

**SOCIO-CULTURAL AND ECONOMIC DETERMINANTS OF ACCESSING THE  
CRIMINAL JUSTICE SYSTEM BY VICTIMS OF SPOUSAL ABUSE IN NAIROBI  
CITY COUNTY, KENYA.**

**BY**

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**DECLARATION**

This thesis is my original work and has not been presented for a degree in any other university or institution of higher learning.

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## **DEDICATION**

To my late sister, Mildred Akinyi Agola Ollando and my late grandparents Henricus Awuor Imbo, Christina Orao and Magdalena Omollo. Though physically absent, the memories of precious times, words of advice and your encouragement keep the family bonds strong.

To all victims of spousal abuse, both men and women, young and old, although the family is the only social system that is meant to provide its members with unconditional love, emotional, psychological, spiritual support and encouragement amongst other needs, today it is threatened by unresolved family conflicts and domestic violence. Instead of being the safest place, it has in some cases become the death trap from which many victims are unable to escape. The social systems that are meant to resolve family conflicts appear to be unsuitable and or inadequate in their response. The Criminal Justice System's wheels of justice only set in under very serious cases when grievous harm or death has occurred to the victim. The social foundation of the society is therefore under constant attack from within itself.

It is my sincere hope that one day, appropriate measures will be in place to ensure that the family is safe for all its members. Humanity must keep talking and listening to each, and dialogue on emerging threats to the family, for when we stop talking to each other, we begin to fight each other.

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1. The Constitution of Kenya, 2010
2. The Children Act, 2001.
3. The Evidence Act, 2007.
4. The National Police Service Act, 2011
5. The Penal Code Cap 63 Laws of Kenya.
6. The Protection from Domestic Violence Act, 2015.
7. The Sexual Offences Act, 2006.
8. The Universal Declaration of Human Rights, 1948.
9. The Victim Protection Act, 2014.
10. The Witness Protection Act, 2006.

## **OPERATIONAL DEFINITION OF TERMS**

### **Access to Justice**

Access to justice refers to the availability, accessibility, adequacy and efficiency with which services are rendered satisfactorily by concerned institutions of the CJS in addressing the needs and concerns of spousal abuse victims who report the abuse.

### **ADRM**

The informal dispute resolution mechanism which includes: NGOs, church leaders, social networks, family members, friends and many others that resolve conflicts outside the CJS.

### **Assault**

Any action by an individual that leads to negative health consequences on the victim.

### **Barrier**

Refers to social, cultural and economic factors that inhibit, bar, discourage or make the VSA not report the cases to the CJS or having reported, makes them not pursue the cases or withdraw them.

### **Beliefs**

Specific statements that people hold to be true; customs and practices.

### **Conviction**

A term used in the criminal justice system when a person is found to have committed a crime and should therefore be punished.

### **Court Protection Orders**

This refers to directives given by the court to stop the perpetrator from committing further acts of spousal abuse towards the victim.

### **Crime**

This is defined as a wrong against the state. Some view spousal abuse as interpersonal violence not against the state.

### **Criminal Justice System**

This refers to the police, the DCI, the prosecution under the ODPP and the court which together are organs of the state that are responsible for ensuring peace in the society through making sure that citizens obey the laws of a country, respect the rights of others and those found to have committed crimes are punished.

**Culture**

This is the values, beliefs, behaviour, and material objects that together form a people's way of life.

**Determinants**

This refers to variables that enhance or hinder victims' access to justice.

**Discrimination**

This is the unequal treatment of various categories of people.

**Evidence**

Refers to facts that can be admitted in court to prove that a certain event/ incident actually occurred.

**Facilitators**

This refers to social, cultural and economic factors that either make VSA report to the CJS and pursue the case to the end and get resolution of the abuse.

**Formal Justice System**

This refers to the state controlled criminal justice system that includes the police, the courts and the correctional institutions.

**Gender**

Refers to the personal traits and social positions that members of a society attach to being male or female.

**Informal Justice System**

Refers to means of resolving disputes outside the formal state criminal justice system.

**Investigation of SA**

Investigation refers to the process of collecting information about a reported crime so as to establish whether or not a crime occurred and who is responsible.

**Justice Chain**

Refers to the various steps followed in dealing with a crime from the time it is committed to the time when the court finds the accused person guilty or not guilty.

**Non-Governmental Organizations**

These refers to institutions which are not part of the government but which are registered and recognized by the government to deliver essential services to the society.

**Patriarchy**

Refers to a form of social organization in which males dominates females.

**Prosecution**

The prosecution process refers to the stage at which the police investigation has been successfully carried out and the findings reveal that a crime was committed and so the perpetrator is taken to court to answer to the allegations.

**Religion**

A social institution involving beliefs and practices based on recognizing the sacred.

**Restorative justice**

This refers to a procedure of dispute resolution that aims at resolving the dispute by bringing the perpetrator and the victim together and restoring the harmony that existed before the abuse.

**Roles**

This is behaviour expected of someone who holds a particular status.

**Spouse**

Refers to a person who is married to another.

**Status**

This refers to a social position that a person holds.

**Stigma**

This is a powerfully negative label that greatly changes a person's self-concept and social identity.

**Tradition**

Values and beliefs passed from generation to generation.

**Values**

Culturally defined standards that people use to decide what is desirable, good, beautiful, and serve as broad guidelines for social living.

**Variable**

This is a concept whose value changes from case to case.

**Victim**

An individual who has suffered psychological, physical, emotional, mental, financial or other consequences of abuse by his/ her spouse.

## ACRONYMS

ANNPCAN	:	African Network for the Prevention and Protection against Child Abuse and Neglect
CEDAW	:	Convention on the Elimination of all forms Discrimination against Women
CJS	:	Criminal Justice System
COVAW	:	Coalition of Violence against Women
CREAW	:	Coalition of Rights and Education of Abused Women
DCI	:	Directorate of Criminal Investigations
FEMNET	:	African Women’s Development and Communication Network
FIDA	:	Federation of Women Lawyers
GBV	:	Gender Based Violence
GOK	:	Government of Kenya
GVRC	:	Gender Violence Recovery Centre
ICRW	:	International Centre for Research on Women
IJM	:	International Justice Mission
KDHS	:	Kenya Demographic Health Survey
NALEAP	:	National Legal Aid Awareness Programme
ODPP	:	Office of Director of Public Prosecution
SA	:	Spousal Abuse
SWED	:	Support for Women in Extreme Difficulties
UNEGEEW	:	United Nations Entity for Gender Equality and the Empowerment of Women
UNFPA	:	United Nations Population Fund
USAID	:	United States Agency for International Development
VSA	:	Victims of Spousal Abuse
WHO	:	World Health Organization
WRAP	:	Women’s Rights Awareness Program

