97648603f69bc12563ed004c3881?http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?)

²⁰ UNICEF, 2001,p1

intimidation.²¹ The absence of domestic violence legislation has created a major gap in addressing gender based violence in Lesotho hence there is a need to enact specific laws that will seek to eliminate gender based violence.

Domestic violence is treated as private and when reported, victims are turned back and told that such cases should be settled at home. This has difficulties in ensuring that laws are enforced and harsh sentences are given to deter the perpetrators. This study therefore argues that in order for domestic violence to be fully addressed, it is important to address the factors which fuel it including GBV which is deeply sustained using culture or tradition as a result of which women have limited decision making in the household.

Lesotho is a party to several international instruments which mandate it to legislate against and eradicate all forms of GBV including domestic violence. These include the Southern African Development Community (SADC) Protocol on Gender and Development, adopted by SADC heads of states in August 2016,²² AU Gender Policy, the SADC Declaration on Gender Development of 2007, and the Convention on the Elimination of All Forms of Discrimination against women of 1979 (CEDAW).²³ However, the levels of GBV in Lesotho are nowhere close to eradication.

1.4 Literature review

The premise of this dissertation is that gender dynamics exist in all societies. Gender is defined as the norms, values and behaviors that are associated with being male or female. Gender is used to describe all the society given roles as well responsibilities that are connected or linked to either being male or female.²⁴ As a result these norms and attributes of the society influence a certain type of behavior and particularly in this dissertation, domestic violence. It has been explained in an analysis of GBV that in order to fully address GBV, there is need to note that it is structural and is systematically perpetrated up to macro levels by entrenching oppression and exploitation.²⁵ This means

²¹Sec 30 Lesotho Penal Code 2010

²² FOOTNOTE NEEDED

²³ CEDAW 1995

²⁴ March, Smyth and Mukhopadhyay; A guide to Gender Analysis (1999;16)

²⁵ JR Wies and H. Haldan; Anthropology at the Front Lines of Gender Based Violence (2011;7)

that even in families or at household level, GBV is continued using culture or tradition and unfortunately this transcends to the broader economy, in that when women have limited decision making in the household, this may, to a certain extent be mirrored with low numbers of women in decision making positions at much higher levels including parliaments.

A world health organization(WHO) study that was conducted in 2005 noted that the proportion of ever partnered women who had experienced physical and sexual violence by an intimate partner in their lifetime ranged from 15% to 71% of women interviewed, with most research sites averaging 29% to 62%.²⁶ From this it can be said that there is a need firstly for public understanding of GBV as well as the characteristics that it encompasses so as to end up having effective mechanisms for its reduction. GBV issues are mostly treated as domestic issues that should be settled within the household and this has very high difficulties in ensuring that laws are enacted, enforced and that harsh sentences are given to the perpetrators.

It has been revealed in Lesotho that 86% of women have experienced some form of violence at least once in their lifetime²⁷. The research states further only 5% of the women who had reported their cases had the police open a docket for them. Gender links has been advocating for the eradication of GBV in Lesotho and other SADC counties, this has been done through educating people on GBV and it has been reported that there were still high incidences of domestic violence occurring and it is stated that the cause might be lack of legislation to deal with issues of domestic violence²⁸.

It is for this reason that there is a need for domestic violence legislation in Lesotho, hence this research has been conducted and carried out. Although there is a proposed domestic violence bill which has for years been pending, this bill has looked into the traditional and cultural discriminatory laws that promote the minority status of women thus increasing their vulnerability to GBV. However this research has looked into elements that have been not captured by the bill and such includes not only looking into the protective and

²⁶ WHO, 2005;15

²⁷ The 2013 Gender Link Violence against Women(VAW)baseline study in Lesotho

²⁸ *ibid*

preventive measures but also taking a step further to look into the and punitive measures that are essential to curb GBV through the enactment of domestic violence legislation.

This research also addresses domestic violence in Lesotho not only locally but through taking a glance at the international community and what it mandates Lesotho to do in order to effectively deal with issues of domestic violence. The essence thereof is that, with good use of this research the bill should be revisited and updated such that elements herein are included and then have the bill tabled in parliament and implemented.

1.5 Aims and objectives

The overall objective of this paper is to explore the need for the statutory regulation of gender based violence in Lesotho. This will be achieved through the following objectives;

1. To illustrate the extent of domestic violence in Lesotho.
2. To highlight the international human rights standards against domestic violence to which Lesotho has committed.
3. To interrogate the legislative and policy measures taken by Lesotho to regulate and minimize domestic violence and whether they have achieved the purpose of curbing GBV.
4. To recommend enactment of a specific domestic violence law and to illustrate how laws from other countries have.

1.6 Research questions

1. What is the extent of domestic violence in Lesotho?
2. What are the International human rights standards against domestic violence that Lesotho has committed to?
3. Have the legislative measures taken by Lesotho in order to minimize domestic violence achieved their purpose of curbing gender based violence?
4. Should Lesotho enact new domestic violence law as other countries have

1.7 Research methodology

In order to achieve the aims and objectives mentioned above, doctrinal research will be conducted. This includes review of library based material such as relevant law textbooks, case law, journal and articles as well as the internet. The research will also use a comparative method wherein Lesotho will be compared with other jurisdictions that have enacted specific domestic violence legislation aimed at combating domestic violence and to directly address issues relating thereto without dealing with them generally under the common law.

