

THE ROLE OF LEGAL AID IN ADDRESSING SURVIVORS' CASES OF DOMESTIC VIOLENCE IN AFRICA

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ABSTRACT

This research investigates legal aid in the context of domestic violence cases, highlighting its role to ensure access to justice for vulnerable and marginalized survivors, predominantly women. Its target is the examination of how legal aid services, through mechanisms such as representation, education, and advocacy, enable survivors to negotiate the legal systems before remedies and social support. Regarding methodology, the study employs a doctrinal research method supplemented by case studies and policy reviews, drawing from propositions such as the Maputo Protocol, national laws, and practices in Uganda, South Africa, Nigeria, and Kenya. It was found that legal aid systems help remove barriers to justice, improve legal literacy for survivors, and ensure holistic support through multi-sector collaboration. The article continues the policy and legal discourse, recommending the strengthening of legal aid systems, enhanced levels of funding, and regional cooperation as key avenues in the fight against gender-based violence in Africa.

Keywords: Legal, Aid, Domestic Violence, Africa

1. Introduction

Domestic violence remains one of the human rights violations that persist in Africa. While it is a worldwide phenomenon, its incidence in the continent has now reached alarming proportions and forms in at least physical, sexual, psychological, and economic abuses¹. But given how the African continent is involved in extreme manifestations of this crime, it is simply uncommon to be a usual human rights violation worldwide². Domestic violence is a multifaceted human rights violation across different territories. It is also known as domestic abuse or intimate partner violence, and it is defined as "a pattern of behavior in any relationship that is used to gain or maintain power and control over an intimate partner". The World Health Organization (WHO) estimates that nearly one in three women worldwide has experienced domestic violence, with an even higher number in African countries due to socio-cultural and economic variables³.

Despite all the worldwide awareness, legal intervention, and concerted action to stem the rise of domestic violence cases, a rise in incidents was witnessed in Africa as a result of concealment and entrenched socio-cultural, legal, and economic factors. Cases of domestic violence differ depending on which country of Africa they take place with sub-Saharan Africa having a prevalence rate of 44%, while in North Africa, the rate is 34%⁴. These are staggering numbers if one goes

¹ Kaburi RM and Kaburi BB, 'Formal Support Services and (Dis) Empowerment of Domestic Violence Victims: Perspectives from Women Survivors in Ghana' (2023) 23(1) BMC Women's Health 539.

² Bowman CG, 'Domestic Violence: Does the African Context Demand a Different Approach?' (2003) 26(5) International Journal of Law and Psychiatry 473.

³ Lee JG and Backes BL, 'Civil Legal Aid and Domestic Violence: A Review of the Literature and Promising Directions' (2018) 33 Journal of Family Violence 421.

⁴ Usdin S and others, 'The Value of Advocacy in Promoting Social Change: Implementing the New Domestic Violence Act in South Africa' (2000) 8(16) Reproductive Health Matters 55.

into the cultural stigma of domestic violence and weak legal systems where less than 10% of cases are officially reported. Due to the harm it continues to inflict upon families and society, there is, as it were, an agreed urgency for addressing this malaise given the far-reaching consequences, of which perhaps the intergenerational cycle of abuse stands out as the worst⁵.

One of the factors identified as sustaining domestic violence in Africa is the socio-cultural environment where gender norms and power dynamics assume a paramount role⁶. Many African societies constitute themselves within patriarchal structures that design and sustain male dominance while curtailing female agency, thus promoting conditions where violence against women is tolerated and even justified. Theologies and indigenous dispute resolution mechanisms also muddle the waters on the matter since they tend to emphasize family cohesion over individual rights, thus discouraging the intervention of the formal law. Also, some religious interpretations that stress marital obedience and submission could deter survivors from pursuing justice or leaving abusive relationships.

2. Theoretical and Conceptual Framework

The Conceptual and Theoretical Framework section provides the intellectual foundation for the study by explaining the theories and concepts that guide the research. The theoretical framework explains the underlying theories, such as Access to Justice Theory, used to understand the relationship between legal aid and access to justice for survivors of domestic violence⁷. The conceptual framework, on the other hand, identifies and graphically or descriptively explains the key variables and how they relate to each other, such as legal aid services, justice outcomes, and survivor empowerment⁸. Collectively, they provide the organized eye through which the research issue is viewed and assist in ensuring consistency and clarity in the design and analysis of the study⁹.

Legal aid is the provision of legal services, legal advice, representation, and education to people who cannot afford them. Legal aid's primary goal is to ensure that all people, irrespective of their socio-economic status, are able to access justice and can exercise their rights under the law¹⁰. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems affirm that legal aid is "an essential element of a fair, humane and efficient criminal justice system based on the rule of law." In the case of domestic violence, legal aid becomes especially necessary, as survivors often face a range of intersecting barriers—financial, psychological, and cultural that make it difficult for them to get justice. Legal aid can give survivors the tools to be able to navigate the justice system, get protection orders, hold perpetrators accountable, and access social support

⁵ Weisz AN, 'Legal Advocacy for Domestic Violence Survivors: The Power of an Informative Relationship' (1999) 80(2) *Families in Society* 138.

