

Economic Determinants to Accessing Justice by Spouse Abuse Victims in Nairobi City County, Kenya.

Scholastica Omondi¹, Prof Wilson Otengah²

^{1.} *Phd Candidate, Kenyatta University*

^{2.} *Professor of Sociology, Rongo University*

Abstract: Spouse abuse (SA) is acknowledged globally as a major social problem. Most victims are women while majority of the perpetrators are men. There is a high attrition level as cases reported to the police drop out of the 'justice chain'. Limited studies in Kenya make it difficult to design an effective intervention strategy. This study's objective was to investigate the economic determinants in accessing justice from the Criminal Justice System (CJS), by SA victims in Nairobi County, Kenya. The Social conflict theory of the family feminist was used. Data was collected from 134 SA victims (male and female) who reported to the police, FIDA and Gender Violence Recovery Centre (GVRC) during the period 2012-2013. There were 31 key respondents purposively sampled due to their roles in handling SA in the CJS. Secondary data was collected through records review. Both quantitative and qualitative data was analysed using SPSS and inferences respectively. The study found that majority of victims were unable to access justice from the CJS due their social status, employment status, lack of psychosocial support and legal services as well as financial dependence of the VSA on the perpetrator. The study concludes that these factors hinder the VSA's access to the CJS. The study recommends that the Social Protection Department of the Ministry of Labour, Social Security and Services should develop and implement economic empowerment programs for VSA.

Key words: access to justice, economic determinants, financial dependence, spouse abuse, victims of spouse abuse

Date of Submission: 16-10-2019

Date of acceptance: 31-10-2019

I. INTRODUCTION

Spouse abuse (SA) refers to a phenomenon that is commonly known as domestic violence. It is also variously referred to as family violence, domestic disputes, intimate partner violence, wife abuse, wife battering, husband battering, gender based violence and many other terminologies in various parts of the world (Novisky & Peralta, 2014; Smith, 1989; Buzawa and Buzawa, 2003; Freeman, 2008). SA also refers to violence between intimates living together or who have previously cohabited (Buzawa and Buzawa, 2003). SA is perpetrated in the form of physical, psychological and verbal acts used to achieve domination and control over an intimate partner (Freeman, 2008). It characteristically includes acts of physical and mental cruelty progressing from a slap or shove, to a punch or kick and to the more extreme manifestations of violence, in suffocation, strangulation, attempted murder and actual murder (Novisky & Peralta, 2014; Lockton and Ward, 1997). The terms are at times used interchangeably, causing confusion rather than clarification, but nonetheless they focus on a marital relationship between the victim and the perpetrator (Bayer, Wallis, & Hamberger, 2015; Lockton and Ward, 1997).

The term violence or abuse is often used in a narrow as well as wider sense. In the narrow sense, it describes the use or threat of physical force against the victim, constituting the crime of assault. In the wider definition within the family context, it includes physical assault, sexual or psychological, mental and emotional harassment. These result in negative health consequences for the victim (British Law Commission, 1992). This study adopted the definition of the term violence by the British Law Commission view of spouse abuse, but recognized the limitation that in Kenya, only physical violence is recognized by the Criminal Justice System (CJS) as a crime known as assault under the Penal Code (*Chapter 63, Laws of Kenya*). The operational definition of SA in this study therefore refers to violence perpetrated by an intimate partner in a marital heterosexual relationship by either the wife or the husband. The study was therefore confined to SA within a marital relationship.

Although women are predominantly victims, (Novisky & Peralta, 2014; Dobash and Dobash, 1981; Smith, 1989; Cerulliet al, 2011), husbands also experience spouse abuse (Novisky & Peralta, 2014; Strauss, 1999; Noreen, 2011; Ellsberg et al, 2000).

SA is acknowledged globally as a major social problem that affects the victims, their families and the community in general irrespective of the social, economic, religious or cultural group (Bennet & Lisa, 2015). In a survey carried out in 1998 amongst married women in Australia, Canada, USA, Leon and Nicaragua, 3% to 27% of the respondents had experienced SA in the last twelve months preceding the study. In Korea, 38 % of women had experienced SA while in Palestine 52% of women in the West Bank and Gaza strip were victims of this type of abuse, not as an isolated event but as a continuing pattern of abusive behaviour (Novisky & Peralta, 2014; Heise, Ellsberg, Gottemoeller, 1999). In Japan, 57 % of women were VSA perpetrated in the form of physical, psychological and sexual violence (Novisky & Peralta, 2014; Yoshihama and Sorenson, 1994). Research studies also showed that men were also affected. In a study conducted in India, 98 % of the men interviewed were VSA perpetrated by their wives (Husain, et al., 2015). More than 40% of VSA in Britain were found to be men (Bagwell-Gray, Messing, & Baldin-White, 2015; Campbell, 2010). In the state of Florida in the USA, an estimated 4% of men become VSA every year (US Department of Justice, 2012). According to the UN WOMEN facts and figures 2017, approximately 35% of women have experienced violence in their lifetime within the context of an intimate relationship (UN Women, 2017). In 2009, 39% of women experienced gender based violence. While there are no comprehensive statistics for male VSA, in Kenya, 44% of men and 45% of women have experienced SA (KDHS, 2014). This indicates an increase in gender-based violence for both men and the women.