1.8 Chapter breakdown

Chapter one gives a general introduction as well as the motivations that lead to the conducting of this dissertation. The research problem is defined and placed into context, research questions are further placed in this chapter. The objectives as well as justifications of this study are also stated and explained in detail. It gives clear definitions of GBV and domestic violence and how the two are linked. Finally, this chapter provides an outline of the dissertation and layout of chapters.

Chapter two provides an overview of domestic violence in Lesotho by focusing on the magnitude and extent of domestic violence in Lesotho. This is done through research in forms of questionnaires where some areas of Lesotho have been identified as study areas.

Chapter three lays out and discusses the international human rights standards that have been set in different instruments and interpreted by relevant human rights treaty bodies. It shall look into Lesotho's commitments to the international community and finally look into the normative framework contained in these international instruments.

Chapter four focuses on addressing the domestic laws in Lesotho and whether they are in compliance with the international standards. This shall be done by having a look at the legal instruments created to protect women and girls in Lesotho, their effectiveness and finally assess the need for the implementation of new laws.

Chapter five provides a conclusion to this research. It also makes recommendations for suitable and possible reforms of Lesotho laws so as to improve protection of victims of domestic violence through enactment of accurate legislation.

CHAPTER 2

MAGNITUDE OF DOMESTIC VIOLENCE IN LESOTHO

2.1 Introduction

Over the years women in Lesotho have been suffering many different forms of domestic violence. Research has been carried in two rural areas of Lesotho where women were interviewed with regard to the issues of domestic violence that affected them²⁹. It was realized that in as much as domestic violence happens both in rural and domestic areas, it is more prevalent in the rural areas. This is because most women in the rural areas are abused without them even being aware that the abuse is going on as many of them are illiterate and believe that that is how they ought to be treated. This research was carried out in the rural areas. The aim of this research was to find out whether the law is being helpful and responsive to the victims of abuse. And if not what measures can be implemented by the government such that the law is more responsive to the needs of those women that are facing domestic violence.

2.2 Data collection and analysis

Primary research was undertaken in some areas of Lesotho in order to make inquiries in relation to the research objectives. This research was conducted through use of interviews. The main purpose was to inquire whether the existing laws of Lesotho are a sufficient answer to the problems of domestic violence. Additionally the interviews were conducted in order to put the current domestic violence Bill to the scrutiny of the public and to make an informed conclusion as to whether the proposed bill that has been pending will be an answer to the issue of domestic violence and whether if implemented exactly as is, will it seek to reduce domestic violence.

²⁹ Interviews Carried out at Seforong and Senekane

This research was conducted in two rural areas of Lesotho, namely Seforong, in the district of Quthing and secondly another was conducted in the district of Berea, Senekane Lekokoaneng. In this research questionnaires were used to gather information.

A questionnaire was administered to a total of 30 respondents in both areas. The researcher sought to interview more women than men as they are affected by gender-based violence more than their male counterparts. 80% of the respondents were therefore female.

2.2.1 Meaning of GBV

In order to determine the levels of understanding of the respondents with regards to gender, the respondents were asked the question if they were aware of what gender based violence is and what it meant to them. 100% of the respondents mentioned that they had heard of the term GBV. Respondents then stated some of the types of gender based violence which they knew are physical, emotional and verbal abuse. 60% male respondents argued that women were more prone to practicing verbal abuse, especially in marriages by arguing more and having the final say, hence women were more prone to physical abuse as they are naturally less stronger than men.

2.3 Domestic Violence Reporting

A considerable number of respondents, that is, 90% of respondents mentioned that they had experienced some form of GBV in their lifetime. Of the respondents that had experienced some form of GBV, 30% reported the matter to the police, 35% did not report at all, whilst 25% reported to their family members. Of the 30% that had reported the matter to the police, they revealed that they did not get adequate help as they were informed by the police that those were family matters that needed to be dealt with at home between the spouses. Additionally it was revealed that it felt like re-victimization was occurring from the police as some were shamed and their matter was not handled with all the sensitivity that it needed. They further mentioned that it was very embarrassing to tell their abuse story in the presence of all other police men.

The 35% that did not report at all mentioned that they opted not to report the matter because they found it useless as other people who had been abused had reported but not much was done, and it in fact left the victim to more danger because the perpetrator would be reported and not after long he is released from police cells and when we returns he threatens his victim and the abuse even gets worse than it was before the report. Of those that reported to their family members, they mentioned that it was easier and further that they felt much comfort in reporting to their family members than to go straight to the police as the issue of domestic violence is very sensitive and that it was easier to open up to someone closer to them than to open up to a stranger.

2.4 Role of culture and religion

Culture and religion both influence the way people live, their values and ethics hence it was important to get the respondents perceptions. The majority of respondents felt that culture and religion were negative forces, as they perpetuated GBV. Women generally felt that culture was a way of men controlling them and limiting their abilities to participate fully in socio-economic activities. Male counterparts indicated that men were taught to be strong and to enforce authority and where one grew up in violent set-ups, this tended to form a cycle of violence.

The respondents stated that amongst others is the issue of chieftainship and inheritance where they stated that the fact that women cannot inherit under Sesotho culture then that amounts to domestic violence because that denies them their right to inheritance. They further that women felt prejudiced by the fact the widows cannot inherit their late husband's belonging and that such inheritance has to pass to the first born male child according to culture. The findings showed that 70% of respondents felt that culture and religion could play a positive influencing factor in providing counseling for survivors and perpetrators of gender-based violence, clarifying roles of women and men and providing platforms for discussing GBV violence issues.