⁶ Ibid

⁷ Epstein D, 'Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System' (1999) 11 *Yale Journal of Law & Feminism* 3.

⁸ Epstein D, Bell ME and Goodman LA, 'Transforming Aggressive Prosecution Policies: Prioritizing Victims' Long-Term Safety in the Prosecution of Domestic Violence Cases' (2003) 11(2) *American University Journal of Gender, Social Policy & the Law* 13.

⁹ Ibid

¹⁰ Ibid

services¹¹. Legal aid can be part of the effort to address power imbalances between survivors and abusers, particularly in patriarchal societies that still exist in many African countries.

Additionally, legal aid is acknowledged as a human right in Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR), and its availability is key to achieving Goal 16 of the UN Sustainable Development Goals.

2.1 Theoretical framework

The theoretical framework, and especially the Access to Justice Theory, is relevant to the current study as it positions legal aid within a conceptual framework through which to critique access to justice as an answer to domestic violence¹². This is particularly important as the theory argues that true access to justice is more than physical access to a court - it also involves affordability, effectiveness, cultural awareness, and an institutional perspective of fairness, especially for marginalized communities (i.e. survivors of domestic violence). By utilizing the theoretical framework, this study can illustrate the role of legal aid in providing a tactical tool for individuals facing financial barriers, fears of reprisal, limitations of legal knowledge, and institutional bias¹³. It can also begin to illustrate why survivors of abuse find it difficult to assert their legal rights, and how legal aid programs can highlight the differences between what is legally available and what is possible and attainable when services are accessed and aligned with notions of access to justice¹⁴.

Ultimately, the proposed theoretical framework enhances this study by providing a structured means to think about the obstacle and transformative role of legal aid in enabling justice, equity, and empowerment for survivors of domestic violence across the African continent¹⁵.

2.1.1 Access to Justice Theory

The theory of Access to Justice stresses every individual's right to obtain an impartial, effective, timely, affordable, and culturally competent resolution of disputes in law through unpredictable processes and institutions. Through the approach of Access to Justice, a full understanding of access includes opportunities beyond merely permitting entry into courts, and is identified with an open, more inclusive, responsive justice system, including the needs of underprivileged and marginalized groups¹⁶. "Access to Justice" came into prominence in the 1970s. Legal scholars Mauro Cappelletti and Bryant Garth brought it to the fore through their work in the Florence Access to Justice Project, including the publication of *Access to Justice: A World Survey*, a worldwide study to understand justice systems and improve their fairness. Cappelletti and Garth discussed the three manifestations of reform as: 1) legal aid to the poor, 2) simplifying procedures,

¹¹ Macy RJ and others, 'Domestic Violence and Sexual Assault Services: Inside the Black Box' (2009) 14(5) *Aggression and Violent Behavior* 359.

¹² Yakubu A and Chaudhuri S, 'Potential Opportunities and Challenging Realities: Organizations' Experiences While Accessing Resources and Advocating on Behalf of Survivors of Domestic Violence in Ghana' (2022) 94 *Women's Studies International Forum* 102620.

¹³ Han EL, 'Mandatory Arrest and No-Drop Policies: Victim Empowerment in Domestic Violence Cases' (2003) 23 *Boston College Third World Law Journal* 159.

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ Stoeve JK, 'Stories Absent from the Courtroom: Responding to Domestic Violence in the Context of HIV and AIDS' (2008) 87 *North Carolina Law Review* 1157.

and 3) participatory (and alternative) justice and dispute resolution¹⁷. In their view, access to justice was the "most basic 'human right,' the most basic 'requirement' of a modern, egalitarian legal system." The central tenet of Access to Justice Theory is that there are particular groups, that have systemic disadvantages (think women, the poor, and survivors of violence) in seeking to assert their rights¹⁸. Legal systems are also usually structurally inaccessible with high legal fees and intricate procedures.

Legal aid, in the sense invoked by this theory, is a strategic intervention to empower survivors of domestic violence by providing free or subsidized legal advice, representation, and information. It improves survivors' capacity to navigate legal systems, get protection orders, start prosecution, and obtain remedies such as divorce, child custody or compensation¹⁹. The African Commission on Human and Peoples' Rights reaffirmed this understanding in its Declaration of Principles on Equality and Access to Justice in Africa, which calls on member states to ensure that justice institutions are accessible to everyone, especially women and vulnerable groups. The United Nations Development Programme (UNDP) noted the need to include a human rights-based approach to justice sector programming, to guarantee accessibility and equity in justice processes²⁰.

