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**THE LAW AND DOMESTIC VIOLENCE AGAINST WOMEN:  
A COMPARATIVE ANALYSIS BETWEEN GERMANY AND  
GHANA**

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## TABLE OF CONTENTS

List of Abbreviations .....	1
ABSTRACT .....	2
INTRODUCTION .....	3
1. NATURE OF DOMESTIC VIOLENCE IN GHANA .....	6
1.1. Nature of Domestic Violence .....	7
1.2 Causes of domestic Violence, cultural beliefs backing domestic violence .....	8
2. LEGISLATION ON DOMESTIC VIOLENCE IN BOTH COUNTRIES .....	11
2.1 Different Form Of Law Enforcement And How Domestic Violence Is Accessed. ....	13
2.2. Change in Legislation to meet the needs of victims .....	14
3. THE DIFFERENCES AND SIMILARITIES IN THE APPROACH ADOPTED TO PROTECT VICTIMS .....	19
3.1 The German and Ghanaian Compliance to DEVAW On Domestic Violence .....	21
3.2 Effective Remedy to Domestic Violence .....	23
CONCLUSION .....	26
LIST OF REFERENCES .....	28
APPENDICES .....	32
Appendix 1. Number of Female Victims of Domestic Violence in Germany .....	32
Appendix 2. Non-exclusive licence .....	33

## **List of Abbreviations**

DEVAW - Declaration on the elimination of Violence against women

CEDAW - Convention on the Elimination of All forms of Violence against Women

DOVVSU - Domestic Violence Victims support Unit

WHO - World Health Organization

EU - European Union

BKA – Bundeskriminalamt

CHRAJ – Commission on Human Rights and Administrative Justice.

NGO – Non-Governmental Organization

INGO – International Non-Governmental Organization

AU – African Union

UN – United Nations

## **ABSTRACT**

Domestic violence affects millions of people and has far-reaching effects on people and their families. The causes can be attributed to many factors, ranging from conflicts of ideas and methods due to cultural differences among couples, alcohol and drug use, and economic conditions.

Like other forms of violence, concerted efforts have been made to provide legislation that tries to punish and deter acts of domestic violence. These legislations outlaw the Act of domestic Violence and give rise to both civil and criminal liabilities depending on the form of violence and its effect on the other party. One of these legislations is the Declaration on the Elimination of Violence against Women (DEVAW), adopted on December 20, 1993, following the need to build international instruments to protect women against violence. Many states domesticated this international pact. It birthed legislations such as the Ghana domestic violence Act 732 (2007), which came into effect on May 3, 2007, German policy on domestic violence, also known as the Acts on Protection against violence. The main objective of this study is to discuss the legislative reforms domesticated to meet the needs of domestic violence victims and its compliance to international instruments (DEVAW). This paper employs qualitative research methods, using scientific journals, information from United Nations and its subsidiaries' websites, and books on the subject matter. The paper shows the various legislative reforms adopted by both countries to meet the needs of victims and how successful these legislations have become. It also proffers solutions on how these legislations can be more effective. These include the Acts on Protection against violence, the Victims' of criminal Act, Ghana domestic violence Act 2007(732), and the establishment of the Ministry of Gender Children and Social Protection. This research has shown compliance to the DEVAW by both the Ghanaian and the German legislative instruments on domestic violence. However, a slight variation can be seen in some articles. For instance, the exclusion of sexual harassment elements from section one of the German policy on domestic violence.

Keywords: Domestic Violence, Victims, Act, Compliance, DEVAW.

## INTRODUCTION

Domestic violence is a key societal problem, and concerted effort has been seen at the international level and within states. The term is defined as the threat or exercise of physical, psychological, and emotional violence. This includes any form of violence against another person with the intent of causing harm or exercising power and control over them. The perpetrator usually belongs to the domestic environment of the victim. That is either the husband, intimate partner, former partner and so on.<sup>1</sup> Although a bit of history is required in unveiling the dilemma, I will focus mainly on the legislative reforms being enacted to combat domestic violence in both countries and relate it compliance to international instruments specifically the Declaration on the Elimination of Violence against Women (DEVAW).

Globally, 1 out of 3 women have experienced either one of the forms of domestic violence in their lifetime. The causes can be attributed to many factors, ranging from conflicts of ideas and methods due to cultural differences among couples, alcohol, drug use, and economic conditions. Like other forms of violence, efforts have been made to provide legislation that tries to punish and deter acts of domestic violence. These legislations outlaw the act of domestic violence and give rise to both civil and criminal liabilities depending on the form of violence and its effect on the other party. One of these legislations is the United Nations Convention on the elimination of all forms of discrimination against women (CEDAW), adopted on December 18, 1979<sup>2</sup>. Many states domesticated this international pact. It birthed legislations such as the Ghana Domestic Violence Act 732 (2007), which came into effect on May 3, 2007, On the part of the European Union (E.U.), legislations like the Directive 2012/29/E.U. of October 25, 2012, which replaced the council's framework decision of 2001/220 the German state started this domestic violence fight but on the axes of gender-based violence in the 1970s and on domestic violence in 1990-2002, during this era the HIT OUT AND YOU CLEAR OUT principle was initiated. Although Domestic Violence is applicable to both gender but this paper will focus on domestic violence against women. The rate of domestic Violence in Germany and Ghana is quite alarming.

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<sup>1</sup> Nyberg E., Riecher-Rossler A., 2010, Domestic Violence against Women: Definitions, Epidemiology, risk factors and consequences, The European Journal of Medical Sciences.

<sup>2</sup> United Nations Women, 1979, Convention on the Elimination of Discrimination against women, <https://www.un.org/womenwatch/daw/cedaw/>

Statistics show that in Germany 81% of victims of domestic partnership in Germany are women while in Ghana 33% - 75% of women experience intimate partner violence. This study seeks to explore the legislative reforms adopted in both countries to meet the needs of victims and their compliance with international obligations. Thus the research questions will be, what are the effective legislative reforms enacted in combating domestic violence to meet the needs of victims? and to what extent does the legislation and its application conform to international regulations on domestic violence?

Domestic violence does not only relate to the harm women go through but it impedes the principles of achieving universal peace, equality, and development. The failure on behalf of states to protect its citizens against domestic violence is a matter of huge concern to all states. International human rights agreements together with advocacy by women's rights groups in the last few years have succeeded in convincing many states to review legislation on domestic violence. This activism has successfully seen the elimination of some provisions that gave shelter to perpetrators to escape criminal sanctions and amending criminal procedures to make the prosecution of offenders easier. International instruments like CEDAW and DEVAW are there to put states that ratify them in checks. Any state that ratifies these instruments commits to ending discrimination against women in all forms. States are obliged to inculcate principles of equality in their legal system and repealing all discriminating laws.

One of this discriminatory legislation is the legal provision of section 42 (g) of the Ghana 1960 Criminal Code which legalised rape in marriages. This provision is interpreted to mean that through marriage implied consent is given and until divorce proceeding is instituted, a case of rape in marriage is not applicable. This legislation was repealed giving room for section 4 of the domestic violence act which state that use of violence cannot be justified by the implied consent given through marriage. A related legislation is seen in the German legislation. The provision of section 177 (6)(1) was initially interpreted to exclude rape in marriages. As seen in the case of *R v R* the court ruled that marital rape was not known to law and dismissed an action for rape. However the subsequent ruling by the house of lords gave a new meaning to this provision eliminating the earlier clause that reinforced marital rape. While there have been scholarly works on domestic Violence in Germany and Ghana, there is not much literature in the field of comparing the extent to which the legislations in Ghana and Germany on domestic violence constitute compliance with international women's rights obligations.

