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GENDER BASED VIOLENCE: THE ELEPHANT IN THE ROOM

IN THIS ISSUE:

We unpack gender based violence and give recommendations on how to respond to it



Overview of the legal and policy framework for gender-based violence in Kenya

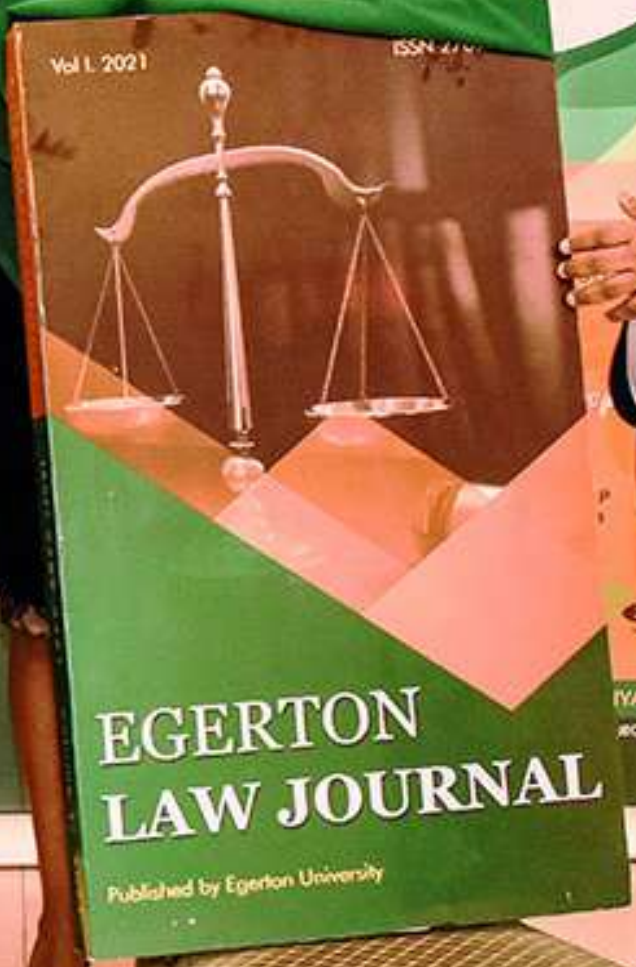


Saturated violence: gender-based violence during the Covid-19 period.



GBV: The epidemic within the pandemic





VISION

Justice and equality for all

MISSION

Promotion of access to
justice for the poor and
marginalized to claim their
rights

OBJECTIVES

Enhancing Access to Justice
through Legal Aid on the
following:

Family Disputes

Children Cases

Land Rights

Criminal Cases

Matters of Public Interest,

Governance and Public

Administration Issues

EDITORIAL

During the 1994 genocide in Rwanda, a section of Christians in one of the churches there wrote to their Bishop for help. He was connected to the powers that be at the time and they were convinced he could be of help; he could marshal forces and see them guarded against attackers.

“We wish to inform you that tomorrow we shall be killed with our families,” the letter partly read. He got it but did nothing. And true to their premonition, they were massacred in their numbers.

And so is it with sexual and gender-based violence (SGBV). Every day would-be victims are writing to us saying that we can do something to avert their foreseen predicament. They are convinced we can do something. But we aren't being responsive. And if we are, we aren't responsive enough.

It is time we think seriously about SGBV. Thus, in this edition we take the position of potential victims writing to say, “We wish to inform you that tomorrow we shall be attacked at our safest spaces. Kindly respond!”

Article 4; Sexual Offences Act (2006)

Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs is guilty of the offence of attempted rape and is liable upon conviction for imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life.

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Designed by Egerton University.

Message from the Team Leader



Dear FOLLAP Partner; I want to thank you most sincerely for the support you have been giving us over the two years we have been implementing this project. It is because of you that we end the second year on a high note.

We had very engaging forums this year. Key among them was a forum with a section of medical professionals in Nakuru County who agreed to work closely with us in helping survivors of sexual and gender-based violence (SGBV) to access justice.

We also held a key forum with police officers from different parts of the county on the law of evidence on gender-based violence (GBV) cases.

In the two forums it was evident that matters of SGBV need specialist skills and FOLLAP is committed to ensuring that we engage further on the issue.

