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Nancy Baraza Karen Koech***

MORE THAN MEETS THE EYE: THE IMPACT OF COVID-19 ON FAMILY LAW IN KENYA

*Nancy Baraza**

*Karen Koech***

ABSTRACT

The advent of the COVID-19 pandemic has tragically unmasked the fragility of all systems and structures globally. It has proved that the gains of thousands of years are just one pandemic away from dismantlement. The pandemic has exposed the volatility of economies, governments, employment, transportation, education, healthcare among other sectors in the current civilisation. Predictably, the legal field has not been spared by the grip of the pandemic. Most notable is the closure of court houses in light of the social-distancing regulations, the emergence of new criminal offences developed to enforce compliance of COVID-19 regulations, the expansion of human rights law with regard to the limitation of certain rights, among others. These changes have had immeasurable implications to the justice system and legal practitioners alike. In Kenya, mitigating measures such as online court sessions and legal filing have been resorted to. These have however been coupled with a myriad of challenges. Nonetheless, the impact is louder in some areas of law more than others. As the effects of the pandemic on contract law, employment law and other public law matters are widely discussed, areas of private law such as the current marriage regulations amidst the pandemic, shared custody and visitation rights of children, international adoptions, the operation of domestic violence restraining orders in times of quarantine among other such issues seem to be left out of the discussions. To this end, this paper specifically probes the reality of these private law issues in times of COVID-19. It discusses the effects that the pandemic has had on specific areas of family law in Kenya in view of the changes occasioned by the pandemic and suggests a way forward.

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I. INTRODUCTION

Family law is intrinsically provocative because it governs a fundamentally important aspect of human life. Unlike fields such as securities or evidence, family law exerts a direct and profound effect upon our most deeply cherished relationships.¹ The nature and purpose of family law has also evolved over the years and writing about this evolution is beyond the scope of this article. Suffice it to say, however, family law scholars have attributed functions to family law. Carl Schneider, for instance, has written that there are five functions of family law: the protective function, the facilitative function, the dispute resolution function, the expressive function, and the channelling function.² Regarding the protective function, Schneider states that one of the law's most basic duties is to protect citizens against harm done by other citizens, meaning protecting people from physical harm, as the law of spouse and child abuse attempts to do, and from non-physical harms, especially economic wrongs and psychological injuries.³ The second function in his view, "is to help people organize their lives and affairs in the ways they prefer. Family law performs this 'facilitative' function by offering people the law's services in entering and enforcing contracts, by giving legal effect to their private arrangements." The third function "is to help people resolve disputes."⁴ The current law of divorce "exemplifies family law's 'arbitral' function, since today's divorce courts primarily adjudicate conflicting claims to marital property, alimony, and child custody."⁵

Schneider's expressive function, "works by deploying the law's power to impart ideas through words and symbols."⁶ The final function listed by Schneider is the channelling function. In the channelling function, "the law creates or (more often) supports social institutions which are thought to serve socially desirable ends." To Schneider, the channelling function generally works by indirect means, such as by recognizing and endorsing institutions, rewarding participation in some institutions, disfavouring competing institutions, and penalizing non-use of particular institutions."⁷ It has an efficiency component," so that people entering an institution do not have to invent all the rules from scratch, and people outside that institution can have a clear understanding of the rules governing those within the institution. Channelling institutions "set

1 Michael T. Morley, Richard Albert, Jennie L. Kneedler, Chrystiane Pereira. *Developments in Law and Policy: Emerging Issues in Family Law*. Yale Law & Policy Review, Vol. 21 :169, 2003, P 169.

2 Jennifer Wriggins. *Marriage Law And Family Law: Autonomy, Interdependence, and Couples of the Same Gender*. 41 B.C. L. Rev. 265 (2000), P 270.

3 Carl E. Schneider, *The Channelling Function in Family Law*, 20 HOFSTRA L. REV. 495 (1992). In Jennifer Wriggins *Marriage Law and Family Law: Autonomy, Interdependence, and Couples of the Same Gender*. 41 B.C. L. Rev. 265 (2000), P 270.

4 *ibid*

5 *ibid*

6 *ibid*

7 *ibid*

bright lines which establish for all concerned what people's status is. They make it easier for people to predict the consequences of their own acts. Further, they protect people from intrusive governmental inquiries."⁸ Most countries around the world, Kenya included, have made attempts at enacting family law legislation to give meaning to the mentioned functions of family law. However, the onset of the COVID-19 Pandemic as discussed below, has dramatically put these functional assumptions about family law to great test.

The far-reaching impacts of the novel Coronavirus outbreak has been the topic of discussion across the globe since it was declared a global health pandemic in March 2020 by the World Health Organisation (WHO).⁹ The media has been awash with stories on the effects the virus outbreak has had on the globe as many countries were forced to shut down parts of their economies to keep up with COVID-19 regulation requirements of social-distancing. Governments were quick to unleash economic and social cushions to pacify the negative toll likely to be witnessed due to the closedown of businesses and other commercial activities.

In Kenya, the measures unveiled by the government to temper the spread of the virus included the closure of schools and higher education institutions, the ban of congregational meetings and gatherings, the preference of cashless transactions, the enforcement of a nationwide dusk-dawn curfew, border closures¹⁰, the requirement that employees, with the exception of essential workers, to work from home, among others.¹¹ Additionally, in anticipation of looming economic hardships, the government formulated a financial buffer package to benefit the citizenry. The package consisted of a 100% tax relief to Kenyans earning Ksh. 24,000 and below, the decrement of VAT from 16% to 14%, the reduction of Pay as you earn (PAYE) from a maximum of 30% to 25%, the decrement of resident income tax to 25% and other such like measures.¹²

The effect of this shift from the status quo in the country has been threefold. First, it has begat the foreseen challenges. These include the economic strains

⁸ Ibid

⁹ Archived: WHO Timeline - COVID-19' <<https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>> accessed 7 August 2020.

¹⁰ Govt Announces Extra Measures to Prevent Spread of Coronavirus Nairobi, Monday April 6, 2020 - Ministry of Health' <<https://www.health.go.ke/govt-announces-extra-measures-to-prevent-spread-of-coronavirus-nairobi-monday-april-6-2020/>> accessed 7 August 2020.