This paper uses qualitative research methods. It discusses legislation in the two countries. It gives an insight into how the legislation in both countries have changed to meet the needs of victims of domestic violence in compliance with international best practices. Thus this study

shall use the compliance theory as a theoretical framework. The theory gives a better approach of the topic under study through the lens of implementation or adoption of international norms on women's right. The use of this theory is to understand how the Ghanaian and the German domestic violence acts conform to international legal instruments on domestic violence. Chapter one of this paper will consist of the introduction to domestic violence in both countries. Compliance is said to have taken place when a given the actions of a subject precribs to the patterns of an act. It further reviews literatures on the causes of domestic violence. Finally, it looks at legislation on domestic violence in both countries. Chapter 2 will introduce the different forms of law enforcement agencies existing in both countries. It also analyses the legal reforms enacted as remedy. Finally, it highlights the similarities and differences in the legal reforms introduced to meet the needs of victims. Chapter 3 will compare the compliance of the key legal domestic violence instruments in both countries to international instruments DEVAW on combating domestic violence. it would determine if these legal instruments complies with the DEVAW on the standards set for signatory sates to follow. and finally proffer effective reforms needed to combat domestic violence.

## 1. NATURE OF DOMESTIC VIOLENCE IN GHANA

Domestic violence is not a modern phenomenon. It forms a violation of basic human rights and global policy concerns. Over the years there have been several efforts by women's right organization and civil society to advocate on this topic. Domestic violence is viewed as very sensitive in many societies. This is because it intrudes into the private sphere and digs into a personal experience that is concerned with deviance and social control.<sup>3</sup> Physical and sexual violence does not count as the only type of domestic violence that is perpetrated against women. Other violence like emotional and economic also counts as domestic violence.<sup>4</sup> WHO on behalf of the United Nations Interagency working group on violence against women conducted an analysis of prevalence data from 2000 – 2008 across 161 countries. This analysis showed that 1 out of every 3 women which is approximately 30% of world women's population have been subjected to one form of violence by either an intimate or non-intimate partner.<sup>5</sup> Men have been recognized as the main perpetrators of domestic violence.

Ghana is not excluded from the global canker of widespread domestic violence. A profound study on violence against women conducted by The Gender Studies and Human Rights Documentation Centre (Gender Centre) shows that one in three Ghanaian women suffer from physical violence at the hands of a past or current partner.<sup>6</sup> The occurrence of domestic Violence in Ghana stands at about 33% to 37% of women experiencing intimate partner violence.

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<sup>3</sup> Hyden M., 2008, Narrating Sensitive Topics, Sage journals, 223- 239.

<sup>4</sup> Slabbert I., Green S. 2014, Types of domestic violence experienced by women in abusive relationships, Social Work Journals, Vol. 49. No. 2

<sup>5</sup> World Health Organization, 2021, Violence against Women, <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

<sup>6</sup> Coker- Appiah & Cusack Kathy, 2019, Violence Against Women And Children in Ghana: Report Of a National Study On Violence, Global Health Action, Vol 12.

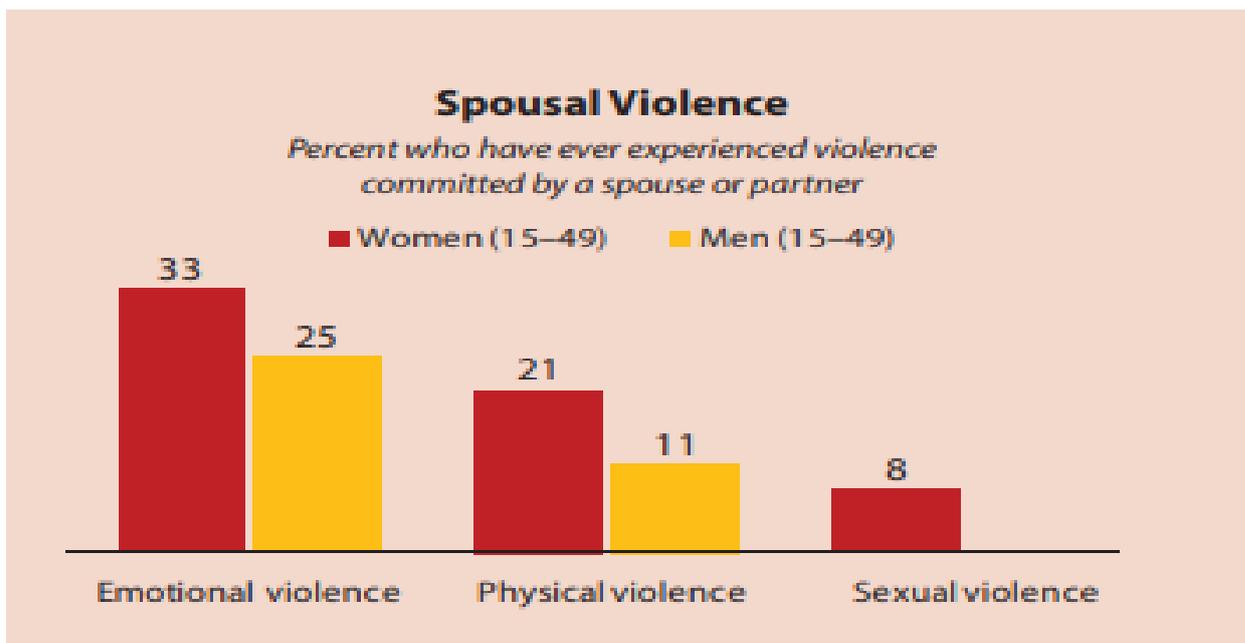


Figure 1.1 Spousal Violence in Ghana  
Source: Ghana Statistical Service (2021)

Also a study conducted by the Ghana Demographic and Health Survey (GDHS) conducted in Ghana in the year, 2008 shows that 36.6% of women who got married between the ages of 15 to 49 had reported an experience they had either physical, psychological, or sexual violence by a partner at some points in their lives. 18.8% reported experience of sexual violence and 34.9% had experienced violence by a husband or partner in the last 12 months.<sup>7</sup> Marriage in Ghana imposes certain rights and obligations to partners however it is characterized by a level of ambiguity.

### 1.1. Nature of Domestic Violence

A study made by the Federal Criminal Police Office (BKA) and presented by the minister of family in Germany shows that 81% of victims of domestic partnership in Germany were women as shown in appendix 1. The results from BKA's study show that 122 women were killed by their ex-partners or partners in the year 2018. Even though it was lesser than that of the previous year, still the numbers increased from 113,965 to 114,393 in 2018. An analysis made from the Bielefeld Study showed that out of the 10,264 women that were interviewed in 2003, 37% of the interviewees had experienced at least one of the forms of physical attack or violence. 13% which

<sup>7</sup> GSS G, Macro I. 2009, Ghana demographic and health survey 2008. Accra: Ghana Statistical Service, Ghana Health Service, and ICF Macro.

sum up to 1 out of 7 answered they had experienced sexual violence since they were 16 years old. This value was derived from a narrow definition of criminally forced sexual acts.<sup>8</sup> 40% had experienced either physical or sexual abuse or both, 42% said they had experienced psychological violence which started with aggressive yelling and intimidation, threats, and humiliation. Lastly, around 25% of German residents had experienced sexual or physical abuse from their previous or current partner.<sup>9</sup> These values listed from the findings being made confirm the extent of physical and sexual violence perpetrated against women in Germany. It also shows that approximately every second or third woman in Germany has experienced physical violence while every seventh has experienced sexual violence.