This year we also hosted the first ever National Moot Court competition which provided a platform for practical learning for students in preparation for their future careers as Advocates. The theme of the competition was 'International Law and Division of Matrimonial Property'. 11 universities participated in the competition, represented by 33 teams. We hope to host another competition next year.

We also hosted our second national conference on access to justice which looked at the lessons from the socio-economic crisis brought about by the Covid-19 pandemic. We hope to host another conference next year.

As we continue implementing the project, next year, we ask you to keep supporting us with a view of changing the lives of the people of Nakuru and Kenya at large.

- FOLLAP Project Leader, Dr. Ruth Aura.

Unpacking sexual and gender-based violence

By Florida Musi

Sexual and Gender-based violence (SGBV) is violence directed at someone based on their gender or sex and often brings about physical, sexual, and psychological harm. It can constitute any harmful behaviors against family members or partners, including rape, assault, physical abuse or forced prostitution.

SGBV is caused by harmful gender norms and gender stereotypes and is often used to justify violence against women. Retrogressive cultural norms are to blame for this. Some men still consider using violence as a form of instilling discipline and commanding respect from women.

Poverty and hunger are also great triggers of SGBV as women and girls are sometimes forced to sell sex to survive. In such instances tensions on who ultimately provides for upkeep lead to violence.

Women are disadvantaged as, more often, the man is the provider, and in the face of violence, women are afraid to speak out lest they lose the support. Some women endure violence as they shield their children from perpetrators. War and conflict also contribute to SGBV – they create situations that fan the perpetration of cases.

SGBV acts may include; violence against women and children, violence against members of the queer community, partner violence, domestic violence, sexual violence among other acts.

Historically, women and girls have been the main victims, men too can be victims of SGBV. This is stressed in the Sexual Offences Act which recognizes violence against men and boys as a form of gender-based violence. The full scale of SGBV against

men and boys is however not as widely known as are cases against women and girls since such cases always go unreported.

The irony of SGBV is that a majority of the cases are perpetrated by people who are very close to the victims such as family members or sexual partners; or simply someone the victims trust so much. Because of this, some cases thus go unreported as victims choose to remain silent so as to protect these close relations.

Effects of gender-based violence include severe physical injuries, unwanted pregnancies, dropping out of school, family disputes among others. It exposes the victims to severe psychological torture as it affects their mental stability; it plants seeds of pain and regret in the victims and those around them. In some instances, it leads to death.

There is need for concerted efforts to counter and respond to SGBV cases. Both state and non state actors need to establish adequate SGBV response centres that offer quality and comprehensive services to victims. Ensure access to services is free and a minimum package of support is available for victims in every community.

There's also need to mobilize and train community resources to respond to SGBV. Establish and monitor formal protocols and referral systems between the health and specialist SGBV sectors. Other mechanisms can be establishment of referral pathways between health care services and SGBV survivors.

Provision of community toll-free 24/7 telephone hotlines and online services where survivors can report cases and seek for help when in need including seeking for legal assistance.

When necessary, there should be professional and social reintegration of SGBV survivors, ensuring their capacity to make decisions about their lives from a position of economic, social and emotional strength.

Ms. Musi is a student of Law at Egerton University.

We need to hasten GBV response measures in Kenya

By Judie Kaberia

Gender-Based Violence (GBV) is an ugly sore in the face of our country. It has taken many lives, not only of men and women, but those of innocent children as well, who have no fault of their own and have no stake in the violence.

No single day passes without a case of GBV in the news. Mind you, not trivial cases, but ones that leave us with a mixture of shock, misery, and apprehension.

The cases are very many but sadly GBV is not getting as much attention as it deserves. Families are crying over losses, mourning their loved ones, falling into poverty spending money in hospitals to treat the wounded while others have sunk into depression because of the trail of destruction left by GBV.

Kenya has a stringent legislative and policy framework that criminalizes GBV and imposes heavy penalties on perpetrators. The country also has solid investigations, prosecutions, and judicial systems to handle even the most difficult of crimes.

What should worry us all is that despite all these laws and systems, cases of GBV rose at an alarming rate during the pandemic period.

Sadly, the wheels of justice have been turning too slow, delaying and denying justice for victims and survivors. Nothing scares the perpetrators. Not the laws and not the system. That is why picking a machete and wiping away an entire family in cold blood is not a big deal. We have to interrogate the system right from when a victim goes to the police station to report a crime to when the court determines the case.

