



Coalition *in* Violence Against Women

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# Handbook on Protection Orders in Kenya

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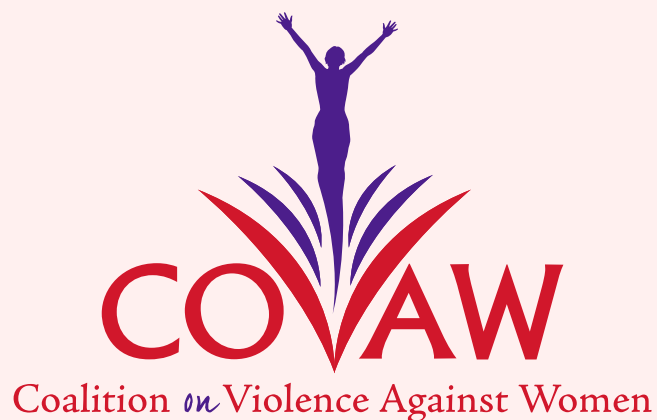
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Protection Orders  
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## Acknowledgements

Around the world, different stakeholders such as Government Agencies, Development Agencies, and Local Civil Society Organizations are working to end sexual and gender-based violence. It is in the pursuit of that goal that hundreds of professionals and agencies have developed an extensive collection of resources on the issue.

These stakeholders have identified innovative and forward-thinking solutions to end violence against women and girls. The development of this Handbook relied on such resources including the laws and the practice of protection orders across jurisdictions from Africa, Europe, and North America.

Special thanks goes to Wairimu Munyinyi-Wahome, the Executive Director of COVAW and the Programme Team comprising of Fridah Wawira (Programme Officer) Kwamboka Oseko (Legal Associate) Mercy Opiyo and Maurine Khabuchi (Programme Associates) for their leadership and contribution to the development of the handbook in collaboration with Prudence Mutiso, the Legal Consultant.



## Preface

The Coalition on Violence Against Women (“COVAW”) is a Kenyan non-profit women's rights organization that exists to champion the rights of women and girls to be free from all forms of violations.

COVAW projects fall under five (5) strategic focus areas, namely:

- ❶ Access to Comprehensive Sexual and Gender Based Violence (SGBV) and Sexual and Reproductive Health and Rights (SRHR) Services
- ❷ Women's Economic Empowerment
- ❸ Women's Leadership Development
- ❹ Access to Justice
- ❺ Institutional Development

Accessing justice in Kenya is costly, especially for excluded, vulnerable, and marginalized groups. Because of the restrictions brought on by the COVID-19 pandemic, many women and girls continue to experience Gender Based Violence (“GBV”).

To empower domestic violence survivors to protect themselves, COVAW with the support of Urgent Action Fund -Africa has developed this handbook as a simplified guide on the law and practice of Protection Orders in Kenya.



## Acronyms & Abbreviations

<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>COVAW</b>	Coalition on Violence Against Women
<b>CSEC</b>	Commercial Sexual Exploitation of Children
<b>CTIP</b>	Counter-Trafficking in Persons Act
<b>DVPN</b>	Domestic Violence Protection Notice
<b>DVPO</b>	Domestic Violence Protection Order
<b>GBV</b>	Gender-Based Violence
<b>GOK</b>	Government of Kenya
<b>ICWG</b>	Intellectually Challenged Women and Girls
<b>IPO</b>	Interim Protection Order
<b>KDHS</b>	Kenya Demographic and Health Survey
<b>NGEC</b>	National Gender and Equality Commission
<b>NPS</b>	National Police Service
<b>OB</b>	Occurrence Book
<b>ODPP</b>	Office of The Director of Public Prosecution
<b>P3</b>	Kenya Police Form Number 3
<b>PADVA</b>	Protection Against Domestic Violence Act
<b>PO</b>	Protection Order
<b>PRC Form</b>	Post Rape Care Form
<b>RO</b>	Restraining Order
<b>SDG</b>	Sustainable Development Goals
<b>SGBV</b>	Sexual and Gender-Based Violence
<b>SOA</b>	Sexual Offences Act
<b>SRHR</b>	Sexual and Reproductive Health Rights
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UNICEF</b>	United Nations International Children Emergency Fund
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>VAWA</b>	Violence Against Women Act
<b>VPA</b>	Victim Protection Act
<b>WHO</b>	World Health Organization
<b>WPA</b>	Witness Protection Act/Agency



## Background

Violence against women and girls is a human rights violation. According to UN Women, one in three women worldwide experience physical or sexual violence mostly by an intimate partner. In the last one year, more than 243 million women have experienced a form of physical or sexual violence. Since the outbreak of COVID-19, emerging data, and reports from around the globe, have shown that domestic violence, has intensified. Kenya has followed this trend. According to reports sourced from investigative agencies, a third of crimes reported since the COVID-19 onset involved sexual violence (NCAJ Report, 2020).

In addition, the Kenya Demographic and Health Survey (“KDHS”) estimates that one in every five women between the age of fifteen to forty-nine (15-49) have suffered a form of violence (KDHS, 2014). The study further indicates that women are at more risk of domestic violence as compared to the men with statistics indicating that 38% of women aged 15-49 years have experienced physical violence from their intimate partners while only 9% of men in the same age group have experienced it. Overall, 39 percent of every married women between the age of 15 - 49 report having experienced spousal physical or sexual violence. In addition, only 4% of men have experienced sexual violence compared to 14% of women. As highlighted above, women bear the highest brunt of domestic violence, with lasting physical and mental trauma.

## The Impact of Domestic Violence

Domestic violence has huge costs on victims, the families, and the economy. Domestic violence affects the physical and mental well-being of victims and people in close contact. The violence leaves lasting effects and has led to family breakdowns, psychological trauma and physical health injuries that have resulted in death. For example, UNICEF reports that children exposed to violence may suffer a range of severe and lasting effects. The effects may include behavioral and psychological problems, difficulty in learning and limited social skills, exhibit violent, risky, or delinquent behavior, or suffer from depression or severe anxiety.

Domestic violence also contributes to loss of income leading to financial stress. A report by the National Gender and Equality Commission (“NGEC”) estimates that because of domestic violence, Kenya loses Kshs. 46 Billion annually. The figure translates to 1.1% of the Gross Domestic Product (NGEC, 2016). In 2019, the audit firm KPMG estimated that Kenya loses Kshs. 5 Billion because of domestic violence on working women. The study conducted across twelve countries in Africa, estimated that at least 500,000 Kenyan women, the highest in Africa, have taken additional leave days to deal with domestic violence. (KPMG & Vodafone, 2019). Consequently, Kenya should take deliberate and urgent steps to end domestic violence and reduce the costs on victims, families, and the economy.

## Kenya's Commitment to End Domestic Violence

Kenya incorporated the UN Sustainable Development Goals (“SDG”) and the African Union (“AU”) Agenda 2063 as part of its key deliverables under the Vision 2030. As a commitment towards achieving SDG 5 and AU Agenda 2063 on Gender Equality, Kenya has made progress towards achieving gender equality by using the law to fight violence against women and girls.