A featured example can be drawn from Uganda, where the Legal Aid Service Providers Network (LASPNET), in partnership with the Justice Law and Order Sector (JLOS), provided critical legal support to survivors of gender-based violence. These services have shown an increase in willingness to pursue legal action by survivors and a decline in impunity. Thus, Access to Justice Theory is not only the moral and legal basis for advocating for legal aid in domestic violence cases, it identifies²¹.

2.1.2 Feminist Legal Theory

Feminist Legal Theory developed in the 1970s as a critical theory that questioned how formal laws have incorporated and institutionalized patriarchal values for centuries. It considers the law as a masculine-centered institution that marginalizes women's voices, particularly with respect to the gendered dimension of violence, not limited to domestic violence²². Feminist scholars observe that legal norms and procedures do not neutrally describe and respond to legal experiences but, instead, are constructed in a social and cultural context that legitimizes male perspectives while not describing women's 'lived' experiences. In some cases, such as in domestic violence laws, the law has ignored domestic abuse where it is addressed in the public sphere, or when it is described as a minor public (or private) event²³. Carol Smart has described in men and 'reasonable mans' values'

¹⁷ Ting L and Panchanadeswaran S, 'Barriers to Help-Seeking Among Immigrant African Women Survivors of Partner Abuse: Listening to Women's Own Voices' (2009) 18(8) *Journal of Aggression, Maltreatment & Trauma* 817.

¹⁸ Ibid

¹⁹ Buzawa ES, Buzawa CG and Stark ED, *Responding to Domestic Violence: The Integration of Criminal Justice and Human Services* (Sage Publications 2015).

²⁰ Coker D, 'Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review' (2001) 4(2) *Buffalo Criminal Law Review* 801.

²¹ Gregory AC, Williamson E and Feder G, 'The Impact on Informal Supporters of Domestic Violence Survivors: A Systematic Literature Review' (2017) 18(5) *Trauma, Violence, & Abuse* 562.

²² Ibid

²³ Epstein D and Goodman LA, 'Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences' (2018) 167 *University of Pennsylvania Law Review* 399.

as "a power that explains away the gendered nature of legal decision-making and interpretation.", and the notion of the law as objective and individualistic does not question how it catastrophically ignores lived experience²⁴.

A leading voice in feminist jurisprudence is Catharine A. MacKinnon, who describes the law as neutralizing male dominance and handcuffing female subordination. In her work *Toward a Feminist Theory of the State*, MacKinnon underscores the legal characterization of public and private in shielding accountability for domestic violence happening at home. Here, the implication is: if you violate norms on a public street²⁵.

In this context, feminist legal theorists argue for new frameworks that acknowledge the gendered nature of violence and survivors' needs. Proposals such as establishing specialized courts for domestic violence; creating trauma-informed alternatives in the law; and developing legal aid services that address specific needs of women²⁶. Legal aid, from a feminist perspective, is not only a procedural right but a radical vehicle for questioning institutional biases and restructuring inequality. The ability to exercise rights, information about how to obtain restraining orders to provide safety, and access to the justice systems for seeking redress only exist for survivors of violence if they are able to exercise rights within the justice systems, legal aid is a way for survivors of violence, especially those who are poor, uneducated or socially excluded, to access their rights with the justice system.

In addition, feminist theory requires a holistic and gendered approach to legal aid, especially in African contexts, because culture and economic dependence make it difficult for women to seek justice²⁷. Legal aid should not only cover court representation (though this should be included), but it should also include community legal education, empowerment, and advocacy that reflects on women's lived experiences. If the law is to achieve its aspiration to be a tool of justice, as Graycar and Morgan argue, then it must confront and expose the gendered assumptions that may be hidden in the law²⁸. Feminist Legal Theory offers an analysis of the processes by which justice becomes inaccessible.

2.1.3 Human Rights-Based Approach (HRBA)

The Human Rights-Based Approach (HRBA) is a conceptual and normative framework that translates international human rights norms, principles, and standards into law, policy, and practice. HRBA is based on the idea that everyone, especially the vulnerable and marginalized, has legal protections and remedies under international and domestic legal systems²⁹. HRBA is not simply about aid; it is about changing legal and governance systems so that people are empowered to claim their right, and states are held accountable as duty-bearers³⁰. HRBA was formally embraced through the United Nations 2003 Common Understanding on a Human Rights-Based Approach to Development Cooperation, and identified three main principles: all development outcomes must promote human rights; international human rights standards should guide all

²⁴ Ibid

²⁵ Ibid

²⁶ Stoeve JK, 'Transforming Domestic Violence Representation' (2012) 101 Kentucky Law Journal 483.