¹¹ Address to the Nation by H.E. Uhuru Kenyatta, C.G.H, President of the Republic of Kenya and Commander-in-Chief of the Defence Forces on Covid-19, Commonly Known as Coronavirus at Harambee House, Nairobi on 15th March 2020 | The Presidency' (2020) <<https://www.president.go.ke/2020/03/15/address-to-the-nation-by-h-e-uhuru-kenyatta-c-g-h-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-defence-forces-on-covid-19-commonly-known-as-coronavirus/>> accessed 7 August 2020.

¹² Presidential Address on the State Interventions to Cushion Kenyans against Economic Effects of Covid-19 Pandemic on 25th March, 2020. | The Presidency' <<https://www.president.go.ke/2020/03/25/presidential-address-on-the-state-interventions-to-cushion-kenyans-against-economic-effects-of-covid-19-pandemic-on-25th-march-2020/>> accessed 7 August 2020.

such as the job losses, reduction of per capita income, and cessation of small and medium-sized businesses which had been pre-empted by the abovementioned economic shield by the government. Second, it has exposed the cracks that exist in some of the systems in the country. COVID-19 has been the litmus paper testing the muscle of the healthcare systems of counties around the world. Kenya's healthcare system for example has been stripped of its inadequacies. When the first case of the novel virus was reported, research showed that there was a considerable lack of ICU beds and ventilator capacity.¹³ Of the 47 counties in the country, only 22 counties have at least a single ICU bed.¹⁴

In addition, the police crackdown during the enforcement of the dusk to dawn curfew revealed the inaptness of the policing system in Kenya. It was reported that at least six people lost their lives in the hands of brutal police officers ten days into the curfew.¹⁵ These incidences of police brutality violated the constitutional right to freedom from torture and cruel, inhuman or degrading treatment or punishment.¹⁶ This is an indication of a failure in a system which, ironically, exists to serve and protect. Third, it has disclosed certain pertinent social-cultural issues bedevilling the Kenyan society whose surfacing has been occasioned by the effects of the pandemic. It is a truism that gender-based violence cases rise in the midst of any type of crisis.¹⁷ Nevertheless, the surging number of domestic and sexual violence cases evidenced by the abominable number of teenage pregnancies reported in Kenya since the outbreak of the virus is appalling.¹⁸

It is on account of these considerations that this paper tackles the COVID-19 implications on the efficacy of family law, and make an argument that family

13 Edwine W Barasa, Paul O Ouma and Emelda A Okiro, 'Assessing the Hospital Surge Capacity of the Kenyan Health System in the Face of the COVID-19 Pandemic' (2020) 15 PLoS ONE e0236308.

14 *ibid.*

15 'Kenya: Police Brutality During Curfew | Human Rights Watch' <<https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew>> accessed 7 August 2020.

16 The Constitution of Kenya 2010, art 29, the people of Kenya — Acknowledging the supremacy of the Almighty God of all creation: Honouring those who heroically struggled to bring freedom and justice to our land: Proud of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation: Respectful of the environment, which is our heritage, and determined to sustain it for the benefit of future generations: Committed to nurturing and protecting the well-being of the individual, the family, communities and the nation: Recognising the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law: Exercising our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution: Adopt, Enact and give this Constitution to ourselves and to our future generations.", "id": "ITEM-1", "issued": {"date-parts": [{"2010"}]}, "title": "The Constitution of Kenya, 2010", "type": "legislation", "uris": [{"http": "http://www.mendeley.com/documents/?uuid=742624db-3bf8-4456-963e-d8712819155e"}]}, "mendeley": {"formattedCitation": "The Constitution of Kenya, 2010 2010.", "manualFormatting": "The Constitution of Kenya 2010, art 29.", "plainTextFormattedCitation": "The Constitution of Kenya, 2010 2010.", "previouslyFormattedCitation": "The Constitution of Kenya, 2010 2010."}, "properties": {"noteIndex": 8}, "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}]

17 UNDP, 'Gender-Based Violence and COVID-19' (2020) <<https://reliefweb.int/report/world/gender-based-violence-and-covid-19>> accessed 4 August 2020.

18 Ngatha Muturi Muturi, 'Teenage Pregnancy In Kenya' (National Council for Population and Development, 2020) <<https://ncpd.go.ke/teenage-pregnancy-in-kenya/>> accessed 4 August 2020.

law is no longer an adequate paradigm of knowledge in the face of COVID-19 pandemic. It will start off by giving a general scope of family law in Kenya then delves into a discussion on the specific arenas of this law that have been imparted by the outbreak such as marriage, children, domestic violence and access to justice. The paper then concludes by giving recommendations on how these matters can be combated.

II. FAMILY LAW IN KENYA

Family is the basic unit of any functional society and should therefore be protected to ensure societies continue to thrive.¹⁹ Family law, also known as the law of domestic relations, governs family matters and domestic relations.²⁰ This faction of law regulates marriage and divorce, children affairs, domestic violence, cohabitation and financial matters associated with the same.²¹ As compared to other sections of the law, family law has been characterised as ‘introverted’ as it tends to differ from jurisdiction to jurisdiction.²² Its introverted nature is attributed to the influence history, religion, morality, race and culture have on the family hence the disparity in family law systems in the world.²³ The personal nature of family law also contributes to this introversion.

In Kenya, the Constitution rightfully acknowledges the paramount role of the family as the natural and fundamental unit of society and the necessary basis of social order.²⁴ Family law in Kenya is governed by various statutes which were enacted after the *2010 Constitution* came into force. The reforms of family law post-2010 sought to amalgamate the various laws on family issues in the country²⁵ which was previously governed by a set of scanty and scattered

19 John Eekelaar, ‘Family Law and Identity’ (2018) 38 Oxford Journal of Legal Studies 822 <<https://academic.oup.com/ojls/article/38/4/822/5114416>> accessed 7 August 2020.