The Government of Kenya has enacted a robust legal and policy framework to prevent, protect, and prosecute gender-based violence. Some of the enacted laws include, the Constitution of Kenya (2010), Penal Code Cap 63), the Children's Act (2001), the Sexual Offences Act (2006), the Witness Protection Act (Revised 2012), the Counter-Trafficking in Persons Act (2010), the Prohibition of Female Genital Mutilation Act (2011), the Matrimonial Property Act (2013), the Victim Protection Act (2014), and the Protection against Domestic Violence Act (2015). At the international and regional level, Kenya has also demonstrated commitment to end violence against women. Kenya signed and ratified the Convention on the Elimination of all Forms of Discrimination Against Women ("CEDAW") and the Protocol to the African Charter on Human and People's Rights on the Rights of Women popularly known as the Maputo Protocol. The treaties call for countries like Kenya to promote women rights, eliminate all forms of discrimination and violence against women and promote gender equality. The treaties also place an obligation on Kenya to submit reports on its progress towards eliminating discrimination and violence against women.

At the policy level, the government in collaboration with development partners adopted several national policies that outline inter-agency and organization strategy to respond to various forms of violence. For example, the National Plan of Actions on trafficking in persons and ending commercial sexual exploitation of children and the National Management Guidelines on Sexual Violence, among others. In implementing the policies, the Kenyan government continues to partner with donor agencies and work alongside civil society organizations such as COVAW.

This Handbook is intended to act as a simple guide for gender-based violence victims across Kenya, seeking protection under the Protection against Domestic Violence Act. The handbook provides a step by step procedure for applying for a protection order, best practices from other countries and makes targeted recommendations for the public justice system stakeholders.





**P.A.D.V.A.**



## Introducing the Protection against Domestic Violence Act

In 2015, Kenya passed into law the Protection against Domestic Violence Act (“PADVA”),<sup>1</sup> which provides for the protection and relief from domestic violence and the protection of a spouse and any children or other dependent people. This law protects all victims of gender-based violence such as domestic violence.

## Highlights of the Protection against Domestic Violence Act

- Recognizes the unlawful nature of domestic violence.
- Provides immediate and long-term protection for domestic violence victims.
- Gives responsibilities to the police to investigate domestic violence cases and assist the victims.
- Gives courts power to issue protection orders (“POs”) to protect domestic violence victims.

You may seek protection if you are worried about your safety because you are being physically abused, stalked, harassed, sexually assaulted, or threatened by someone you have a domestic relationship with, close relationship or someone not closely associated with you.

## What is Domestic Violence

The PADVA in section 4 defines domestic violence as violence against a person, or threat of violence or of imminent danger to a person, by any other person with whom they are, currently or previously, in a domestic relationship. The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) Committee defines domestic violence as violence that is disproportionately 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, intimidation, and other denials of freedom (CEDAW General Comment 19 and 35).

## What are the Duties of Police Officers in Relation to Domestic Violence?

- 1 To advise domestic violence victims of the protections available under PADVA.
- 2 To investigate cases reported to them either directly or anonymously.
- 3 To advise victims on the procedure of making a complaint.
- 4 To advise the victims on available temporary shelters.
- 5 To advise the victims on access to medical care.
- 6 To advise the victims when reporting on their right to speak with officers of the same gender.
- 7 To arrest without warrant, Respondents who violate the protection orders.

<sup>1</sup> The PADVA No.2 of 2015.





## The Meaning of Violence

Under the PADVA violence means abuse that includes the following:

- 1 Child marriage, female genital mutilation, forced marriage, forced wife inheritance.
- 2 Interference from in-laws, sexual violence within marriage, virginity testing.
- 3 Widow cleansing, defilement, rape, incest, sexual abuse, physical abuse.
- 4 Sexual assault (such as improper touching or groping of breasts, buttocks, or genital areas), physical abuse.
- 5 Harassment (stalking, pursuing or waylating someone), intimidation, verbal abuse, emotional or psychological abuse. Harassment also includes harassment in public spaces such as streets or public transportation.
- 6 Damage to property, denying access to a shared home or house.
- 7 Behavior that harms or may cause harm to the safety, health, or well-being of the person such as trafficking in persons.

## The Meaning of Domestic Relationship

The PADVA defines a domestic relationship to include the following:

- a People married to each other.
- b People who were previously married to each other.
- c People living within the same household.
- d People who have divorced or whose marriage has ended.
- e Family members and relatives who include spouses, siblings, parents, children, adopted and foster children, in-laws, stepchildren, stepparents, grandparents, cousins, nephews, and nieces.
- f People engaged to marry.
- g People who have a child together.
- h Persons in a close relationship. The court may determine a close relationship by the nature (not necessarily a sexual relationship), and in particular the amount of time the persons spend together, the place or places where that time is spent, the way that time is spent and the duration of the relationship.



## What is a Protection Order?

A Protection Order (“PO”) is a court order that allows a victim of domestic violence to require an abuser to do or not certain things.

## Contents of a Protection Order

### A PO may order the abuser to stop the following:

- 1 Physical and sexual abuse and threats to abuse.
- 2 Damage, or threats to damage property.
- 3 Stalking, intimidation or harassment or threats to intimidate or harass leading to emotional or verbal abuse.
- 4 Emotional/ verbal/ psychological abuse includes repeated insults, ridicule, or name-calling, and repeated threats.
- 5 Economic abuse which includes threats to engage in denying household necessities, medical expenses, school fees, rent, mortgage expenses or denial to seek employment or an income generating activity.
- 6 Engage, or threaten to engage, in cultural or customary rites or practices such as widow cleansing, widow inheritance and female genital mutilation.
- 7 Stay away from the house or home of the victim.
- 8 Stay away from the business, employment, educational institution, or any other location of the victim.
- 9 Avoid contact with the protected person through telephone, social media, or any other form.

### A PO may also do the following:

- 1 Direct the abuser to pay all expenses or emergency money relating to the victim's needs and those of any child or dependent.
- 2 Give temporary custody of any child or dependents of the abuser to any person or institution and regulate access by the abuser.
- 3 Direct the abuser to grant access to the victim to their place of residence and use of the facilities.
- 4 Any other order as the court may direct.

The PADVA considers the person applying for a Protection Order as the **APPLICANT** or **Protected Person** and the person committing the violence as the **RESPONDENT**.

Specifically, under the PADVA, a Protection Order may direct that a respondent not do any one or more of the following:

- a** Physically or sexually abuse or threaten to abuse the protected person.
- b** Damage, or threaten to damage, any property of the protected person.
- c** Engage, or threaten to engage, in behavior including intimidation or harassment, which amounts to psychological abuse of the protected person.
- d** Encourage any person to engage in behavior against the protected person where the behavior, if engaged in by the respondent would be prohibited by the order.

Every protection order should conditionally provide that at any time other than when the protected person and the respondent are, with the consent of the protected person, living in the same house, the respondent shall not do any one or more of the following:-

- a** Watch, loiter near, or prevent access to or from, the protected person's place of residence, business, employment, educational institution, or another place that the protected person visits often.
- b** Stalk the protected person or stop or accost the protected person in any place.
- c** Without the protected person's consent, enter or remain on any land or building occupied by the protected person.
- d** Where the protected person is present on any land or building, enter or remain on that land or building, in circumstances that constitute a trespass.
- e** Make any other contact with the protected person (whether by telephone correspondence, or otherwise), except such contact that is- (i) reasonably necessary in any emergency; (ii) permitted under any order or written agreement relating to custody of, or access to, any minor; or (iii) permitted under any special condition of the protection order.