## ABSTRACT

Spousal abuse is acknowledged globally as a major social problem that affects the victim, perpetrator, their families and the community in general, irrespective of social, economic, religious or cultural background (Eriksson & Mazerolle, 2015; ICRW & UNFPA, 2009). Globally, there is a high attrition level where cases of spousal violence reported to the police drop out of the 'justice chain' (Eriksson & Mazerolle, 2015; UN Women, 2012). Limited studies in Kenya make it difficult to design an effective intervention strategy. The main objective of the study was to investigate the social, cultural and economic determinants in accessing justice from the Criminal Justice System (CJS) by Victims of Spousal Abuse (VSA) in Nairobi City County, Kenya. The specific objectives were to find out the CJS's response to spousal abuse, to determine the social, cultural and economic barriers and facilitators to accessing justice by victims of spousal abuse, to identify the available alternative mechanisms of resolving spousal abuse and recommend measures towards enhancing access to the CJS by victims of spousal abuse in Kenya. The study applied four theories namely feminist, masculinities in crisis, the family conflict theory and the theory of justice. The research target population comprised of 681 married male and female VSA who had reported their cases to the police, FIDA and GVRC (Nairobi Women's Hospital) in the last twelve months (2012-2013) before data collection. The study interviewed one hundred and thirty-four spousal-abuse victims (male and female) (20% of the target population according to Mugenda & Mugenda, 1999). Thirty-one key respondents were purposively sampled due to their roles in handling spousal abuse in the CJS. The study conducted three focused group discussions. The study applied interview guides and focused group discussion guides as the instruments to collect data. Quantitative data was analysed using SPSS while qualitative data was analysed using inferences and verbatim citations of the voices of the Respondents. The study found that majority (89%) of spousal abuse victims are unable to access justice from the CJS due to its adversarial nature, formality of procedures, delays, legal expenses, inflexibility and corruption, leading to a 'pyramidal progression' of spousal abuse cases in the CJS, as the victims opt for Alternative Dispute Resolution Mechanisms. The study concludes that spousal abuse is a major concern nationally that needs to be addressed urgently to protect the family from its impact and that the current CJS in Kenya is unsuitable for the resolution of spousal abuse cases. The study recommends that the President should declare spousal abuse as a national concern that threatens the family as the basic unit of society and direct the Cabinet Secretary in charge of the Ministry of Labour and Social Protection (in collaboration with Kenyatta University Sociology Department and other NGOs working in the area of Gender- Based Violence such as FIDA, GVRC, Maendeleo ya Wanaume) to develop a policy on family protection. In addition, the Cabinet Secretary in charge of the Ministry of the Labour and social protection should spear head a national debate on spousal abuse cascaded to the regional, county and household levels to re-socialize the society on relationships between spouses. The study further recommends that the Commission on Administrative Justice (CAJ) in collaboration with the Judicial Service Commission (JSC), the Kenya Law Reform Commission (KLRC) and Parliament should operationalize Article 159 of the Constitution and strengthen ADRMs by creating a quasi-judicial system such as a Family tribunal composed of experts from different disciplines to handle cases of spousal abuse. Only very serious and life threatening cases which cannot be resolved by the Tribunal should be prosecuted through the CJS. There is also need for further research to establish and address the causes and impact of spousal abuse.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

Spousal 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 & Buzawa, 2003; Freeman, 2008; Plazaola-Castano et al., 2011). SA also refers to violence between intimates living together or who have previously cohabited (Buzawa & Buzawa, 2003; Tonia & Hamel, 2006). 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 murder (Novisky & Peralta, 2014; Lockton & Ward, 1997; Rudolph & Hughes, 2001). The terms are at times used interchangeably, causing confusion rather than clarification, but nonetheless focus on a marital relationship between the victim and the perpetrator (Bayer et al., 2015; Lockton & Ward, 1997; Rudolph & Hughes, 2001).

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; Tonia & Hamel, 2006). This study adopts the definition of the term violence by the British Law Commission view of spousal abuse, but recognizes 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 is therefore confined to SA within a marital relationship.

## **The Concept and Causes of Spousal abuse**

SA, also known as gender based violence is defined with reference to violence by men directed at their female spouses, to mean ‘any act of violence that results in, or is likely to result 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 private life’ (CEDAW, 1993; Bagwell-Gray et al., 2015). Gender based violence, variously referred to as domestic violence, is mostly perceived as violence committed by men and victimizes women. However, husbands are also victims of spousal abuse by their wives (Bayer et al., 2015; Henning et al., 2005; Baines, 2010; Tonia & Hamel, 2006).

Spousal abuse takes the form of physical, psychological, mental, emotional and sexual assault (Iancu, 2010; Letourneau et al., 2012; Baker, 2008; Sonnis & Langer, 2008; Khawaja et al., 2007). Physical violence refers to intentional use of physical force such as shoving, choking, shaking, slapping, punching, burning, or use of a weapon, restraints, or one’s size and strength against another person, resulting into negative health consequences. Sexual violence takes three forms. Firstly, the use of physical force to compel a victim to engage in a sexual act. Secondly, a sexual act with a victim who has no capacity to give consent through the use of pressure or intimidation. Thirdly, abusive sexual contact.

Threats of physical or sexual violence include verbal abuse, gestures or use of weapons that result into psychological/emotional violence. This potentially traumatizes the victim through humiliation, control, isolation from friends and family, withholding of information and denial of access to resources or other basic services. Emotional violence often precedes physical or sexual violence (Buzawa & Buzawa, 2003; Lockton & Ward, 1997; Sokoloff & Pratt, 2008; Shai & Sikweyiya, 2015). From the above discussions, the scholars are in agreement that SA includes physical, psychological, emotional, sexual violence or threat to violence by a perpetrator in an intimate/ romantic relationship with the victim. SA aims at making the victim do what the perpetrator requires the victim to undertake through the use of coercion or threatening negative consequences for non-compliance (Tsui, 2014; Dutton & Goodman, 2005; Rudolph & Hughes, 2001).

Johnson, (2006) identifies four causes of SA. The first is the nature of patriarchal societies in which SA is perpetrated mainly by males against females, in order to take

control and/or maintain general control over the female victim. Johnson, (2006) calls this type of SA patriarchal terrorism/ intimate terrorism characterized by a general pattern of coercive control in which the perpetrator engages in a variety of behaviour that allows him to exert general control over his wife against her wishes. Patriarchal terrorism is generally perpetrated by husbands against wives and is consistent with the feminist's theory's explanation of male dominance, control and subordinate status of women in a patriarchal society which is discussed in Chapter Two.

Haj-Yahia, (1991) conducted a study amongst Arab husbands from Israel on domestic violence and found that the patriarchal ideology, negative and traditional attitudes towards women, non-egalitarian marital role expectations and familial patriarchal beliefs justified SA of wives by their husbands on the grounds of adultery, failure to obey husbands as well as disrespect for parents and relatives (Haj-Yahia, 1991). Whereas Haj-Yahia investigated the causes of SA and sought the views of Arab husbands in Israel only, this study seeks to investigate social and economic determinants inhibiting access to the CJS by both male and female VSA in Nairobi County, Kenya.

The second form of SA according to Johnson is common couple/ situational violence. This occurs from specific conflict between the spouses which escalates into violence. It is consistent with the crisis of masculinities theory that explains the changing roles, expectations and shift of power in the contemporary society between husbands and wives resulting into a situation where husbands are also battered by their wives.