## **1.2 Causes of domestic Violence, cultural beliefs backing domestic violence**

The causes of domestic violence come in many different forms. Nkiru et al 2017 in their paper posited that the causes of domestic violence can be psychological, social, economic, cultural, and religious. The economic factors could be due to loss of job by a partner or poverty which can lead to undue financial pressure causing a lack of understanding between the couple that will deteriorate to domestic violence. Certain cultural beliefs in Africa support the reinforcement of domestic violence as it is believed that it is a means of disciplining the woman. Furthermore, there is the belief that men are born with the right to control as women are inferior while men are superior.<sup>10</sup> Albert Bandura the proponent of social learning explained that we learn from our interactions with others in a social context. This means domestic violence can be adopted when we see people do it. He also predicted that those raised in aggressive homes are likely to grow up with aggressive characters.<sup>11</sup> The psychological factors shrink in and affect the self-worth and self-esteem of the individual.<sup>12</sup> Ajayi et al revealed in their article through a thorough study carried out in Accra that most domestic violence cases were caused by alcoholism, patriarchal social structures, financial suppression, and the male response to the growth of economic

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<sup>8</sup> Helmut. K, Ursula. S, (2006), Domestic Violence: Recent Developments in German and English Legislations and Law Enforcement, *European Journal of Criminal Law and Justice*, 144(4): 382-407.

<sup>9</sup> Ibid

<sup>10</sup> Nnaemezie N.O, Akuezuilo J, A, 2017, Domestic violence: Nigerian Experience, *Journal of Guidance & Counselling Studies*, .2. 1,3.

<sup>11</sup> Luluk T.H, Achmad S, Mintarti R., Achmad F, 2017, Study of the Bandura's Social Cognitive Learning Theory for the Entrepreneurship Learning Process, *Social Sciences*, 6, 1-6.

<sup>12</sup> Nnaemezie (2017), *Supra Nota* 12, 87- 88.

independence of women as the main triggers of domestic Violence in Accra-Ghana.<sup>13</sup> Christina Beninger stated in her article that some communities regard abusing women as culturally acceptable and do not consider it as violence as almost all the respondents in a study carried out in Ghana shared that the beating they normally received was some form of discipline at the hands of their partners and it was also normal. It was also deduced that it was somewhat normal to abuse your partner if she provoked you by misbehaving.<sup>14</sup> Ursula Smartt analyzed that according to a study conducted by Muller and Scrotte in Bielefeld's study in Germany. It sampled 10,264 women and questioned them about their experience of domestic violence. The study took account of physical and sexual abuse as well as psychological and sexual violations in a domestic and partnership setting. 34% of domestic violence cases that were recorded were perpetrated under the influence of alcohol. And 1.3% was under the influence of drugs, 3.4 were under the influence of both alcohol and drugs. Ursula also stated that the high rate of domestic violence was attributable to the underreporting of cases of domestic violence. This is due to the fact that society still views domestic violence as an internal problem and does not need to be discussed outside.<sup>15</sup> Kurzinger revealed that until now in the various federal states in Germany policemen used to send a complaining victim back home telling them that common sense should tell them not to press charges against their husbands. They should give their husbands time for things to calm down at home.<sup>16</sup> Amoakohene posited that in Ghana, women are expected to be submissive to their partners and this is demonstrated through accepting not responding to sexual, physical, and emotional abuse from male spouses and by taking care of their men even in a domestic setting.<sup>17</sup> Cynthia Grant revealed in her article that under the cultural theory of domestic Violence in Africa, the power of tradition and norms explains the widespread incidence of domestic violence. In support of this proposition, she posited that certain cultural explanations point to the uneven distribution of power within traditional African marriage. These include the acceptance of male promiscuity, the power that the extended family possesses over the couple,

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<sup>13</sup> Ajayi A.L, Soyinka –Airewele P., 2018, Key Triggers of domestic violence in Ghana: A victim Centered analysis, African population study, 32, 1.

<sup>14</sup> Beninger C., 2017, The Effectiveness of Legislative reform in Combating Domestic Violence: A Comparative Analysis of Laws in Ghana, Nmaibia and South Africa, Sage Journal, 7.

<sup>15</sup> Ursula S., 2007, Domestic Violence: Comparative Analysis of German and U.K Research Finding, Social Science Quaterly, .5, 1263-1280.

<sup>16</sup> Kurzinger Josef, 1996, Criminology: An Introduction to the Doctrine of Crime, European Journal of Crime, Criminal Law Justice.

<sup>17</sup> Amoakohene I. 2005, Violence against women in Ghana: A look at women's perception and review of policy and social responses, Social Sciences and Medicine 59(11) , 2378-85

payments of bride price which makes it difficult for victims to leave abusive marriages.<sup>18</sup> Dery et al deduced that the common causes of domestic violence include gender inequality, economic problems, traditional beliefs including bride price payments, and alcohol use.<sup>19</sup> In the view of Hernandez patriarchy which is a system of male dominance contributes to the increasing rate of domestic violence.<sup>20</sup> Male dominance is not only prevalent in Africa, in Germany for instance from inception it was believed that a man should be the governor of the family this was illustrated in the words of Justus Menius who emphatically stated that a husband has two functions first he should rule over his wife, children, servants and be the head of his house. Secondly, he has to work and produce enough to feed and support his family.<sup>21</sup> Among other causes of domestic violence, religious ideologies were seen as a major attributing factor to domestic violence. This was the position of Westenberg. Christian women that were abused throughout their marriage felt obligated to present themselves as a perfect Christian wife in a Christian community. In some cases, abused women had to display a good face of their abuser to protect the dignity of the family and the abuser. These religious ideologies create a hegemonic culture that limits victims from seeking further assistance as they attempt to leave their abusive homes.<sup>22</sup> Leuze-Mohr and Mobius posited that throughout the age wife beating had been supported and tolerated by the laws of the land as these laws perceived male dominance and the chastisement of women and children as a section of domestic life. German administrative laws considered the husband as the supervisor and householder while the woman is regarded as a subordinate to the man therefore it is her duty to obey the man. The freedom that the wife enjoys is greatly curtailed until the late 1970s.

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<sup>18</sup> Bowman C.G., 2003, Theories of Domestic Violence in the African Context, *Journal of Gender, Social Policy & the Law*, Vol. 11, 8.

<sup>19</sup> Issac D., Africanus L.D., 2014, Domestic violence against women in Ghana: An explanatory Study in Upper West Region, Ghana, *International Journal of Humanities and Social Sciences*, 12.

<sup>20</sup> Hernandez V., 2018, A qualitative Cse Study on the Domestic violence act 2007(732) and the Convention on the Elimination of all Forms of Discrimination against Women, repository.usfca.edu.

<sup>21</sup> Hendrix S., 1995, Masculinity and Patriarchy in Reformation Germany, *Journal of the History of Ideas*, Vol. 56, No. 2, 177- 193.

<sup>22</sup> Westenberg L., 2017, When She Calls for Help- Domestic Violence in Christian Families, *Social Sciences* 6(3).