The Court may also order the following: -

- a** Grant to any protected person the right of exclusive occupation of the shared residence or a specified part by excluding the respondent from the shared residence or the specified part, regardless of whether the shared residence is solely owned or leased by the respondent or jointly owned or leased by both of them.
- b** Require the respondent to permit any protected person to enter the shared residence, or to enter the residence of the respondent accompanied by any enforcement officer for the purpose of collecting the personal belongings of the protected person or persons.
- c** Require the respondent to permit any protected person to have the continued use of necessities previously used by the protected person or persons.
- d** Give such other directions as may be necessary for the proper carrying into effect of any order.



The Court may also: -

- a Direct the respondent to pay all expenses or emergency monetary relief in respect to the applicant's needs and those of any child or dependant of the respondent.
- b Give temporary custody of any child or dependant of the respondent to any person or institution and regulate access by the respondent to such child or dependant.
- c Direct the respondent to provide the applicant or dependant access to their place of residence and use of the facilities associated therewith.
- d Direct the respondent to do or omit to do any act or thing which the court considers necessary or desirable for the well-being of the applicant or a dependant.

**Note:** A protection order shall not affect any title or interest that the respondent or any other person might have in the said premises.

In PADVA, the court issues a PO as a **final order**. A final order means bringing the case to a close with the Magistrate or Judge providing a solution to the dispute of the people involved by issuing a Judgment and making certain directions. If a person feels they are in danger, they can make an Application to the Civil Court for a PO.

### What is an Interim (Temporary) Order?

An Interim Protection Order (IPO) means an emergency order made by the court **pending the full hearing** of a case and the making of a final order.

#### TIP

*A victim may pursue Protection Orders outside of a criminal case. If a person commits an act of domestic violence, a victim may report to the Police Station and have the perpetrator prosecuted in criminal court. At the same time, a victim of domestic violence may also apply to the civil court for protection orders. Simply put, the institution of a criminal case does not affect the Applicant's right to seek a protection order in a civil court*

### Civil Court System

- IPOs and POs are part of the civil court system.
- In a civil case, you bring the case against another person.
- You may drop your case at any time.
- In Civil Court, the Magistrate cannot make the abuser (respondent) go to jail, BUT if the abuser violates a protection order, the abuser may go to jail or pay a fine.

### Criminal Court System

- If you are assaulted, threatened, or stalked, you report to the police.
- A criminal case starts with a police report for a crime.
- The police investigate the case and decide whether to arrest the suspect.
- If the suspect is arrested, the prosecutor decides whether to start a case against the suspect.





THE LAW COURT

UZIMA POLICE STATION

COURT

## Who can Apply for a Protection Order?

A person who is in a **domestic relationship** with another person may apply to the Court for a protection order in respect of that other person. If you believe you are a victim of **domestic violence** or you are a parent or guardian of a child victim of domestic violence, or a person who lacks the capacity, you may apply for a protection order.<sup>2</sup> A person who lacks capacity includes a child, an elderly person who has limitations because of advancement in age, a person with intellectual and mental disabilities or affected by an illness or condition rendering them mentally impaired. A person who has attained the age of eighteen (18) years may with the authorization of the court apply for a protection order for their own protection.

If you believe you are a victim of physical abuse, sexual abuse, harassment, stalking (pursuing or waylaying someone), intimidation, cyber stalking, verbal abuse, emotional or psychological abuse, you may apply to the court for a PO.

**Note:** Any person whether in a domestic relationship or not, may apply to court for a protection order.

## Procedure for Applying for a Protection Order

### Step 1-Preparation and Filing of Case

- 1 Understand the complaint under the Protection against Domestic Violence Act available at [www.kenyalaw.org](http://www.kenyalaw.org).
- 2 Collect all the necessary evidence to support the case. For example, medical reports such as the p3 Form, PRC form, medical images or treatment notes, phone text messages, social media messages, photos of attack, photos of the damage to property, national identification documents such as birth certificates, Identity cards or passports, school enrolment forms, business permits, ownership documents such as title deeds or lease agreements, vehicle log books, any written documents including letters, written witness statements, written threats, judgement or ruling of a court related to the case, Occurrence Book (“OB”) number.
- 3 You do not need a Lawyer to file for a Protection Order. However, it is advisable to consult an Advocate of the High Court of Kenya and licensed to practice law for the current year. Search for the Advocates at the Law Society of Kenya available at <https://online.lsk.ke/>. You can also consult organizations that offer **free legal advice** such as COVAW.
- 4 The **first document** to prepare is called an Application. Write your Application in the form of a Notice of Motion or a Chamber Summons. If applying for the protection order on behalf of another person or a child, you must list their name within the Application. You must also indicate that you are acting as a next friend for the minor or person with limited capacity. If you have concerns about privacy, consider using initials in the Court Documents. For children and other vulnerable persons, always use initials to protect their privacy.<sup>3</sup>
- 5 The **second document** to complete is a signed Supporting Affidavit with the Application. In the Affidavit be specific as possible. Include all relevant dates, locations, witnesses, name (s) of the Respondent and supporting documents such as occurrence book number (“OB”), medical reports such as the P3 form, phone call log, messages, written threats, or photos of damage. It is not a requirement to have a police report.

<sup>2</sup> Under section 9 & 10 of the PADVA, A children officer, the Director of Children's Services, a police officer, a probation officer, social welfare officer, religious institution, NGO, a relative or neighbour or any other person authorized by the court may apply for a protection order for a child. For a person who lacks the capacity (because of advanced age or mental disabilities), a police officer, representative or any other person authorized by the court may apply for the protection order.

<sup>3</sup> Vulnerable persons include children, persons with intellectual challenges.

- 6 The **third document** to prepare is called a **Plaint**. The **fourth document** to write is called a **Verifying Affidavit** and the **fifth document** to prepare is **Witness Statement (s)**. These documents form part of the **MAIN SUIT**. A Lawyer or a person with basic legal knowledge can help you to prepare the **Plaint** and the supporting documents.
- 7 Present the **Application and Supporting Affidavit** together with the **Plaint, Verifying Affidavit and Witness Statement (s)** to the resident magistrate court registry nearest to you for assessment and filing. Present the **Court Documents in three copies**. For applicants around the country, you can also access the filing system through the **Judiciary of Kenya e-filing portal** at <https://efiling.court.go.ke/>. Please consult a **Lawyer, Court Clerk, or a person with basic legal knowledge** on the e-filing system.
- 8 Ensure you file the **Application and Supporting Affidavit** before **12p.m Monday to Friday** or during the official working hours (8a.m to 5p.m).
- 9 The **Court Registry** assesses the fees required for you to pay. Upon paying and presenting the receipts, the registry affixes court stamp, and allocates a case number. Ensure you keep **two original copies** of the court documents.