²⁷ Duterte EE and others, 'Correlates of Medical and Legal Help Seeking Among Women Reporting Intimate Partner Violence' (2008) 17(1) Journal of Women's Health 85.

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

aspects of development cooperation; and strengthen the capacity of rights-holders and duty-bearers³¹. An important feature of HRBA is that it is anchored to normative frameworks created by human rights instruments such as the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), and Convention on the Elimination of All Forms of Discrimination Against Women (1979).

An HRBA also reconfigures the relationship of state to citizen. Rather than being passive charity recipients, survivors of domestic violence should be rights holders. They can access those rights through a legal process requiring empowerment strategies such as legal literacy, awareness campaigns, and accessible justice institutions. The state, as duty bearer, must create and enable institutions capable of protecting rights – that is, the state must pass laws prohibiting domestic violence, train the judiciary and policing bodies to recognize and address gender sensitivity, and create responsive legal aid services that are accessible, timely, and subsidized³².

The concept of HRBA has been developed by important scholars and researchers within the legal and development discourse. Katarina Tomasevski, ex-UN Special Rapporteur on the Right to Education, argued human rights should be operationalized through legal frameworks with accountability and justice³³. Paul Gready and Jonathan Ensor, in their seminal work *Reinventing Development*, argued that HRBA changes the way to approach development through certain operating procedures of prioritizing dignity, agency, and participatory development practices. Asbjørn Eide, another noted scholar, argued HRBA will fundamentally change structure by addressing the underlying causes of inequality and exclusion rather than addressing its symptoms³⁴.

In Africa, the HRBA has guided a number of legal aid and justice sector reforms. For example, South Africa's Legal Aid Board (now 'Legal Aid South Africa') has adopted human rights principles in its provision of public legal services for indigents and vulnerable groups (for example, women survivors of domestic violence)³⁵. Similarly, Uganda's Draft National Legal Aid Policy (2012), as well as Uganda's National Action Plan on Human Rights document (2016) view access to legal aid as important, placing it in the context of 'realising' constitutional rights, with rights being contained in Article 21, 28 and 44 of the 1995 Constitution. Kenya's Legal Aid Act (2016) specifically recognizes legal aid as a 'right,' with particular provisions for both gender-based violence survivors and other vulnerable groups³⁶.

The Human Rights-Based Approach is based on a principled, rational, and, therefore, lawful foundation on the expansion of legal aid services that are closely linked to what will be a robust service to counter domestic violence³⁷. The HRBA takes account of empowerment, accountability,

³¹ Davies J and Lyon E, *Domestic Violence Advocacy: Complex Lives/Difficult Choices* (Sage Publications 2013).

³² Bell CC and Mattis J, 'The Importance of Cultural Competence in Ministering to African American Victims of Domestic Violence' (2000) 6(5) *Violence Against Women* 515.

³³ Warshaw C, Rivera EA and Sullivan CM, *A Systematic Review of Trauma-Focused Interventions for Domestic Violence Survivors* (National Center on Domestic Violence, Trauma & Mental Health 2013).

³⁴ Krasnoff M and Moscati R, 'Domestic Violence Screening and Referral Can Be Effective' (2002) 40(5) *Annals of Emergency Medicine* 485.

³⁵ Dutton MA, 'Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome' (1993) 21(4) *Hofstra Law Review* 2.

³⁶ Goodman LA and Smyth KF, 'A Call for a Social Network-Oriented Approach to Services for Survivors of Intimate Partner Violence' (2011) 1(2) *Psychology of Violence* 79.

³⁷ *Ibid*

participation and non-discrimination in the HRBA to the law - to ensure that the justice system is not simply a procedural reading of the law but one that is substantively fair, inclusive and accessible, irrespective of gender, sexuality or vulnerability³⁸.

The Importance of Legal Aid in Providing Access to Justice for Survivors

By enabling access to justice for survivors, legal aid complements the broader fight against gender-based violence, such as accountability, deterrence, and rule of law reinforcement. Legal aid is not just a basic right but also a crucial tool for ensuring access to justice for African domestic violence survivors. As a right, legal aid is entrenched in human rights documents like Article 14 of the ICCPR that guarantees the right to justice and, by implication, legal aid for individuals who cannot pay for a lawyer's services³⁹. The Maputo Protocol also calls on African states to provide accessible and effective legal aid to victims of gender-based violence. Thus, the necessity to strengthen legal aid mechanisms as a fundamental pillar in the anti-domestic violence crusade and human rights promotion on the continent cannot be overemphasized.