## 2. LEGISLATION ON DOMESTIC VIOLENCE IN BOTH COUNTRIES

Many international instruments relate to ending violence against women these include the “Convention on the Elimination of all Forms of Discrimination against Women” (CEDAW), “Declaration on the Elimination of Violence against Women (DEVAW),” World Conference on Human Rights, Framework for model legislation on Domestic Violence. Instruments like the “Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW) serve as the core international treaty that protects women. It was an international bill of women adopted in 1979 by the United Nations General Assembly. This bill defines what sums up discrimination against women and sets up an agenda for national action to end such discrimination.<sup>23</sup> DEVAW is the first international instrument that addresses violence against women and provides a ground for national and international action.<sup>24</sup> DEVAW obligates states not to impose any custom, tradition, or religious consideration that would prevent them from performing their obligation to the treaty. Both states are mandated to honour international laws and what they impose due to their ratification of international statutes. Rights conferred to states under international laws infer responsibilities and states are liable for any breach. States are held liable for breaches committed by their internal institutions hence the reason why domestic laws are made to put punitive measures in place. The domestication of these international laws on domestic violence facilitated the creation of legal instruments in Germany and Ghana.

In Ghana, the main legislation that governs domestic violence is the Domestic Violence Act 2007 (732) which was adopted on May 3 2007. During the late 1990s, there were discussions concerning legislation relating to domestic violence. But during the early 2000s, the rate of domestic violence had increased and further leading to femicide. The women’s rights experts and advocates held a series of events that led to bringing domestic violence into a conversation as a primary issue in Ghana. This increased the appointment of women for women and children’s affairs and was instrumental in the emergence of the Domestic Violence Act, 2007 (732) to be drawn and enacted.<sup>25</sup> This collective action for the need of legislation to penalize all forms of domestic violence was not recognized by the government until after few years. This Act aims to establish ground rules that domestic violence is immoral, illegal, and punishable by law. This

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<sup>23</sup> United Nations Entity for Gender Equality and empowerment of women, Convention on the elimination of all forms of discrimination against women.

<sup>24</sup> United Nations Women, Global Norms and Standards: Ending violence against women.

<sup>25</sup> Mensah-Allah B., Osei-Afful R., 2017, A political Settlement Approach to Gender Empowerment: The Case of the Domestic Violence Act and Girls Education Policy in Ghana, SSRN Electronic Journal.

Act was introduced as gender-neutral. Also, the domestic violence bill ensures that every individual that commits any form of violence intentionally will be arrested, prosecuted by the law, and mandated to pay for their actions.<sup>26</sup> The term domestic violence is defined in the domestic violence act 2007(732) in legal standing as “engaging in physical abuse, sexual abuse, emotional abuse, economic abuse, and any behaviour that inflicts pain on another person. It further explains a domestic relationship as either a relationship between the complainant and respondent or a relationship in a domestic situation.”<sup>27</sup> Ghana falls within the African regional system and has ratified the Protocol to the African Charter of Human and People’s Rights on the Rights of Women in Africa. This protocol offers comprehensive Protection of the rights of women in Africa. Article 2(1) of this protocol stipulates that states shall combat all forms of discrimination against women through appropriate legislative, institutional, and other measures.<sup>28</sup>

The women’s movement group in Germany were unhappy about issues concerning gender-based violence. This led to their public agitation in the mid-1970s on this topic. They set up the first women’s shelter to protect battered women and their children. From that time, they have explored new approaches to make the case better. Responsibility has been assigned on a broader footing and the focus has been shifted to interactions between different institutions.

At the beginning of the 1990s, intervention projects were being set up in Germany to bring a change in the view people have on the topic of domestic violence. They invented a high number of perpetrator-oriented intervention strategies and that brought about the popular principle known as “hit out and clear out” principle which underlined a different kind of state intervention. Germany presented its first action plan to combat violence against women in the year 1999. The aim behind this initiative was to create a model for action that would apply to all the 16 federal laender and bring possibilities for the federal government, the NGOs, and the Laender to collaborate. Having implemented the measures of the first action plan, the second action plan which was to combat domestic violence against women was adopted. The goal of the second action plan was to improve the efficiency of combating violence against women and improving their Protection. Like the first action plan, the second action plan addresses all the forms of violence and gives a summary of the commitment of the Federal Government.

The Protection from Violence Act was also introduced at the beginning of 2002 and the successive expansion of the Police Act in all parts of Germany to include police to issue a Go-

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<sup>26</sup> Hernandez, (2018), *Supra Nota* 15, 5.

<sup>27</sup> Osei-Tutu E., Ampadu E., 2017, Domestic violence against Women in Ghana: The Attitudes of Men toward Wife-Beating, *Journal of International Women’s studies*, Vol. 18.

<sup>28</sup> African Union, 2005 , Protocol to the African Charter on Human Rights And People’s Right of Women in Africa, [https://au.int/sites/default/files/treaties/37077-treaty-charter\\_on\\_rights\\_of\\_women\\_in\\_africa.pdf](https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf)

order banning perpetrator from the residence shows how this new method of thinking has changed the actions of the society.<sup>29</sup> Legislations in Germany on domestic violence include the Directive 2012/29/E.U. of October 25 2012, Acts on Protection against violence also known as German Policy on Domestic Violence which was introduced to improve the Protection against stalking and violence to enable the allocation of shared homes.<sup>30</sup> The European Convention on Human Rights was introduced in 1953, to protect the human rights of citizens and residents of member states in the European Union. Article 3 of the convention prohibits torture or inhuman and degrading treatment or punishment. Domestic violence can be considered under this article as it includes rape and sometimes threats of harm to the family. The bodily harm or mental suffering suffered by victims can be considered as inhuman treatment as well. The degrading treatment under this article includes humiliation and debasement.<sup>31</sup>

## **2.1 Different Form Of Law Enforcement And How Domestic Violence Is Accessed.**

Laws without instruments of enforcement are often not taken seriously. Policing is a pertinent instrument used by states to ensure law and order is maintained. This equally becomes the first process in the criminal justice system. The arrest of perpetrators of domestic violence is the first step to getting a remedy for the abused. In Germany, all the 16 lander police forces have different regulations concerning domestic violence unlike in Ghana where one regulation covers the whole country. Some police forces in Germany have accepted the soft method of policing more than the others. This is because of the different religious upbringing in some parts of the country.<sup>32</sup> In Ghana, the criminalization of domestic violence in 2007 led to police involvement in domestic violence cases paramount. This led to the establishment of specialized domestic violence units. This specialized unit is known as DOVVSU (domestic violence victims support

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<sup>29</sup> Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Working together to Combat Domestic Violence.

<sup>30</sup> United nations women, Protection against Violence Act, <https://evaw-global-database.unwomen.org/en/countries/europe/germany/2002/protection-against-violence-act>

<sup>31</sup> Council of Europe, Prohibition of Torture, European Convention on Human Rights, <https://www.coe.int/en/web/echr-toolkit/interdiction-de-la-torture>

<sup>32</sup> Smartt ( 2007), Supra nota 15, 11.

unit)<sup>33</sup> Basically, Ghana and the German police force are the first points of contact for domestic violence victims seeking a remedy. In most instances, most NGOs equally play a key role in ensuring individuals who are scared of reporting domestic violence cases are given every assistance including filing a report by themselves to the police and hiring personal lawyers to defend the victims. Examples of these NGOs that aid victims to seek remedy are the Commission on Human rights and Administrative Justice (CHRAJ), Alliance for action against trafficking in women (Aktionsbündnis Gegen Frauenhandel)

The high dark figures of domestic violence are due to the under-reporting of these cases. Leuze-Mohr found this in his study in Germany where it was deduced that around 90% of the cases recorded in Germany were not reported. Most victims tend not to report cases because they believe the chances for the offender or their abuser to go scot-free is high during criminal proceedings, keeping the family intact also comes as a reason for high dark figures of domestic violence cases. No faith in the criminal justice system stems as a reason.<sup>34</sup>