Whereas progress has been made to tighten

the laws against GBV, establish structures such as the gender desks, PolyCare, and an emergency reporting system, the upsurge of cases is an indication that either these changes are insufficient or incommensurate to the weight of GBV crimes.

There is need for the Government, the offices of the Directorate of Criminal Investigations (DCI), Public Prosecutions (ODPP), and the Judiciary to clean up the system to ensure justice for victims is served without delays and perpetrators are held to account.

GBV has taken many lives, left dozens with lifetime psychological and physical dents, and continues to injure and claim more lives. In view of this we wish to propose the following:

1. We appeal to the Government of Kenya to fast-track the 12 commitments made before the 'Generation Equality Forum' to eradicate GBV by 2026. In this regard, the President pledged to invest Ksh. 2.3 billion by end of 2022 and another Ksh. 5 billion by 2026. Kenya has committed to eradicating systemic barriers that allow GBV to thrive while undertaking heightened campaigns against GBV and the establishment of safe houses for victims.
2. The Chief Justice Martha Koome is on record that the Judiciary was considering establishing a specialized unit to handle GBV cases in the country but cited resource constraints as a hindrance. We urge the Judiciary and the government to hasten this process by allocating the necessary resources to pave way for the establishment of the special unit to clear the backlog of GBV cases and hasten the process of justice.
3. An effective response to GBV should not be fragmented. It should come as a complete package with social support services and

justice. We urge the duty bearers to ensure all GBV response centers are adequately equipped and manned by qualified personnel with knowledge and skills in handling victims of GBV.

4. Victims of GBV fail to report cases due to fear of the police, bribes, and further victimization. We urge for the professionalization of these centers especially the gender desks and advise them to roll outreach activities and campaigns intended to win the public's trust and reassurance to promote reporting of GBV crimes.
5. We appeal to the government to adopt a comprehensive approach to incorporate prevention, proper handling of GBV crimes, and redress to ensure an effective response that deters and punishes perpetrators and gives justice to the victims.

Ms. Kaberia is the Executive Director, Association of Media Women in Kenya (AMWIK).



Samuel Kimani, FOLLAP Project Monitoring and Evaluation Officer facilitates at a women's forum in Bahati, Nakuru North Sub County. We all have a role to play in ending sexual and gender based violence (SGBV).

The epidemic within the pandemic

By Ann Gethi

The Covid-19 pandemic brought a lot of activities to a halt as governments worldwide – including Kenya – put measures in place to curb the spread of the virus. Some of the measures included lockdowns as people were encouraged to stay at home when necessary. Employers also started downsizing, sending many employees back home to reduce interactions.

These measures put potential victims of gender-based violence at a higher risk (GBV) since they tended to be in the same spaces, for long hours, with their would-be tormentors. They were also unable to seek assistance from the relevant bodies established to deal with the vice.

Covid-19 has been a rude awakening on how harsh gender-based violence is, in Kenya. It justifies it being referred to as an epidemic; an epidemic within the pandemic.

Since the onset of the Covid-19 pandemic, there has been a staggering increase in the reports related to Gender-Based Violence (GBV). Recent studies show that the number of cases reported has doubled the number of grievous bodily harm cases as a result of GBV reported pre-pandemic.

The patriarchal nature of African communities has contributed to numerous cases bearing the typical vicious hallmarks of gender and sexual harassment. The United Nations even called for a 'global ceasefire' on ending this kind of violence asking governments to focus resources on stopping this epidemic (within the pandemic).

Causes of gender-based Violence during the Covid-19 period:

Economic and social restrictions: Women and girls at this time find themselves more dependent on their male counterparts, who take advantage of their inability to acquire help due to their new economic situations imposed by the pandemic.

Pre-existing violence in families: The patriarchal system has instilled the belief that some forms of violence from one's husband or father is an act of love or a form of asserting dominance. This has led to repeated abuse which was controlled by women being in the workplaces during the day and girls being in schools. With the schools closed and slow business in the workplaces, the victims are now at home with their abusers, which has led to the situation escalating.