Despite the above statistics of the known reported incidences of SA, research indicates that majority of the incidences go unreported while only a smaller percentage is documented compared to other offences like robbery. A study conducted across 57 countries found that on average only 10% of female VSA reported the abuse to the authorities (UN Women, 2012). Globally, there is a high attrition level where cases of SA reported to the police drop out of the 'justice chain' - all the steps between a crime being committed and the perpetrator being convicted (UN Women, 2012). A study conducted in 2009 revealed that an average of 14% of reported cases of SA ended in conviction with the rates falling as low as 5% in some countries in Europe (UN Women, 2009).

In Africa, SA is a complex issue that results from and is perpetrated by various facets of community life (USAID, 2006). Studies conducted in Sub-Saharan Africa revealed that 13%-49% of women were VSA with 5% to 29% experiencing the abuse within one year prior to the surveys in which they were respondents (Krug *et al*, 2002; Koenig *et al*, 2003; Watts and Zimmerman, 2003; Kishor and Johnson, 2004; World Health Organisation, 2012). In Ghana, over 2,000 men were reported to be victims of spouse. In Namibia, 14% of all the reported cases of SA were perpetrated by wives against husbands (Bagwell-Gray, Messing, & Baldin-White, 2015; Law Reform and Development Commission, 2000). In Uganda, up to 40 % of all SA cases involved women as the perpetrators and men as the victims.

Despite the documented cases of spouse abuse (SA), few of the cases go through the criminal justice system (CJS) for resolution (Moult, 2005). In South Africa, VSA prefer to report the incidences to the Alternative Mechanisms of Dispute Resolution (ADRM) as opposed to the CJS (Moult, 2005). In Uganda, VSA prefer using the services of local informal authorities rather than the formal CJS. The study by ICRW and UNFPA showed 8.5% of VSA in Uganda used the local informal authority compared to 2% who reported the case to the police with only 0.2% of the cases reported to the police proceeding to court for determination (ICRW & UNFPA, 2009). In Morocco, the local informal authority did not exist but only 13.5% of VSA reported their cases to the police and out of these, only 8.7% of the victims had their cases proceed to court for determination. 6.9% of the VSA in Morocco reported their cases to the social services department. These statistics therefore show that access to the CJS by VSA is still low in many developing countries, especially in Africa, where there appears to be a preference for ADRMs.

In the year 2009, the prevalence of SA against women in Kenya was estimated at 39%. (Kenya Demographic Health Survey (KDHS, 2009). In 2014, the prevalence for women rose to 45% while for the first time, the survey reported the prevalence of SA against men at 44% (KDHS, 2014). Reports indicated that 60% of married women experience SA once in their lifetime while 54% of the women experience the abuse frequently (Johnston, 2002; World Health Organisation, 2012). The KDHS showed that 47.3% of women had experienced SA with 27.9% having had such an experience twelve months prior to the study. In a study conducted in Kenya, SA was found to be high among currently married women, with three in ten reporting violence within twelve months of the marriage (KDHS, 2003; Reena B *et al*, 2009). MaendeleoyaWanaume, a men's rights organization conducted its own survey of Central and Nairobi provinces and found that up to 460,000 men had experienced SA (MaendeleoyaWanaume, 2012). According to the Gender Violence and Recovery Centre (GVMC), 90% of SA cases reported to the centre are perpetrated by men while only 10 % are perpetrated by women.

Incidences of SA are on the rise in Kenya (MaendeleoyaWanaume 2012). The Civil Society recognized the problem of SA and subsequently many organizations sprung up to deal with the phenomenon. The rise of organizations dealing with SA was an indication of the increase in the problem. Such organizations, registered

and recognized by the government of Kenya included FIDA, COVAW, GVRC, WRAP, CREAM, UNFPA, FEMNET, ANPPCAN, Plan Kenya, IJM, Oscar Foundation Free Legal Aid Clinic, SWED and other GBV stakeholders.

The Government of Kenya, in recognition of the problem, set up a gender desk at the police headquarters where gender based violence can be reported. The gender desk is managed by a Senior Assistant Commissioner of Police. In addition, gender desks were set up in some police stations countrywide, including Kilimani and Shaurimoyo police stations in Nairobi City County. This demonstrates the seriousness with which the government views SA in the country.

Due to the increased awareness on gender based violence, an increasing number of VSA are reported the violence either to the police or to the NGOs.

In the year 2011, the police received a total of 1072 reports countrywide (Kenya Annual Police Crime Report, 2011). Out of the 1072 recorded, 140 of the cases were reported from Nairobi City County (Kenya Annual Police Crime Report, 2011). In the same year, FIDA received 1327 cases of SA countrywide out of which 306 were reported from Nairobi City County. The GVRC received 1237 cases of SA countrywide out of which 235 were from Nairobi City County (FIDA, 2011; GVRC Profile, 2011). Studies in Kenya therefore indicate that more cases of SA were reported to NGOs such as FIDA- a women rights organization and MaendeleoWanaume- a men's right organization (which also serves as ADRM) than the police, which is the entry point in the CJS (MaendeleoWanaume 2012; FIDA, 2011). Further research indicates that few cases reported to the police proceed to court for prosecution and that even fewer of the cases filed in court are prosecuted to the final determination (FIDA, 2011).

The CJS therefore needs to adequately and effectively respond to SA which is a threat to the existence of the family in Kenya as the basic unit of the society. An analysis of the 2003 KDHS shows that domestic violence may contribute to separation and divorce. According to the report, almost two-thirds (64%) of divorced or separated women reported having experienced violence since age 15, compared with 53% of married women and 30% of those widowed. Kayongo, Male and Onyango, (1984) recognized that there is need to conduct complete studies in the areas of divorce, abuse and homicide by spouses as well as family issues, which end up in court.