## **2.2. Change in Legislation to meet the needs of victims**

The systematic nature of domestic violence necessitates reform in the legislation to ensure continual remedy for the abused. Specifically, the German legislation has experienced some reforms. The right to marriage reform act of June 14 1976 which was adopted on July 18 1976 in gave women in Germany a chance to make decisions without fear on issues concerning their lives. This included employment and legal right to their surname. The civil code of 1896 instituted that a woman shall assume her husband's name upon marriage and his surname shall be given to the children. But the 1976 reform law section 1355 of the civil code stated that the marriage and family name is the husband's surname but the wife is authorized to add her maiden name to her husband's by Declaration before the registrar and this Declaration must be publicly authenticated. Discussions on legislation concerning measures to deal with domestic violence have been in existence for about a decade but the progression has been slow due to the need to adjust to traditional social norms and the legal rights of a woman within domestic social and

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<sup>33</sup> Yalley A. A., Olutayo M. S., 2020, Gender , masculinity and policing: An analysis of the implications of police masculinised culture on policing domestic violence in southern Ghana and Lagos, Nigeria, Social Sciences & Humanities Open.

<sup>34</sup> Smartt (2007), supra nota 15, 5-6.

employment background. Women in Germany have a great deal of scope for improvement in every sector even though the independence of women in Germany has been slow. Other legislative reforms that have taken place in Germany include the April 1 1987 OEG Victim's Compensation Act which was amended by further statutory laws known as the Victims of Criminal Acts 1987 Opferschutzgesetz (OSG) . The aim was to advance and help victims in criminal proceedings. The amended Act gives victims high security from responding to personal questions during trial proceedings. The victim also possesses the right to request for the withdrawal of the defendant from trial proceedings when the victim is stating evidence in a bid to avoid intimidation. The victims can also ask for the removal of the public from proceedings on application of an in-camera anonymity order to the judge presiding the case especially when the victims are requested to give evidence on personal or private information. This Act also grants the victim an improved freedom of information right this includes more information on the use and disclosure of personal data. The victim is entitled to a lawyer. Another remarkable procedure brought pursuant to this Act was the entitlement to begin a separate private prosecution against the defendant. The 33rd Amendment Act (Strafreschtsanderungsgesetz) replaced the German criminal code (Strafgesetzbuch) in 1997. The amendment made to the German Criminal code states that offenses like sexual assault and the force into any sexual activity without consent are possible offenses in marriage. This rule was previously not included in the Act. As seen in R v R (1992) 1 AC 599. The Judge ruled pursuant to section 1(1) of the sexual offenses (Amendment) Act that "the offense of rape was one that was not known to the law where the defendant was the husband of the alleged victim" however he was convicted of attempted rape and assault occasioning to actual bodily harm his subsequent appeal for this conviction was dismissed.

The Protection from violence Act 2000 (Gewaltschutzgesetz [GewSchG]) came into force on January 1 2002. This Act is geared towards protecting victims of violence, persecution, and stalking. This Act aimed to lessen the legislation that governs the distribution of domestic and marital homes during the process of divorce. Decisions are made by the family court when victims apply for them. This Act serves as a protection to not only married or divorced couples but to anyone who has become a victim of violence. There shouldn't necessarily be a relationship between the victim and the perpetrator. This means people living in a sheltered environment due to age, mental illness, or physical and psychological disability are covered by this Act. The Victim Protection Act 1998 which came into force on December 1 1998 was introduced to provide statutory Protection for a vulnerable person, victims, and underage witnesses during a criminal proceeding. This includes materials that prevent duplicate witness statements like video evidence at court and during police interviews. The Act also provides an

attorney for underage or youthful witnesses as their evidence is broadcasted by pictures and sound. The Improvement of the Right of Victims Act was adopted on September 1, 2004. This Act plays a role in criminal proceedings. The act states that among other things victims of crime have a constitutional right to an advocate and the help of an advocate. Also, victims have a right to victim protection schemes and victim support in court. Moreover, victims are entitled to compensation as part of the sentence by wishes of the victim. The European Convention on Human Rights was introduced in 1953 and article 3 of the convention states that “no one shall be subjected to inhuman and degrading treatment or punishment” Member states of the European Union need to ensure the Protection of people from domestic violence. Failure to do so is likely to cross the high impediment of the prohibition on degrading and inhuman treatment. This was seen in the case of *Affaire Burtunga v Romania*. Where the court found a breach in articles 3 and 8 in respect to failure on the part of Romania to investigate adequately and take action on complaints of domestic violence and awarded 10000 Euros general damages. Also in the case of *E.S and others v Slovakia* The court held that Slovakia had failed to provide the first applicant and her children the immediate Protection against the violence she was going through at the hands of her husband which was a violation of article 3.

The passing of the Domestic Violence Act 732 (2007) which was the first major step in the fight against domestic Violence in Ghana, it ensued a lot of controversies. This is because political and community leaders criticized the proposed law on grounds that it imposed foreign ideas and that did not fit Ghana’s culture, religious social structure, and traditions. This controversy is an illustration of the difficulties posed by a cultural resistance to legislative reform. In addition, the initial British laws did not address or recognize any form of violence against married women as Ghanaian laws are based on British common law. To ensure an inclusive drive in protecting the rights of women and children while not making it look one-sided the Ghanaian government implemented gender equality into its legal system. Apart from the multiple statutes and treaties, it established a government agency to deal with the problems of gender inequality. This agency is the Ministry of Gender, Children, and social Protection. Ghana ratified CEDAW in 1986 to eliminate discrimination against women. It supplemented the international legal obligations by requiring equality and equal access in various realms which includes the right to education, the legal age of marriage, divorce proceedings inheritance, equality in law, and land rights. The Ministry of Women and children’s affairs was established in the year 2001 with a mandate to initiate, organize and supervise gender-responsive issues while ensuring women have equal rights. The Domestic Violence Act was passed in 2007. It was divided into three sections the first part gives definitions of some important terms such as domestic violence, domestic

relationship, prohibition of domestic violence, filing of complaints to the police, police assistance, arrest by police, and so on. The second part consists of provision for protection orders and spells out the jurisdiction of courts in domestic violence cases, how to apply for a protection order, conduct of court proceedings, interim protection order, grant of protection order duration, and conditions of protection order. The last part makes up the miscellaneous provisions which gives a description of how criminal codes relates to Domestic Violence Act, criminal charges, civil claims for damages. Although The Domestic Violence Act provided security for women and is viewed as a progressive law, there were disappointments from many supporters as they argued that the Act remained contemptuous of effective implementation. Yielding to the pressure of the public, parliament changed the meaning of Domestic Violence that explicitly contradicted the old formulation of section 42(g) of the criminal code 1960 Act 29 which states that “sexual consent between partners is given at the time of marriage thus a woman cannot refuse her spouse sex”. This code had permitted marital rape for years though certain ambiguity in the language came up as people opinionated that the definition of domestic violence included marital rape. The section that was repealed in the criminal code was replaced by a section in the Domestic Violence Act that prevents the use of violence based on concern in marriage. It states that “the use of violence in a domestic setting is not justified based on consent.” Many members of parliament disapproved of this provision including the elected Minister for Women’s and Children’s Affairs. They argued that the definition given in the repealed section was a western one and was not fit for the Ghanaian culture. While we consider the drafting of laws to be actions taken towards the compliance with international obligations, effective implementation is also necessary this is why the Domestic Violence Victim Support Unit was also set up in Ghana police service as an institution dedicated to responding to issues of domestic violence. It was founded under the Ministry of Women and Children’s Affairs to help in monitoring and implementation processes.