It can be concluded under this part of research that GBV is an intricate dilemma that requires versatile efforts to decrease it, including the empowerment of women and men with mind set change as good entry points. This is even worse for women who are in the

rural areas where access to basic health care facilities are very problematic. This is accompanied by the fact that they might not have money to travel to receive assistance. It is evident from this section that factors within the home, community and society at large, all play a crucial factor towards perpetuating or reducing gender based violence. It is clear that gender based violence issues are very complicated and are systematically entrenched deeply in patriarchal societies and to tackle this requires the implementation of gender based laws that will seek to engage all women and men the fight against gender based violence.

2.5 Victim protection

The respondents stated that in as much as they were aware that generally the law protects them they felt that it is rather more theoretical than practical. They mentioned that it would be practical if the law introduced other measures through acts which would allow them to report even non physical forms of violence. Approximately, 90% of the respondents felt that perpetrators of domestic violence were not receiving adequate sentencing within the courts, hence reducing the effectiveness of deterring acts, such as rape and physical abuse.

A significant 80% of respondents also noted that a major limiting factor is that the police are not well equipped and capacitated to handle issues of domestic violence and at times even laugh at people who come to report domestic violence or urge women to deal with these matters within the home. They further mentioned that the law also tends to put more attention and focus on the abuser than on the abused, in that there are no measures that are legally taken to ensure that the person being abused is receiving protection after reporting the abuse as well as providing free counseling services at the police stations. The solution to this would be the Domestic Violence Act.

Conclusion

The research conducted above is clear evidence that in terms of the law there has not been much success in offering protection to the victims of GBV and preventing re-victimization. It further shows that there is still much legal work to be done in order to curb GBV in Lesotho, this would firstly require revisiting international human rights standards

and ensuring that laws are in alignment with such standards. This shall be discussed in the next chapter where international human rights standards shall be laid out and Lesotho's commitments to the international community shall be looked at.

CHAPTER 3

INTERNATIONAL HUMAN RIGHTS STANDARDS AGAINST DOMESTIC VIOLENCE

3.1 Introduction

The international human rights standard refers to the level or quality of life that must be met under the laws. Lesotho has signed and ratified a number of treaties that set out these rights. It is by virtue of ratification to these treaties that Lesotho has to ensure that its laws are in compliance with the international standards. In this chapter shall discuss briefly the international human rights standards and the normative framework contained therein and assess Lesotho's commitments to the international community standards.

3.2 Domestic violence under international human rights law

3.2.1 UN Standards

In international human rights law, domestic violence is treated as discrimination against women which results in violation of human rights. It requires that it should be classified under the violation of human rights to equality. In 2000 the Human Rights Committee concluded that domestic violence may give rise to violations to be free from torture or ill treatment under article 7 of the ICCPR³⁰. This means that at times, where it is very severe and highly complex domestic violence may constitute torture. This was supported by the CAT committee as well as the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment³¹. Where it stated that where it is highly severe it can constitute torture. Domestic violence is an infringement to the victim's right to liberty,

³⁰General Comment No. 28: Equality of rights between men and women (article 3) of the Human Rights Committee: 29/03/2000 CCPR/C/21/Rev.1/Add.10, General Comment No. 28. (General Comments) dated 29 March 2000

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument) accessed December 10, 2009.

³¹General Recommendation No. 2, CAT/C/GC/2 dated 24 January 2008 and Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3 dated 15 January 2008.

health and security, including the right not to be tortured or exposed to inhumane and degrading treatment as has been guaranteed by the UDHR.

Domestic violence is defined in the CEDAW as any act of GBV that results or is likely to result in physical, psychological harm or suffering to the women³². Domestic violence is a form of GBV that may take form of sexual abuse which includes marital rape and physical violence that occurs to women in a family or in an intimate relationship, this type of violence includes but is not limited to battering, murder or attempted murder, marital rape, harassment and intimidation.

It follows therefore from the above that domestic violence refers to a pattern of assaultive and or coercive behaviors, including physical, sexual, and psychological as well as economic coercion within the family system.³³ It further includes abuse which in this instance refers to physical, sexual, emotional, verbal, non-verbal and psychological abuse.³⁴ Other forms of domestic violence may include harassment, intimidation, stalking, damage to property, entry into residence without consent, and any other controlling abusive behavior.³⁵

3.2.1.1 Evolution of women's rights and GBV

In the early 1990'S, women's rights issues and gender based violence came to the fore, led by women's rights activists during the Vienna World Conference on Human Rights of 1993, the International Conference on Population and Development held in Cairo in 1994, and the Fourth World Conference on Women, which met in Beijing in 1995. The key issues from these conferences are summarized as thus;

- The Vienna conference issued a call stressing the need to eliminate all forms of violence against women by stating that gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural

³²General Recommendation No. 19(23) (1992).

³³ Child Welfare Information Gateway,(2013). How the Child Welfare System works. Washington DC; U.S Department of Health and Human Services, Children's Bureau.

³⁴ Domestic Violence Act 116 of 1998 South Africa.

³⁵ supra@footnote1

prejudices and incompatible with the dignity and worth of the human person be eliminated. The Vienna World Conference on Human Rights supported the establishment of a special Rapporteur on Violence against women.

- The Cairo conference emerged as a cornerstone in the fight for women's empowerment. It became clear that violence against women is a form of control of women's health and sexuality and a clear obstacle to women's rights to self-determination, in matters related to their reproduction.
- In Beijing, the understanding of violence against women as a human right and development issue, was further elaborated. In 2000 there was another conference, titled Beijing+5, which sought to ensure that women's issues remain on the development agenda. The platform for Action of the Beijing conference, summarizes governments' agreement that violence against women is an obstacle to the achievement of the objectives of equality, development and peace; stating that violence against women both violates and impairs the enjoyment by women of their human rights and fundamental freedoms.