**TIP**

*When seeking an interim (temporary) protection order, you can prepare the Certificate of Urgency, the Application and the Supporting Affidavit only. It is advisable to file the documents on the same day.*

## Step 2-Placing of the Case File before Duty Court

- 1 Once the **Court Registry** allocates the case number, they inform you of the **hearing date** and the **Magistrate** to attend to the case.
- 2 For an **interim protection order Application**, the court registry may allocate the **next day** after filing the **Application**.
- 3 Make sure you attend court either **virtually or physically** on the allocated date for the hearing of the **interim protection order Application**. Remember to carry an **original copy** of the **Application** to the court.
- 4 The **Duty Court** reviews the **Application** together with supporting documents and makes the decision whether to issue or not issue the **interim protection orders**.
- 5 The court does not grant a protection order automatically. The case you present before the court must meet the legal requirements. That is, state the form of abuse suffered, the period of abuse and attach the evidence to show the court the abuse suffered.
- 6 Remember to refer to the **Magistrate** as “Your Honor.”
- 7 Upon review of the **Application**, the court may certify the case as **urgent** and grant any of the **interim protection orders** and set a **hearing date**. The court may also certify the case as **urgent** and require that the **APPLICANT** serve the **RESPONDENT** with the court documents for another hearing with the **RESPONDENT**.

- 8 Whenever a court issues an Interim Protection Order, the court shall issue Summons to **Appear** to the RESPONDENT which shall be attached to the ORDER. Upon receiving the communication from court, ensure that you obtain the ORDERS from the Court Registry and serve them upon the RESPONDENT.
- 9 The Process of Service requires sending a “**Licensed Court Process Server**” to serve the Court Documents upon the RESPONDENT. Access licensed process servers on <https://kenyalaw.org/kl/index.php?id=8158> or consult the Court Clerk or a Lawyer near you. Do not serve the court documents or the orders yourself.
- 10 Upon service, the Process Server files a **Return of Service** with the court to show that the RESPONDENT received or declined to receive the Court Documents.
- 11 Upon issuing interim protection orders, the Court requires that the APPLICANT and RESPONDENT argue the case, for the court to hear both sides.
- 12 During the court hearing, the court may ask questions, ensure you respond to the questions and present the evidence of violence to court. During the hearing, in the case of a child the court may order for a social enquiry report through the children's officer or in the case of a person who lacks capacity and above the age of eighteen years, the court may ask for a social enquiry or assessment report through the department of aftercare and probation services.
- 13 The Applicant may also prompt the court for the relevant offices such as Children's Office or the Department of Social Services, to submit the social enquiry reports to court.
- 14 The RESPONDENT may choose to respond and file the defence to the Application such as a Replying Affidavit.
- 15 The APPLICANT should ensure to get a copy of the response from the RESPONDENT.
- 16 The Court then requires both sides to come to court and present their case.

### Step 3- The Full Hearing of the Application

- 1 During the hearing date, if ready, each person presents their side of the story before the court.
- 2 The APPLICANT presents their side of the case and then the RESPONDENT presents their side of the case. The court may direct the Applicant makes a response to the arguments by the RESPONDENT.
- 3 After the hearing, the court may direct that both the APPLICANT and the RESPONDENT make written or oral submissions. Submissions should summarize the issue in the case and answer the question “why the court should grant the protection order?”.
- 4 The court proceeds to make a **RULING** to determine whether to grant the protection orders or not.
- 5 After the court delivers, the RULING, it proceeds to issue a hearing date for the hearing of the **MAIN SUIT**.
- 6 During the Main Suit, each person presents their case and the court proceeds to make a final decision in the form of a **JUDGEMENT**.

- 7 In delivering the Judgment, the court determines whether to issue a Protection Order (**FINAL ORDERS**) or not.
- 8 The Court also decides on the duration of the protection orders.
- 9 If any person does not agree with the decision of the court, they have a **RIGHT OF APPEAL** to the High Court of Kenya.

**TIP**

*If the Respondent fails to appear in court on the expected day and the court is satisfied of the process of service and the evidence on record, the court may proceed to make a determination and issue the protection orders in their absence.*

A.C. & CO  
ADVOCATES



## Commonly Asked Questions Answered

### Who Can Report a Case of Domestic Violence?

A victim or any person who is aware of an ongoing domestic violence case including neighbors, friends can report a case of domestic violence. A concerned person may choose to make anonymous reports with their identities hidden.

### Can I File for a Protection Order without An Advocate?

Yes. Although an Advocate of the High Court of Kenya or any other person qualified to practice law may give advice, you can seek a Protection Order without an Advocate.

### What is the Cost of Filing for a Protection Order in Kenya?

The court may charge between Kshs. 1000 to Kshs. 2500 as the court filing fees. Licensed process servers may charge anywhere between Kshs 1500-5000 depending on the distance to the Respondent's address of service. An Advocate may charge between Kshs. 50,000 to Kshs. 100,000 or more to represent you. The Advocate may also choose to represent you with minimal or no charges at all.

### Can I Obtain a Protection Order without Notifying the Respondent?

Yes. The Court may grant without notice to the Respondent an Interim Protection Order. The Court can also require a hearing before granting an Interim Protection Order. The court may issue a notice requiring the Respondent to show cause why a protection order should not be made. The Respondent should receive the notice in the manner required under the law. The Court cannot grant a Final Protection Order, without notice to the Respondent and a hearing.

### How Long Does a Protection Order Last?

An Interim Protection Order remains in force until it is replaced by a final protection order or varied or revoked by a competent court. A court may grant an interim protection order pending the hearing of the Main Application and Suit. A Protection Order shall remain in force for such period as may be specified by the court and maybe reviewed, from time to time, depending on the circumstances.

### What is the Criminal Penalty for Violating a Protection Order?

A Respondent who has been served with a copy of the protection order and who contravenes the order commits an offence and is liable to a fine not exceeding Kshs. 100, 000 or to imprisonment for a minimum period of 12 months, or both.

### What happens if the Respondent Violates a Protection Order?

Section 23 of the PADVA provides that a police officer may arrest the Respondent without a warrant of arrest on the request of the Applicant or the Applicant's Representative, at any time within 5 years after the day of issue of a Protection Order, or such extended period as the court may order, if the Respondent breaks any term or condition of the order.



## Who Should be Present During a Hearing?

The law provides for the hearings of domestic violence to take place in private with only persons relevant to the case present.

## Should a Protection Order Prohibit the Applicant from Seeking other Legal Remedies?

No. A person can obtain other forms of reprieve. For example, if the Applicant has a Protection Order after sexual abuse, the Applicant may petition the Court for a Protection Order against workplace harassment from the Respondent. A Victim may also lodge a criminal complaint. Section 41 of the PADVA provides that where a victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court hearing the claim for compensation may award such compensation in respect of such injury or damage or loss as it deems just and reasonable.

## Can you file for a Protection Order in Conjunction with other Legal Proceedings?

Yes. Even if another case is ongoing involving the same parties for example custody or divorce, it does not prohibit issuance of a protection order neither shall it bar the institution of criminal proceedings against the Respondent. Section 15 of the PADVA provides that a court shall not decline to make a protection order merely because of the existence of other proceedings.



## The Practice of Protection Orders in Kenya

The practice of the issuance of protection orders while well provided for in law differs in practice. The case studies below and based on real life experiences, provide a glimpse into the challenges faced by victims and Advocates in using the PADVA to seek protection.

### Case Study I

MRR was married for a period of fifteen years. In 2017, MRR began experiencing episodes of abuse in her marriage and decided to informally separate from the husband. At the time, MRR ran a business with her siblings and as such she was able to provide for her three children. In 2018, the estranged husband started visiting her place of business, causing chaos, and making threats of eliminating her. MRR sought the help of a friend who advised her to report the matter to the Police Station.