SA was globally recognized as a social problem that affects the family and a country's development, leading creation of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979), to which Kenya is a signatory. However, a third of the world population still lives in countries where there is no specific legal protection from SA (UN Women, 2012). Despite Kenya being a signatory to CEDAW, to date there is no law that criminalizes SA, further complicating this problem. The absence of a specific law on this vice hinders access to justice by its victims.

Despite the increased reporting of SA by victims in Nairobi City County, access to the CJS is low and few cases reported to over 10 registered NGOs that deal with this vice are prosecuted by the police, while even fewer survive the CJS to the final court determination. There are economic determinants which affect the access to the CJS by the VSA. These are employment status, finances, control of resources, and availability of resource/rescue centres where victims can receive help. It is in this regard that this study sought to investigate the economic determinants of access to the CJS by VSA in Nairobi City County, Kenya.

II. STATEMENT OF THE PROBLEM

Spouse Abuse (SA) incidences are on the rise in Kenya. Both men and women are victims of the abuse, although more men than women are perpetrators. SA threatens the existence of the family as the basic unit of society. If the current trend is allowed to continue, the stability of the family is likely to be disrupted leading to undesirable social, emotional, health, psychological, mental, financial, legal and developmental consequences for the entire nation, with negative consequences for future generations. The state has an obligation to protect the family from SA. One of the mechanisms through which the state carries out this function is through the Criminal Justice System (CJS). Several studies have been conducted in the area of family protection and violence, access to justice, but none has specifically focused on the economic determinants in accessing the CJS. Based on these premises therefore, this study sought to establish the economic determinants of access to the CJS by VSA in Nairobi City County, Kenya.

III. OBJECTIVES OF THE STUDY

The overall objective of the study was to investigate the economic determinants of access to the CJS by VSA in Nairobi City County, Kenya.

Specific objectives

The specific objectives of the study were;

1. To identify the economic facilitators to accessing the CJS by VSA in Nairobi City County, Kenya

2. To establish the economic barriers to accessing the CJS by VSA in Nairobi City County, Kenya

IV. RESEARCH QUESTIONS

The Research questions were;

1. What are the economic facilitators to accessing the CJS by VSA in Nairobi City County Kenya?
2. What are the economic barriers to accessing the CJS by VSA in Nairobi City County Kenya?

V. SIGNIFICANCE OF THE STUDY

The study findings will lead to the development of interventions that can protect the family as the basic unit of society as provided for by the Constitution of Kenya and Vision 2030 under the social pillar. In addition, the findings will generate new knowledge in this area which can be used by the relevant stakeholders.

VI. THEORETICAL FRAMEWORK

The study applied the social conflict theory of the family.

Social Conflict Theory of the Family

There is no coherent unified conflict theory of the family, rather an eclectic conceptual framework (Farrington & Keith, 1983). This study therefore uses the Conflict theory to explain SA as a social conflict between wives and husbands and the difficulty faced by VSA to access justice in the CJS.

The Marxian Conflict theoretical argument is that conflict is inherent in the society. Interactions between individuals are characterized by conflict as they pursue personal goals and interests to advance individual interest. This results in competing interests and struggle for power, prestige and available resources. Relationships between spouses is therefore not devoid of conflict since the family is perceived as the safety valve in which husbands exercise dominance and control over wives who remain in a subordinate position. The family institution therefore remains as the system in which capitalism is not challenged. As a result, the spousal relationship is a source of conflict and perpetuates social inequality.

Applying the Marxian economic determinism to SA, the social relationship between the male and female spouse is a class struggle that reinforces social inequality that already exists in a patriarchal unit. The husband is dominant, owns and controls the family resources, makes important decisions and belongs to an 'upper class' in the relationship. The wife is seen as the worker who provides labour in the relationship by carrying out the homemaker's duties, giving birth, nurturing and training the future workers (children). The labour provided by the wife (worker) is not properly compensated for by the husband (owner). The wife is in a subordinate position (lower class) and exploited by the husband who exercises power and authority over her. The power and authority of the husband over the wife is legitimized through religious beliefs, cultural norms and practices such as bride price and laws on monogamous marriages.

The socialization process, which is one of the functions of the family, serves to perpetuate the dominant position of the husband and the subordinate role of the wife. This makes the spousal relationship in a marriage, the only exploitative social institution where capitalism appears to be sanctioned. Engel argues that spousal relationship in a marriage is analogous to that of a worker and owner of resources and is therefore the first institution that creates class struggles and conflict in the society (Engel 1884). Such family class conflicts include differences between husbands and wives such as SA. Engel argues that the nuclear family is a result of private property thinking in which the wife is owned by the husband who determines and controls the paternity of her children and their inheritance.

The dynamism and changing roles in the society between male and female spouses, the engagement of women in labour outside the domestic front, and women's empowerment efforts have resulted into a different form of social conflict between spouses. This is due to the change in the equation that has altered the traditional roles of husbands and wives. Today, some husbands may not be in a position of control of the family resources, hence difficulty in maintaining their male dominant position and decision-making. Likewise, some wives today own and control resources in the family. Therefore, it becomes difficult to maintain their subordinate position in a spousal relationship. This results in a new form of conflict between spouses. As a result, conflict arises and continues as parties compete for the available resources that may include power, prestige or finances.