The confluence of legal aid with other supportive services is crucial in tackling the plight of survivors of domestic violence. Through the advocacy of a merger of legal, psychological, as well as social support, legal aid can meaningfully contribute towards building the survivors' resilience and empowerment, which cumulatively feeds into the general societal objective of mitigating domestic violence in Africa. This can be achieved in many ways such as by the supply of free representation to survivors who cannot afford attorneys and hence ensuring that survivors do not lack justice due to economic constraints; by educating women on their rights and sensitization which empowers survivors to seek protection, report violence, and access support services, and thus reduce their vulnerability to future violence; and through advocacy for policy changes directed at national and regional levels, and ultimately helping to create a more favorable legal framework that is centered on the rights of survivors and access to justice.

3. Legal Framework

A review of the legal framework is important to understand how laws, policies, and institutional mechanisms either enable or disable access to justice for survivors of domestic violence by reviewing where legal protections exist, as well as where there might be gaps or inconsistencies in enforcement. A review of the legal framework also provides insight into whether current laws fully protect the needs of survivors, comply with international human rights standards (such as the right to effective remedy), and provide meaningful remedies, accountability, and redress to survivors. Ultimately, the findings of a legal framework review also guide options for policy reforms to enhance legal aid, accountability, and justice sector reform that responds to the needs of survivors, is inclusive/non-discriminatory, and has a survivor-centered approach.

3.1 International Legal Framework

International and regional legal instruments offer normative standards to combat domestic violence and ensure that survivors have access to legal aid, including throughout Africa. The foremost of these is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted in 1979 by the United Nations General Assembly. Article 2 of

³⁸ Ibid

CEDAW requires State Parties to take the necessary steps to eliminate obstinance and discrimination against women in all its forms, including through law reform and institutional mechanisms. General Recommendation No. 33 (2015) of the CEDAW Committee explicitly outlines the duty of states to provide access to justice for women, including survivors of domestic violence, by providing affordable and accessible legal aid. The CEDAW commits does not mention domestic violence per se, however, it interprets gender-based violence as a form of discrimination in Article 1 through its jurisprudence, including the communication in *A.T. v Hungary* (Communication No. 2/2003), and therefore obliges states to take action by including legal redress mechanisms.

At the regional level, the African Charter on Human and Peoples' Rights (ACHPR) acknowledges dignity (Article 5), equality (Article 3), and family protection (Article 18). The ACHPR, however, does not specifically mention gender-based violence. Thus in 2003, the Protocol to the African Charter on the Rights of Women in Africa (also called the Maputo Protocol) was adopted. Article 4 of the Maputo Protocol requires State Parties to take legislative, administrative, and other measures of a non-judicial nature to prohibit all forms of violence against women, including domestic and sexual violence, and provide women with access to legal aid and an effective means of lodging complaints. The African Commission on Human and Peoples' Rights has found, for example, in its finding in *Doebbler v. Sudan* (2003) and *Equality Now and Ethiopian Women Lawyers Association v. Ethiopia* (Communication No. 341/07) that failure to provide protection for women from violence is a violation the Charter and the Maputo Protocol.

The United Nations Sustainable Development Goals (SDGs) also emphasise legal protection for violence survivors. Goal 5, specifically targets 5.1 and 5.2, aim to eliminate all forms of violence against women and girls and eliminate discriminatory laws and policies. Goal 16 aims to provide access to justice for all, and develop effective, accountable institutions.

3.2 Regional and National Legal Framework

African countries have adopted domestic violence laws and legal aid statutes aligned with international standards. South Africa's Domestic Violence Act 116 of 1998 stands as a landmark statute that defines domestic violence broadly and guarantees protection orders for survivors. It is complemented by Legal Aid South Africa, a public entity created under the Legal Aid South Africa Act 39 of 2014, which ensures access to free legal representation, including for domestic violence matters. The case of *Carmichele v. Minister of Safety and Security*⁴⁰ established state liability for failing to protect a woman from a known violent offender, affirming that state agencies must act with due diligence to prevent gender-based violence.

In Uganda, the Domestic Violence Act of 2010 criminalizes domestic abuse and provides for protective orders, counseling, and shelter services. Section 6 of the Legal Aid Policy (draft 2012) recognizes legal aid as a human right and outlines a multi-sectoral framework for service delivery, including state, non-state actors, and community paralegals. The Constitution of Uganda (1995) under Article 28 guarantees the right to a fair hearing, which courts have interpreted to include access to legal representation in criminal and civil cases affecting fundamental rights.⁴¹

⁴⁰ *Carmichele v Minister of Safety and Security* [2001] ZACC 22, 2001 (4) SA 938 (CC) (Constitutional Court of South Africa).

⁴¹ Justice Law and Order Sector, *JLOS Strategic Investment Plan III (SIP III) 2012/13–2016/17* (Government of Uganda) <https://governance.jlos.go.ug/index.php/news-and-notices> accessed 5 April 2025.