At the police station, the officer informed her to go report to the area Chief. The Officer declined to take down the report stating “mambo ya nyumbani” (domestic issues) ought to be discussed with the area Chief first.

Having failed to receive assistance from the station, MRR reached out to a friend whose niece is a Lawyer. MRR explained to the Lawyer the issues she had with her estranged husband. She explained to the Lawyer that the husband continually disrupted her business, abused her, and threatened to take away the children. The Lawyer advised that as a precautionary measure they should file for protection orders to restrain the husband from visiting her place of work. The Lawyer charged MRR Kshs. 70,000/= which was beyond her means. Through the help of family, MRR raised the Lawyer's fees and they filed the Application.

During the hearing, the Lawyer presented to the court the evidence available regarding the threats and disrupting visits from the Husband to MRR's place of work. During the hearing for the Application for interim protection orders, the court declined to grant the orders sought stating that MRR had not presented sufficient evidence to warrant the issuance of an interim protection order. As MRR narrated, the Lawyer informed her that because they did not attach a copy of the visitor's book or call witnesses who can attest to the husband's behavior, the case failed at that stage.

At the time of the ruling, the husband had filed a separate application seeking custody of the children. The Lawyer advised MRR to have the protection order case put on hold as they defend the custody case. The custody case cost MRR another Kshs 80,000/= as legal fees. MRR reports that it took less than a month from when the Lawyer filed the Application for protection order to when the court heard the case and issued a ruling. MRR stated that high legal costs may have prevented her from seeking the court's protection had her family not assisted. Further, MRR stated that the court placed very high evidentiary standards in protection cases. MRR recommended that courts should lower the standards in terms of the evidence required and that police stations should offer domestic violence victims the necessary assistance.



## Case Study 2

### Advocate's Perspective

#### Scenario 1

In 2018, Advocate 1 filed a Chamber Summons Application under a certificate of urgency in the children's court. She represented a woman separated from the spouse because of violence and threats to her life. The Advocate appeared before court (Ex-parte) and argued the Application, the day following the filing. The court granted the interim protection orders pending the hearing of the case. In the Order, the court restrained the Respondent from coming near the house or stalking, abusing, intimidating the Applicant, and taking custody of the child. The Advocate stated that the Respondent breached the protection order and continued to stalk the Applicant. After advising the Applicant to report the breach to the nearest police station, the Applicant expressed fears that she might be turned away and declined to report.

At the hearing of the Main Application (Inter-Parties), a different court hearing the main application did not touch on the issue of violence. The court failed to determine the issue of protection orders despite the Applicant asking for an extension of the same. The court also noted that Applicant, an adult could not benefit from the protection in a children's court which is also designated as a Resident Magistrate court. In this case, the Advocate had supported the Application with all the necessary documentation including medical reports, birth certificate, photos of the attack and witness statements.

Because of the outcome, the court failed to provide the Applicant the necessary protection. Without the final protection orders, the Respondent continued to taunt, threaten, and stalk the Applicant. The Advocate advised the Applicant of the right of appeal which they are actively pursuing. In this case, the Advocate took the case up while charging minimal fees as the client could not afford the Kshs. 100,000/= fees quoted.

#### Scenario 2

Advocate 2 filed an Application under certificate of urgency in 2019. He sought the protection of his client and child from assault and abuse by the Respondent. The child through the Applicant had reported allegations of abuse and a criminal case instituted. Despite the criminal case ongoing, the Respondent continued to taunt the Applicant. According to the Advocate, the Respondent had sent hired thugs to the Applicant's house to threaten her. The civil court declined to grant the protection orders citing the lack of evidence and that the Applicant had not proved that the Respondent had abused the child.

Before filing the case, the police had issued the Applicant with a P3 form, which she had filled at a local government hospital and charged Kshs.2000/=. Despite relying on the express provisions of the PADVA, the Court informed Advocate 2 that he should have gone to the criminal court on cases of assault and abuse and not seek protection from a civil court.

During the hearing of the Main Suit, the court argued that protection orders have no bearing to the child because the accused person had not been convicted. Having lost the case at the lower court, the Applicant instituted an appeal because of the disregard of the express provisions of the PADVA and the high evidentiary threshold.

## Lessons Learnt in Relation to the Practice of Protection Orders

Despite the progressive nature of the PADVA, Applicants and Advocates face numerous challenges while seeking protection orders:

- 1 The approach of enforcement officers to domestic violence restricts intending applicants such as MRR from seeking assistance at police stations. The enforcement officers should familiarize themselves with their duties under the provisions of the PADVA and assist domestic violence victims accordingly.
- 2 The huge costs associated with legal fees and court costs for filing for protection order applications, inhibits most intending applicants from seeking services of Advocates and courts. As the Advocate and court costs may be out of reach for indigent persons, stakeholders should consider reducing court fees in relation to protection orders application for indigent persons. Additionally, civil society organizations should partner and provide free legal services and frequent trainings on self-representation before courts of law.
- 3 The Judiciary should re-examine the evidentiary threshold under the PADVA that has resulted in denial of protection orders for urgent and deserving cases such as MRR and many others. The tedious and otherwise long procedures of applying for a protection order serve to expose the victim to further harm and violence especially where courts decline to grant interim order in the first instance. The law should make provisions for issuance of protection orders at the first instance and fast tracking of such cases as a protective measure.
- 4 The Judiciary should increase the capacity of the judicial officers to effectively respond to and handle cases of domestic violence through the PADVA.
- 5 Because of the trauma experienced by domestic violence victims and the need for temporary shelter, both governmental and non-governmental agencies should collaborate and provide counselling facilities as well as temporary secure shelters for the victims.
- 6 Because of the varied interpretation on the extent and application of the PADVA, stakeholders within the public justice system should hold inter-agency sessions and trainings to discuss the best approaches and practices towards implementing the PADVA.

## Summary of Protection Orders and Best Practices from Other Countries

### Ghana

Ghana enacted its Domestic Violence Act in 2007.<sup>4</sup> The Domestic Violence Act was followed by the formulation of the National Policy and Plan of Action (“NPPOA”) developed by the former Ministry of Women and Children's Affairs in 2008. The NPPOA lays out specific roles of key stakeholders to effectively implement the Domestic Violence Act, under the direction of the Domestic Violence Secretariat (Ministry of Gender, Children and Social Protection, 2016).

### Highlights of Ghana's Protection Orders

#### 1. The Law prohibits the Respondent from:

- a Coming within fifty meters of the applicant.
- b Physically assaulting or using physical force against the applicant or any relation or friend of the applicant.
- c Forcibly confining or detaining the applicant or a relation or friend of the applicant.
- d Depriving the applicant access to adequate food, water, clothing, shelter arrest.
- e Forcing the applicant to engage in a sexual contact.
- f Engaging in a sexual conduct that abuses, humiliates, or degrades the applicant.
- g Depriving or threatening to deprive the applicant of economic or financial resources.

#### 2. Remedies Available for Victims of Domestic Violence

- a Lodge a criminal complaint.
- b Apply for protection orders (both interim and final).
- c Get compensation.
- d Reconciliation.
- e Where the offence amounts to an offence that is deemed as aggravated or the corresponding penalty under Ghana's Criminal Procedure Code (CPC) is over three years, the CPC provisions apply.