The main critique of the theoretical framework is that it views the family unit as an institution that perpetuates exploitation of females by men. Indeed, both husbands and wives each derive benefits from the spousal relationship although this may not be on an equal measure. The theory overemphasizes the family as a tool for the perpetuation of social inequality in the society while placing little emphasis on the family's role in social stability, by providing socialization, practical and emotional support, regulation of sexual activity, reproduction and the provision of social identity to its members.

Despite this weakness, the theoretical framework of conflict theory's approach to family conflict remains most relevant in explaining the difficulties experienced by VSA in accessing justice from the CJS, hence its relevance to this study.

Relevance and Application of the theory to the study

The theory explains the nature of conflict between members of the family as arising from competing personal interests over power, privilege and available resources. It also explains the paradoxical nature of SA and the difficulty in resolving it. Therefore, the theory explains why, VSA and members of the family who witness SA may find it difficult to report to authorities for intervention due the competing interests within the family members.

The male VSA need to maintain their dominant position and reporting the abuse may attract social stigma as they are socialized to exercise power and authority over the wife. To report the abuse to the CJS or ADRMs may be misconstrued to signify the fact that the male VSA is not in control of his domain (family). This has a negative impact on his power, prestige and authority which he struggles to maintain.

The female VSA are socialized to be submissive, nurturing, forgiving and to be subordinate to the husband in return for protection, security and financial support, since they do not own means of production and do not make important decisions. By reporting SA to the CJS, they may jeopardize their ‘worker’ position and may lose the relationship and benefits attached to it. This consideration may hinder their ability to access justice as they opt not to report SA or testify in court.

VII. THE CONCEPTUAL FRAMEWORK

This section discusses various variables that are operationalized by the study in order to achieve the set objectives. It is a diagrammatic presentation of the social conflict theory of the family and their relevance in accessing the CJS by VSA. There are three categories of variables namely the independent, the dependent and the intervening variables.

The independent variable is SA which may be perpetrated by the husband or the wife due to the factors as explained by the social conflict theory of the family. The VSA can choose any of the following options; do nothing (this may be fatal), report to ADRMs or report to the CJS. These options depend on some intervening variables that influence the choice made by VSA. These options are therefore dependent variables while the intervening variables are the economic determinants that influence the choice that VSA make. This study focuses on the dependent variable that is the CJS so as to establish how it responds to SA cases and the economic determinants that influence the progress of SA cases through the system. The economic determinants are important because of their influence on the individual characteristics of VSA that therefore determine their response to SA.

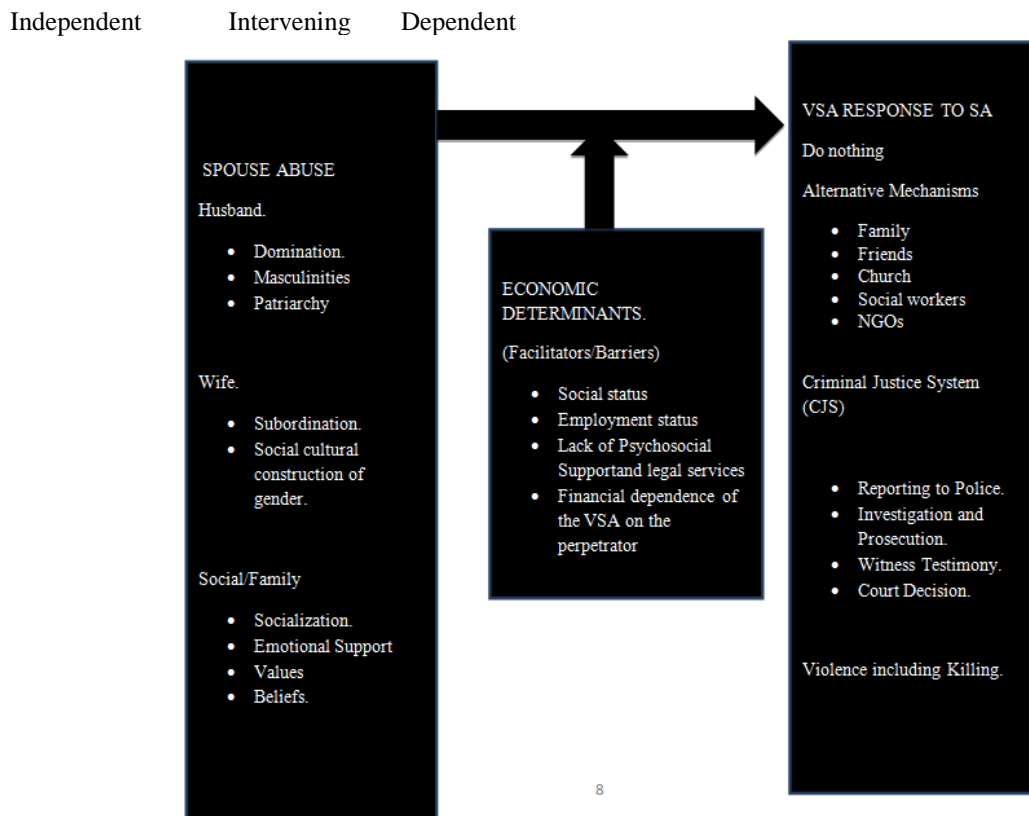


Figure 1: Conceptual Framework for Access to the Criminal Justice System for Victims of SA