The third form of SA according to Johnson (2006) is violence resistance/ resistance to intimate terrorism and occurs due to the need by the victim of intimate terrorism to resist the violence towards her or him by the intimate partner/ spouse. It is often a reaction to intimate terrorism, but is not necessarily self-defence in the legal sense. It does in some cases involve a primary motive to protect one's self from physical violence in the immediate situation or in the long term. It functions as an expression of anger, resistance and retribution even though its perpetrator may expect to provoke greater violence from the controlling party who perpetrates intimate terrorism (Hester et al., 2007; Tonia & Hamel, 2006).

A study in Britain by Baines (2010) confirmed that most SA perpetrated by women are aimed at revenging incidences of abuse they experienced over a long period of time. Baines' study focused on the CJS response to VSA in Britain. This study seeks to investigate the social and economic determinants inhibiting access to the CJS by VSA in Nairobi County Kenya.

The fourth type of SA according to Johnson is mutual violence where both spouses struggle for general control in the marriage due to unequal distribution of power and control of resources. This is consistent with the findings of a study by Kimuna & Djamba (2008) who studied correlates of physical and sexual wife abuse in Kenya. Whereas Kimuna & Djamba focused on correlates of physical and sexual wife abuse in Kenya, this study seeks to investigate the response of the CJS to SA.

Although women are predominantly victims, (Cerulli et al., 2011; Dobash & Dobash 1981; Levinson, 1989; Novisky & Peralta, 2014; Smith, 1989; Sunders, 1988), husbands are also victims of spousal abuse (VSA) (Akumu, 2012; Ellsberg et al., 2000; Hakim et al., 2001; Mooney, 1993; Noreen, 2011; Novisky & Peralta, 2014; Public Health Agency of Canada, 2009; Strauss, 1999; WHO, 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 (ICRW & UNFPA, 2009). 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 (WHO, 2000). 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 et al., 1999). In Japan, 57 % of women were VSA perpetrated in the form of physical, psychological and sexual violence (Novisky & Peralta, 2014; Yoshihama & Sorenson, 1994). Research studies also showed that men were also affected. In a study conducted in India, 98 % of the men interviewed were VSA by their wives (Dhulia, 2009; Husain et al., 2015). More than 40% of VSA in Britain were found to be men (Bagwell-Gray et al., 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).

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 women 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 offender 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, as elsewhere in the world, SA is a complex issue that results from and is perpetrated by various facets of community life (USAID, 2006; World Health Organisation, 2012). 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 (Kishor & Johnson, 2004; Koenig et al., 2003; Krug et al., 2002; Watts and Zimmerman, 2003; World Health Organisation, 2012). In Ghana, over 2,000 men were reported to be victims of spousal abuse (Domestic Violence & Victim Support Unit, 2012). In Namibia, 14 % of all the reported cases of SA were perpetrated by wives against husbands (Bagwell-Gray et al., 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 (Akumu, 2012).

Despite the documented cases of spousal abuse, few of the cases go through the criminal justice system (CJS) for resolution (Moult, 2005; Vetten, 2014). In South Africa, VSA prefer to report the incidences to the Alternative Mechanisms of Dispute Resolution (ADRM) as opposed to the CJS (Moult, 2005; Shai & Sikweyiya, 2015). In Uganda, VSA prefer using the services of local informal authorities rather than the formal CJS (Obura, 2014; ICRW & UNFPA, 2009). 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 (ICRW & UNFPA, 2009). 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 ADRM.

In the year 2009, the prevalence of SA in Kenya was estimated at 39 %. (KDHS, 2009). SA is on the increase in Kenya and in 2011, the prevalence had risen to 74 % (FIDA, 2011; GoK, 2009). Reports indicate 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 Kenya Demographic Health Survey (KDHS) showed that 47.3 % of women had experienced SA with 27.9 % having had such an experience twelve months prior to the study (KDHS, 2003). 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). Maendeleo ya Wanaume, 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 (Maendeleo ya Wanaume, 2012). According to the Gender Violence and Recovery Centre (GVRC-Nairobi Women's Hospital) 90 % of SA cases reported to the centre are perpetrated by men while only 10 % are perpetrated by women (Thenya, 2010).

Incidences of SA are on the rise in Kenya (FIDA 2008; ICRW, 2009; UNAIDS/GOK, 2006; Ngondi-Houghton, 2006; Maendeleo ya Wanaume 2012). The Civil Society has also recognized the problem of SA and subsequently many organizations have sprung up to deal with the phenomenon. The rise of organizations dealing with SA is an indication of the increase in the problem. Such organizations, registered and recognized by the government of Kenya include 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 have been set up in some police stations countrywide, including Kilimani and Shaurimoyo police stations in Nairobi 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 reporting 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 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 County. The GVRC received 1237 cases of SA countrywide out of which 235 were from Nairobi County (FIDA, 2011; GVRC Profile, 2011). This study focused on FIDA and GVRC as the two main NGOs dealing with SA as they received most of the reported cases of SA. This is because most of the female VSA report the abuse to FIDA given that it provides legal services and representation to the victims. GVRC on the other hand provides medical attention and health services to the VSA.

Studies in Kenya therefore indicate that more cases of SA are reported to NGOs such as FIDA- a women rights organization and Maendeleo ya Wanaume- a men's right organization (which also serves as ADRM) than the police, which is the entry point in the CJS (FIDA, 2011; Kenya Police, 2010; Maendeleo ya Wanaume 2012). 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).

SA is therefore a threat to the existence of the family in Kenya which needs to be addressed. Data from the 2003 KDHS imply that domestic violence may contribute to separation and divorce. Almost two-thirds (64 %) of divorced or separated women report having experienced violence since age 15, compared with 53 % of married women and 30 % of those widowed. Kayongo Male & 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 to 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 live in countries where there is no specific legal protection from SA (UN Women, 2012; World Health Organisation, 2012). Despite Kenya being a signatory to CEDAW, to date there is no law that criminalizes domestic violence, further complicating the problem of SA.

The absence of a specific law on this vice may influence access to justice by its victims. An analysis of the legal framework shows that the laws that regulate aspects of SA in Kenya are the 2010 Constitution, the Penal Code, the Sexual Offences Act 2006, the Children Act 2001 and more specifically the Protection from Domestic Violence Act 2015.

The Constitution is the supreme law of the country and provides for the protection of all human beings against any form of violation including SA. The Penal Code is the main body of law that defines most crimes and provides for their punishment. This does not however provide for any offence known as spousal abuse. Cases of spousal abuse are therefore prosecuted under the general offence of assault that makes it difficult statistically to analyse SA matters in the CJS. The Sexual Offences Act defines several crimes of a sexual nature and provides for their punishment. This Act recognizes the sexual form of SA, but does not criminalize marital rape. This presents a challenge in protecting spouses from sexual violence due to the controversial issue of when consent in marriage is given and when it stops.