Additionally, below is a summary of some of the important developments in history of women's rights evolution

- In 1989 the Committee on the Elimination of Discrimination against women adopted general recommendation 12 on violence against women; general recommendation 14 sought to address female circumcision and other harmful cultural traditional practices;
- In 1992 the committee adopted general recommendation 19, which identifies gender based violence as a key development issue from all levels, including the state and showing that states may directly be responsible for the violence.
- The Declaration on the Elimination of violence against women of 1993 was a major victory for activists, as it gave governments the obligation to address violence against women.
- Launch of Special Rapporteur on Violence against Women, including its causes and consequences in 1994.

- General Assembly resolution 52/86 on Crime Prevention Justice Measures to Eliminate Violence against women, 1997 that urged member states to ensure that women are treated fairly by the criminal justice.
- Statute of the International Criminal Court (Rome Statute) 1998 that recognized rape, sexual slavery, forced prostitution, pregnancy and others as war crimes.
- Optional Protocol to CEDAW, 199 that allowed individuals and groups to be petitioned to concerning violation of women's conventions.
- General Comment 28 on Equality of Rights between Men and Women (Article 3 International Covenant on civil and political rights), 2000 that was adopted by the Human Rights Council and asserts the responsibility of states to provide for the equal enjoyment of rights.
- UN Security Council Resolution 1325 on Women, Peace and Security, 2000 that provides a framework for addressing women's need for protection and conflict.
- UN Convention on Transnational Organized crime, 2000 that includes a protocol to prevent, suppress and punish trafficking in persons, especially women and children.

3.2.1.2 CEDAW

Women have a right not to be discriminated against and be protected from any form of violence. Women's right to be free from discrimination is encompassed in the CEDAW³⁶, it makes it very clear that discrimination against women is prohibited. GBV in the family impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under international law, and constitutes discrimination within the meaning of article 2 of the CEDAW. In General Recommendation No.19³⁷ domestic violence was included as a form of discrimination, where the recommendation made an explicit mention of the fact that domestic violence is a form of discrimination covered by CEDAW, it stated that;

³⁶ Art2,5&16

³⁷Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003), available at <http://www1.umn.edu/humanrts/gencomm/gener19.htm>.

“The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence”³⁸.

The recommendation further addressed domestic violence as a form of discrimination against women stating that

“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality”³⁹.

This shows that domestic violence, when not properly dealt with and in instances where nothing is done to stop it, can be considered as a great discrimination against women.

CEDAW purpose is to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises. In accordance with article 2 (b), (c), (e), (f) and (g) and article 5 (a), states are required to adopt legislation prohibiting all forms of GBV and harmonizing domestic law with the convention. It is for this reason that a report from the UN Committee on the Elimination of Discrimination Against women, in its concluding observations, stated that even though Lesotho has implemented the sexual offences Act of 2003 which recognizes marital rape as an offence, the committee is deeply concerned

³⁸ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, available at <http://www2.ohchr.org/english/law/ccpr.htm>

³⁹ Committee against Torture, General Comment No. 2, ¶ 18, UN Doc. CAT/C/GC/2 (Jan. 24, 2008), available at <http://www2.ohchr.org/english/bodies/cat/comments.htm>.

at the absence of specific legislation to eliminate violence against women which includes domestic violence⁴⁰. It further noted that the only centre in Lesotho that provides services to women in terms of legal aid clinics is the Lapeng Care centre and it provides only day services and not exclusively for women victims of domestic violence⁴¹.

The Committee, in its concluding observations⁴² urged Lesotho to give high priority on the enactment of the draft of the domestic violence bill, that there should be measures to prevent and address issues of domestic violence and that measures should be put in place that recognize domestic violence as a violation of human rights under the convention and also as a criminal offence. To further ensure that women and girls that are victims of domestic violence have protection and further that perpetrators are prosecuted and punished in accordance with the Committee's general recommendation No.19.

It is stated further in the concluding observations that the state party has to provide mandatory training for judges, prosecutors and the police if they are to deal with cases of domestic violence and to train the police officers on procedures to deal with women victims of violence.

3.2.1.3 ICCPR

Article 7 of the ICCPR. General recommendation 19 of the ICCPR protects the family and equality of the spouses. Both general recommendation 18 and 19 ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution⁴³. According to this right both men and women have a right to family equally and fairly without any prejudice in terms of their sex.

3.2.1.4 CAT

⁴⁰ Report from the UN Committee on the Elimination of Discrimination against women, titled "Violence Against Women" para 22

⁴¹ *ibid*

⁴² Concluding observations of the committee on the Elimination of Discrimination against women fifteenth session 3-21 October 2011

⁴³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Recommendation No. 2, CAT/C/GC/2 dated 24 January 2008.

The Committee against Torture acknowledged that domestic violence may constitute torture or ill-treatment under CAT⁴⁴. Torture is defined in this convention as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted” for purposes such as obtaining information, punishment, intimidation or coercion, or any reason based on discrimination. In clarifying State responsibility for torture by non-state actors, the Committee specifically cited “States parties’ failure to prevent and protect victims from GBV, such as rape, domestic violence, female genital mutilation, and trafficking” as a violation of CAT⁴⁵.

Accordingly under this right the domestic violence can be seen and categorized as torture, it is therefore the duty of each state under CAT to ensure that there are proper measures that are taken to prevent and protect citizens from all forms of GBV which include domestic violence.