Harmful traditional practices: young girls are often victims of such practices as female genital mutilation (FGM) and early marriages. The government and various NGOs have provided shelters where they run to in such cases. Most of these shelters were locked down due to the Covid-19 safety protocols, leading girls back to the hands of their perpetrators. The closure of these shelters opened a new can of worms to those who wanted to escape their homes when forced into harmful traditional practices. The financial hardships faced by the families may prompt them to force their daughters into marriages for the promise of a hefty dowry. With schools and shelters closed, there were no such places where the victims could run to.

Helpline: 0800720448 (Toll Free)

Dusk to dawn curfew: The curfew has been recently lifted, but this was after a series of horrific cases being reported of the many forms of violence facing young girls and women. The curfew curtailed women from running to safer places when at risk to avoid getting arrested during the curfew hours. They were also not able to seek medical assistance, which led to some succumbing to the injuries sustained.

In brief, GBV takes many forms, all related to some kind of aggravation towards another person based on their gender. The situation

has worsened during the Covid-19 pandemic and is now being termed the GBV epidemic due to the many horrific cases being reported.

This is a result of the protocols that have been put in place to curb the spread of the virus, consequently placing the victims under the same roof as their perpetrators. The government has implemented some measures to help cushion the situation. However, a lot is left to be desired.

--Ann Gethi is an LLB student at Egerton University



Women from Njoro Sub County at a FOLLAP forum to mark the 2021 International Women's Day. The theme of the day was 'Women in leadership: Achieving an equal future in a Covid-19 world'.

Systemic and intersectional response needed to counter GBV

By Lilian Mwangeli

The United Nations (UN) defines gender-based violence (GBV) as any act of physical, sexual, economic or psychological harm or suffering, including threats of such acts, coercion, or arbitrary deprivations of liberty, perpetrated against a person based on gender differences between males and females, whether in public or private life.

It is perpetrated against a person or group based on their gender, sex, or non-conformity to gender norms and stereotypes. It is a manifestation of uneven power relations, based on social norms and ideas about dominance, power, and abuse of authority, and formalized by social institution laws, rules, and regulations.

Physical, psychological, and sexual violence, as well as social violence that isolates survivors from their communities or social groups, and economic violence that results in economic deprivation, are all examples of GBV.

GBV is a global epidemic that affects all social groups, yet it has been largely disregarded in COVID-19 response and rehabilitation plans. GBV, including domestic violence and intimate partner violence, has clearly increased as a result of the COVID-19 pandemic, but expenditures in GBV prevention and response are woefully inadequate.

Although there are still obstacles to achieving gender justice, such as harmful social norms, progress has been made since the start of the 16 Days of Activism Against Gender-Based Violence Campaign, demonstrating that there are solutions and that feminist activism has been a driving force for progress in ending gender-based violence.

As the government imposed tight policies to regulate COVID-19, GBV rates began to rise, schools were closed, travel was restricted to

citizens and permit holders, big gatherings were prohibited, a national curfew was established, and all flights in and out of the country were halted. Following that, there were reports of rising GBV levels across the country. Sexual violence increased while physical violence increased largely. GBV stakeholders and women's groups have been placing pressure on the government to pay attention to GBV rates and assure the availability of services as a result of growing worries about rising rates of GBV combined with a lack of government action to address the issue.

From the beginning of the COVID-19 pandemic, women and girls experienced an unprecedented increase of violence, and women's organizations and frontline responders were quick to raise the alarm. Coronavirus caused a perfect storm of social and personal anxiety, stress, economic pressure, social isolation including isolation from violent family members or partners, and growing alcohol and substance usage in many households, leading to an increase in domestic abuse.

As domestic abuse killings surged during the early lockdowns, calls to domestic violence and GBV helplines skyrocketed. Many people assumed that services were closed, remained away for fear of illness, or were unable to call out for help since their abusers were at home all day keeping track of their phone and internet usage.

Women were frequently obliged to break curfews, lockdowns, or stay-at-home orders outside of their homes owing to their need to earn a job, acquire food and water for their families, or do the care tasks that society disproportionately expects of females, which escalated during the pandemic. They were harassed and beaten up by police and

military officers imposing coronavirus control measures like roadblocks, quarantines, and curfews.

Some forms of violence have shifted from physical to virtual areas, with reports of increased cyberstalking, bullying, and sexual harassment. Similarly, the GBV that women and girls are subjected to tends to be more severe and long-lasting, possibly as a result of the increased difficulties in escaping abuse. According to reports, callers are claiming an increase in bites, burns, repeated beatings, and continual pressure from their partners to have unwanted sex.