Most importantly, the Protection from Domestic Violence Act, 2015 (PDVA) aims to protect victims of domestic violence including VSA but does not create a specific offence called SA. The PDVA therefore seeks to protect the victim from the perpetrator but does not provide for penal sanctions. The victim therefore has to make a civil application to court for protection orders. This implies that the VSA has to be aware of the court procedures and formalities. Further, the VSA has to have enough financial resources to get legal representation and pay for court fees. The Civil Justice System therefore is

more complex than the Criminal Justice System in which once an act is criminalized, then the State takes charge of its investigation and prosecution. The failure to create a specific offence called SA within the PDVA therefore hinders its prosecution as a crime under the CJS.

### **The Regulation of the CJS in Kenya in Relation to SA**

The CJS in Kenya is anchored on the adversarial legal system of trial in which the perpetrator and the victim of a crime are responsible for the collection of evidence and ensuring that their witnesses testify in court.

Article 50 (2) (n) of the Constitution provides that every accused person has the right not to be convicted for an act or omission that at the time it was committed or omitted was not an offence in Kenya; or a crime under international law. Parliament must, therefore, pass a law that criminalizes domestic violence and provides a punishment for it so that when the abuse occurs, the report made to the police is specifically captured under a specific offence defined by an Act of Parliament. It is only under such circumstances that the wheels of justice start rolling by the arrest and prosecution of the perpetrator. In the absence of a law that specifically defines spousal abuse as a crime, it becomes very difficult to arrest, prosecute and punish the abusers. Where an accused person is prosecuted under an existing law, the Evidence Act, 2007 provides that the judicial officer must be an impartial arbiter, not taking part in the collection and presentation of evidence in court. The arbiter's role is to apply the rules of law to make a decision based on the evidence presented by the victim of crime, the perpetrator and their witnesses.

The decision arrived at determines whether the crime was committed or not. If no evidence reveals that a crime was committed, the perpetrator is set free (acquitted) and no protection orders are given to the victim. If the perpetrator is found to have committed the crime, he/she is convicted and punished and protection orders may be issued to the victim only if the court finds that the crime was committed. This is a system where both the perpetrator and the victim are left to 'fight' their case in court and the winner takes it all as the loser gets nothing.

The parties (victim and perpetrator) are adversaries, hence the adversarial system of dispute resolution. The court decision and the punishment is predetermined by law and

cannot be negotiated by the parties if a crime is found to have been committed. This is the adversarial nature of Kenya's CJS which makes it very difficult to satisfactorily handle SA cases.

An analysis of the laws that regulate SA reveals that as at the time when this study was conducted, the following were the gaps in the legal framework.

### **No specific offence called Spousal abuse**

There is no specific offence in Kenya called SA or domestic violence. This is the major challenge of the CJS in responding to SA. Cases of SA reported to the police are prosecuted under the general offence of assault as provided for under sections 250 and 251 of the Penal Code. The two sections of the Penal Code which provide for common assault and assault causing grievous bodily harm only take care of physical abuse but leave out emotional, psychological, verbal and financial forms of spousal abuse. The Penal Code provisions are therefore inadequate in addressing complaints of SA reported to the police.

Although the Sexual Offences Act addresses sexual abuse in general, it however decriminalizes sexual abuse within a marriage. When a spouse complains of being sexually assaulted by the other spouse, the issue that arises is at what point does consent begin and stop. Is there blanket consent from the time marriage takes place or is consent to be given and withdrawn in the course of marriage? These are issues which are not addressed by the Sexual Offences Act therefore making prosecution of allegations of spousal abuse by a spouse against another very difficult. The current provisions by the Penal Code and the Sexual Offences Act are therefore both inadequate in prosecuting the sexual form of SA. Sexual abuse within marriage is not criminalized under the laws of Kenya thus making it difficult for the CJS to effectively protect the victims and bring the perpetrators to account for their misdeeds. As it is, the legal provisions do not effectively address the plight and rights of the victims of sexual abuse within a marriage.

Recognizing that SA occurs within the confines of the privacy of the family home, in the absence of any eye witness or circumstantial evidence, the success of the case depends entirely on the evidence of the victim.

In 2015, the Kenyan Parliament passed the Protection from Domestic Violence Act whose main goal was to protect victims of domestic violence. The Act failed to provide for an offence known as domestic violence or spousal abuse but only provided that anybody can make a report to the police or to the court of an incident of domestic violence so as to enable the court to issue orders for protection of the victims. However, a closer analysis of the law reveals that the Act has only provided for anybody to report the abuse on behalf of the victim to the court by making an application for protection orders to protect the victim from the abuse. However, such an application must be heard in the presence of the abuser and evidence produced to prove that the abuse occurred or that there is a threat of the abuse occurring. This law does not take into account the perception of SA as an occurrence within a private domain (marriage) from which many people are reluctant to interfere. The law also fails to consider the vulnerability of the VSA who in most cases are dependent on the abusive spouse for financial support.

The analysis of the legislative framework that deals with SA in Kenya therefore reveals that it is inadequate in responding to SA and protecting the victims. From the above discussion, it is clear that as at the time of this study, there was no clearly defined specific offence that can address complaints of SA.

Charging perpetrators of SA with assault only recognizes physical abuse while it ignores other types of SA such as emotional and psychological abuse which are not covered by the Penal Code.

Another type of SA not covered by the existing legislation is economic abuse. While the PDVA recognizes economic abuse as a form of domestic violence, it does not criminalize this form of abuse. It is therefore evident that the legal framework as it is now does not capture all the forms of SA.

### **Lack of laws on mandatory reporting**

The Kenyan CJS does not provide for mandatory reporting of SA. There is no obligation on anybody who has information or witnesses SA to report it to the authorities for the protection of the victim. Although the Protection from Domestic Violence Act (PDVA) provides that anybody can report SA to the police, it does not make it mandatory. In Canada and the USA, it is mandatory that anybody who has such information must report

it to the authorities so that the victim can be protected. Should investigation be carried out that reveals that somebody knowingly withheld such information, the person is liable under the USA and Canadian Law to be prosecuted and punished.

In Canada, there is so much awareness creation about spousal abuse that the marriage institution is no longer viewed as a private domain (Barett B. J et al., 2020). Neighbours are therefore able to report spousal abuse on behalf of the victim. In Kenya, the society still views the marriage institution largely as a private domain in which the man exercises control over his household and therefore other people keep off. This is what informs the attitude of the police on spousal abuse in Kenya as a domestic affair. This perception of spousal abuse by the society and the police hinders victims of spousal abuse from making reports and accessing the CJS.

The absence of mandatory reporting in Kenya implies that where victims are not able to report themselves, then many cases may go unreported and as a result many victims of SA suffer the consequences and are not able to benefit from the intervention of the CJS. The PDVA does not make it mandatory for anybody with information that one is subjected to SA to make the report and therefore does not effectively enable VSA to access justice from the CJS.

### **Lack of laws on mandatory prosecution**

Like the absence of mandatory reporting, the Kenyan CJS has no provision for mandatory prosecution of SA. The implication is that where a case of SA has been reported to the police, even where the police find enough evidence to show that the abuse indeed occurred, there is no obligation on the prosecution to press on with the charge.