Relationship between the Variables

The independent variable is SA and can be perpetrated by the husband or wife within the family. Once the abuse occurs, the VSA may react in any of the following four ways; the victim may do nothing, may report to the ADRMs for intervention, may report to the CJS for justice to be done or perpetrate retaliatory violence directed at the perpetrator. This form of violence may be fatal resulting into the VSA (now turned perpetrator) killing himself/herself or the perpetrator or their children or in-laws or all of them. The action taken is the dependent variable. It depends on the occurrence of SA. The dependent variable (the action taken by VSA upon being subjected to SA (independent variable) is determined by economic determinants which intervene to influence the conduct of VSA. For example, a husband who is brought up within an African patriarchal society believes that his status in the family dominates that of the wife who is subordinate to him. The wife in most cases depends on the husband for protection, security and her financial needs. When the husband perpetrates SA against the wife, then her financial dependence (intervening variable) will result into her doing nothing about the abuse. On the other hand, if the wife is financially independent and believes that spouses are equal partners in a marriage and the husband does not hold a dominant position over her, neither is she subordinate to the husband, she will not condone SA and will report to the CJS to access justice. In this case, SA is the independent variable, the financial dependence of the VSA on the perpetrator is an intervening variable while the VSA action of doing nothing or reporting to the CJS is the dependent variable.

VIII. METHODOLOGY

The study was carried out in Nairobi City County which is the capital city of Kenya, with a total area of 695km² and a population of approximately 3.5 million people (Kenya County Fact Sheets, 2012). It is one of the 47 counties in Kenya and being the capital city, it attracts people from different communities in the country. It therefore gives a fair representation of the different communities in Kenya (Kenya County Fact Sheets, Commission on Revenue Allocation 2012).

The study employed the narrative analysis research design which is a qualitative research method that focuses on the recounted experiences of individuals. It is most suitable when conducting inquiries into real life issues such as SA that exist in the Society. The VSA narrated their personal experiences in accessing the CJS. The information about the respondents' experience in the CJS and the influence of the cultural determinants was the investigative focus of the study. The information was obtained through interviews and Focus Group Discussions (FGDs) with the respondents, based on interview schedules and focus group schedules respectively.

The target population was married male and female VSA. They included those who reported their cases to the police, FIDA Kenya headquarters and the GVRC office in Nairobi City County in the last 12 months preceding the study.

The key informants were; senior officers at the police headquarters gender desk, police officers in charge of the prosecution, the executive officer and legal officer of FIDA, executive director and a social worker from GVRC, magistrates from Kibera, Makadara and Nairobi Law Courts, a judge from the Family Division, Criminal Division of the High Court, a judge of the Court of Appeal and a Supreme Court Judge, the police, prosecutors, judicial officers and heads of institutions like FIDA, GVRC.

The data collection tools included questionnaires, interview schedules and FGDs guides

Both male and female VSA who had reported their cases to police, FIDA, GVRC and gave consent were included in the study. Respondents who were not married to each other and who did not report their cases to the police, FIDA or GVRC within the last 12 months preceding the study or those who did not give consent were excluded from the study.

The study employed the systematic random sampling method for the respondents and the purposive sampling technique for the key informants. A total of 134 respondents and 31 key respondents were interviewed. There were three FGDs comprising of 8 participants each.

Quantitative data was analysed using Statistical Package for Social Sciences (SPSS). The data analysed by SPSS included the demographic characteristics of the respondents such as age, gender, level of education, type of marriage, marital status, number of children, employment status, level of income, region of origin, religion and duration of stay in Nairobi City County.

The findings were analysed and presented graphically in simple tables and charts. The quantitative findings were complemented by inferences made in qualitative analysis. This provided a deeper understanding of SA, VSA and accessibility to justice in Kenya.

The study considered and took measures to ensure the following research concerns were addressed; informed consent, privacy and confidentiality, permit from the ethical research committee and the sensitivity of the research as it involved intimate feelings of the respondents.

Informed consent

The study sought the consent of respondents after explaining to them the purpose of the research. Those who did not give consent had their views respected and were replaced by other respondents.

Privacy and confidentiality

The privacy of the respondents was respected and observed and any information given by the respondents was received in confidence and only applied for purposes of the study.

Ethical and Legal Approval and Clearance

The necessary clearance from the ethical research committee was sought to ensure that the requirements of ethical standards in research are adhered to. This included seeking permission from the relevant authorities among them the Ministry of Higher Education, Science and Technology, the Commissioner of Police, the Registrar of the High Court, Executive Director of FIDA, the Office of the Attorney General and its relevant departments before the study commenced.

Sensitivity of the research

The researcher recognized the sensitivity of the research as it involved intimate feelings of respondents. The researcher therefore ensured sensitivity to the feelings and views of the respondents and took care not to hurt them. In the unfortunate event that any respondent was negatively affected then the researcher being a qualified professional counsellor, applied the counselling skills to mitigate the impact of any such unfortunate incident.

Acknowledgment of sources

The study adhered to the ethical principle of giving proper credit to those whose work it borrowed or cited through appropriate documentation in accordance with the chosen style which is the APA style.

IX. FINDINGS AND DISCUSSIONS

Table no 1The Economic Determinants to access of the CJS by VSA in Nairobi City County, Kenya

ECONOMIC DETERMINANTS TO THE ACCESS OF CJS BY VSA	
ECONOMIC FACILITATORS	ECONOMIC BARRIERS
1. Availability of legal services	1. Social Status
2. Availability of psychosocial support services	2. Employment status
3. Availability of rescue centres	3. Lack of psychosocial support, legal services and rescue centres
	4. Financial dependence of the VSA

Economic Facilitators in Accessing the CJS by the VSA

The three economic facilitators established by the study were the availability of legal services, psychosocial support services and availability of rescue centres.