In Kenya, the Protection Against Domestic Violence Act, 2015 provides a comprehensive framework for the protection of victims, recognizing physical, sexual, psychological, and economic abuse. The Legal Aid Act, 2016, institutionalizes a National Legal Aid Service (NLAS) and mandates the establishment of legal aid schemes, prioritizing indigent and vulnerable groups, particularly women and children affected by domestic violence. Additionally, Kenya's Victim Protection Act, 2014 reinforces access to justice by safeguarding victims' rights to information, participation in proceedings, and access to psychosocial and legal support.⁴²

In Nigeria, the Violence Against Persons (Prohibition) Act, 2015 (VAPP Act), though initially applicable only in the Federal Capital Territory, has since been domesticated in several states. It provides a broad definition of domestic violence, including psychological, economic, and sexual abuse, and mandates protective and legal remedies. Section 38 of the Act calls for the provision of legal and medical assistance to survivors. Nigeria also operates legal aid services under the Legal Aid Council Act, Cap L9, Laws of the Federation of Nigeria 2004, which provides free legal representation and advice in matters including gender-based violence. The case of *Ijeoma v. State* (2015) LPELR-25939(CA) reinforced the judiciary's stance on the seriousness of domestic violence, upholding a conviction for grievous harm in a domestic setting.⁴³

Collectively, these international, regional, and national legal instruments create a framework of obligations and best practices that reinforce the right to legal protection, remedies, and redress for survivors of domestic violence. Legal aid emerges as a core component of this framework, not only facilitating access to justice but also advancing gender equality and human dignity across the African continent.

The Role of Legal Frameworks in Addressing Domestic Violence

In order to overcome this problem, there is a need to apply an effective legal strategy not only to decrease the trend, but also to consolidate the mechanisms of assistance and rehabilitation of victims in order to assure safety and access to justice⁴⁴. To this end, legal aid has come at the forefront of the broader struggle against gender-based violence (GBV), providing invaluable support to survivors who are faced with overcoming socio-economic challenges brought about by the problem as well as other related legal issues. But the question does have to be asked why African legal systems seem not to protect victims after all the liberal legislation of recent years in an attempt to address the problem⁴⁵.

Preceptively, the domestic violence legal policies in Africa are multifarious and diverse across countries. While some have enacted full and robust legal protections for the issue, many are still sublegal and institutionally reactive⁴⁶. Although international and regional human rights treaty such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) require states to make domestic violence an offence and provide protection for its victims, the general perspective is that most domestic legal systems are ineffective in enforcement, corruption, religious influence and weak legal framework which tends

⁴² National Legal Aid Service (Kenya), 'Programs and Partnerships' <https://www.statelaw.go.ke/departments/national-legal-aid-service/> accessed 11 April 2025.

⁴³ Legal Aid Council of Nigeria, 'About Us' <https://legalaidcouncil.gov.ng/> accessed 11 April 2025.

to make it difficult or impossible to implement the laws effectively⁴⁷. While countries like Nigeria, South Africa, Kenya, and Ghana have enacted certain domestic violence laws, some continue to rely on general criminal provisions, provisions which are insufficient for addressing challenges faced by survivors. Legal aid provides a crucial avenue for bridging the gap between justice and survivors⁴⁸.

Based on the multi-faceted nature of domestic violence, legal aid is not only a legal instrument but also a social justice and human rights defense instrument in view of the fact that survivors of domestic violence lack economic power, legal sophistication, or social supports to deal with sophisticated legal frameworks and obstacles posed by domestic violence. The worth of legal aid is seen in the delivery of its services, such as free or subsidized legal representation, advocacy, and counseling, in order that survivors can gain access to the protection and redress provided by law.

4. Legal and Institutional Barriers

Legal and institutional barriers constitute one of the largest barriers in handling survivors' cases of domestic violence. Many countries in Africa establish laws that criminalize domestic violence, but enforcement of those laws is weak at best. For one, there are so many reports of police officers failing or refusing to act on police complaints stating that it was a "domestic affair" or "family matter. Another barrier that is institutionalized and endemic in many of these countries is corruption. The victims generally face bribery, slowness, or misdirection of investigations, and compromised prosecutions, all of which depress victims and erode trust in legal institutions and the idea that they can help them⁴⁹. At another level, bureaucratic inefficiencies and cumbersome and complicated procedures also create barriers and more anxiety in an already broken survivor. The slowness of the courts and the administrative processes, the bureaucratic apathy, unmotivated and understaffed institutions, make it hard for survivors to gain access and handle processes, create other barriers to accessing the justice system, and lead to fewer options for survivors⁵⁰.

In Nigeria, for example, even though the Violence Against Persons (Prohibition) Act exists, survivors often continue to face opposition from law enforcement and even religious leaders because of a lack of training and institutional neglect.