### **Absence of a Law on No Drop Policy**

No drop policy means that once the prosecution process has commenced, the case is prosecuted to the end without being dropped at any stage. This works together with the mandatory prosecution requirement. Neither the prosecutor nor the victim of SA can interfere with the progress of the case that must be prosecuted to the end. The no drop policy is therefore important and protects vulnerable witnesses who are likely to be intimidated into withdrawing the charges against the perpetrator. The no drop policy

ensures that once a case is reported, the victim must record a statement. If the statement reveals that SA is likely to have occurred, the victim must testify and give evidence against the perpetrator. The evidence is used to make decisions that protect the victim. An analysis of the legislative framework in Kenya reveals that there is no provision for a no drop policy either in law or policy.

It is in this regard that this study seeks to investigate the socio-cultural and economic determinants of access to the CJS by VSA in Nairobi County, Kenya.

## **1.2 Problem Statement**

Incidences of SA are on the rise in Kenya going by research findings (ICRW, 2009; FIDA, 2008; UNAIDS/GOK, 2006; Ngondi-Houghton, 2006; Maendeleo ya Wanaume, 2012). The rise of organizations dealing with SA is an indication of the increase in the problem. Such organizations, registered and recognized by the government of Kenya include FIDA and GVRC amongst others.

Despite the increased reporting of SA by victims in Nairobi 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. Inadequate judicial response to SA is one of the gaps in the CJS (Thenya, 2010). Thenya focused on different gaps in response to gender based violence (GBV) and singled out the judicial process, a part of the CJS, as a challenge in addressing SA. Different communities have different values, norms, customs, culture, social structures and beliefs that may influence access to the CJS by VSA (Davies et al., 2015; Wormer & Bartollas, 2011).

Although various studies have been conducted to attempt to give an account for the lack of access, few studies have specifically focused on the determinants in accessing the CJS. Based on these premises therefore, this study sought to establish the socio-cultural and economic determinants of access to the CJS by VSA in Nairobi County, Kenya. Since studies show that both men and women are affected by Spousal abuse, the study included both males and females so as to holistically capture the social, cultural and economic factors objectively as they affect both male and female spouses. The study also settled on Nairobi County as the geographical area of study given that Nairobi County, as the

cosmopolitan city, has inhabitants drawn from different social, cultural and economic backgrounds in all parts of the country.

### **1.3 Objectives of the Study**

#### **General Objective of the Study**

The main objective of the study was to investigate the socio-cultural and economic determinants of access to the CJS by VSA in Nairobi County, Kenya.

#### **The Specific Objectives**

The specific objectives were to: -

1. To establish the status of SA in Kenya and the CJS response.
2. Understand the social, cultural and economic determinants that facilitate access to the CJS by VSA in Nairobi County, Kenya.
3. Determine the social, cultural and economic barriers that hinder access to justice by VSA in Nairobi County, Kenya.
4. Identify the available alternative mechanisms of resolving SA in Nairobi County, Kenya.
5. Generate suggestions on how to enhance access to justice by VSA in Kenya.

### **1.4 Purpose of the Study**

The Purpose of the Study is to understand why a large number of cases reported to the CJS are not determined by the Court but fall off the justice system so as to recommend effective intervention to address spousal abuse.

### **1.5 Research Questions**

1. What is the status of spousal abuse in Kenya and the CJS' response?
2. What are the social, cultural and economic determinants that facilitate access to the criminal justice system by spousal abuse victims in Nairobi County, Kenya?
3. What are the social, cultural and economic barriers that hinder access to justice by victims of spousal abuse in Nairobi County, Kenya?

4. Apart from the criminal justice system, what other alternative mechanisms are available in resolving spousal abuse in Nairobi County, Kenya?
5. How can access to the criminal justice system by victims of spousal abuse be enhanced in Kenya?

### **1.6 Justification for the Study**

SA is a threat to the existence of the family which is recognized as the basic unit of any society. Research reveals that one of the causes of separation and divorce is SA. As observed by Kayongo Male & Onyango, (1984), SA has great implications and threatens the existence of the family. A study on SA and access to the CJS is therefore justified in order to understand the relationship between the two and how access to the CJS can be enhanced for the stability of families in the society.

SA amounts to a crime known as assault under the Kenyan law. Everyone has a right to be protected under the general human rights concept and therefore VSA need to be protected from the abuse by the perpetrators who should be punished if found guilty and the cause of the abuse addressed.

Under the Sustainable Development Goals, all human beings are equal and are entitled to equal protection by the law. The equality principle therefore demands that VSA be given equal protection and fair treatment by the CJS.

Under the Vision 2030 that is Kenya's development blueprint, access to justice is one of the goals. Therefore, improving access to justice by VSA will assist in the realization of the goals of vision 2030.

Under the Constitution of Kenya, 2010, every human being has a right to be protected by the law, treated fairly and have their rights respected and upheld as provided under the Bill of Rights. The study has the potential of contributing to the implementation of the Constitution 2010 and therefore reform of the Judiciary in order to enhance access to justice by VSA.

The study investigated cultural imperatives of treating women with dignity by identifying the cultural aspects that hinder VSA's access to the CJS. The study findings and recommendations on enhancing access to the CJS in Kenya will contribute towards

solving the problem of SA and protecting the family unit. This will have the ripple effect of productive and functional families and nation.

Based on the above reasons, the study is therefore justified due to its ability to contribute in the preservation of the family as a basic unit in the society, hence the development of Kenya. The knowledge from the study findings on the determinants to accessing justice will enhance access the CJS and can be used to advise and persuade victims to report any incidences of abuse for early intervention. In this respect therefore, the study will fill in gaps in knowledge in SA and access to justice.

### **1.7 Significance of the Study**

The study focused on SA which has been recognized as a major social and development problem (Palm et al., 2015; ICRW & UNFPA, 2009). The importance of this study is embedded in at least four main reasons.

The study findings may be useful in the formulation of policy and programmatic interventions to the problem of SA. The study will generate empirical data that will provide an essential link to social, cultural and economic factors and the problem of SA and access to the CJS by VSA.

The study falls within the Kenya Government policy framework as enshrined in a number of policy documents which include *Vision 2030*. The policy documents identify gender equity and access to justice as their main focus. The findings of the study may therefore provide invaluable data and recommendations for the realization of the policy provisions.

The study has the potential of enhancing knowledge on the dynamics of SA and the victims' access to the CJS which may be of great benefit to the victims themselves. A proper knowledge of the dynamics of spousal abuse may help improve access to the CJS through an enhanced service delivery by the relevant institutions thereby enhancing dialogue between the concerned parties.

The study findings will also contribute additional knowledge to the existing information on access to the CJS. This is particularly important given that access to the

CJS by victims of spousal abuse has often been considered to be low but the underlying reasons for such trends have not been adequately understood.