### Best Practices from Ghana

- 1 Ghana has in place a trust fund known as Victims of Domestic Violence Support Fund that is meant to assist victims of domestic violence.<sup>5</sup> The fund assists victims with basic material support, training, rescue, rehabilitation and reintegration of victims of domestic violence. The fund works towards the construction of reception shelters for victims of domestic violence in regions and districts, and training and capacity building of persons connected with the provision of shelter and restoration.
- 2 **Medical Treatment** - Ghana provides for free medical treatment for any person victim of domestic violence who has been referred to a medical facility by the Police.

<sup>4</sup> Domestic Violence Act 2007(Act 732) <http://www.ilo.org/dyn/natlex/docs/ELECTRONICS/88525/101248/F503368907/GHA88525.pdf>.

<sup>5</sup> Section 29 Domestic Violence Act Ghana.



- 3 **Arrest of perpetrators-** The Police have the right to arrest a suspect of domestic violence with or without a warrant. Further, the Act provides for civilian arrests.
- 4 Court applications take fourteen (14) days to be heard and for the court to make its orders. Interim protection orders are valid for three months with the final protection orders being valid for twelve (12) months and can be extended.
- 5 Breach of the orders amounts to a fine or imprisonment of a maximum of two years.
- 6 Under the Ghana law, the institution of a criminal charge arising from acts of domestic violence shall be in addition to and shall not affect the rights of an applicant to seek a protection order under the Act.
- 7 Ghana has Domestic Violence and Victim Support Unit (“DOVVSU”) which is a unit within Ghana Police Service.<sup>6</sup> It is a special branch of the Police to exclusively deal with domestic violence cases. Its mission is to prevent, apprehend and prosecute culprits of domestic violence and child abuse.

## South Africa

South Africa enacted its Domestic Violence Act in 1998.<sup>7</sup> In 2011, the country also enacted the Protection against Harassment Act. Both laws provide relief to victims of domestic violence and enhance the protection against harassment.

### Highlights of South Africa's Protection Laws

- 1 The Law prohibits the respondent from committing any act of domestic violence.
- 2 The harassment law prohibits respondents from harassing or engaging in any conduct understood as harassment to the applicant.
- 3 Under both laws, the court has the power to order the seizure of any arms or dangerous weapon in the possession or under the control of the respondent.
- 4 The court can order that a peace officer accompany the complainant to a specified place to assist with arrangements regarding the collection of personal property.
- 5 If the court grants an interim or final protection order, under both laws, it must issue a suspended warrant for the arrest of the abuser that will become active if the abuser violates the order.
- 6 Under the harassment law, the police officers may assist a complainant to determine the name and address of a respondent for purposes of filing a protection order.
- 7 Under the harassment law, the court may summon a person to appear in court to give evidence. If the person fails to appear, they are guilty of an offence.
- 8 Under the harassment law, the court may order any police officer to investigate a criminal complaint.

<sup>6</sup> Ghana Police Service, <http://police.gov.gh/en/index.php/domestic-violence-victim-support-unit-dovvsu/> (last accessed 30th July 2020).

<sup>7</sup> Domestic Violence Act No 116 of 1998 [http://www.gov.za/sites/default/files/gcis\\_document/201409/al16-980.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/al16-980.pdf) (last accessed on 30th July 2020).



## Best Practices from South Africa

- 1 Both laws, the Domestic Violence Act and the Protection from Harassment Act spell out the role of the police officers in relation to harassment and domestic violence.<sup>8</sup>
- 2 Police officers should present an info pack to the complainant in the language of the complainant's choice and explain to the complainant, the contents including the remedies available and the right to lodge a complaint.
- 3 The Domestic violence act also places personal responsibility to the Police. The law provides that failure by a Police Officer to discharge his duties as provided by the law amounts to gross misconduct as contemplated in the South African Police Service Act, 1995 and that disciplinary proceedings should commence against such an officer.<sup>9</sup>
- 4 The South African Police also make bi-annual reports to Parliament on domestic violence management and any charges against its officers.
- 5 In instances where the complainant is on self-representation, it is the duty of the court clerk to inform the complainant of the available options including any right to lodge a criminal complaint.

## United States of America

The United States of America ("U.S") enacted its Violence Against Women Act ("VAWA") in 1994. While the U.S has independent states that have their own laws, VAWA was enacted as a federal law and in instances where the domestic state laws are not sufficient, a victim of domestic violence can rely on VAWA for protection from the abuser. Prosecutors can take action to safeguard victims and provide notice that respondents will be held accountable in any jurisdiction in which they violate a protection order (NCPOFFC, 2006). As VAWA is a federal law, every state government must recognize and enforce protection orders issued in other states, as if issued in the enforcing state.

In summary, the key provisions of the VAWA include:

- 1 Full funding of rape kits and legal and court fees for domestic violence protection orders.
- 2 Victim protection orders are recognized and enforced in all state, tribal, and territorial jurisdictions within the United States.
- 3 Implementation and funding of special domestic violence crime units in local communities.
- 4 Special domestic violence and sexual violence training for law enforcement officers in domestic or dating violence cases.
- 5 Interstate travel restrictions are placed on convicted domestic violence abusers. A convicted domestic violence abuser should neither follow the victim into another state, nor force a victim to move to another state.
- 6 The definition of domestic violence has been expanded to include dating violence and stalking including cyber stalking.

<sup>8</sup> Section 18 (4) of the S.A Police Service Act.

<sup>9</sup> Section 2 South Africa Domestic Act.

## Best Practices from the United States

- 1 The VAWA recognizes domestic violence as a felony, a serious offence with punishments of not less than a year.
- 2 The VAWA fosters community coordinated responses to domestic violence and sexual assault and allocates substantial funds for shelters and other services for women.
- 3 The VAWA allocates funding for judicial education and training programs, and programs to increase outreach to rural women as well as government funding for studies of violence against women.
- 4 In a bid to increase protection to victims of domestic violence, in 1994 and 1996, Congress also passed changes to the Gun Control Act making it a federal crime in certain situations for domestic violence abusers to possess guns.<sup>10</sup>
- 5 The State of Arizona has special rules and procedures for Judges to consider in issuance of protective orders.<sup>11</sup> In California a stalking order is in effect for three years,<sup>12</sup> and employers can seek a protective order for an employee's if threatened at work.
- 6 In Colorado and New Jersey, the permanent domestic violence orders are open indefinitely to the judge's discretion.<sup>13</sup>

## The United Kingdom

The United Kingdom's ("UK"), Domestic Violence, Crimes and Victims Act 2004 came in to supplement the existing legislations that previously governed domestic violence. That is, the Family Law Act 1996, the Protection from Harassment Act 1997, and the Protection from Harassment Order 1997. The domestic violence law provides protection to victims of crime especially domestic violence. In addition, the UK's Stalking Protection Act 2019 provides for stalking protection orders.<sup>14</sup> Under the law, the police make the application on behalf of victims of domestic violence seeking interim or final orders.