What can be done?

To curb the increase in the Gender based violence, the government and other actors should:

First, build economies that increase GBV resilience: Inequality and resilience to GBV will increase or decrease depending on how countries manage their economic reaction and recovery in the face of COVID-19. Women's labour should be recognized and fairly compensated in all forms, particularly the low-paid and unpaid care work they disproportionately shoulder, such as caring for children, the sick, and the old. Governments and other actors should do the following:

- Ensure that the costs of GBV are not borne disproportionately by survivors by mobilizing resources to alleviate inequities.
- Create social protection systems that operate as safety nets for people who are victims of abuse, expand them to include informal workers and unpaid and low-paid careers, and ensure that the poorest women and girls have good earnings.
- Implement gender-responsive budgeting to promote gender equity, a more equitable distribution of resources, and redistributive policies that eliminate gender disparities and mitigate the economic effects of discrimination.
- Address abuse and exploitation directed

at women in low-wage, precarious jobs, especially by supporting their ability to join unions.

- Encourage the expansion of social protection and public services by increasing debt cancellation ties and offer accessible, affordable public services, particularly through fair taxation.

Secondly, women's and feminist organizations and movements should be strengthened and resourced: GBV is preventable, and women's groups and movements have shown that, given the chance, they are best positioned to reverse the tide against it by:

- Immediately designate GBV prevention and response services as vital and eligible for rapid response financing by governments and other entities.
- Provide feminist movements and groups working to abolish GBV and support survivors with proportional multi-year, flexible funding.
- Increase the equal and meaningful representation of women in the planning and delivery of services by including women's and LGBTQIA+ organizations in decision-making settings.
- Collaborate with women's organizations and human rights advocates to establish safety measures.

The journey is still long:

In many regions of the world, the COVID-19 pandemic and policies enacted to prevent it are exposing gender-based structural disparities and straining already weakened health and social protection systems. COVID-19 containment methods, like past pandemic containment tactics, increased the exposure of women and girls, particularly those who were difficult to reach, to various kinds of GBV.

While GBV was on the rise in the country in the early months of the pandemic, the government's failure to include GBV services and programs in the COVID-19 response had a significant impact on the availability of

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While GBV was on the rise in the country in the early months of the pandemic, the government's failure to include GBV services

and programs in the COVID-19 response had a significant impact on the availability of essential services for survivors, such as health care, shelters, and access to justice, as well as preventive services.

The government's response to GBV was reactive rather than proactive, with problems being addressed as they arose in various industries. In the end, this haphazard approach has wreaked havoc on Kenyan women and girls, some of whom may never fully recover from their ordeals. With appropriate planning and the provision of robust and comprehensive GBV services and social protection mechanisms, this could have been averted.

-- Lilian Mwangeli is an LLB student at Egerton University



Reknowned Lawyer and Pan-Africanist, Prof. P.L.O Lumumba with other participants at our Second National Legal Aid Conference whose theme was "Access to Justice in a Socio-Economic Crisis: Lessons from the COVID-19 Pandemic". The conference was held in Naivasha, in early December, 2021.

Gender Based Violence and Mental Health

By Kevin Muiruri.

Gender-Based Violence (GBV) is widely acknowledged as a public health and human rights issue. It has its roots in gender inequality, social norms that tolerate violence, and gender stereotypes that perpetuate violent cycles with women and girls being affected the most.

According to the United Nations (UN) one in every three women globally is subjected to physical or sexual violence, the majority being perpetrated by an intimate partner.

The Covid-19 pandemic, unfortunately, made the situation even worse. There has been a notable increase in violence against women during the pandemic. GBV cases recorded in Kenya by the National Crime Research Center in the country within January and June 2020 featured at an alarming rate of 92%. Many of the cases took place in the confines of homes that are meant to offer comfort and protection; the culprits were often close relatives or neighbors.

The Government of Kenya employed various measures to contain Covid-19 pandemic, including lockdowns. In the first two weeks of the lockdown, a national gender-based abuse hotline received a 301 percent spike in calls from women and girls. This may be attributed to staying long hours at home during the lockdown and domestic challenges brought about by reduced income and lost jobs. Considering the nature of such cases, the fear of victimization has been the main force of suppressing reports to the relevant authorities.