Evidently, there has been a reform to mitigate domestic violence in both Ghana and Germany, however, it is pertinent to ask to what extent these legislations helped to mitigate domestic violence. First, I will succinctly explore the 33rd amendment act which replaced the German criminal code. An integral element in this amendment is the view of what constitute rape and whether such constituting element can be suspended on the ground of marriage. To the law rape could be defined as having sexual intercourse with a person without their consent. Rape in itself is regarded as a domestic violence. Section 177 (6)(1) created no exceptions as it relates to marriage, this legislation explicitly used the word “ whoever” this interpretation was essential in

the case of R v R. it was intriguing as the case of rape against the husband was dismissed at the court of first instance. The court ruled that rape was not one that was known to law in marriage. A remarkable feat was recorded here as the House of Lords overturned the earlier judgment. The significance of this legal instrument is that the interpretation of whoever in this section became inclusive and applicable to marital couples. This legislative reform and its concomitant reinterpretation by the court has aided in mitigating domestic violence.

A similar legislative modification was seen in the Ghanaian act against domestic violence. The definition of rape and sexual assault as captured section 42 (g) was lacking in scope just like the German earlier law, this section raises an exception to what constitutes rape or sexual assault, more so, the limitation to consent. Consent according to this section can be withdrawn anytime. However as long as couples are still married, consent cannot be revoked. The implication of this legal provision is that rape is permissible as long as couples are married and only divorce can signal withdrawal of consent. This legal provision was replaced by section 4 of the domestic violence act. This legal provision cancels the implied consent of the earlier law in marriage.

### **3. THE DIFFERENCES AND SIMILARITIES IN THE APPROACH ADOPTED TO PROTECT VICTIMS**

The legislative reforms between both countries possess a level of difference and similarities. Both countries have the same aim which is to combat domestic violence this can be deduced from their ratification of international instruments on domestic violence. One evident similarity in these legislative reforms is compensation for domestic violence. In Germany, victims are entitled to compensation from the state if they apply for them. This is made possible by the German Victims Compensation Act of May 11 1976 (Opferentschädigungsgesetz) while in Ghana the Domestic violence Act 732 section 3(3) states that a court can impose a fine in case of domestic violence to pay compensation to victim an amount determined by the court.

The Victims of Criminal Act 1987 came into effect to grant victims increased Protection from being asked personal questions during a trial. This Act gave victims the right to also ask for the removal of defendants during proceedings to avoid intimidation. Victims could exclude the public from proceedings upon application of an in-camera anonymity order to the presiding judge. The Domestic Violence Act in Ghana also holds in section 13 that proceeding for a protection order shall be held in private in the presence of lawyers, parties, and other persons committed by the court. Subsection (2) also permits the court to remove respondents from proceedings when their presence is likely to cause an adverse effect on the victim or a witness without sacrificing the integrity of the proceedings.

The German criminal code which was amended by means of the 33<sup>rd</sup> amendment act holds that offenses like a sexual assault that leads to engagement in sexual activity without consent and rape are now considered as an offense within marriage. This part of the legislation is seen in section 4 of the Domestic Violence Act of Ghana which prohibits the use of consent as an excuse for violence.

Another similarity in the change of legislation to meet the needs of victims is the Protection from Violence Act in Germany which protects victims from violence, persecution, and other acts like stalking. This Act also reduces legislation in sharing of marital and domestic homes. It gives an exclusion order to remove a violent partner from the home in cases of domestic violence. This

Act applies to only married couples and does not relate to cohabitants who fight in public. Also, the section 1 of this Act states that the court must take measures to protect victims against violence and stalking. If a person intently physically assaults and impairs the health or encroaches upon the freedom of another person the court must refrain the perpetrator from (1) entering the dwelling place of the aggrieved person. (2) Coming within a certain proximity of the dwelling of the aggrieved person. Subsections (3), (4), and (5) of this policy all talk about the refrainment of a perpetrator to a victim.<sup>35</sup> Section 2 of the policy relinquishes a perpetrator from a jointly used dwelling. This is similar to section 3(4) of the Domestic Violence Act in Ghana. However, the German policy pursuant to section 1 is more explicit in guaranteeing these rights and freedoms.<sup>36</sup>

The improvement of the rights of victim's Act stipulates that victims in criminal proceedings have a statutory right to legal aid and the help of an advocate, the right to protection schemes, and victim support in court proceedings. Similarly, criminal matters in Ghana as in other states are regarded as a crime against the state this measure is used in domestic violence cases where there is physical harm or sexual assault the state attorney takes up the prosecution. In most cases, NGOs and INGOs play vital roles in ensuring the victims get a remedy. INGOs like FIDA (International Federation of Women Lawyers) are at the forefront in aiding victims of domestic violence.

In Germany, concerted efforts have been made to punish individuals that abuse their partners. Many reforms have been introduced to repeal outmoded laws to suit the age. However cultural and religious beliefs have limited the efforts to penalize offenders in Ghana. Though Ghana has made efforts to increase the Protection of women, the statutory regime fails to address domestic violence. The Ghanaian legal system has made tremendous efforts in issues relating to providing a remedy for traditional practices which constitute domestic violence in line with international best practices however these efforts are deemed insufficient to address the catalytic rate of domestic violence. But there has been insufficient progress made to redress the serious and continuing violation women go through. The Ghanaian legal system fails to fully hold men accountable for the abuse they inflict on their partners. This response is mostly problematic due to the prevalent influence of cultural norms that prevent women from seeking justice until they

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<sup>35</sup> German policy on Domestic Violence, European Crime Prevention Network, <https://eucpn.org/document/german-policy-on-domestic-violence>

<sup>36</sup> Ibid.

have been abused to the crisis point. The failure on the part of the legal system to impose the needed criminal sanction for domestic offenses supports the concept that domestic crimes are less serious than crimes committed against others. This portrays a view that is inconsistent with Ghana's constitutional and international legal obligation.

### **3.1 The German and Ghanaian Compliance to DEVAW On Domestic Violence**

The Ghanaian and the German state are signatories to various international instruments on domestic violence. They are expected to act in good faith towards these ratified instruments. This obligation is mostly captured in the formation of national legislations. Article 40(d) of the Ghanaian constitution obliges states to “adhere to the principles enshrined in the Charter of the U.N., A.U., the Commonwealth Treaty, Treaty of ECOWAS and any other organization of which Ghana maybe a member”<sup>37</sup> Whereas article 25 of constitution of the federal republic of German captures the primacy of international laws. It states that “The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and directly create rights and duties for the inhabitants of the federal territory.”<sup>38</sup>

The compliance will start by exploring the meaning of domestic violence. Firstly the Declaration on the elimination of violence against women explains the term “ violence against women” as any act of gender-based violence that results in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life.<sup>39</sup> The Ghana domestic violence Act 2007(732)<sup>40</sup> defines the term domestic violence in light of the criminal code 1960 Act 29 which gave a broad definition of acts that can be regarded as domestic violence. This include physical abuse, sexual abuse , economic abuse , emotional, verbal or psychological abuse. This is equally relative to the German definition. The acts on Protection against violence explains violence within its meaning as any unlawful physical assault, impairment to the health of or encroachment on the freedom of another with intent whether it took place within or outside the confines of the home. This Act also covers the definition of psychological violence explicitly in cases of threats and unreasonable harrasment and indirectly when it has led to psychological or psysical impairment

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<sup>37</sup> Article 40(d), Constitution of Ghana.