## Emergency Protection in the United Kingdom

In 2014, the U.K rolled out the Domestic Violence Protection Orders ("DVPOs") and Domestic Violence Protection Notices ("DVPNs") across all forty-three (43) police forces in England Wales. DVPOs are a civil order that fills a "gap" in providing protection to victims by enabling the police and magistrates' courts to put in place protective measures in the immediate aftermath of a domestic violence incident where there is insufficient evidence to charge a perpetrator and provide protection to a victim via bail conditions (DVPO, 2016). A DVPN is an emergency non-molestation and eviction notice which can be issued by the police to a perpetrator, when attending to a domestic abuse incident. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support, they require in such a situation. A DVPN can only be issued by a police officer of the rank of Superintendent or above. Within 48 hours of the DVPN being served on the perpetrator, an application by police to a magistrates' court for a DVPO must be heard. A DVPO is an order made by a magistrates' court after a DVPN has been issued.

<sup>10</sup> Domestic Violence Law, <https://www.justice.gov.usao-wdtn/victim-witness-program/federal-domestic-violence-laws> (last accessed on 30th July 2020).

<sup>11</sup> A Judge's Guide: Best Practices for Protection Orders;

<sup>12</sup> Wider Opportunities for Women Justice System Policy Series (2012).

<sup>13</sup> Wider Opportunities for Women Justice System Policy Series (2012).

<sup>14</sup> CPS, <https://www.cps.gov.uk/legal-guidance/stalking-protection-orders> (last accessed 30th July 2020).



A DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. The DVPO allows the victim space to consider their options with the help of a support agency. Both the DVPN and DVPO contain a condition prohibiting the perpetrator from molesting the victim.<sup>15</sup>

The immediate emergency protection offers the victim protected space to explore the options available to them and make informed decisions regarding their safety. Police can also arrest the perpetrator without warrant for breach of the order.

### Best Practices from the United Kingdom

- 1 The UK provides for the application of two types of injunctions, non-molestation order and occupation order to prevent someone from being violent, threatening violence, harassing, or intimidating.<sup>16</sup> A person can apply for a non-molestation order even when living with the respondent.
- 2 The UK does not charge victims of domestic violence for any applications for injunctions.
- 3 Breaching a non-molestation order is a criminal offence that can be taken to the criminal court. The maximum sentence is five (5) years' imprisonment and a fine.
- 4 Legal provisions allow police officers to issue DVPNs for forty-eight (48) hours to provide immediate assistance and protection to domestic violence victims.
- 5 The UK provides for the application of emergency protection orders by the police on behalf of victims.

### The Kingdom of Norway

Compared with many other countries, Norway has a low level of violence. According to Statistics Norway's surveys of living conditions in the period 1987–2007, about five per cent of the adult population in Norway are subjected to violence or the threat of violence for one year. These figures have remained stable in recent decades.<sup>17</sup> In Norway it is prohibited to subject someone to violence, including domestic violence, female genital mutilation, forced marriage and human trafficking. The Norwegian Penal Code in Section 57 provides for the practice and issuance of restraining orders.

### Restraining Orders in Norway

Norwegian Authorities issue Protection Orders in two-fold; through the prosecuting authority or the courts. The prosecuting authority's decision to impose a restraining order is in writing and states the person against whom the restraining order is directed and the basis for the restraining order. The prosecuting authority may impose a restraining order if there is reason to believe that a person will otherwise commit a criminal offense against another person, pursue another person, otherwise violate another's peace, or commit disorderly conduct that is particularly stressful to another person.<sup>18</sup>

The restraining order may provide that the person subject to the order, may not be present in specific areas, or stalk, visit or otherwise contact another person.<sup>19</sup>

<sup>15</sup> DVPO Guidance (2016).

<sup>16</sup> VAW, <http://rightsofwomen.org.uk/get-information/violence-against-women-and-international-law/domestic-violence-injunctions> (last accessed 30th July 2020).

<sup>17</sup> Violence Prevention in Norway, <http://www.nkvt.no/content/upload/2015/08/violence-prevention-in-norway-activities-and-measures-to-prevent-violence-in-close-relationships.pdf> (last accessed 29th July 2020).

<sup>18</sup> S. 222a Norway Criminal Procedure Code [https://lovdata.no/dokument/NL/lov/1981-05-22-25/KAPITTEL\\_4-12#C2%A7222a](https://lovdata.no/dokument/NL/lov/1981-05-22-25/KAPITTEL_4-12#C2%A7222a) (Last accessed 29th July 2020).

<sup>19</sup> S. 57 Norway Penal Code [https://lovdata.no/dokument/NLE/lov/2005-05-20-28/KAPITTEL\\_1-1#%C2%A759](https://lovdata.no/dokument/NLE/lov/2005-05-20-28/KAPITTEL_1-1#%C2%A759) (last accessed 22nd October 2020).





As an additional protective measure, a perpetrator of violence can be subjected to electronic monitoring for easy surveillance of movements and ensuring compliance with therestraining orders. The Respondent may be banished to or from certain parts of the country.<sup>20</sup> A breach of a restraining order may result in a fine or imprisonment for up to one (1) year. If the prosecuting authority decides not to issue protection orders, a victim of violence has a right to bring the matter to the courts for issuance of the orders. The courts will decide either on the evidence adduced by the complainant in court or rely on the documents filed in court in instances where both the complainant and the accused person are not in court.<sup>21</sup>

### **Best Practices from Norway**

- 1 The government provides safe accommodation at a crisis center, guidance, and legal assistance to report the matter to the police.
- 2 The government has a coordinated local aid apparatus, statutory crisis center services, emergency telephone for children and nationwide treatment services.<sup>22</sup>
- 3 Restraining orders may last up to one year and a person may be restrained in staying in a certain place or in the shared home.
- 4 The Prosecuting Authority issues a restraining order and brings it to court within five (5) days.
- 5 The Norway Penal Code provides in S 57 subjects a perpetrator of violence to electronic monitoring as an additional measure of ensuring compliance with the restraining orders.
- 6 Protection orders in court can be issued on the strength of the case documents alone even in instances where both the complainant and perpetrator are unable to attend court.

<sup>20</sup> S. 168 Norway Penal Code, [https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL\\_2-4#%C2%A7168](https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL_2-4#%C2%A7168) (Last accessed 29th July 2020).

<sup>21</sup> The Courts of Norway, <https://www.domstol.no/en/the-criminal-court-proceedings/types-of-cases/restraining-order/> (last accessed 22nd October 2020).

<sup>22</sup> Norway, <https://www.regjeringen.no/no/dokumenter/vendepunk-handlingsplan-mot-vod-i-na/id500470/> (Last accessed 29th July 2020).



## Targeted Recommendations for Kenya's Public Justice System

In acknowledging the rising numbers on domestic violence, stakeholders within Kenya's public justice system have an obligation to review the practice and procedure in relation to protection orders and provide a near seamless experience for gender-based violence victims. Looking at the content of protection orders and the best practices from the five countries, Kenya can borrow a few lessons to strengthen its practice in relation to domestic violence response. For example, in its law, Ghana, has gone to the extent of providing for a technical and specialized unit to deal with domestic violence ensuring quality investigations of cases. In comparison, Kenya lacks a specialized domestic violence unit that would provide effective response. In Kenya, the Officer Commanding Station can direct any officer to investigate a case of domestic violence thus limiting the quality of investigations.

In South Africa, the law expressly provides for suspended warrants of arrest should a respondent breach a protection order. The South African law also provides for the training of court clerks to assist unrepresented litigants. In implementing the PADVA, Kenya can borrow the practice to enhance protection measures for victims especially where respondents breach the protection orders. Additionally, training court clerks would ensure timely advice and assistance for unrepresented litigants in courts across Kenya. Crossing over to the United States, some jurisdictions have eliminated the legal and court filing costs associated with protection orders. The practice ensures that more victims present their cases to court without the worry of the high legal and court filing fees.