GBV has life-threatening attendant consequences such as physical injuries and an increased risk of sexually transmitted infections, including HIV Aids. Other risks include a higher risk of miscarriage and low birth weight for pregnant women, who are unfortunately more likely to experience intimate partner violence.

The mental health consequences are equally as severe. For women in Kenya and other places who have experienced violence and abuse, mental illnesses such as depression, anxiety, post-traumatic stress disorder (PTSD) and suicide ideation are usually on the rise. All these are signs of ailing mental disorders. Once the issues persist, women with severe mental illness are far more likely to be victims of GBV aggression.

The link between mental health and such abuse is not effectively addressed and as a result women are frequently misdiagnosed or unable to obtain the support they need and want to heal. Victims suffering from mental health issues may often be labeled “difficult to work with” and denied help. Some resort to drugs and substance abuse. Many services demand clients to be sober to get treatment, which is particularly difficult for those who use substances to cope with their problems.

Survivors of violence do not have access to mental health services, and when they do, they are rarely incorporated into the primary health care system. With the requisite support, women can regain control of their bodies, sexuality, and lives by receiving comprehensive and gender-sensitive mental health services. Successful treatments can teach us how to combine mental health services with other vital aspects of health care. These include hospital-based help for survivors of gender-based violence, which provides social and psychological support in addition to medical care, as well as community-based initiatives that facilitate access to shelters and legal aid agencies.

Many victims claim that they are afraid of being judged by their friends, family, or authorities if they speak up about their experiences. GBV victims with mental health issues are much less likely to report abuse. Poverty, age, race, and discrimination make some women more vulnerable to violence.

The Covid 19 pandemic worsened GBV in Kenya and other places. It diverted attention from the issue to immediate COVID-19 relief which caused significant neglect of the associated mental health issues.

There is little doubt that violence has an impact on mental health. The World Health Organization now recognizes GBV as a significant public health issue.

Ending GBV will require much more progressive legislation, a considerable increase in financing, and strong collaborations with the national government, corporate sector, civil

society, and communities.

To prevent and address violence, critical support for women and men with mental health issues should be strengthened. This includes long-term counseling, affordable housing, childcare aid, improved legal representation, and job prospects.

It is imperative to underscore that ending GBV issues will help alleviate the burden created on victims and survivors on their mental health.

-- Kevin Muiruri is an LLB student at Egerton University.



Egerton University Law student Kevin Muiruri, presents a paper titled 'Impact of Covid-19 on access to justice: An analysis of the Kenyan criminal justice system in a socio-economic crisis' at FOLLAP's 2nd National Legal Aid Conference at the Simba Lodge, Naivasha. His presentation is a testimony that the conference is a learning platform to young scholars.

Role of the police in ending violence against women during elections

By Dr. Ruth Aura

Violence against women during elections (VAWDE) is any harm or threat of harm committed against women with intent or impact of interfering with their free and equal participation in the electoral process.

It includes harassment, intimidation, physical harm or coercion, threats and financial pressures. It can be committed at home or other private or public spaces.

Women can face violence in any of their roles as electoral stakeholders: voters, media, political actors, state actors, community leaders, or electoral officials.

The International Foundation for Electoral Systems (IFES) asserts that VAWDE has a threat to the integrity of the electoral process; it affects how women participate in elections and thus undermines the free, fair and inclusive democratic process.

Regardless of the times, VAWDE acts tend to be the same. It must be addressed and police officers have a greater duty bestowed upon them by the law and must be proactive at all time to safeguard all lives.

To effectively deal with VAWDE, focus should shift from the victims to the community as a whole. Victims of rape and justice activists across the community have called for authorities to set up a specialized police unit to handle gender-based violence and ensure perpetrators are held to account.

Thus, the police should establish desks that specialize in matters relating to sexual and gender-based violence (SGBV) generally. More sensitization, development and reinforcement are needed for effective referral networks to the health facility so that the police can be effective in responding to SGBV.

A successful prosecution and sentencing of an offender depend on a chain of evidence which includes forensic examination, specimen collection, analysis and documentation which provide vital links between the health and the criminal justice system.

In order to effectively and efficiently deal with VAWDE police need to be careful on how they handle the evidence to such cases from statement taking, to investigation and how they generally handle the data.