### **1.8 Scope of the Study**

Although women are predominantly victims of spousal abuse, the study included both male and female victims as respondents since statistics in Kenya show that men are also affected (Maendeleo ya Wanaume, 2012). The study was carried out in Nairobi, Kenya and not the entire country because the County houses the capital city which draws its population from various communities in Kenya (KNBS, 2019). Nairobi County is therefore representative of different social, cultural and economic backgrounds and different classes in society. The study did not investigate all determinants that influence access to CJS by VSA. The focus of the study was on those of socio-cultural and economic nature of access to the CJS by VSA.

### **1.9 Assumptions of the Study**

1. The study assumes that VSA who report to the police have the knowledge of how the CJS works in Kenya.
2. The study assumes that ADRMs are applied in resolving cases that are not reported to the police.

### **1.10 Chapter Outline**

Chapter One introduces the research topic of study. It gives a background of the study with a discussion on the concept and causes of spousal abuse and the regulation of SA within the CJS in Kenya. It also entails the problem statement, the objectives of the study, the purpose of the study and research questions. The Chapter further provides a justification of the study and discusses the significance, scope and assumptions of the study.

Chapter Two delves into the Literature reviewed. It reviews the literature thematically along the following areas: the concept and causes of SA, effect of SA on families, response to SA by the formal and informal justice system and the determinants of accessing justice by VSA. The chapter also provides the theoretical and conceptual framework of the study.

Chapter Three discusses the Research Methodology of the Study. It entails a brief analysis of the study design and area, the Variables used in the study, the Target population and key informants of the study, the inclusion and exclusion criteria, sample size determination, the sampling techniques and data collection tools of the study. The Chapter also outlines the ethical considerations undertaken by the Researcher during the study.

Chapter Four provides a detailed analysis of the research findings. It examines the efficacy of the CJS in handling and prosecuting cases of spousal abuse and analyses the social, cultural and economic facilitators and barriers to accessing justice within the CJS by VSA in Nairobi County. The Chapter further examines the ADRMs used by the Respondents to report and resolve cases of spousal abuse.

Chapter Five gives the summary of the findings, conclusion and the recommendations of the study

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

This chapter reviews literature along the following thematic areas: the concept and causes of SA, effect of SA on families and access to justice. In addition, the chapter reviews literature on the response to SA that includes the use of (ADRM), also known as the informal justice system and the (CJS) which is also known as the formal justice system. The review also includes literature on determinants of accessing justice by VSA such as social, cultural and economic factors that either enhance or act as barriers to accessing justice by VSA. This is followed by a review of literature on ways of enhancing access to CJS. In addition, the chapter discusses the theoretical and conceptual frameworks.

#### **2.2 Effect of Spousal Abuse on Families and Access to Justice.**

SA has an immeasurable impact on the victim, family and the society (Heise et al., 1994; Moore 1999; Tonia & Hamel, 2006; WHO 2002). This includes the human cost in grief and pain to the victim and the society (Martin-de-las-Heras et al., 2015; Iancu, 2010). VSA cannot function fully in activities and may be less able to care for themselves and their families. SA is often characterized by long-term psychological effects which in some cases may lead to attempted or successful suicide (Wong & Mellor, 2014; Heise, 1993; Plazaola-Castano et al., 2011). SA therefore can potentially reduce the victim's life expectancy (Heise et al., 1994; Rudolph & Hughes, 2001; O'Leary et al., 2014). SA is reported to affect the emotional, psychological and mental well-being of children within the household where it occurs. Some of the effects of SA on children include; depression, aggression, disobedience, physical ailments and poor school performance (Macmillan & Wathen, 2014; WHO, 2011). Whereas the above studies concerned the effects of SA on the victim, children and wider society, this study seeks to examine the response of the CJS, establish the social, cultural and economic barriers and facilitators and recommend measures to enhance victims' access to justice, thereby mitigating against the impact of SA in Kenya.

## **2.3 Responses to Spousal Abuse**

Although conflict is inherent in any society, there is need to manage it so that it does not threaten its very existence (Stith, et al., 2015; Galtung, 1958, Hobbes, 1651). This is the foundation of any legal system that creates rules, regulations and laws that ensure harmonious coexistence in any society. To ensure compliance, the state norms are backed by sanctions, hence the creation of law. To implement laws, institutions are set up and specific members of the society mandated to enforce the laws. The aim is to maintain harmony in society. This is therefore the foundation of any legal system, which is further systematized into criminal, corporate, family, commercial, and constitutional law amongst other branches. The laws are implemented through the formal dispute resolution mechanisms also known as the CJS. This includes the police, the courts and the correctional institutions.

There are also informal dispute resolution mechanisms that are devoid of procedural bureaucracies and technicalities associated with the CJS. The informal dispute resolution mechanism is also referred to as Alternative Dispute Resolution Mechanisms (ADRM). In the next section, the study discusses the ADRM.

### **2.3.1. The Alternative Dispute Resolution Mechanisms and its response to Spousal Abuse**

The informal mechanisms of dispute resolution, also known as the ADRM include NGOs, church leaders, social networks, family members, friends and many others that resolve conflicts outside the CJS (Krist et al., 2015; Chaka-Makhooane et al., 2000).

ADRM's are preferred for resolving SA due to various factors which include: their accessibility, cost effectiveness, informality, flexibility, their ability to resolve disputes fast, without unnecessary and/undue delays. They give everybody an opportunity to be heard while the community's best interest is at the centre of the dispute resolution. In addition, all stakeholders are involved, in the process while the decision makers are people who live within the community, understand the community and are therefore better placed to make decisions in the interest of justice, VSA and the community.

VSA prefer the ADRM due to their affordability and immediacy with which the systems resolve problems and the focus on mediation and resolution rather than arrest and punishment of the perpetrator, which is seen as the focus of the criminal justice system (Moult, 2005; Iancu, 2010; Legal Services Commission, 2009; Vetten, 2014).

Although they are preferred as the first point of reporting many disputes largely due to their accessibility, the major weakness of ADRM is the inability to enforce their decisions because of lack of formal backing of the law. Consequently, perpetrators of SA ignore decisions of ADRMs, and the abuse may continue while concerns by VSA remain unresolved. The system benefits and relies more on the goodwill, ability and willingness of those affected by the decision to abide by it. Where those affected by the decision refuse to adhere to it, the lack of sanctions and inability to enforce their decisions make ADRM a weak mechanism of dispute resolution especially in SA cases.

Prior to the colonization of the geographical area presently known as Kenya, different communities had informal dispute resolution mechanisms that dealt with conflict within the society (Mbeo & Ombaka, 1989, Kariuki, 2014). This kind of dispute resolution, also known as informal/ ADRM, included family members, the chiefs, community elders, traditional/ religious leaders who were called upon to arbitrate on any matter that threatened the existence of peace and harmony in the society. Family conflicts such as SA were dealt with and amicably settled by any of the mechanisms described above.

Kenya is a patriarchal society. Most communities therefore, had norms and values that regulated the interaction of men and women. This sometimes perpetuated the dominance and control by men and the subordinate status of women in the society. Disputes involving SA were therefore resolved within the context of such norms and values (Kayongo, 1984, Kariuki, 2014). Article 159 of the Constitution of Kenya 2010 provides for ADRM as alternatives to courts in the resolution of disputes in Kenya. This study therefore seeks to identify existing ADRMs currently applicable in SA dispute resolution in Nairobi County, Kenya.