20 *ibid.*

21 Fines Barbara Glesner, ‘The Changing Landscape of Disciplinary Risks in Family Law Practice’ (2016) 50 Family Law Quarterly. “type”: “article-journal”, “volume”: “50”, “uris”: [“<http://www.mendeley.com/documents/?uuid=71ded978-fe8a-33d8-908c-d62859bdf919>”]], “mendeley”: {“formattedCitation”: “Fines Barbara Glesner, ‘The Changing Landscape of Disciplinary Risks in Family Law Practice’ (2016

22 Dewar John, ‘Review: Family, Law and Theory’ (1996) 16 Oxford Journal of Legal Studies 725.

23 *ibid.*

24 The Constitution of Kenya 2010, art 45(1).the people of Kenya – Acknowledging the supremacy of the Almighty God of all creation: Honouring those who heroically struggled to bring freedom and justice to our land: Proud of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation: Respectful of the environment, which is our heritage, and determined to sustain it for the benefit of future generations: Committed to nurturing and protecting the well-being of the individual, the family, communities and the nation: Recognising the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law: Exercising our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution: Adopt, Enact and give this Constitution to ourselves and to our future generations.”; “id”: “ITEM-1”, “issued”: {“date-parts”: [“2010”]]}, “title”: “The Constitution of Kenya, 2010”, “type”: “legislation”, “uris”: [“<http://www.mendeley.com/documents/?uuid=742624db-3bf8-4456-963e-d8712819155e>”]], “mendeley”: {“formattedCitation”: “The Constitution of Kenya, 2010.”, “manualFormatting”: “The Constitution of Kenya 2010, art 45(1

25 Lucyline Nkatha Murungi, ‘Consolidating Family Law in Kenya’ (2015) 17 European Journal of Law Reform 317.

legislations.²⁶ These included the *Matrimonial Causes Act*, *The Law of Succession Act*, *The Married Women Property Act* and *The Children Act*. The absence of a law regulating domestic violence in the country was a glaring lacuna.

Presently, under the *2010 Constitution*, there are several statutes that were enacted to govern the various aspects of family law. The laws regulating marriage in Kenya were consolidated into two statutes; *The Matrimonial Property Act of 2013* and the *Marriage Act of 2014*. The *Children Act of 2011* is still the law governing children and has been revised to be consistent with the Constitution. In addition, parliament enacted *The Protection Against Domestic Violence Act of 2015* which contains provisions on domestic violence. These laws have created a new order of laws relating to family in comparison to the former constitutional dispensation which paid little attention to matters of personal law. In addition, the High Court constitutes a family court division which simplifies the processes and procedures during family law proceedings. There also exists the Children's Court, established by the *Children Act* to conduct proceedings involving minors.²⁷ This transformation in the family law regime in Kenya has had positive effects on both the justice system and the justice seekers.

It is under this backdrop that the next section forms the substantive part of the paper. It shall cover the impact that the COVID-19 pandemic has had on specific family law aspects in the country.

III. SPECIFIC AREAS IN FAMILY LAW IN KENYA IMPACTED BY COVID-19 PANDEMIC

A. MARRIAGE

Marriage holds different definitions as it is described differently depending on the jurisdiction. This is attributed to the introverted nature of family law, as abovementioned, which does not allow for an all-encompassing description of marriage. In common law systems, marriage has many times been defined from Lord Penzance's perspective in the case of *Hyde v Hyde*²⁸, an 1866 English case, as a life-long unification of a male and female, exempting all others.²⁹ For instance, Lord Penzance's definition ignores many realities such as the option of divorce and does not recognize polygamous unions and other African customary marriages such as the woman to woman marriage.³⁰ Neither does it envisage

²⁶ Nancy Baraza, 'Family Law Reforms in Kenya: An Overview', Gender Forum, Nairobi 2009, p2.

²⁷ Children Act 2001, s 73.

²⁸ *Hyde v Hyde & Woodmansee* (1886) LR 1 130.

²⁹ Rebecca Probert, 'Hyde v Hyde: Defining or Defending Marriage' (2007) 19 Child and Family Law Quarterly 322.

³⁰ See Nancy Baraza, 'The Institution of Woman-to-Woman Marriage in Kenya: Navigating between Culture and Human Rights', (2018) 6 African Nazarene University Law Journal.

same-sex marriages which are now the recognised in England. To this end and from Kenya's historical and customary perspective, marriage in Kenya falls outside the purview of this renowned interpretation.

Marriage in Kenya is governed by the *Marriage Act of 2014* which codified all the former statutes pertaining marriage, pursuant to the Constitution.³¹ It describes marriage as a discretionary union, either monogamous or polygamous, of persons of the opposite sex registered under the Act.³² In this sense, marriage is a contract for which the parties elect but which is regulated by the state.³³ Further, marriage is recognized as a right conferred to any two consenting adults of the opposite sex.³⁴ The Act contains extensive provisions on marriage and it recognizes five systems of marriage; Civil, Christian, Customary, Hindu and Islamic.³⁵

The process of marriage in Kenya involves various procedures and parties. Legal, social and economic protocols are factored in the journey to marriage. It was therefore expected that the pandemic control measures would affect the marriage process. The social distancing directives by the Ministry of Health to manage the spread of the virus interfered with normal functioning of the Marriage Registry so much so that in May, the office of the Attorney General suspended all marriages due to high client numbers.³⁶ The office was manually serving an average of 500 clients daily hence it could not operate in the wake of the pandemic due to the mandatory physical distancing stipulations.³⁷ All the systems of marriages were affected by this suspension but civil marriages were particularly affected as they are celebrated by the Registrar of Marriages.³⁸ A number of religious marriages were also suspended upon the closure of all places of worship and the ban on social gatherings.³⁹

Under normal circumstances, *Marriage Act* conducts civil marriages by notice.⁴⁰ Both parties are expected to appear before the Registrar to fill a notice form.⁴¹ In addition, a fee and certain documents, including valid national identification cards, coloured passport size photos and death certificates of widowed or divorce

31 The Constitution of Kenya 2010, art 45(4).

32 Marriage Act 2014, s 3(1).

33 Elizabeth S Scott and Robert E Scott, 'Marriage as Relational Contract' (1998) 84 Virginia Law Review 1225.

34 The Constitution of Kenya 2010, art 45(2).

35 Marriage Act 2014, s 6.

36 Omondi Jerry, 'Kenya Launches Online Marriage Services' *CGTN Africa* (2020) <<https://africa.cgtn.com/2020/07/10/kenya-launches-online-marriage-services/>> accessed 28 August 2020.

37 *ibid.*

38 The Marriage Act 2014, s 24.

39 Kirui Ben, 'Over 2,500 Kenyan Couples Cannot Get Married Due to COVID-19' (*Citizen TV*, 2020) <<https://citizentv.co.ke/news/over-2500-kenyan-couples-cannot-get-married-due-to-covid-19-334784/>> accessed 28 August 2020.