4.1 Financial Constraints

Emerging funding resources to pursue the activities of legal aid services across Africa remain a daunting task for members of the practice. Most organisations involved in this area lack funding from the government, and when such funding is allocated, it seems insufficient to scratch the surface⁵¹. Donor funding, although often sporadic, on occasion comes with conditions or is allocated to a specific project where organisations do not have the ability to expedite matters of urgent need.

As a result, organisations operate with limited staff, less outreach, and a limited caseload, which limits their capacity. Also, it disenfranchises survivors who depend on their abusers as they are unable to pay privately for legal services to enable them to escape, perpetuating the cycle of abuse, violence, and silence⁵².

4.1 Socio-Cultural and Religious Challenges

Most African societies are inherently patriarchal, and this tendency complicates access to legal help for victims of domestic violence. Because these societies are often based upon a heavy culture of silence and acceptance to save 'honor' of the family, they support the idea that men can do no wrong as a leader of the family, leading to widespread victim-blaming because women take responsibility for the 'risk of provocation' through failure to preform matrimonial duties, or other examples⁵³.

The stigma surrounding domestic violence and the religious stance against divorce also serve as a deterrent for survivors of domestic violence to come forward. Survivors fear ostracism and disbelief, which forces many to remain silent or face violence. This also makes it psychologically difficult to leave a situation when the religious doctrine would teach divorce is ungodly and unwanted would often leave survivors with little to no other options, besides facing abuse, which most times, has resulted in death alrea⁵⁴.

The proper balance of cultural norms and legal principles must be made, and education and advocacy become necessary in this situation, which is also stymied in a number of ways, but especially because of the stigma and preconceived notions that the matter is not something to be discussed profitably.

4.2 Limited Coverage in Rural Areas

The availability of legal aid services in most African countries tends to be located in urban areas. Those can be quite beneficial to people in cities, but for those who are based in remote or rural areas or communities, the reality is that significant suffering continues to occur due to the lack of access to lawyers, courts, or other support⁵⁵.

Survivors must also deal with the additional burdens of travel and hotel costs, transportation options, and telecommunication costs for those who are living in remote areas just to attend

⁵⁵ Coker D, 'Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color' (1999) 33 UC Davis Law Review 1009.

hearings or file complaints. Even if desperately needed legal aid strategies such as community-based legal aid models and mechanisms are not available, or are still in the process of being developed, many survivors ultimately have to make the difficult decision to abandon any or all of their claims or complaints, and in doing so, remain in their state of continued abuse because in all practicality, justice is now out of reach⁵⁶.

5. Best Practices for Legal Aid

Best practices for the provision of legal aid consider the fundamental principles of accessibility, quality, sustainability, and responsiveness to the needs of vulnerable populations, such as domestic violence survivors. A notable best practice is to institutionalize legal aid services within formal justice systems. Legal assistance is not a charitable act, but a fundamental right recognized and guaranteed by law⁵⁷. The United Nations provides numerous international instruments to reflect this importance, such as the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, in which states are urged to ensure their legal aid frameworks are comprehensive and owned by the criminal justice system.

Accessibility is a key part of responsible legal aid practice. Legal aid should be linguistically and physically accessible, particularly for rural, marginalized, and underserved communities. For example, mobile legal clinics and paralegal programs have been introduced in Kenya, Uganda, and Sierra Leone to help close the justice gap in remote communities. In South Africa, Legal Aid SA has both satellite offices and community advice offices that enable the agency to deploy services over a given geographic area while maintaining the standard of service. Accessibility also requires awareness, especially when so many survivors of domestic violence do not know their rights or where they can go to seek help. This means that community awareness programs and legal literacy campaigns are critical to effective legal aid provision.

Quality and professionalism are important, too. Legal aid should be delivered by trained personnel who understand the specific needs of survivors, including how to provide trauma-informed services and operate with gender sensitivities. Codes of conduct, capacity building, and supervision are mechanisms that keep legal aid providers honest and professional. For example, in Malawi, legal aid personnel received training on current developments around laws pertaining to gender based violence as well as child protection laws and learned to be more effective when providing services on sensitive or high-risk case management. Similarly, Uganda's Justice Law and Order Sector (JLOS) has promoted multi-sectoral collaboration and continuous professional development for legal aid providers to improve case outcomes and survivor support.⁵⁸

Funding and sustainability are also important. Legal aid services must have enough funding and support to be able to offer services consistently and with at least some level of quality. Countries that have institutionalized national legal aid funds, like Kenya with its recently introduced Legal Aid Fund through its Legal Aid Act, offer helpful examples for how to achieve long-term fiscal sustainability. Other strategies include public-private partnerships, support from international

⁵⁶ Bowman CG, 'Theories of Domestic Violence in the African Context' (2002) 11 American University Journal of Gender, Social Policy & the Law 847.

⁵⁷ Henning KR and Klesges LM, 'Utilization of Counseling and Supportive Services by Female Victims of Domestic Abuse' (2002) 17(5) Violence and Victims 623.