Availability of Psychosocial, Legal services and Rescue Centers

Rescue centers are institutions which provide psychosocial, medical and at times legal services to VSA. They serve as forums where VSA can run to when the abuse occurs and receive protection, counselling, shelter, advice and other basic services. The study found that there is no government established and managed rescue centers for VSA in Nairobi City County. Although there is a Gender Based Violence Recovery Centre at Kenyatta National Hospital, this is a special department of the hospital that treats victims of gender based violence. Most of the gender based violence recovery centers such as Nairobi Women’s Hospital are provided by NGOs. These centres are therefore few and limited in Nairobi and the duration that a victim can stay in them is limited. Most of the gender based violence recovery centers identified by the study in Nairobi City County are those that cater for female victims of domestic violence. Apart from Nairobi Women’s Hospital, others are MSF in Kariokor, COVAW. FIDA offers psychosocial support, limited legal services and liases with other organizations to provide temporary centers to VSA. This makes FIDA a preferred choice for reporting SA by female VSA. Indeed most of the respondents interviewed were sampled from FIDA Nairobi Office.

The inadequacy of rescue centres where victims can run to in the event of the abuse was found to hinder their access to justice since after reporting the abuse, most victims did not have alternative accommodation and therefore risked being abused again or losing their accommodation in which the abuse occurred. Faced with this difficult choice, most of the victims opted not to report the abuse to the CJS for fear of losing the only accommodation available to them in Nairobi, especially those dependent on their perpetrator spouses.

The study found no rescue centre at all for male VSA despite the fact that male spouse abuse occurs in Nairobi City County. Male victims find it difficult to report the abuse in the absence of alternative accommodation even though some victims of spouse abuse are able to afford alternative accommodation.

The facilitators to reporting SA as discussed above are relatively fewer than the barriers which are discussed in the next section.

Economic barriers in accessing the CJS by VSA

The economic barriers identified by the study are social status, employment status, lack of psychosocial support, legal services and rescue centres as well as financial dependence of the VSA on the perpetrator.

Social status

The study found that because of victims' social status and the stigma attached to SA together with the blaming of the victim for having attracted the abuse, many VSA who hold a high social status were unlikely to report the abuse.

Victims of lower social status, which attracted fewer privileges, were more likely to report the abuse to the authorities for intervention as they had very little prestige to lose by reporting the same. One of the female VSA interviewed by the study was a manager at a local microfinance institution and also owned a fleet of PSV vans. She was worried about reporting the abuse to the police and exposing what she called her privacy to the public. She was concerned about the public knowing that despite her success and social status she was a victim of SA. In her own words:

"...He has taken over my matatu business, claiming that it was his money that gave me the initial capital for the business. He has stopped the drivers from engaging me on any matter pertaining to the business. Every time I try to assert my authority over them he gets very violent. Just yesterday he beat me at a car wash... I had gone there to talk to one of the drivers of a particular vehicle. The most painful thing is that I am still servicing the loan I took to buy this vehicle because his contribution was negligible...he chased me from the house and the only person I could turn to was my colleague. Though my sister lives nearby, I could not gather the courage to tell her what I was going through. I cannot tell my friends either. My social status affects my ability to report. If I didn't have the money to fund trips to Westlands' Children Office, Milimani Law Courts and NALEAP I would give up and just endure the abuse. (Respondent No 91).

Employment status

Those who reported SA were either unemployed (37.4%) or in self-employment (31%). There was low reporting of SA from those engaged in the public service (7%) and the private sector (14%). Others accounted for 11% that includes casual workers who may get a job for some days and not others in a month.

Unemployment is, therefore, a major determinant to the reporting of spouse abuse. They reported SA for purposes of maintenance of themselves and their children. They were not interested in the prosecution of the perpetrator.

The figures of reporting in the private and public sector are lower. The low reporting by VSA employed in the private and the public sector may be due to social stigma associated with being a victim of SA and the perception that the victim is to blame. The low reporting by VSA in the private and public sector could be due to the fact that they have an assured source of income from their occupation that would enable them to look after their children. Additionally, it could also be due to the fact that they seek to avoid the stigma that may accompany the publicity of the abuse.

For those who are in employment or were self-employed, the study found that the level of income influenced their ability to report the abuse for intervention.

A large proportion of the respondents 42% were either unemployed or had irregular income, followed by those who earned 10,000 or less (32%), 10,000 to 50,000 (20.0%), 50,000 to 100,000 (4%) and more than 100,000 (3%). This indicates that VSA who earn above Ksh. 100,000 rarely report SA or there could be fewer women in the formal job market with earnings above 100,000.

Those who earn above Ksh 100,000.00 belong to the middle class. Therefore, this could be attributed to the social status and the stigma associated with SA. Reporting of the abuse was therefore highest among those unemployed, had irregular income or earned below Ksh. 50,000 per month, while it was lowest amongst those who earn above 100,000 per month. Income level therefore affects reporting of SA. The lower the income, the more likely a VSA is to report the abuse for purposes of maintenance. On the other side, the higher the income, the less likely is a VSA to report the abuse due to the social status attached to income levels.

Lack of Psychosocial support and Legal services

Lack of availability of legal services, psychosocial services and rescue centres was found to hinder access to justice by VSA. Whereas many NGOs offer the above services to women, few existed for male VSA therefore hindering their access to the CJS.