40 The Marriage Act 2014, s 25(1)

41 *ibid*

absolute if divorced are a requirement. When the ministry of health rolled out the COVID-19 protocols, these procedures were rendered non-compliant given the number of clients the Registry served every day. To this effect, the Registry was forced to devise ways of ensuring it offered marriage services in a manner that did not put both the clients and the staff at risk of contracting the virus. Consequently, in a bid to ensure that its function was not crippled long-term, the Registry digitized the marriage registration process to enable clients to access their services remotely.

The online system of marriage registration allows marriage clients to log on to a website and fill in the registration forms and upload the registration forms on there. Afterward, the fee payment is made online and once the 21-day period lapses, the couple is notified online and an appointment date for visiting the Registrar is scheduled.⁴² Strict compliance to the scheduled time is a requirement to ensure the offices are only serving a small number at a time, to ensure compliance to the health guidelines. Additionally, only two witnesses are allowed to accompany the couple and the ceremony, officiated by the Registrar only lasts twenty minutes.⁴³ However, this online is limited to the residents of Nairobi County as the demand is higher and is scheduled to be decentralized to other regions. In addition, after the opening of places of worship, religious weddings are taking place but under the strict adherence to the health protocols. For instance, the maximum number of guests allowed to attend weddings is fifteen and the ceremonies are limited to only forty-five minutes. These drastic changes in the marriage regulations have all been occasioned by the COVID-19 containment protocols.

Beyond the marriage regulation procedures, the pandemic has occasioned forced cohabitation where unmarried couples have opted to quarantine together for convenience or financial reasons. Cohabitation in Kenya is a murky issue which in some instances has legal implications on couples. Cohabitation is a situation in which an unmarried couple are living together long-term and significantly resembles a marriage.⁴⁴ Despite the conservative marriage laws in the country which favour formalities, in some occasions, a cohabitation may result in a presumption of marriage. The Court of Appeal in the case of *Karanja Phylis Njoki* held that the presumption of marriage could be drawn from cohabitation and acts of general repute.⁴⁵ The threshold for a cohabitation to be considered a marriage was also reiterated by Justice Majanja in the case of *BCC v JMG* as being twofold.

⁴² Jerry (n 27).

⁴³ *ibid*.

⁴⁴ Margaret F Brinig and Steven L Nock, 'Marry Me, Bill: Should Cohabitation Be the (Legal) Default Option?' (2004) 64 Louisiana Law Review 403.

⁴⁵ *Phylis Njoki Karanja & 2 Others v Rosemary Mueni Karanja & another* (2009) 313 of 2001.

One, the presence of children born out of cohabitation and the time period of cohabitation.⁴⁶ Couples forced to cohabit due to the health protocols should be wary of the consequences as the law excludes cohabitantes from benefits available to spouses⁴⁷ and the conservative nature of the law precludes the presumption of marriage unless the aforementioned criteria is met.

B. CHILDREN'S RIGHTS

The COVID-19 pandemic has affected every aspect of life, but the effects weigh heavier on others on account of systemic inequalities in society.⁴⁸ Children, being among the most vulnerable groups in the society, have severely been impacted by the virus outbreak. Even though children are not in direct danger with regards to direct infection of the virus, the chances of these minors being the most negatively affected by the tragic impacts of the virus are astonishingly high.⁴⁹ A report by United Nations Children's Fund (UNICEF) suggests three avenues in which the virus is likely to affect the rights of children.⁵⁰ These are: through direct infection with the virus, through the socioeconomic effects of the virus and related measures to suppress transmission and control the pandemic and the risk that the virus and its response poses to the long-term efforts to achieve the Sustainable Development Goals (SDGs) and ensure realization of the rights of all children.⁵¹ Using this analysis as a backdrop, this section of the paper will discuss the effects of the pandemic on children laws in Kenya in three parts, the first one on the basic rights of children, the second one on custody and visitation rights and the third one on international adoption.

⁴⁶ *BCC v JMG* (2018) 10 of 2018.

⁴⁷ The Matrimonial Property Act 2013.

⁴⁸ Shehzad Ali, Miqdad Asaria and Saverio Stranges, 'COVID-19 and Inequality: Are We All in This Together?' (2020) 111 *Canadian Journal of Public Health* 415. through both its unequal health burden and its disparity of economic losses. From the Spanish flu to the most recent H1N1 pandemic in 2009, historical evidence highlights the role of social inequalities as fueling the spread of infections and the extent of their health impacts, by amplifying predisposing conditions related to living and working environments-which in turn provide susceptible hosts and "hot spots" for pandemics to thrive (Farmer 2001; Zhao et al. 2015)

⁴⁹ Timothy Robertson and others, 'Early Estimates of the Indirect Effects of the COVID-19 Pandemic on Maternal and Child Mortality in Low-Income and Middle-Income Countries: A Modelling Study' (2020) 8 *The Lancet Global Health* e901.

⁵⁰ UNICEF, 'COVID-19 and Children' (2020) <<https://data.unicef.org/topic/covid-19-and-children/>> accessed 22 August 2020.

⁵¹ *ibid.*

1. Basic Rights of Children

The determination to ensure the protection of children rights is a global one.⁵² The United Nations Convention on the Rights of the Child (UNCRC) is the most widely ratified human rights treaty in history.⁵³ These rights are protected internationally, regionally and nationally.⁵⁴ The purpose of international protection is to codify, legalize and universalize claims of children's rights.⁵⁵ The UNCRC sets out the rights of children and how governments of the member states should work to make them available to all children.⁵⁶ These rights include the right to life, survival and development, the right to protection from violence, abuse or neglect, the rights to education, parental relationship and to express their opinion and to be listened to.⁵⁷ Children's rights are derived from moral claims because children are a vulnerable group which cannot assert their own rights.⁵⁸

The Constitution of Kenya protects the rights of every child to education, a name and nationality, shelter, health, protection, parental care among others.⁵⁹ The