3.2.2 AU Standards

Firstly Lesotho is a member state to the AU Gender Policy⁴⁶, the policy commitments are based on the AU and international gender equality instruments and the constructive act of the African Union. Amongst others, the AU gender policy commitments for member states are that member states develop and enforce explicit gender policies which seek to make emphases on gender justice, gender accountability and transparency principles reforms, emphasizing the elimination of all forms of discrimination and violence against women.

Additionally it states that firstly legal framework is key in implementing protocols and instruments adopted by the AU for the protection of women rights. It means that the first step to ensure that women’s rights are protected is through legislation, that there should

⁴⁴Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Recommendation No. 2, CAT/C/GC/2 dated 24 January 2008.

⁴⁵ Committee against Torture, General Comment No. 2, ¶ 18, UN Doc. CAT/C/GC/2 (Jan. 24, 2008), available at <http://www2.ohchr.org/english/bodies/cat/comments.htm>.

⁴⁶ 2009 AU Gender Policy

be certain pieces of legislation that specifically seek to deal with ensuring that the rights of women are protected and that women are not being abused.

The AU Gender Policy supports this by stating that at times legal systems end up creating contradictions on the rights of women by according women some rights through general law and withholding others on the basis of tradition, customary law and some religious beliefs and practices that deny women their rights⁴⁷. This shows clearly that Lesotho, by failing to implement the domestic violence legislation is failing to keep its commitment under the policy. It is stated that weak legal frameworks and non compliance of adoption of rights based legislation hinders the progress and empowerment of women in countries, the end result is therefore failure in attaining the required gender justice and human development targets⁴⁸.

By failing to have the domestic violence act Lesotho is greatly contradicting its own commitment that it has undertaken or mandated to do as it is part of the international community. Lesotho therefore has to work in depth on the passing and enforcing new legislation that will ensure the elimination of all forms of gender based discrimination and that will help to reduce the rate of domestic violence.

3.2.3 SADC Standards

Lesotho is also a member state to the 2008 SADC Protocol on Gender and Development. The main aim for this Protocol is to provide empowerment for women and to eliminate discrimination as well as to achieve gender equality by encouraging and creating the development and implementation of gender responsive legislation, policies, programs and projects. The protection speaks of GBV issues and other issues such as constitutional issues. It is stated in the Protocol that by 2015 the member states shall enact and enforce legislation which prohibits all forms of GBV⁴⁹.

⁴⁷ AU Gender Policy 2009; Commitment 2: legislation and legal protection action against discrimination, for ensuring gender equality

⁴⁸ *ibid*

⁴⁹ Art20(1)(a)

And that states shall ensure that the perpetrators of GBV which includes domestic violence, rape, femicide, sexual harassment, female genital mutilation, and all other forms of GBV are tried by a court of competent jurisdiction⁵⁰. This means that the Protocol requires member states to implement national policies that will combat GBV including domestic violence. Article 20 the Protocol specifically sets out its target, which is to have all SADC member states enact and enforce legislation prohibiting all forms of GBV. The fact that in Lesotho there is no specific legislation that deals directly with issues of domestic violence which is another form of GBV shows that Lesotho has not fulfilled its mandate of enacting and enforcing legislation that will prohibit all forms of GBV.

CONCLUSION

In the light of the preceding discussion, it is clear that domestic violence is against international human rights law, as it violates the right to be free from discrimination, right to a family, right to freedom from torture and inhumane treatment and the right to life, liberty and freedom of person. As a result of the defilement of these human law rights women's lives are sometimes lost. It is therefore a matter of consideration that domestic violence should be known in Lesotho. The question that will follow, is whether Lesotho has taken enough measures to curb domestic violence and whether there has been an attempt to localise any of the international conventions that Lesotho has ratified? This inquiry is illustrated in the next chapter and an informed conclusion will therefore be made based on relevant authority.

⁵⁰ Article 20(1)(b)

CHAPTER 4

NATIONAL LEGAL AND POLICY FRAMEWORKS ON DOMESTIC VIOLENCE

4.1 Introduction

This chapter shall look into the domestic laws of Lesotho with regard to domestic violence and make an informed assessment as to whether they comply with the international standards set out in chapter three. In order to achieve this objective, the chapter involves an analysis of the laws governing domestic violence which are the Constitution and the Penal Code Act. A critique of the Domestic Violence Bill, which has remained a Bill and not passed into law for several years now, will also be made in this chapter.

4.2 The Law of Lesotho relating to domestic violence

4.2.1 The Constitution

In terms of section 18 the constitution of Lesotho there is a clear provision on freedom from discrimination, it states that the laws in Lesotho shall not be discriminatory either through the law itself or through the effects of such law. It is stated further that no person shall be discriminated against by anyone acting under a written law or under the performance of any public office or authority.⁵¹ Discrimination is described as the affording of different treatment to different persons completely or on the basis of race, colour, sex, language, religion, political or other opinion.⁵²

Lesotho has signed the CEDAW and its reservations and the abovementioned section of the constitution is in line with the CEDAW, this convention opposes discrimination and all its effects which are amongst others inclusive of violence and lack of legal protections. Article 2 of the CEDAW read with articles 5 and 16 state that it is the state's obligation to eliminate discrimination against women by eradicating all forms of practices and prejudices against women. It further commits states to eliminate all forms of discrimination against women in marriage and family relations, it provides for the promotion of equality of men and women and further that men and women should be accorded the same rights

⁵¹ Section 18(2)

⁵² Section 18(3)

and responsibilities. Read with section 18 of the constitution is the Legal Capacity of Married Persons Act of 2006. The purpose of this Act is to give women in marriage the same powers a men and this helps in that their status as married women is no longer undermined which means that in marriages women are no longer being treated as minors. The Act repealed the marital power of a husband over his wife with regard to the administration of the joint estate⁵³ and the act applies to both common and customary law.