In eliminating the barriers associated with legal costs for protection orders, Kenya can ensure that thousands of indigent victims such as those identified in the case studies access the protection measures under PADVA.

In the United Kingdom, the government has rolled out emergency protection orders and empowered the police service to issue the same to protect domestic violence victims. The practice ensures that as first responders, police provide immediate protection for victims and secure them from further harm. In the Kingdom of Norway, some cases allow for electronic monitoring of the abusers to ensure compliance with the restraining orders.

Considering the economic costs and losses due to violence against women and girls, Kenya can borrow the practices from the UK and Norway to further secure victims and effectively implement the PADVA. While the PADVA exists as a good law, the best practices from across jurisdictions and the case studies demonstrate an urgent need for public justice system stakeholders to revisit the implementation of the PADVA and examine the different interventions needed to attain the intended objective of the law. As an introduction to the conversation, we have made targeted recommendations for public justice system stakeholders as outlined below:

### Judiciary

- 1 The Chief Justice should clarify the legislation and issue a special gazette notice designating specific Resident Magistrates as the Magistrates referred to under the Protection against Domestic Violence Act ("PADVA") and that any Court with a resident magistrate jurisdiction can hear applications brought under the Act.
- 2 In addition to what is contemplated under law, the Chief Justice should issue Special Guidelines and Rules of Procedure under PADVA. The Rules should include simplified forms of Application departing from the current complex civil procedure applications. The simplified forms or procedure would go a long way to assist thousands of domestic violence victims to access justice.

- ③ As seen from the case studies, the legal costs associated with protection orders appear out of reach for indigent victims. The Chief Justice should consider issuing a special notice to waive filing fees for indigent victims.
- ④ The Chief Justice should consider the training of special court clerks to assist victims filing for protection orders.
- ⑤ The Chief Justice through the Judicial Training Institute should consider the provision of targeted and technical capacity building of judicial officers on the Protection against Domestic Violence Act.

### The Inspector General

- ① To assist in implementation of the PADVA, the Inspector General (“IG”) should develop the Rules of Procedure regarding the duties of police officers and capacity building as required under Section 6(4) of the Protection against Domestic Violence Act.
- ② The IG should consider expanding the mandate of the gender desks and constitute a nationwide Specialized Unit to respond to and investigate domestic violence cases.
- ③ The IG should direct the in-service training of general duty police officers on domestic violence and their duties and responsibilities under the PADVA.
- ④ The IG should direct that Officer Commanding Stations oversee the enforcement of protection orders presented to their station. The practice would ensure abusers comply with the orders issued.

### The Ministry of Health

- ① The Ministry should waive the fees for filling of medical reports relating to domestic violence to encourage more victims to seek medical assistance.
- ② The Ministry should also ensure compliance with the **Embu High Court Petition 2B of 2017** that deemed unconstitutional the practice of levying fees on victims of sexual violence seeking treatment services.
- ③ The Ministry should allocate funding to train healthcare professionals on management of domestic violence cases.
- ④ The Ministry should provide for counseling services at every government health facility for survivors of domestic violence.

### The Department of Children Services

- ① The Department should undertake due diligence and seek protection orders for children living in abusive situations.
- ② The Department should in conjunction with county governments allocate funding to build temporary shelters for children in every county.
- ③ The Department should train its officers on the Protection against Domestic Violence Act.
- ④ The Ministry should increase funding to the Domestic Violence Hotline 1195 and the Childline Helpline 116.

- 5 The Department should strengthen child protection coordination at the national, county, sub-county, ward level up to the household level in each area.
- 6 The Department should improve and coordinate the provision of psychosocial support and after care services to children in need.
- 7 In coordination with the national police service, county governments and NGOs, establish and improve existing child protection units at the station level.
- 8 In coordination with government and non-governmental partners, enforce and create awareness on the provisions of domestic violence laws touching on children.

### **The County Governments**

- 1 The County Governments should allocate substantial funding and build Crisis Centers/ safe houses to provide temporary shelters and support services to domestic violence victims.
- 2 The County Governments should allocate funding to cater for domestic violence support such as County domestic hotlines.
- 3 The County Government in collaboration with the Ministry of Health, should consider waiving treatment costs for victims of domestic violence.
- 4 The County governments should designate a support center for domestic violence victims at each ward level.
- 5 In collaboration with the Ministry of Health, the County governments should set aside funding and train healthcare professionals on management of domestic violence cases.
- 6 The County Government should enact county specific legislation and policies on domestic violence.
- 7 The County Governments should conduct awareness and inform people of the provisions of the national and county laws relating to domestic violence.

### **Civil Society Organizations**

- 1 Conduct national awareness campaigns on domestic violence laws and especially the availability of protection orders.
- 2 In collaboration with law enforcement agencies, conduct trainings on the Protection against Domestic Violence Act.
- 3 In collaboration with the National Legal Aid Service and the Law Society of Kenya, conduct countrywide legal clinics on self-representation relating to domestic violence laws.
- 4 Lobby the government to allocate substantial funding towards the Victim Protection Fund under the Victim Protection Act, 2014.
- 5 In collaboration with donor agencies, train paralegals to assist potential litigants to access services contemplated under the PADVA.
- 6 In conjunction with government agencies, work towards having dedicated Counselors attend court to assist and offer psychotherapy to victims of domestic violence.

- 7 Lobby the National Assembly for the review of the PADVA to provide for enhanced protection measures for victims.

### **The Office of the Director of Public Prosecution**

- 1 In cases where the victim has lodged a criminal complaint, the prosecutors should request the fast tracking of the cases.
- 2 The Director of Public Prosecution should consider the training of the prosecutors on the provisions of the PADVA.

### **The National Assembly and The Senate**

- 1 Review the existing legislation to increase protection to domestic violence victims. The National Assembly should consider amending the PADVA to provide stiffer penalties. Currently, the law provides for a fine of Kshs.100,000 or imprisonment for up to twelve (12) months or both. The National Assembly should consider revising the law to increase the penalty to not less than three years imprisonment for breach.
- 2 The National Assembly should consider amending the law to include other emergency protection orders such as the Violence Protection Notice, to issue through the Police Service. The Violence Protection Notice can issue through an officer of the rank of Chief Inspector or above and would provide immediate assistance to victims before moving to court to file for an Interim Protection Order.
- 3 The National Assembly should consider amending the law to establish and operationalize a fund for domestic violence victims. Alternatively, the National Assembly can consider amending the Victim Protection Act to specifically provide that the Victim Trust Fund shall also assist victims of domestic violence.
- 4 The National Assembly should ensure allocation of substantial funds to the Victim Protection Board and the Victim Trust Fund to ensure support for the victims of crime, including domestic violence victims.
- 5 The National Assembly should increase funding to the National Police Service and require that the IG present a bi-annual report to Parliament on the management of domestic violence cases.
- 6 The National Assembly should increase funding to the Judiciary to ensure sufficient budgetary allocation for domestic violence case management.
- 7 The Senate should hold annual domestic violence preparedness meetings with the Council of Governors and prompt the county governments to allocate substantial funds in the response to domestic violence.

## List of Statutes

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