Financial Dependence of VSA on Perpetrator

The dependence of victims on their perpetrators was found to be a barrier in accessing the CJS. The adversarial nature of the CJS requires that both the perpetrator and the victim should have resources to meet the costs of the legal process. According to a police officer interviewed by the study:

'The CJS treats the perpetrator and the victim of crime as adversaries who engage in a battle in court. Each party is expected to gather and present the evidence in court. They are also in charge of bringing their own witnesses to testify in support of their cases. This procedure makes it difficult for most VSA who are vulnerable and dependent on the perpetrators to engage in such a legal contest.' (Key Respondent No 8).

The study found that many factors intervene to disable the VSA from winning such a contest due to the nature and procedure of the CJS. It is a fundamental characteristic of the adversarial CJS that the winner takes it all and the loser gets nothing. As argued by Belknap, 2007, many VSA, especially women, are dependent on their abusive spouses and therefore opt to remain in the marriage despite the abuse without reporting to the police. They only report in cases where their lives are threatened. The study findings are therefore consistent with Belknap's argument that VSA will still hang on in the abusive marriage because they are dependent on them amongst other factors.

This supports the concern by most respondents that they only report the abuse so that it can be stopped, but not that the marriage is terminated or that the perpetrator is jailed. Since majority of respondents were of female gender, this finding may be a reflection of the high dependency of women on their husbands for their financial and economic needs and therefore remain in the abusive marriages (Basow, 1986).

The main reason as to why most respondents report the abuse is to seek intervention to stop the abuse and access financial assistance from the perpetrator due to their dependency on them but not to terminate the marriage. In the words of one respondent:

'I do not want my marriage to end. I just want the government to talk to him so that he can stop the abuse. I do not want him jailed or punished' (Respondent No 105)

The study found that VSA who were dependent on the perpetrator spouses for financial support were unable to afford the legal costs of accessing the CJS. The total amount of expenditure incurred by the advocate during a trial roughly costs One hundred and fifty thousand Kenya shillings. This is way beyond the reach of many Kenyans. Many victims were therefore not able to afford legal services. There are few lawyers who offer pro bono services. The government does not render such services to the victims. Many of the VSA did not even know their specific rights apart from knowing that SA is a violation of their human rights and dignity. Their insufficient knowledge of the workings of the CJS and the law therefore acts as a barrier to their access to justice in the absence of a lawyer who can represent them in court. Few NGOs such as FIDA, COVAW, and WRAP offer minimal legal services to female VSA. This is, however, limited to very needy cases that attract attention and publicity so as to assist the NGOs secure funding.

The study found that it is indeed not all needy cases that receive legal services from the NGOs due to their limited sources of funds. The legal services in such NGOs are mostly limited to basic legal education to the VSA to make them aware of their rights without necessarily providing legal representation in court due to its expense. The study did not find any advocates' firm that provides legal education or legal representation to male VSA. Whereas the various numbers of NGOs dealing with women rights encourage female VSA to report, the study found that only one organization, MaendeleoyaWanaume was known to protect rights of men. However, despite several attempts, the study could not trace the location of MaendeleoyaWanaume's offices. The lack of openness in discussing male SA and lack of access to men's rights' organization are therefore barriers to male VSA reporting of SA and access to justice

The FIDA legal officer explained that;

'The VSA who report to us are motivated by their dependence on the perpetrator, "packaged" as the perpetrator's failure to pay school fees for the children, provide money for food and clothing and at times payment of rent where they had been evicted from the perpetrator's house.' (Key Respondent No 19)

X. CONCLUSION AND RECOMMENDATIONS

The study found that the most of the VSA were unable to access the CJS because of their dependence on the perpetrators of SA for their needs and those of their children. Most of the VSA were not employed and therefore depended on the perpetrator. This prevented them from accessing the CJS. In addition, the lack of a one stop centre where VSA can get legal, psychosocial and financial support is a great hindrance to the access to justice. However, the availability of several NGOs that provide legal and psychosocial support and limited financial assistance was found to encourage the reporting of SA by women. There is only one NGO that handles cases of male VSA which is MaendeleoyaWanaume. This is therefore a major barrier of male VSA's access. The study recommends that the Social Protection Department of the Ministry of Labour, Social Security and Services develops and implements economic empowerment programs for VSA.