This Act is a clear example of the governments' attempts to rectify discriminatory provisions that had been based on customary law. This act provides for the abolition of the minority status of married women. A woman was regarded as a minor in terms of Basotho laws before the implementation of this act. It meant that a woman could not even enter into a contract without the husband's consent or undergo any medical surgery, in essence before the enactment of this act a woman did not have any legal capacity over her body or over herself. The fact that through this act women are no longer seen as minors means that the law is responding to their needs

Lesotho through its constitution has complied with the international standard by making a provision of freedom from discrimination which is found in section 18 of the Lesotho constitution. However, the same constitution prohibits discrimination and at the same time allows for discrimination in terms of customary law.⁵⁴ It therefore means that because of Lesotho's dual legal system being civil and customary, the international standards are not fully met as Lesotho is still holding on to some parts of its customary law for, cultural norms and practices still continue and some of which discriminate against women thus leaving women prone to discrimination and violence. This means that the law does not address the needs of the people as some standards are not meant.

The constitution of Lesotho further makes a provision against torture. It is stated that no person shall be subjected from torture or inhumane or degrading treatment or punishment.⁵⁵ It goes further to state that nothing done or authorized by law shall be held

⁵³ Legal Capacity of married persons act 2006 3(1)

⁵⁴ Section18(4)(c)

⁵⁵ Section 8(1)

to be inconsistent with this section if the law in question allows for the infliction of any form of punishment that was lawful in Lesotho immediately before the constitution came into operation.⁵⁶ The constitution of Lesotho makes it an offence for anyone to commit torture on another person, this shows that Lesotho is in line with the CAT that for it has acknowledged by the Committee against Torture acknowledged that domestic violence may constitute torture or ill-treatment under CAT. It can therefore be said that in part the constitution is responsive to the needs of women who are likely to be affected by GBV.

4.2.2 Penal Code Act

Lesotho has made further efforts to reduce GBV as seen in the Penal Code of 2010. In the Penal Code domestic violence is treated and prosecuted under the offence of assault. It is stated that a person who intentionally applies unlawful force to the person of another commits an offence of assault⁵⁷. It is further provided by the penal Code that a spouse, who intentionally applies unlawful force to another, commits the offence of assault⁵⁸. The latter part of section 30 of the Penal Code shows that in cases where one spouse abuses another by applying force onto that other spouse such is treated as the offence of assault there it is safe to say that in Lesotho domestic violence is not prosecuted on its own but it is rather charged and charged prosecuted under the Penal Code as the offence of assault.

The penal code also criminalizes marital rape, read with the penal code is the sexual offences act of 2003, which strengthens the protection against sexual violence and also criminalizes marital rape. This act recognizes marital rape⁵⁹ as an offence. The act states that an unlawful sexual act is committed when the sexual act takes place in any coercive circumstances and that marriage shall not be a defense. The following circumstances however have to be proven that the complainant was sick⁶⁰, that the accused spouse had or was reasonably suspected of having a transmissible disease or other life threatening disease⁶¹. Or that there were violence or threats were used in order to engage in the

⁵⁶ Section8(2)

⁵⁷ Penal Code Act 2010 Sec.30(1)

⁵⁸ Sec. 30(2)

⁵⁹ Sexual Offences Act 2003 Sec 3

⁶⁰ Sec 3(3)(a)

⁶¹ Sec 3(3)(b)

sexual act⁶² or that there had been a judicial order of restraint in respect of the accused⁶³ or in instances where the partners had been separated by a court order⁶⁴ or when one of the spouses had deserted the other⁶⁵.

When sexual acts occur between the spouses and any of the abovementioned incidences are present then a spouse may be safely accused of having committed a sexual offence against the other and it is thus recognized as marital rape. The act does not however make any specific mention of sanctions or penalties against the offender such is the discretion of the court. With regard to achieving a non violent society or rather in an attempt to fight domestic violence, under the act an engagement in sexual relations that include the exposure of genitalia, conducting a sexual act in the presence of another and the insertion of animate or inanimate objects into another without their consent amounts to an offense.

In as much as these statutes have made provisions that offer a protection against domestic violence there is no specific legislation that deals with domestic violence alone and it shows that Lesotho is still not in full compliance with the international standards as required by the international community. The law in Lesotho does not effectively address the needs of people who are affected by domestic violence as such is treated as assault and it is not in all cases that domestic violence shall manifest itself physically therefore the law is not responsive to the needs of people.

4.2.3 Domestic Violence Bill

It was developed to reduce or curb domestic violence in Lesotho. The bill is meant to be a comprehensive legislative approach to issues of domestic violence. It criminalizes all forms of violence against women and encompasses issues of protection of victims and as well as prevention of domestic violence. Finally give an adequate punishment for the perpetrators of domestic violence and to offer remedies to those who survived domestic violence. There are however a number of things that should be updated in the bill if it is

⁶² Sec 3(3)(c)

⁶³ Sec 3(3)(d)

⁶⁴ Sec 3(3)(e)

⁶⁵ Sec 3(3)(f)

to come into use in Lesotho. The fact that this bill has since remained a bill and has not been revisited, updated and implemented and has only been pending for years shows that Lesotho still has not complied with the international standard that require it to have a domestic violence legislation.