52 Oinam Jitendra Singh, 'International Dynamics On The Rights Of The Child' (2018) 22 *The Journal of International Issues* 136. these instruments remain genuine landmarks providing a basis for action. Lacking are the mechanisms and will for enforcement. Protecting children requires broad participation in monitoring and reporting human rights abuses, an enforcement of the law and a determined effort to prosecute offenders. The protection of children is not just a national issue but also a legitimate concern of the international community as many serious violations of children's rights occur in situations of conflict where there is no functioning national government. National and international strategies must also enfranchise, empower and build capacity for women, families and communities to address the root causes of conflict and strengthen local development.", "author": [{"dropping-particle": "", "family": "Singh", "given": "Oinam Jitendra", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "The Journal of International Issues", "id": "ITEM-1", "issue": "1", "issued": {"date-parts": [{"2018}]}], "page": "136-151", "publisher": "Kapur Surya Foundation", "title": "International Dynamics On The Rights Of The Child", "type": "article-journal", "volume": "22", "uris": [{"http": "http://www.mendeley.com/documents/?uuid=f7e66818-421f-3d2f-8947-2ca57f0f250e"}]], "mendeley": {"formattedCitation": "Oinam Jitendra Singh, 'International Dynamics On The Rights Of The Child' (2018

53 *ibid.* these instruments remain genuine landmarks providing a basis for action. Lacking are the mechanisms and will for enforcement. Protecting children requires broad participation in monitoring and reporting human rights abuses, an enforcement of the law and a determined effort to prosecute offenders. The protection of children is not just a national issue but also a legitimate concern of the international community as many serious violations of children's rights occur in situations of conflict where there is no functioning national government. National and international strategies must also enfranchise, empower and build capacity for women, families and communities to address the root causes of conflict and strengthen local development.", "author": [{"dropping-particle": "", "family": "Singh", "given": "Oinam Jitendra", "non-dropping-particle": "", "parse-names": false, "suffix": ""}], "container-title": "The Journal of International Issues", "id": "ITEM-1", "issue": "1", "issued": {"date-parts": [{"2018}]}], "page": "136-151", "publisher": "Kapur Surya Foundation", "title": "International Dynamics On The Rights Of The Child", "type": "article-journal", "volume": "22", "uris": [{"http": "http://www.mendeley.com/documents/?uuid=f7e66818-421f-3d2f-8947-2ca57f0f250e"}]], "mendeley": {"formattedCitation": "ibid.", "plainTextFormattedCitation": "ibid.", "previouslyFormattedCitation": "ibid.", "properties": {"noteIndex": 44}, "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}]

54 Thomas Hammarberg, 'The UN Convention on the Rights of the Child--And How to Make It Work' (1990) 12 *Human Rights Quarterly* 97 <<https://www.jstor.org/stable/762167>> accessed 22 August 2020.

55 *ibid.*

56 *ibid.*

57 Ursula Killkelly and Laura Lundy, 'Children's Rights in Action: Using the UN Convention on the Rights of the Child as an Auditing Tool' (2006) 18 *Child and Family Law Quarterly* 331.

58 Ferdinand Schoeman, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family' (1980) 91 *Ethics* 6 <<https://www.jstor.org/stable/2380367>> accessed 22 August 2020.

59 *The Constitution of Kenya* 2010, art 53.

main principle governing the protection of the rights of children in Kenya is the paramountcy principle which states that the best interests of a child are of paramount importance in every matter concerning the child.⁶⁰ Additionally, there is enacted a Children Act which further ensure the protection of children in Kenya through the establishment of systems and institutions to cater for the same. In addition, the provisions of the UNCRC and the African Charter on the Rights and Welfare of the Child (ACRWC) apply in Kenya by virtue of Article 2(5) and (6) of the *Constitution*.⁶¹

The pandemic adversely influenced the environment in which children grow and develop and this had impacts on ensuring that the rights of children are upheld. These effects span from the direct effects such as the right to health, and the interruption of their right to education due to the directive by the Ministry of Education for school closures to other indirect ones caused by the pandemic control measures.

Children's right to education is enshrined in Article 53 of the Constitution and reiterated in Section 7 of the Children Act. The outbreak of the pandemic in Kenya occasioned the shutdown of all schools and tertiary educational institutions in a bid to adhere to the health protocols to mitigate the spread of the virus.⁶² These closures have revealed the importance of schools as it has interfered with more than the basic right to education for most learners. Vulnerable children who depend to a great extent on schools for food and other basic needs were denied more than others. While efforts have been made by schools to offer online education, children from poorer backgrounds do not have access to such technology and this has disadvantaged them disproportionately. This amounted to covert discrimination which tampers with the right to non-discrimination protected by the law.⁶³

Marginalized and vulnerable children include those living in refugee camps, urban informal settlements and arid/semi-arid regions. In response to these educational implications of the virus on the Kenyan children, the government, through the agency of the Ministry of Education developed a COVID-19 response and recovery plan to aid the situation.⁶⁴ The plan propose various interventions in the education sector to the cope with the changes elicited by the

⁶⁰ The Constitution of Kenya 2010, art 53(2), The Children Act 2001, s 4(3).

⁶¹ David Kenani Maraga, 'The Legal Implications of Article 2(6) of The Constitution of Kenya 2010' (University of Nairobi 2010).

⁶² 'address to the nation by h.e. uhuru kenyatta, c.g.h, president of the republic of kenya and commander-in-chief of the defence forces on covid-19, commonly known as coronavirus at harambee house, nairobi on 15th march 2020 | the presidency' (n 3).

⁶³ children act 2001, s 5.

⁶⁴ republic of kenya (ministry of education), 'kenya basic education covid-19 emergency response plan' <https://www.education.go.ke/images/kenya_basic_education_covid-19_emergency_response_plan-compressed.pdf> accessed 22 august 2020.

pandemic. The proposed live radio and TV learning live broadcast, installation of SCADA (supervisory, control and data acquisition), technology to support virtual centralized learning countrywide, live streaming of model lessons and building capacity of teachers on interactive remote learning methodologies are among the recommended courses of action.⁶⁵ These undertakings are aimed at providing access to quality, equitable and inclusive education to learners during and after the crisis to ensure continued learning, to facilitate production of online teaching and learning materials, to provide psychosocial support to learners, teachers, education officials and other stakeholders, among others.⁶⁶ These strategies, if properly implemented, will bridge the education gap that continues to be widened by the consequences of the pandemic.