Although many people prefer ADRM due to their advantages as compared to the CJS, they are characterized by weaknesses that at times push aggrieved parties to seek redress in the CJS which has at its disposal the state personnel and resources in addition to

its ability to enforce compliance. The next section reviews literature on the CJS and its response to SA.

### **2.3.2. The Criminal Justice System and its Response to Spousal Abuse**

In order to understand the current CJS in Kenya, a brief introduction of how the system was introduced into the country is important at this point.

Kenya became a British protectorate in 1897. The colonization of Kenya by the British led to the introduction of the English Laws to protect the interest of the British settlers. However, their introduction did not replace the existing informal dispute resolution mechanisms in matters that were regarded as private or of family nature (Mbeo & Ombaka, 1989; Kariuki 2014). Such matters include spousal abuse. The English laws introduced the formal mechanism of dispute resolution under what is today known as the CJS. This comprises of the police, the courts and the correctional institutions otherwise known as prisons. The English laws further outlawed certain practices that amounted to a crime as per its definition of a crime. The outlawed practices included any act that inflicted injury on another, referred to as assault under the Penal Code Chapter 63 of the Laws of Kenya as introduced by the British. By implication therefore, spousal abuse which refers to violence against a spouse, mostly perpetrated by husbands against their wives and perpetuated by the patriarchal practice of ‘disciplining’ a wife, therefore amounts to a criminal offence which is to be prosecuted under the formal dispute resolution system, by reporting it to the police for subsequent prosecution and determination by the court. However, the difficulty arises from the fact that there is no offence or crime defined as ‘spousal abuse’ in the penal laws in Kenya.

At the end of the British rule, Kenya inherited the British legal system that forms the basis of the CJS as it applies today. The aim of the CJS is to protect members of the society from unlawful acts and punish the offender if found guilty as a deterrence to further violation of the law. The punishment also aims at sending a clear message to the rest of the society that any commission of such a crime attracts the kind of penalty with the hope that it can deter potential offenders from committing the crime (International Federation of Social Work, 2014; Wright & Galaway, 1989). The current CJS in Kenya is therefore

modelled along the English adversarial criminal procedure of dispute resolution in which parties see each other as adversaries in court and the winner takes it all.

Whereas the CJS is state controlled and funded, the ADRM is controlled and funded by non-state actors. An exception is the chief's office which is state funded as part of the state administrative structure at the community level. It handles disputes informally, at the community level and only refers cases to the police if they are unable to resolve them (World Bank, 2009; Kariuki & Kariuki, 2014).

The ADRM include NGOs, church leaders, social networks and many others that resolve conflicts outside the CJS (Bayer et al., 2015; Chaka-Makhooane et al., 2000). Both the CJS and the ADRM coexist in Kenya. Most victims of SA prefer to report the cases to ADRM as opposed to the CJS (Moult, 2005; FIDA, 2011; Letourneau et al., 2012; Moore, 2008; Flake & Forste, 2006). However, CJS is criticized for being bureaucratic and neglecting the needs of VSA, while focusing on the establishment of the guilt or innocence of the perpetrator (Freeman, 2008; Wormer & Bartollas, 2011; Sokoloff 2008; Baines, 2010; Iancu, 2010; Letourneau et al., 2012). This study examined the response of the CJS to SA with the aim of determining socio-cultural and economic determinants that hinder or facilitate access to justice by VSA. In the next section, the study reviews literature on how the CJS works.

### **2.3.2.1 How the Criminal Justice System Works**

The CJS is a continuum that begins from the point of entry where the services are sought mostly at the police station, to the enforcement and up to the end of the case and judgment (Ngondi-Houghton, 2006; Barnes, 2014). The CJS focuses on the implementation of rules and regulations sanctioned by the state in order to protect its citizens from any arbitrary use of state power in the resolution of disputes between individuals or individuals and the state (Eriksson & Mazerolle, 2015; Wormer & Bartollas, 2011). The protection of VSA is therefore facilitated by the existence of specific statutory laws and policies on domestic violence by any country. This may be further facilitated by mandatory reporting of SA in some countries such as America where healthcare providers are under a duty to report suspected cases of SA to the police for action to protect the victim (Sokoloff and Pratt, 2008; Barnes, 2014). Availability or lack of mandatory reporting is

therefore a determinant that influences the CJS response to spousal abuse (Krist, Lazgare, Zang, & Ocampo, 2015; Jasinki, 2010; Dawson, Bunge & Balde, 2009; Weisz, Black & Neva, 2008). Equally, lack of recognition by some countries of domestic violence as a crime serves as a determinant in accessing the CJS by victims of SA (Buzawa & Buzawa, 2003; Vetten, 2014). This study seeks to examine Kenya's response to SA and to establish whether SA is considered as other serious crimes.

#### **2.3.2.1.1 The Legal Framework for the Protection of VSA**

The Constitution of Kenya, 2010 has a special recognition for the family as the basic unit of society. It entails key provisions for the protection of the family as an institution. These provisions include:- Article 45 which recognizes the family as the basic unit of the society, Article 26 on the protection of the right to life, Article 27 on the protection from discrimination, Article 28 on the protection from inhumane and degrading treatment, Article 29 on the right to human dignity and respect, Article 31 on the right to privacy, Article 47 on the right to fair administrative action, Article 48 on the right to access to justice and Article 50 on the right to a fair hearing.

The first obligation of the state to protect life in Kenya mandates the protection of the family institution through Article 45. It recognizes the family as the natural and fundamental unit of society and necessary basis for social order. It further provides that the family enjoys the recognition and protection by the state. The constitutional protection of the family therefore obligates the State to ensure the safety of all members of a family. The state carries out this responsibility through the institution of the CJS by punishing violation of rights of members of the family. Since SA threatens the existence of the family, VSA have a constitutional right to be protected from the abuse by the state. The implication is that the state, through the National Assembly, is obligated to pass enabling legislation and ensure that the criminal justice agencies, namely the police, prosecution, courts and correctional services have measures in place to protect VSA.

The third human right protection that the Constitution provides to everyone including VSA is equal treatment, benefit and protection by the law as per Article 27. The state is obligated to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals through

discrimination. In light of this provision, the lack of a law criminalizing SA amounts to a violation of the constitution. The fact that victims of other crimes are recognized by criminalizing acts that victimize them such as robbery, theft, assault amongst others, subjects VSA to discriminative treatment of the law. Article 50(9) of the constitution obligates the National Assembly to specifically enact legislation protecting the rights and welfare of victims of crime. VSA should be protected by passing an enabling legislation to protect their constitutional rights.

The fourth fundamental human right that applies to VSA is the right to security of any individual who is protected from any manner of inhuman and degrading treatment whether physical or psychological according to Article 28 of the Constitution. The Constitution recognizes psychological harm to victims of crime. However, the existing penal laws do not provide for psychological abuse. The lack of a legislation to protect VSA from the psychological form of SA is therefore a violation of their right to protection from inhuman and degrading treatment.