The mere fact on its own that this bill has not been tabled into parliament and implemented is a clear indication that the bill itself does not answer to the needs of the people that may be exposed to domestic violence.

4.3 Gaps in the Lesotho's legislation with regard to domestic violence

Although Lesotho has made attempts to eliminate GBV and to promote peace and equality, the deepest concern is the fact that in Lesotho there is still no specific legislation to eliminate domestic violence and this is a very great gap in the legislation of Lesotho. The absence of domestic violence legislation in Lesotho has created a notable gap in addressing issues of domestic violence in Lesotho, because there exists no legislation to deal with issues of domestic violence and as a result the levels of domestic violence in the country keep increasing.

The fact that currently in Lesotho domestic violence is charged and prosecuted under the penal code as the offence of assault⁶⁶ clearly shows that there still exists a great gap in dealing with issues of domestic violence. This is problematic because as things stand in Lesotho there is already a very huge problem with police prosecution failures to enforce the existing criminal law generally. Such may include problems with proving criminal offences and the victim's attitude to the prosecution. And most importantly the fact that not all domestic violence fits neatly into the criminal offence of assault. An example could be that in Lesotho where cases of domestic violence are non physical then this part of the penal code is inapplicable as it deals with matters of assault and such are physical matters only.

This potentially means that stalking and harassment offences in Lesotho go unattended in Lesotho due to lack of domestic violence legislation. The greatest issue with having

⁶⁶ ibid

domestic violence prosecuted under the criminal offence of assault is that, the definition of assault is based on the traditional criminal law concepts and the essential actus reus for assault is an act intended to cause or that causes physical pain or injury⁶⁷.

What this then implies is that domestic violence in itself essentially remains uncriminalised due to the fact that other acts of domestic violence that are not physical are still not criminalized. It has been pointed out that in effect the essence of domestic violence will be declared and shall for all intents be seen to remain uncrimilised if non-physical methods of power, abuse, coercion and control are still not criminalized⁶⁸. By prosecuting and charging domestic violence under assault then the law of Lesotho is not at all capturing the power and control aspects of domestic violence that have nothing to do with use force, which may amongst others include, economic abuse, stalking, harassment and intimidation. Domestic violence is mostly seen as an ongoing pattern of behavior that has been motivated by the perpetrator's desire for power and control over the victim⁶⁹, while, to the contrary observations show that in Lesotho the laws just deal with the acts of perpetrator without considering the acts of the actor's motivation for power and control.

The laws of Lesotho do not provide adequate protection for a person that is being followed, placed under any form of surveillance, sent offensive items in circumstances where the victim felt harassed, intimidated or where the victim felt threatened. Stalking is associated with risk of violence and the victim should be protected from future violence, this may be done through the use of protection orders which should be included in the domestic violence legislation. Stalking is a course of conduct offence and focuses on activities that are protracted or may occur on more than one occasion. Some of activities of stalking may include the following; following, contacting, watching or acts of intimidation in a way that any reasonable person would experience fear or apprehension or where the behavior causes detriment to the person being stalked.

⁶⁷ Steve Mulligan, "Redefining Domestic Violence; using the power and control Paradigm for Domestic Violence legislation"(2009)29(1)Children's Legal Rights Journal 33,34

⁶⁸ *ibid*

⁶⁹ Alfair S Burke,"Domestic Violence as a crime of Pattern and Intent;An Alternative Reconceptualization'(2007) 75 George Washington Law Review 552, 555-6"

Lack of inclusion of stalking offence in the laws of Lesotho when it comes to domestic violence is seen as a great gap because although stalking is mostly associated with domestic violence⁷⁰ if not carefully addressed and dealt with it can lead to the re-victimization of the victim. This may occur in incidents where the perpetrator, stalks the victim and eventually ends up abusing the victim again because there are no laws in Lesotho that specifically address the issue of stalking.

The problem that follows when the legal system does not respond to the needs of women being abused is that women are hurt by intimate partner violence, they are not helped when they make attempts to seek help and remedies from the legal system, they hurt even more therefore they by all means avoid turning back to the system that did not help them in the first place. And since they do not engage in what has become the expected trajectory to safe they are understood to be non-victims.

Additionally in Lesotho the law does not mandate specific penalties and judges have a wide discretion in sentencing. This means that judges as they deem fit may; authorize release of an offender with a warning, give a suspended sentence or they may, depending on the severity and gravity of the assault give an imprisonment to the offender or issue a fine. In as much as the law criminalizes sexual harassment but penalties for those charged with sexual harassment is the discretion of the court.

Conclusion

It is concluded that the existing legislation does not directly address domestic violence in Lesotho. Recommendations on how issues of domestic violence can be dealt with directly in Lesotho are given in the next chapter.

⁷⁰ Ann W Burgess "Stalking Behaviors within Domestic Violence"(1997)12 Journal of Family Violence 389

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

This chapter entails recommendations on the implementation of domestic violence legislation in Lesotho. It is clear from the discussion in the previous paragraphs that Lesotho has not met its mandate and commitments and thus violates the human rights principles under international law. The result is that human rights are violated as there is no specific legislation that offers protection to the victims of such abuse and domestic violence. The law in Lesotho does not mandate specific penalties for those who have committed domestic violence, this means that the judges have a wide discretion in sentencing. Therefore an offender can be officially warned and released, they may be given a suspended sentence, imprisoned or they may be fined depending on the severity of the assault. This does not offer justice to the victims and re-victimization is likely to occur. Lesotho needs comprehensive legislative packages to deal with issues of domestic violence as well as to confront domestic violence against women. Different legislative measures need to be put in place for Lesotho to implement and have its own domestic violence legislation.