In addition to the right to education, children's right to protection in Kenya has heavily been compromised. The law confers every child the right to be protected against abuse, neglect, harmful cultural practices, inhuman treatment and all forms of violence.⁶⁷ The pandemic has seen the depravation of this right from children in Kenya. The most notable case of the breaching of this right is the killing of a teenager, Yasin Moyo, by a police officer in the name of enforcement of the nationwide dust-to-dawn curfew orders.⁶⁸ The unfortunate incident highlighted the need to protect children from abuse of power by security forces. In addition, upon the closure of schools, children from needy backgrounds are being left uncared for at home and their need being neglected as their parents and guardians go out to work or in search of money.⁶⁹ Consequently, these children are exposed to a lot of danger as they do not have the capacity to care for themselves.⁷⁰ This amounts to a gross violation of the rights of children in Kenya. Another vulnerable group of children whose protection has been jeopardized due to the virus outbreak are the girl children. The economic effects of the virus outbreak is forcing families from marginalized regions to marry off their female children early in order to acquire bride price. This practices are in complete disregard of children laws in Kenya which ban all cultural rights, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development.⁷¹

The girl child's right have further been undermined throughout the course of the lockdown as the cases of child pregnancy continues to rise. A survey done by

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ The Constitution of Kenya 2010, art 53 (1) (d).

⁶⁸ Moses Okinyi, 'I Am Yassin Moyo, Aged 13, Killed By The Kenyan Police' ICJ-Kenya News (2020) <<https://icj-kenya.org/news/latest-news/311-i-am-yassin-moyo-13-killed-by-the-kenyan-police>> accessed 22 August 2020.

⁶⁹ The Alliance for Child Protection in Humanitarian Action, 'Technical Note: Protection of Children during the Coronavirus Pandemic' (2020).

⁷⁰ *ibid.*

⁷¹ The Children Act 2001, s 14.

the Kenya Health Information System indicates that a total of 3964 girls of ages 19 and below feel pregnant within the lockdown period in Kenya.⁷² Taking into consideration that these are all school-going girls, this is an alarming number. According to the law, sexual intercourse with a minor amounts to the sexual offence of defilement.⁷³ Therefore, legally speaking, a majority of these girls are victims of defilement as a girl of age 18 and below is incapable of sexual consent. A report by the National Council on Population and Development suggested that these teenage pregnancies are fuelled by rape, defilement, poverty, early marriages, drug abuse and the lack of youth friendly health services.⁷⁴ This unfortunate situation calls for the government, as it continues to roll out measures for mitigating the effects of COVID-19, to ensure that the gendered repercussions on adolescent girls are not bypassed.

2. Custody and Visitation Rights

Marriage in law is a relational contract.⁷⁵ Therefore, the marriage contract may be terminated by either or both of the parties on various grounds provided by law.⁷⁶ Divorce interferes with the marital union hence terminates marital rights and obligations.⁷⁷ Alternatively, a couple may choose to keep the marriage contract intact by going through a process of separation. In both scenarios, in the case where children were involved, each parent's obligations to the wellbeing and upbringing of children such as custody, visitation rights and maintenance persists. Parental responsibility in Kenya is vested in both the mother and father of the child whether or not they are married.⁷⁸ The couple therefore, in case of divorce or separation, is obligated the law to agree on how these responsibilities will continue to be shared. One of the avenues in which children law provides for this continuance is its stipulations on child custody and maintenance.

Custody refers to all the parental rights and obligations accruing to the person in possession of a child.⁷⁹ It is the care, control and maintenance of a child, which a court may award to one or both of the parents following a divorce

72 'Report On Teen Pregnancies Alarms Kenyans' Daily Nation (2020) <<https://allafrica.com/stories/202006190439.html>> accessed 22 August 2020.

73 The Sexual Offences Act 2006, s 8.

74 Ngatha Gloria Muturi, 'Teenage Pregnancy In Kenya – National Council For Population and Development' (2020) <<https://ncpd.go.ke/teenage-pregnancy-in-kenya/>> accessed 22 August 2020.

75 Elizabeth S Scott and Robert E Scott, 'Marriage as Relational Contract' (1998) 84 Virginia Law Review 1225.

76 The Marriage Act 2014, s 66.

77 Ngussie Afesha, 'Legal and Practical Aspects of Child Custody, Visitation and Maintenance: A Case Study in SNNP Regional State' (2018) 11 Mizan Law Review 275.

78 The Constitution of Kenya 2010, art 53(1)(e), ZAK & another v MA & another [2013] eKLR.

79 Children Act 2001, s 81.

or separation.⁸⁰ In Kenya, the *Children Act* contains extensive provisions on attaining the custody of children as well as child maintenance.⁸¹ The onset of the COVID-19 pandemic affected custody arrangements of several families especially those in which custody is shared. The pandemic protocols on social distancing, travel restrictions and staying at home have left parents at crossroads concerning issues of possession and access to their children.⁸² Deciding whether or not it is safe for children to move from one parent to another in accordance to custody agreements has proven to be a challenge. In addition, the safety of children staying with the parents who work in healthcare and other pandemic frontline services has been questioned.⁸³ These concerns continue to be raised as the effects of the virus continue to spread. The principle that prevails in deciding such matters is that the best interests of the child should be the primary considerations.

C. DOMESTIC VIOLENCE /GENDER BASED VIOLENCE

Domestic violence is an ancient issue that continues to bedevil the society despite the laws and regulations put in place to protect potential victims. Domestic violence is a tool of control and fear founded by an individual in a relationship through the use of violence and other forms of abuse such as physical assault, psychological abuse, social abuse, financial abuse and sexual assault against another.⁸⁴ Domestic violence amounts to a gross violation of international human rights law and has been described as 'intimate terrorism'.⁸⁵ It denies the victims the right to dignity, the right not to be subjected to torture or cruel, inhuman or degrading treatment and punishment, and in some instances, the right to life.⁸⁶ These are basic rights protected by any standard bill of rights.