It is important to however note that there is lack of systematic collection and reliable data on sexual and SGBV, and especially VAWDE.

There are also gaps in legislation and policy in sexual violence, poor enforcement mechanisms of legislation and litigation processes that need to be addressed. Such processes are hinged on cultural and traditional social norms which hamper successes in prosecution of VAWDE cases.

VAWDE also need to be prioritized by health providers for funding. Court response to VAWDE is slow and rarely imposes life sentences in deserving cases. Community perceptions impede police response to GBV. The police in charge of investigation of VAWDE are also prone to the pressures of the community's perception of SGBV.

-- Dr. Ruth Aura (Ph.D) is the Project Leader, FOLLAP and the current Dean, Faculty of Law, Egerton University



Overview of the legal and policy framework for gender-based violence in Kenya

By Annemary Opola

Earlier definitions of gender-based violence (GBV) centered on violence against women.

It was defined as any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.

The definition has since been expanded to include economic deprivation and isolation which may cause eminent harm to safety, health and well-being.

Broader definitions include harmful cultural practices such as early child marriages, forced marriages, widow inheritance, disinheritance, infanticide, virginity testing, ritual and honour killings. Emotional and psychological violence as well as human trafficking also fall within the purview of GBV.

Kenya has a number of laws that address this vice.

The Constitution of Kenya (2010): It guarantees equality and freedom from discrimination, human dignity, the right to freedom and security of the person, protection from slavery, servitude and forced labour, and the rights of children. It further provides that fundamental rights and freedoms may not be limited. These rights underpin the commitment to nurturing and protecting the well-being of the individual, the family, communities and the nation as indicated in the preamble of the Constitution and the national values in Article 10.

The Sexual Offences Act (2006): It defines sexual offences and makes provision for the investigation and prosecution of offences with particular regard to offences against

children, persons with disabilities as well as offences perpetrated by persons in authority or in positions of trust.

The Penal Code: It provides for offences such as assault and offences against liberty which are offences punishable by imprisonment.

The Prohibition of Female Genital Mutilation Act (2011): It prohibits the practice of female genital mutilation. Under this act, a person who fails to report an offence of FGM, whether before or after, commits an offence. It also prohibits the use of derogatory or abusive language intended to ridicule, embarrass or otherwise harm a woman for having not undergone female genital mutilation, or a man for marrying or otherwise supporting a woman who has not undergone female genital mutilation.

The National Policy for Prevention and Response to gender-based violence (2014): It was written with the principal objective of accelerating the implementation of legislation, policies and programmes for prevention and response to GBV by state and non – state actors for the realization of a society where men, women, boys and girls are free from all forms violence. Notably, the policy removed gender specific definitions of victims/survivors and perpetrators of GBV in a vital move geared towards reducing stigma and encouraging male victims to seek help.

Protection against Domestic Violence Act (2015): This Act is the only legislation in Kenya that solely addresses violence within the family set-up and seeks to protect persons in a domestic relationship including relatives and children. It creates prosecutable offenses including economic violence, emotional abuse, stalking, interference from in laws as well as virginity testing and sexual violence in marriage. Remarkably, a person can

report abuse on behalf of a victim. The Act also creates protection measures against victims such protection orders, court ordered counseling services and compensation to the victims.

The Victim Protection Act (2014): It was enacted with the aim of giving effect to the rights and protecting the dignity of victims of crime. The Act intends to achieve this through provision of better information, support services, reparations and compensation from the offender and establishment of programs to assist vulnerable victims. This is crucial in prosecution of GBV offences where victims are mostly disadvantaged and often undergo re-victimization in the justice process.