5.2 Localizing international conventions

In order to guarantee that governments have policies and laws that seek to ensure gender equality, a key drive has been to ensure that international conventions like CEDAW are localized within local laws. This section shall show how in addition to legislation there is a need for practical solutions that support victims of gender based violence in a timely and holistic manner. Various conventions are seen as modalities of ensuring that governments remain accountable by providing frameworks which governments can adopt and utilize in the fight against gender based violence⁷¹. Some states have made a lot of efforts to localize these instruments into domestic laws, these alone are not effective in deterring violence against women and having a tangible impact on the lives of women.

⁷¹ Carrillo et al 2003;19

Domestication of these laws and protocols has become very critical for ensuring a free violence generation.

A snapshot of countries will give real examples on how gender based violence legislation is a first step towards developing comprehensive interventions, programs and mechanisms that fully support an enabling environment that not only recognizes, but protects the rights of women and children. The following countries will show steps taken in reducing gender based violence.

South Africa

South Africa has a domestic Violence Act that was passed in 1998 and that covers a wide range of gender based violence and creates a framework for deterring perpetrators and strengthening assistance. UNICEF noted that much of the provisions in the act require the state to avail adequate resources for shelters as examples⁷². Despite this South Africa is one of the countries that have a culture of violence which has increased the vulnerability of women in Private and public spaces. There is therefore a need for harsh sentences and stiffer penalties on the perpetrators.

Malawi

The Malawian Constitution recognizes the right and full protection of women as it largely guarantees women's rights and states that they should not be discriminated against on the basis of their sex. The Prevention of Domestic Violence Act was passed in 2006, seeking to reduce the rates of gender based violence and ensuring perpetrators are punished accordingly. There has been progress although compounded by the high illiteracy rates of women and girls and consequently high poverty levels among women. Malawi has a huge challenge in its laws as they are not harmonized to ensure uniformity, an example is that the legal age of the majority which is 18 and the age at which a young girl can get married is 16.

Even though legal provisions are often put in place to address and deter gender based violence, more still needs to be done to ensure mind sets change, and have well informed

⁷² http://www.unicef.org/southafrica/hiv_aids_729.html

and educated communities who access legal and health facilities that are well resourced⁷³.

Zambia

In 2011 President Rupiah Banda signed off the Anti-gender based violence law, one that has been seen as the most comprehensive law on gender based violence in SADC, as it is holistic in its approach⁷⁴. The gender links publication notes that this law provides for the establishment of gender based violence committees. Setting up of funds that offer immediate relief to victims and the establishment of shelters for their safety. In addition the law makes a provision for the mechanism of addressing harmful traditional practices, an important aspect that is missing from other legislative frameworks. Legislation helps to ensure the reduction of gender based violence but there is also need for holistic institutional strategies that tackle systemic and structural causes of gender based violence.

Such strategies or legislative measures can be summarized as; protective, punitive and preventive measures. These measures will help in the implementation of the domestic violence legislation and for the provision of monitoring the implementation of the law.

5.3 Recommendations

It is recommended that Lesotho must enact a specific domestic violence law which should entail protective, preventive and punitive measures as illustrated below. Although these recommendations will not completely eradicate domestic violence, they will however minimize the rate at which women are being abused as there will be legal protection. Additionally the perpetrators will be dealt with accordingly. These recommendations if put in place by Lesotho, will also enable compliance with the obligations of Lesotho in International human law principles set out in chapter three of this dissertation

5.3.1 Protective measures

⁷³ (http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/childmarriage_8_annex1_indicator-definition.pdf)

⁷⁴ <http://www.genderlinks.org.za/article/Zambia-anti-gender-based-violence-act-passed-2011-10-07>

The aim of domestic violence legislation should always be to protect the victims of abuse and provide effective and accurate assistance to the victims as well as to their children. In order to achieve this, the Act should:

- Allow the police authority to arrest the aggressor in the act in case of any forms of domestic violence
Allow the police to request the judge to issue out urgent measures, such measures may be to issue out the suspension of the perpetrator's licence to carry a weapon
- Allow the authorities to remove the perpetrator from the home so as to keep distance from the victim.
- Include a specific chapter on assistance which may be provided by the police authority

5.3.2 Punitive measures

The main purpose of the domestic violence Act in Lesotho should be to criminalize domestic violence, this should be backed up by creation of new courts as well as increased sentences. The act shall provide for the following;

- Give a clear explanation of domestic violence which shall include, physical, psychological, financial, economic, emotional and sexual abuse
- Creation of special courts to increase the comfort of victims and in order to issue speedy judgments on issues of domestic violence such courts should have the multidisciplinary staff which shall include; social workers, psychologists in to order to support the victims
- Allow the doctrine of open standing in cases where the woman has been badly victimized and is not in a position to openly stand before the court
Penalties be increased according to the abuse and there must a minimum sentence for the aggressor
Allow the judge to decree preventive custody when there is risk to the physical or psychological integrity of the women

5.3.3 Preventive measures

There should be preventive and educative measures that are included in the act in order to prevent and limit future cases of domestic violence.

- Educational campaigns focusing on human rights, gender, equality and on the new piece of legislation.
- Implementation of programs at all levels that aim to eradicate domestic and family violence against women.

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