REFERENCES

- [1]. Bagwell-Gray, M., Messing, J., & Baldin-White, A. (2015). Intimate Partner Sexual Violence; A Review of Terms, Definitions and Prevalence. *Trauma Violence and Abuse*, 16(3).
- [2]. Bayer, K., Wallis, A., & Hamberger, K. (2015). Neighborhood Environment and Intimate Partner Violence. *Trauma Violence and Abuse*, 16(1).
- [3]. Bennet C.L., Goodman L., (2015), What is Empowerment anyway? A Model for Domestic Violence Practice, Research and Evaluation, *Psychology of Violence American Psychological Association* 5(1).
- [4]. British Law Commission. (1992). *Domestic violence and occupation of the family home*. Working Paper, No. 207 London: HMO.
- [5]. Buzawa & Buzawa (2003) *Domestic violence, the Criminal Justice response* (3rd edition). Sage Publications, USA.
- [6]. Campbell, D. (2010, September 5). *Domestic Violence: More than 40% of domestic violence victims are male, report reveals*. Retrieved June 24, 2015, from The Guardian: <http://www.theguardian.com/society/2010/sep/05/men-victims-domestic-violence>
- [7]. Cerulli, G., R. Nicholls., C. Hall., D. Conner., R. Caine. (2011). *Mental and physical health symptoms of family court intimate partner violence petitioners*, *International Journal of Law and Psychiatry*, 34.
- [8]. Dobash, R. P., Dobash, R. E. (1981). *Community response to violence against wives: charivari, abstract justice and patriarchy*. *Social problems*, 28, 5.
- [9]. Ellsberg, M. *et al.* (2000). Domestic violence and emotional distress among Nicaraguan women: results from a population-based study. *American Psychologist*, 2000, 54(1):30-36.
- [10]. Engels F (1884), *The origin of the family, private property and the state* (Hottingen-Zurich).
- [11]. Farrington K & Chertok E, *Social Conflict Theories in the Family*, in Polatnick Ross, W. J. Doherty, R. LaRossa, W Schumm, & S. K. Steinmetz *et al*, *Sourcebook of family theories and methods: A contextual approach*, Plenum, 1993.
- [12]. FIDA Kenya. (2011). *Access to justice program report for the year 2011*.
- [13]. FIDA Kenya. (2011). *Towards integrating gender in the transitional justice process in Kenya: research report*. FIDA 2011.
- [14]. Freeman, M. (2008). *The family law and society: domestic violence*. Ashgate Publishers.
- [15]. GVRC Profile. (2011). GVRC.
- [16]. Heise, L., Ellsberg, M., Gottemoeller, M. (1999). *Ending violence against women* Population Reports, Series L No 11. Baltimore, Maryland: Population Information Program, Johns Hopkins University School of Public Health.
- [17]. Husain, N., Sprague, S., Madden, K., Hussain, F., Pindiprolu, B., & Bhandhari, M. (2015). A Comparison of the Types of Screening Tool Administration Methods Used for the Detection of Intimate Partner Violence: A Systematic Review and Meta-Analysis. *Trauma Violence and Abuse*, 16(1).
- [18]. Johnston, T. (2002). *Gender Series: Domestic Abuse in Kenya*. Nairobi, Kenya.
- [19]. Kayongo-Male & Onyango, P. (1984). *The Sociology of the African Family*. Longman, London and New York.
- [20]. Kenya County Fact Sheets, Commission on Revenue Allocation 2012, <<http://kenya.usaid.gov/sites/default/files/profiles/Nairobi%20County%2023%20Jan%202012.pdf>>, accessed on 12th June 2012).
- [21]. Kenya Police Annual Crime Report for the year 2011.
- [22]. Kishor, S., Johnson, K. (2004). *Profiling domestic violence: a multi-country study*, Calverton, MD, USA: ORC Macro, 2004.
- [23]. Krug, E. G. *et al.*, Koenig, M. *et al.*, (2002) *Domestic violence in rural Uganda: evidence from a community-based study*, *Bulletin of WHO*, 2003, 81(1):53-60.
- [24]. Law Reform and Development Commission. (2000). *A Publication on the Reporting of Domestic Violence to the Police in Namibia*.
- [25]. Lockton, D. & Ward, R. (1997). *Domestic violence*, Cavendish Publishing Limited, Great Britain.
- [26]. Maendeleoya Wanaume. (2012). *Kenyan men urged to boycott meals in abuse protest* (<http://www.standardmedia.co.ke/?id=2000052505&cid=4&articleID=2000052505>).
- [27]. Moulton, K. (2005). *Providing a sense of justice: informal mechanisms for dealing with domestic violence*. Gender, health and Justice Research Unit, University of Cape Town.
- [28]. Noreen, A., Norling, E. (2011). *The 'crisis of masculinity' and its influence on domestic violence in Barbados: convergence and departures from the theoretical framework*. Uppsala University.
- [29]. Novitsky, M., & Peralta, R. (2014). *When Women Tell: Intimate Partner Violence and the Factors Related to Police Notification*. Sage Publications.

- [30]. Reena, B., Rouguiatou, D., Stella, G., Elisabeth, S., Doyin, O. (2009). *Gender-based violence in Sub-Saharan Africa: a review of demographic and health survey findings and their use in national planning*. Woodrow Wilson Center, Washington, DC.
- [31]. Smith, L. (1989). *Domestic violence*. Home Office Research Study107, London: HMSO.
- [32]. Straus, M. A. (1999). The controversy over domestic violence by women: A methodological, theoretical, and sociology of science analysis. In X. B. Arriaga & S. Oskamp (Eds.), *Violence in intimate relationships* (pp. 17-44), Thousand Oaks, CA: Sage.
- [33]. UN Women. (2009). United Nations Entity for Gender Equality and the Empowerment of Women, (2009) *Progress of the World's Women*, United Nations.
- [34]. UN Women. (2012). United Nations Entity for Gender Equality and the Empowerment of Women, (2012) *Progress of the World's Women*, United Nations.
- [35]. US Department of Justice, US Statistics: Domestic Violence against Men Press Release 1st January, 2012.
- [36]. USAID. (2006). *Linking Gender-Based Violence Research to Practice in East, Central and Southern Africa: A Review of Risk Factors and Promising Interventions*. A publication prepared by Betron, M (consultant) and Doggett, E under the POLICY Project.
- [37]. Watts, C., Zimmerman. C, *Violence against women: global scope and magnitude*, Lancet, 2002, 359(9313):1232-1237.
- [38]. Yoshihama, M., Sorenson, S. B. (1994). Physical, sexual and emotional abuse by male inmates: experiences of women in Japan. *Violence and Victims*, 1994.

Scholastica Omondi." Economic Determinants to Accessing Justice by Spouse Abuse Victims in Nairobi City County, Kenya. " IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 10, 2019, pp. 39-49