<sup>38</sup> Article 25, Constitution of the Federal Republic of Germany.

<sup>39</sup> Article 1, Declaration on the Elimination of all Violence against Women

<sup>40</sup> Ghana Domestic Violence Act 2007 (732) § (1)

of another person's health.<sup>41</sup> Looking at the definition of domestic Violence in DEVAW certain essential elements of the definition are not captured in the Ghanaian and German legislations on domestic violence. For instance the German definition does not include sexual harrasment elements of domestic violence as seen in DEVAW and the Ghanaian definition. Another similar element seen in the definitions is the deprivation of liberty. The three legal instruments highlight on the encroachment of the freedoms of another person as a form of domestic violence.

Article 3<sup>42</sup> of DEVAW requires equal enjoyment of all rights and freedoms enjoyed by men. This inter alia include the right to equality, the right to security and liberty of a person, the right to life, the right to be free from all discrimination and the right to equal Protection under the law and the right not to be subjected to torture, or other cruel inhuman or degrading treatment or punishment. A critical look at the Ghanaian Domestic violence Act does not explicitly cover the equality components as seen in the DEVAW this equally is missing in the German Protection on Acts against Violence. Another critical area of assessment is the provisions of the DEVAW against torture cruel inhuman and degrading treatment in article 3(h) this provision can be attributed to the prohibition of domestic violence in the Ghanaian domestic violence Act. The Ghanaian domestic violence Act categorized all forms of violence explicitly capturing cruel inhuman and degrading treatment as seen in the DEVAW. Section 1<sup>43</sup> of the Ghanaian domestic violence Act categorized this under all forms of physical assault or use of physical force against another. This equally include treatment that leads to deprivation and subjecting person to cruel inhuman and degrading treatment or punishment. Section 1 of the German Acts on Protection against violence, held a similar provision on the judicial measures to protect against violence and stalking.

Article 4<sup>44</sup> of DEVAW stipulates that states should put in the necessary efforts to condemn violence against women. Article 4 requires states to exercise due diligence in preventing and investigating in accordance to national legislations and punish all acts of violence against women whether those acts were perpetrated by states or private individuals. Also states need to develop penal civil, labour and administrative sanctions in domestic legislations to punish wrongs caused to women subjected to violence. Access to mechanisms of justice should also be made while educating women on their rights in seeking redress using these mechanisms. States should include special assistance like rehabilitaion and and child care maintenance, counselling and

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<sup>41</sup> Federal Ministry of Justice and Consumer Protection, Greater Protection in Cases of Domestic Violence Information on the Act on Protection against Violence.

<sup>42</sup> Article 3, Declaration on Elimination of Violence against Women.

<sup>43</sup> Section 1, Ghana Domestic violence Act 2007(732).

<sup>44</sup> Article 4, Declaration on Elimination of Violence against Women.

health and social services for victims. In comparison to the Ghanaian domestic violence Act, the Act provides similar provisions that relate to article 4 of DEVAW. These include the arrest of perpetrators by the police captured in Section 9<sup>45</sup> and the jurisdiction of the court seen in section 11 of the Act. Section 29 of the Act provides for the establishment of a Victims of Domestic Violence Support fund to support the basic materials of victims, shelter and rehabilitation of victims. The German Acts of Protection against Violence was not explicit in this area but was specifically centered on the judicial measures. However the German state has enacted several acts to forestall this Protection. These Act includes section 406g of the German code of criminal procedure. This section has improved women's access to justice. Victims of specific offence are entitled to psychological support during criminal proceedings to reduce the pressure experienced by victims during proceedings. Section 177(1)<sup>46</sup> of the criminal code makes a contribution to combating sexual violence.

DEVAW in its article 5 inter alia hold that states should consider issues in elimination of violence as appropriate an ideal in the quest to ensure implementation of human rights instruments. In essence legal efforts for prevention of domestic violence and ensuring remedy for victims of domestic violence should not be marked distinct from the obligation to ensure observance of other fundamental human rights. Both the German and Ghanaian legal documents on domestic violence incorporate the legal guarantees of human rights protection to the Protection on domestic violence. Moreover the penal codes used in determining infringements and punishment to domestic violence cases are same as in every other fundamental human right legislation.

### **3.2 Effective Remedy to Domestic Violence**

The comparative study of domestic violence in both countries was intended to see the nature of domestic violence, both its causality and legal efforts in curbing the menace. Through this study a review of the standards set by DEVAW was necessary in ascertaining the compared countries legal efforts towards curbing the menace. Some legal changes made in Germany included the

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<sup>45</sup> Section 9, Ghana Domestic Violence Act 2007(732).

<sup>46</sup> Section 177(1), Ghana Criminal Code.

victims of criminal Act, Protection from violence Act, victim protection Act. Whiles in Ghana the domestic violence Act 732 was also introduced. The ministry of gender social protection and children was introduced into the system. The definition of domestic violence was changed as it contradicted the old formulation of section 42(g) of the criminal code which permitted marital rape. From the study it was evident that the legislative changes adopted by both countries to meet the needs of victims have been successful as it provides security for victims. This is seen in the Acts of protection against violence section (1) and (2) where in cases of domestic violence the perpetrator is removed from the dwelling place of the victims and is banned from being in close proximity with the victim. However to make these legislations more effective to reduce domestic violence cases, more enforcement methodology is required. This will include ensuring that the enforcement agencies (the police) are liable for failures relating to due diligence in prosecution of offenders.

Compliance of the legislations in both countries to DEVAW was not absolute. Certain mismatches were evident. For instance the definition of domestic Violence in DEVAW had certain essential elements that were missed in the Ghanaian and German legislations. The German legislation did not include sexual harassment elements as seen in the other two legislations. One other mismatch seen in the compliance was the equal enjoyment of all rights and freedoms enjoyed by men.

To ensure a more effective remedy against domestic violence it is pertinent to address the legal and procedural gaps existing therein. The comparison has shown a greater compliance to the international instrument on domestic violence. However more efforts are required for instance in the fight against domestic Violence the German Act was explicit in the judicial measures that applies for punishing domestic violence perpetrators and also Protection in cases of domestic violence. In cases where a person unlawfully or physically assaults, impairs the health of or encroaches upon the freedom of another with intent. The applicable law ensures that there is restriction in accessing the victim's residence, establishing contact and perhaps visiting other places that are frequently visited by the victim. One of the issues associated with the German effort on domestic violence is the exclusion of sexual harassment elements of domestic violence as seen in the DEVAW including this in the Germans legislation will expand the scope of the law and ensure more Protection.

Gender inequality has been one of the major causes of domestic violence. The feeling of one gender being superior to the other continues to breed conflicts between partners. As required by the DEVAW both the Ghanaian and German states should incorporate the equality clause in both

the German and the Ghanaian domestic violence act. This would help to reduce domestic violence cases especially in Ghana where the male hegemonic ideology is intertwined with the cultural and religious beliefs.

In line with the DEVAW the German state through the instrumentality of the E.U. holds a member state accountable for its refusal in guaranteeing due diligence in cases of domestic violence. This was seen in the case of *Affaire Burtunga v Romania* where the court held the Romanian government accountable for lack of due diligence. The inclusion of a clause that ensures that the Ghanaian state is held liable for lack of due diligence in the implementation of domestic violence laws would be a suitable remedy in the fight against domestic violence.