⁵⁸ Justice Law and Order Sector, *Annual Performance Report 2018–2019* (2019) <https://www.dashboard.jlos.go.ug/> accessed 7 April 2025.

development partners, and legal aid being included within national budgets—all of which would help to lessen funding dependence on donor agencies in order to respond to changing needs.

Another recommended method, is to try and include legal aid within a more holistic support system for those who have survived gender-based violence. Legal support is all too often inadequate; survivors of domestic violence generally need not only legal support, but also psychosocial support, medical treatment, shelter, and reintegration assistance. Recommended practices support multisectoral coordination among legal actors, police, health support professionals, and civil society actors, in order to promote survivor-centered justice. The need for multisectoral coordination highlights the messiness of survivor support services. One-stop centers and referral networks, as established in Rwanda and Ethiopia, provide great examples of multisectoral coordination to provide quality and accessible services to survivors of gender-based violence.

Ultimately, monitoring and evaluation are essential to enhance effective legal aid systems. The best practices to be considered include systematic monitoring of performance data and ensuring feedback from ultimate beneficiaries. They also include conducting ongoing impact assessments on a regular basis to ensure accountability and improve systems when needed. Institutions like the Legal Aid Services Council in Tanzania and the Legal Aid Forum in Rwanda have strong monitoring systems which help them to manage data-driven decisions and quality service delivery. The best practices for legal aid in terms of legal and institutional recognition, geographic and social accessibility, professional capacity, financial sustainability, and multi-sectoral collaboration are critical for creating equitable justice systems, especially for survivors of domestic violence and who face convoluted and complex barriers to justice.

6. Recommendations

To effectively address domestic violence by using legal aid, there are a number of strategic interventions that will need to be undertaken. First, we will need to invest in legal aid systems by increasing public investment, simplifying national legal aid policy, and enhancing institutional support for state and non-state sector legal aid providers. In many of the African countries discussed earlier, legal aid is under-funded, and legal aid systems are under capacitated, which limits its accessibility to survivors of domestic violence, and particularly to those in rural and marginalised communities. Legal aid systems must be seen as a public good by governments and be adequately funded to ensure systems are sustainable and survivors can access these services.

Second, it is vital to develop capacity within the legal aid systems. Legal representatives, such as lawyers, paralegals, police officers, and human rights defenders need to be trained in a gender-sensitive approach to trauma, relationship equitable legal aid services, and legal frameworks on gender-based violence. Training should address some of the institutional biases that are typical in legal aid services, as well as develop the capability for service providers to garner the appropriate skills needed to work effectively with survivors - many are experiencing psychological trauma and do not often have agency in the process.

Third, efforts need to increase public awareness and community engagement, to address the cultural norms and stigma that prevent survivors from accessing holistic support and to seek legal redress. Legal aid providers can partner with community-based organisations, religious leaders, and local councils to undertake this work.

Fourthly, technology will enable legal aid provision to overcome geographic and logistical physical barriers to realize transformative possibilities mobile legal aid clinics, SMS-based legal assistance, and online legal portal use to provide legal information, advice, or assistance, have the potential for closing legal access gaps faced by people living in remote or underserved areas. These innovations are especially valuable in post-conflict or rural settings where legal infrastructure is diminished or not available.

Finally, enhancing regional collaboration through knowledge sharing and mutual learning among African countries is crucial. Examples of successful legal aid models, such as South Africa's Legal Aid Board, Kenya's National Legal Aid Service, or Uganda's LASPNET initiatives, are extremely valuable for African countries envisioning how to position effective, rights-based legal aid services. Regional bodies such as the African Union and civil society coalitions can fulfill a coordinating function in the promotion of best practices and harmonization of standards.

7. Conclusion

This research has established that legal aid is a vital component of the domestic violence remedy, especially given that in African contexts, survivors experience many barriers to justice. Using the Access to Justice Theory, we develop a legal aid service as legislation that goes beyond representation and includes empowerment, education, and structured inequalities dismantling and where survivors (women, in a patriarchal and resource-constrained context) can access, understand and engage with the justice system for protection, remedy, and lasting safety and recovery.

Examples from the continent, including Uganda, South Africa, Kenya, and Nigeria, demonstrate that well-resourced and properly coordinated legal aid systems facilitate survivors in accessing protection orders, the criminal justice system, and other integrated services. The overall contribution of legal aid to social change is obvious in its ability to shift community norms, educate vulnerable groups, and help influence policy change. However, the study also identified significant gaps in terms of implementation (funding, professional capacity, swords, and regional disparities). In order to address these obstacles, we must evolve interventions with improving capacity, innovation, and regional collaboration being a critical advancement.

Ultimately, making legal aid available, accessible, and responsive to the needs of domestic violence survivors cannot be regarded as just mandatory.