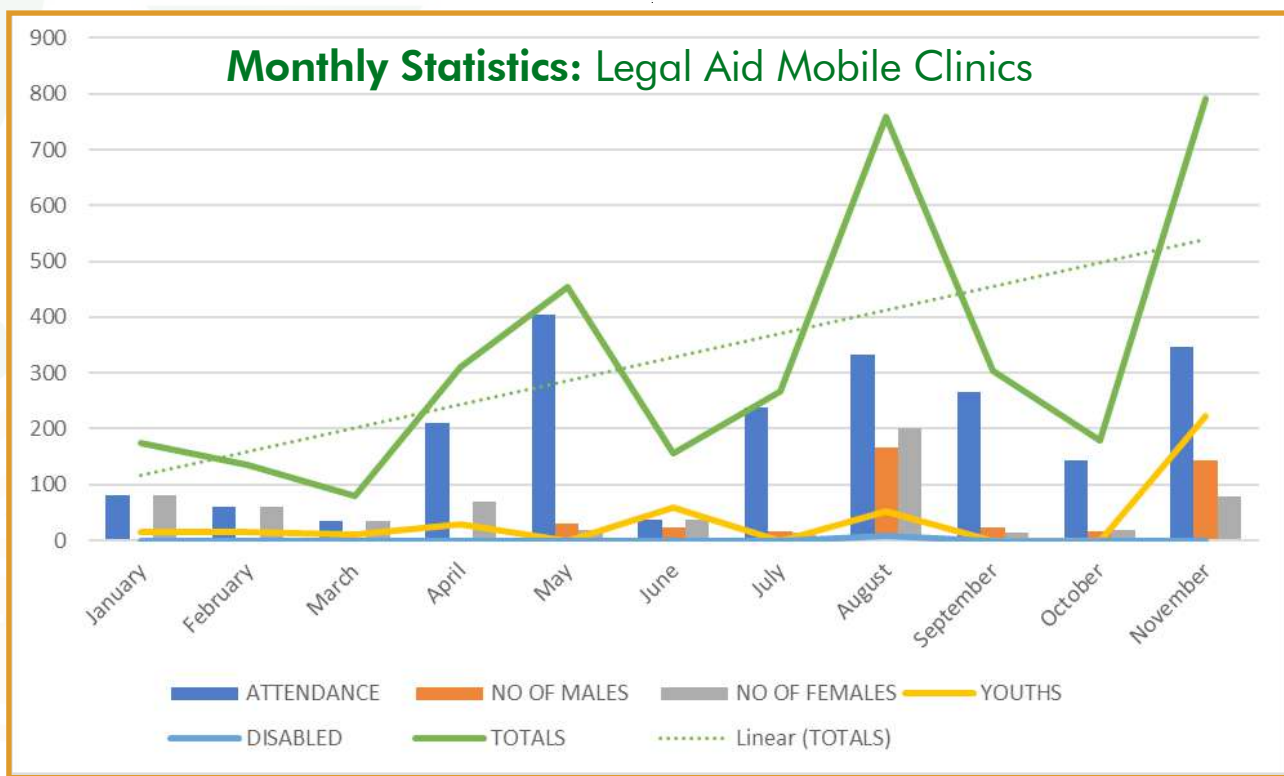
In June 2021, the Government of Kenya unveiled a policy brief titled “Kenya’s Roadmap to advancing gender equality, ending all forms of gender-based violence and female genital mutilation by 2026.” The country made commitments that would remove the systemic barriers that allow GBV to thrive. While this is commendable, Kenya has seen a steady rise in GBV violations during humanitarian crises occasioned by the COVID-19 pandemic. The situation is likely to be aggravated as the country heads into

the electoral period where sexual and GBV violations have historically been a major component of election related violence in Kenya.

While the existing policy and legislative framework makes provision for prosecution of perpetrators and protection victims of GBV, existing challenges include inadequate shelters and safe houses, limited coordination of stakeholders, limited capacity of the health, security and justice sectors, inadequate enforcement, the misconception that GBV unduly focuses on girls and women, the legal dilemma of sex between minors, weak chain of custody of forensic evidence resulting in acquittals and lack of comprehensive prevention mechanisms.

Adoption of prevention and response programmes that have been successful in other jurisdictions including psycho-social support for survivors of violence, economic and social empowerment programmes, cash transfers, and community mobilization interventions to change unequal gender norms, among others, would go a long way towards eradicating GBV in Kenya.

-- Ms. Opola is an Advocate of the High Court.





A group photo of participants at FOLLAP's Second National Legal Aid Conference.



PLEAD



FOLLAP

Faculty of Law Legal Aid Project

*Taking Law
to the People*

Enhanced Access to justice for the poor and **marginalized**

We envision Justice and Equality for all. Key strategies for this vision are removal of barriers for access to justice among the target groups, empowerment of the community to refer cases of human rights violations as well as to build capacity of community justice systems to operate effectively and efficiently.



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