## CONCLUSION

Domestic violence remains an issue. Globally, 1 in 3 women face domestic violence. This study discussed the rate and causes of domestic Violence in Germany and Ghana. It also looked at the legislative reforms made to ensure the needs of victims are been met. Since the study was a comparative research it looked at the differences and similarities in the change in legislation to meet the needs of victims. Both countries have made significant progress towards the elimination of domestic violence in compliance with international obligations. This is evident in the legal framework and the institutional structures being put in place to tackle this issue. It must, however, be noted that beyond the measures put in place, effectiveness remains key and thus far, most of these institutions have not lived up to their mandate.

The aim of this study was to look at the legislative reforms adopted by the legislative systems of both countries and how this change has come to meet the needs of victims. From the study conducted above it was deduced that The German state had made some changes to their legal statutes to protect the needs of victims. These include the adoption of the improvement of the right of victims act. This Act gives victims the right to an advocate and victims support schemes in court. They are also entitled to compensation if they wish for them. The victims of criminal Act are to advance and help victims in criminal proceedings. It protects them from answering questions they seem personal during trial proceedings. The Ghanaian state adopted the domestic violence act 2007 (732) to help curb cases of domestic Violence in Ghana. The Ghanaian state implemented gender equality into its legal system. It established a government agency to deal with problems of gender equality this agency was the Ministry of Gender Children and Social Protection. The study made it evident that there were certain similarities and differences in the legislative reforms adopted by the two states. One evident similarity in the legislative reforms is compensation for domestic violence. In Germany, victims are entitled to compensation from the state if they apply for them. This is made possible by the German Victims Compensation Act of May 11 1976 (Opferentschädigungsgesetz) while in Ghana the Domestic violence Act 732 section 3(3) gives victims the right to compensation determined by the court. It was deduced that there were a lot of similarities in the judicial measures put in place to protect victims of domestic violence. Also there has been improvement in the efforts being made to improve the needs of victims and ensure their security. However it recommended that states should tighten their enforcement methodology and enact legislations that put liability on states that fail to practice due diligence on the prosecution of victims.

The study looks at the compliance of the Ghanaian and German legal frameworks to international instruments (DEVAW). This research has shown compliance to the DEVAW by both the Ghanaian and the German legislative instruments on domestic violence. However a slight variation can be seen in some articles. Findings from the study shows that both states are signatories to various international instruments and are expected to act in good faith to its ratified instruments hence the formation of national legislations. The analysis started by capturing the definition of domestic violence. The definition of domestic violence as captured in DEVAW has certain mismatches to that of the Ghanaian and German legal instruments. It was deduced the German Acts on Protection against violence missed elements of sexual harassments. Also article 3 entails equal enjoyments of all rights and freedom enjoyed by men. This inter alia includes the right to security and liberty, right to life, right to equal Protection under the law and not to be subjected to torture or other cruel inhuman or degrading treatment. A look at the Ghanaian domestic violence act does not explicitly cover the equality components as seen in DEVAW. In view of the above, to ensure a better fight against domestic violence the slight inconsistency between the DEVAW and German and Ghanaian legislations can be adjusted by including sexual harassment elements of domestic violence as seen in DEVAW to the German acts on Protection against violence as this will expand the scope of the law and ensure more Protection.

Gender inequality has been one of the major causes of domestic violence. The feeling of one gender being superior to the other continues to breed conflicts between partners. As required by the DEVAW both the Ghanaian and German states should incorporate the equality clause in both the German and the Ghanaian domestic violence act. This would help to reduce domestic violence cases especially in Ghana where the male hegemonic ideology is intertwined with the cultural and religious beliefs.

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## **EU LEGISLATION**

1. German Policy on Domestic Violence
2. German Protection against Violence Act
3. Victims Compensation Act 1976 No. 237
4. The German Criminal Code section 177
5. European Convention on Human Rights, Article 3
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7. Declaration on the Elimination of all Violence against Women

### **COURT DECISIONS**

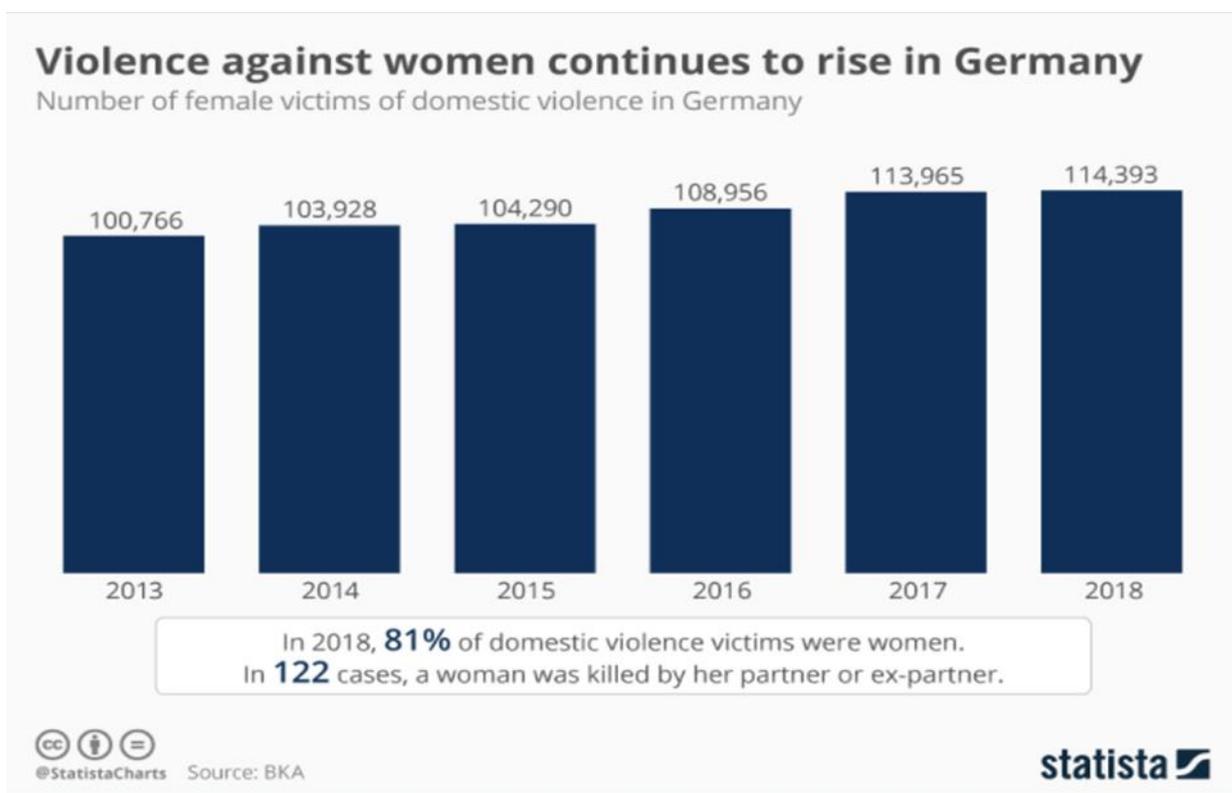
1. Case AC 599, R v R, House of Lords, October 23 1991.

2. Case 8227/04, E.S and others V Slovakia, ECHR, December 15 2009.

3. Case 56867/15, Affaire Buturuga V Romania, 11 June 2020.

## APPENDICES

### Appendix 1. Number of Female Victims of Domestic Violence in Germany



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