80 Henry H Foater, 'Child Custody and Divorce: A Lawyer's View' (1983) 22 *Journal of the American Academy of Child Psychiatry* 392 <<http://www.jaacap.org/article/S0002713809606798/fulltext>> accessed 24 August 2020. the child psychiatrist may be needed for treatment or therapy before, during, and after the divorce. Counseling may promote settlement of previously disputed issues. The applicable legal principles in child custody cases are amorphous but reflect current socioeconomic values. The former emphasis on parental fitness fortunately has given way to an emphasis of the child's welfare, which requires a prediction of the child's developmental needs and an assessment of interfamily relationships. The history of custodial law is summarized, the usual criteria that courts apply is examined, and the role of the expert witness is discussed. © 1983, The American Academy of Child Psychiatry. All rights reserved.", "author": [{"dropping-particle": "", "family": "Foater", "given": "Henry H."}], "non-dropping-particle": "", "parse-names": false, "suffix": ""}, "contain-er-title": "Journal of the American Academy of Child Psychiatry", "id": "ITEM-1", "issue": "4", "issued": {"date-parts": [{"1983", "7", "1"}]}, "page": "392-398", "publisher": "Elsevier", "title": "Child Custody and Divorce: A Lawyer's View", "type": "article-journal", "volume": "22", "uris": [{"http://www.mendeley.com/documents/?uuid=6e641e89-ae91-396e-bc38-241d7e31a4bc"}]}, "mendeley": {"formattedCitation": "Henry H Foater, 'Child Custody and Divorce: A Lawyer's View' (1983

81 The *Children Act* 2001, Part IV.

82 Deborah Copaken, 'Navigating Joint Custody Under Coronavirus Quarantine' *The Atlantic* (2020) <<https://www.theatlantic.com/family/archive/2020/04/navigating-joint-custody-under-coronavirus-quarantine/609676/>> accessed 24 August 2020.

83 Julie R Colton, 'Child Custody During COVID 19 Stay Home Orders' *Jurist - Legal News & Commentary* (2020) <<https://www.jurist.org/commentary/2020/04/julie-colton-child-custody-pandemic/>> accessed 24 August 2020.

84 Debra Umberson and others, 'Domestic Violence, Personal Control, and Gender' (1998) 60 *Journal of Marriage and the Family*.

85 Alice Edwards, *Violence against Women under International Human Rights Law* (2012).

86 *ibid*.

The law regulating domestic violence in Kenya is the *Protection Against Domestic Violence Act of 2015*. The Act was enacted to provide protection and relief for victims of domestic violence. It provides an expansive list of acts which amount to domestic violence to include stalking, defilement, forced wife inheritance, virginity testing, damage to property among others.⁸⁷ It is impossible to discuss domestic violence in exclusion of Gender-Based Violence (GBV). A majority of domestic violence cases are gender-based.⁸⁸ Research reveals that 95% of the victims of domestic violence are women and 40-70% of all female murder victims are killed by an intimate partner.⁸⁹ Women constitute most of the domestic violence victims followed by children and members of the LGBTQ+ community.⁹⁰ GBV cases increase in the midst of any emergency, social, economic and political alike.⁹¹ The spike in the number of cases of this type of violence was therefore expected.

The movement restrictions geared towards pacing the spread of Coronavirus has forced people to be in their homes more as people have been working from home and children are home due to school closures. This has led to the increase of domestic violence cases, to the extent that it has been dubbed the 'shadow pandemic' alongside the coronavirus.⁹² According to GBV statistics, the cases of domestic violence generally increase when families stay together for longer periods, even for joyous occasions.⁹³ This risk of domestic violence is higher particularly among marginalized communities. The indirect effects of the virus such as economic strains due to job losses by breadwinners of families can also be directly linked to the increase in these numbers due to stress, having in mind that this kind of violence is fed by power and control. The National Council on the Administration of Justice reported a considerable surge in sexual

⁸⁷ Protection Against Domestic Violence Act 2015, s 3.

⁸⁸ Kristin L Anderson, 'Gender, Status, and Domestic Violence: An Integration of Feminist and Family Violence Approaches' (1997) 59 *Journal of Marriage and the Family* 655 <<https://www.jstor.org/stable/353952>> accessed 27 August 2020. researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org. Family violence researchers suggest that sociodemographic indicators of structural inequality influence propensities for domestic assaults. Feminist scholars argue that domestic violence is rooted in gender and power and represents men's active attempts to maintain dominance and control over women. This article integrates both approaches by proposing that elements of structural inequality influence violent behavior differently for women and men. Using self- and partner-reported data from Wave 1 of the National Survey of Families and Households, this study examines the relationships among sociodemographic characteristics, gender, status (in

⁸⁹ UN Women, 'Facts and Figures: Ending Violence against Women' (2019) <<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>> accessed 27 August 2020.

⁹⁰ *ibid*.

⁹¹ UNDP, 'Gender-Based Violence and COVID-19' (2020) <<https://www.undp.org/content/undp/en/home/librarypage/womens-empowerment/gender-based-violence-and-covid-19.html>> accessed 28 August 2020.

⁹² Prabhadevi Ravichandran, Anuradha Kunal Shah and Prabhu Ravichandran, 'Shadow Pandemic: Domestic Violence and Child Abuse during the Covid-19 Lockdown in India' (2020) 8 *International Journal of Research in Medical Sciences* 3118.

⁹³ Andrew Morrison, Mary Ellsberg and Sarah Bott, 'Addressing Gender-Based Violence: A Critical Review of Interventions' 25 <<https://www.jstor.org/stable/40282335>> accessed 27 August 2020.

offences throughout the country since the COVID-19 lockdown took effect.⁹⁴ The perpetrators in most of these cases being close relatives, guardians and people living with the victims. This also amounts to domestic violence according to Kenyan law. Unfortunately, most of these cases are not reported to due to the additional hurdles to access to justice elicited by the pandemic.

D. ACCESS TO JUSTICE

The definitional conundrum regarding “access to justice” has been compounded by its new and heightened manifestations in the COVID-19 pandemic and more specifically within the area of family law.⁹⁵ Equally, the term “justice”, whenever invoked, means and takes different forms in the various practical contexts of the Pandemic, in addition to generally no longer being only the property of law.⁹⁶ Whether its distributive (for economic purposes and addressing inequalities apparent from the Pandemic); corrective (for criminality purposes and the issues of access to representation and judicial institutions and processes therewith); administrative (in addressing procedural fairness in the face of virtual Court or tribunal sittings and the difficulty that may come with access to the same); substantive (access to expeditious, fair and substantive justice); social (social justice issues) and environmental etc. It is within that conceptual understanding that the broad issues raised in the quotations, such as inequality, discrimination e.g. on religion, ethnicity, gender, disability, race etc., socio-political and economic deprivation and poverty, human rights especially socio-economic rights and access to timely, efficient formal and informal judicial mechanisms and access to legal aid can be understood with respect to access to justice in the age of COVID-19.

Access to justice is a constitutional right enshrined under the Kenyan bill of rights.⁹⁷ The law obligates the state to ensure access to justice to all persons.⁹⁸ It entails the ability of a justice-seeker to acquire dispute resolution mechanisms which are affordable, proximate and ensure speedy justice and whose processes and procedures are easily perceivable.⁹⁹ The ability of people to seek and obtain

94 ‘Statement on Justice Sector Operations in the Wake of the COVID-19 Pandemic -’ (*National Council on the Administration of Justice*, 2020) <<https://ncaj.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/>> accessed 27 August 2020.

95 See ‘What is Access to Justice? – Alberta Civil Liberties Research Centre’ (Alberta Civil Liberties Research Centre) accessed 5 August 2020.

96 See ‘Justice (Stanford Encyclopaedia of Philosophy)’ (Plato.stanford.edu) accessed 5 August 2020.

97 The Constitution of Kenya 2010, art 48.

98 Ibid.

99 Draft Report on Audit of Laws on Access to Justice, KLRC (March, 2012). See also FIDA Kenya, “The Peoples Version Informal Justice System” (2011), which defines access to justice as ‘the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards’; “Judicial Reforms and Access to Justice in Kenya: Realizing the Promise of the New Constitution”, A Report by the Kenya Civil Society Strengthening Program, 2011.

a legal remedy through institutions of justice in conformity with human rights standards encompasses several components. It includes the ability to access legal representation, measures to reduce the length and complexity of litigation and improve efficiency the adequacy of legal aid, the cost of justice delivery and the availability of alternative means of justice delivery. In Kenya, the primary institution for justice delivery is the Courts. In addition, the Constitution recognizes other means of justice delivery such as Alternative Dispute Resolution mechanism and Traditional Dispute Resolution Mechanisms.¹⁰⁰

As aforementioned, the effects of COVID-19 prevention and control measures did not spare the judicial system.¹⁰¹ The situation was worsened by the fact that judicial services were not listed among the essential services.¹⁰² The protocols necessitated the scaling down of functions and services of the judiciary and alteration of some of the operations to fit with the times. This occasioned the cancellation of hearings and rendered some court processes impossible.¹⁰³ Further, resources are being directed to the pressing sectors such as healthcare and other basic needs and away from the justice system.¹⁰⁴ Alternative justice centres such as legal aid clinics, social services centres, crisis centres and safe houses have also been shut down. Access to justice was therefore limited by the coronavirus control strategies.

In the context of family law, these consequences on the justice system have disproportionately affected women and children given that they make up the majority of family law complainants.¹⁰⁵ It has closed out those seeking spousal and child maintenance, custody, visitation rights, protection orders and inheritance rights from the courts.¹⁰⁶ The closure of shelters and safe spaces have denied justice for many women and children afflicted by domestic violence and GBV. In addition, due to the acute economic hardships caused by the pandemic, spousal and child support agreements are being breached and with the scale-down of Court services, the affected persons are unable to obtain orders for enforcement.¹⁰⁷ This situation has shed light on the importance of access to justice as a fundamental human right.

100 Constitution of Kenya 2010, art 159 (2)(c).

101 'Rule of Law in the Time of COVID-19: Kenya | IDLO - International Development Law Organization' IDLO (2020) <<https://www.idlo.int/news/notes-from-the-field/rule-law-time-covid-19-kenya>> accessed 28 August 2020.

102 *ibid.*

103 'Kenya Is Struggling to Deliver Justice Online: What Needs to Be Done' <<https://theconversation.com/kenya-is-struggling-to-deliver-justice-online-what-needs-to-be-done-139675>> accessed 28 August 2020.

104 *ibid.*

105 'The Gendered Face of COVID-19: Women and Access to Justice' <<https://www.unodc.org/dohadecclaration/en/news/2020/04/gendered-face-of-covid19-women-and-access-to-justice.html>> accessed 28 August 2020.

106 *ibid.*

107 'Kenya Is Struggling to Deliver Justice Online: What Needs to Be Done' (n 92).

IV. CONCLUSION AND RECOMMENDATIONS

It is quite evident that the effects of the dawn of the COVID-19 pandemic have traversed every area of life and will ultimately lead to long-term and even permanent consequences worldwide. Like many other systems in the society, the legal field has been side-tracked in manners that could never have been predicted. However, as mitigating measures are being taken up, it is easy for other more silent areas of law such as private law issues to be side-lined. It is for this reason that this paper has highlighted some of the effects of the pandemic on family law issues in the Kenyan society such as marriage, children, domestic violence and gender-based violence and access to justice in regards to these issues. Some of the family law impacts occasioned by the pandemic are positive such as changes in the digital shift of marriage services in some parts of the country. However, majority of the effects have negatively affected families and especially women and children who make up the bulk of family law complainants.

In Kenya, the escalation in the number of teenage pregnancies indicates that rape, defilement, domestic violence and gender-based violence cases are on the rise. In addition, the pandemic has occasioned a stalemate in certain areas of family law including custody and visitation rights of parents in the backdrop of movement restrictions and social-distancing regulations. Due to the closure and subsequent scale-down of functions and services by the judiciary and other social justice services, a barrier to access to justice has been created which has only worsened the situation for many. Particularly, victims of rape, defilement and other forms of domestic violence have been left without remedy and remain stuck at the mercy of the perpetrators as safe houses, hotlines and other crisis centres remain closed.

Taking these matters into account, it is important that the government and other relevant stakeholders take measures to ensure that these issues are addressed accordingly. Firstly, community-based solutions need to be supported and empowered to combat the restrictions on movement and other measures. Secondly, GBV and domestic violence repose services and other justice services should be elevated to be essential services given their importance in ensuring the protection of human rights. This included the diversion of funds and other forms of support towards these causes. Finally, these bodies should ensure that all the COVID-19-related policies and legislation uphold international human rights standards and promote the inclusion of women's organisations in such and other endeavours. By adopting an intersectional approach and recognizing the differential impacts of COVID-19 on family law especially on the marginalized and other groups of person, we stand a chance of combating the effects of the pandemic in a way that is beneficial and sustainable for the country.

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