The fifth fundamental human right protected by the constitution is the right to human dignity and respect.

The sixth human right applicable to VSA is the right to privacy according to Article 31 of the Constitution and protection relating to the family. It provides that private affairs relating to the family should not be unnecessarily revealed.

The seventh fundamental right relevant to VSA is the right to fair administrative action which must be expeditious, efficient, lawful, reasonable and procedurally fair according to Article 47 of the Constitution. When VSA seek help from the CJS, they are entitled to fair administrative action taken by the criminal justice agencies.

The eighth fundamental right relevant to VSA is the right to access justice according to Article 48 of the Constitution. This implies that all measures and facilities should be put in place to ensure that victims get protection from the CJS.

The last fundamental right relevant to the protection of VSA is the right to a fair hearing according to Article 50 of the Constitution. This provision calls for fairness to both perpetrators and victims in the process of court hearing. However, whereas the accused

persons have several safeguards such as the right to remain silent and not give any incriminating evidence, as at the time of the study, the victims did not have adequately defined rights in the trial process. This situation however has since been changed by the enactment of the Victims Protection Act, 2014 which particularly focuses on the rights and protection of the victim through the trial process.

Article 26 of the constitution protects life and guarantees safety of the citizens. SA is therefore a violation of the victim's right to life. The State is under a constitutional obligation to protect the victims and prevent the violation from occurring. The state carries out this obligation through the use of the CJS. It is therefore important to understand how the CJS works and how it is expected to protect the lives of VSA. In the next section, the study discusses the two approaches of the justice system in Kenya namely civil and criminal approaches.

#### **2.4 The Civil and Criminal Justice Approach to Spousal Abuse**

Under the Constitution of Kenya 2010, there are two separate approaches to SA by the justice system, namely civil and criminal. The first one is by making an application to the court that one's rights are about to be violated and therefore seeking protection (Article 22). With respect to SA, one can apply for protection orders, maintenance, custody for children, school fees and upkeep amongst others under the Children Act and Protection from Domestic Violence Act. The procedure is however, technical and requires the services of a lawyer as well as court fees to be paid.

The second approach, provided for by Article 167 of the Constitution is known as the CJS' Response. Under this system, a report of an abuse is made to the police for investigation by the complainant or a member of the public. If found to have occurred, the perpetrator is prosecuted in a criminal trial. If found guilty, the perpetrator is sentenced by the court. This second approach is provided for by Article 167 of the Constitution. For prosecution to occur, the offence must be defined as a crime and punishment provided by a statute (Act of Parliament). This may be under the Penal Code which provides for different offences or different specific Acts of Parliament like the Sexual Offences Act.

In the CJS, prosecution of crimes is undertaken by the Office of Director of Public Prosecution (ODPP). The Office of the Director of Public Prosecution (the ODPP) is

established under Article 157 of the Constitution. The Director of Public Prosecution (DPP) exercises the state powers of prosecution. The functions of the DPP include to: -

- i. institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
- ii. take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
- iii. discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions

Another important institution in the CJS is the Directorate of Criminal Investigation (DCI). The DCI is a constituent organ of the National Police Service which is established under Article 247 of the Constitution and the National Police Service Act, 2011. Sections 28 and 35 of the National Police Service Act, 2011 outline the roles of the DCI as follows; To collect and provide criminal intelligence

- i. To undertake investigations on serious crimes including homicides, narcotics, money laundering and economic crimes
- ii. To maintain law and order
- iii. To detect and prevent crime
- iv. To apprehend offenders
- v. To maintain criminal records
- vi. To coordinate the country's Interpol Affairs
- vii. To carry out investigation of matters that may be referred to it by the Independent Police Oversight Authority

The DCI supports the prosecution process instituted by the ODPP through aiding in the investigation of crime and apprehension of the offenders. The DCI is therefore an integral actor in the prevention, detection and investigation of crime within the CJS.

The ODPP has 5 departments namely: - the Department of Economic, Organized and International Crime, Department of Conventional and related crimes, Department of

County Affairs and Prosecution services, Prosecution of Training Institute and Department of Corporate Services. The Sexual and Gender based Violence Division is one of the divisions under the Department of Conventional and related crimes. The division handles and prosecutes cases of sexual abuse. It also trains prosecutors, investigators and other stakeholders on matters sexual abuse. Further, it creates awareness through sensitizing the public on effects of sexual and gender based violence.

In the criminal approach, there must be a law that defines action amounting to SA as a crime and a penalty provided for it. The matter must then be reported to the police, investigation carried out, the perpetrator prosecuted and witnesses who include the VSA are asked to testify. If the perpetrator is found to have committed the crime, a fine, imprisonment or any punishment provided by the law, can be passed to punish him or her. However, if there is no proof that a crime occurred, the court sets the perpetrator free for lack of evidence in court. No remedies are available to the victim who may be left more vulnerable to the abuse than before the matter was reported to the CJS. In the next section, the study discusses the procedural technicalities which characterize the CJS in Kenya.

#### **2.4.1 The Formality and the Technical Language of the Court**

The CJS has specific technical words that are applied during the dispute resolution process in court. The technical language of the court is meant to ensure that the magistrate and the legal representatives of the parties are in consensus about the meaning of words used. The aim is to make communication in court easy. The effect, however, is that the use of the technical language only eases communication between the legal experts in court. This therefore means that only the magistrate/judge and the lawyers or those with the legal knowledge are able to communicate and understand what is going on in court. However, non-lawyers who include victims and perpetrators who may not be represented therefore experience serious difficulty in participating in court.

Such technical words include: plaintiff (person making a complaint), respondent (person to respond to the complaint), accused (person being charged with an offence), case to answer (at face value, a case has been established that the accused likely committed the offence, taking plea (accepting or denying committing an offence which one is accused of).

Article 7(2) of the Constitution provides that the official languages of the Republic of Kenya are English and Kiswahili. These therefore are the same languages that can be used in court. However, not all victims are able to effectively communicate in the two languages. This necessitates the services of a lawyer to be able to argue out one's case in court. However, the lawyer's fees may be prohibitive to some victims who cannot afford to pay (Forum on Global Violence Prevention, 2015).

#### **2.4.2 Technicality of the Court Procedure**

There are different steps to be followed before a conclusion is arrived at to enable a VSA access justice. Section 145 of the Evidence Act lays down the different steps. Whereas most victims are interested in the final product of accessing justice which is their protection, the technical procedural requirements of the CJS require that even where a victim presents himself/herself with visible injuries as a result of the abuse, the court cannot issue protective orders until a complaint is formally filed, investigated, statements recorded and witnesses summoned to give evidence in court. If the victim went to a hospital, the hospital medical record of the treatment must be produced in court.

It is after all the witnesses have testified that the court makes a decision as to whether there is a possibility that the perpetrator indeed committed a crime. At this stage, if the evidence does not reveal that an offence was committed or that the perpetrator is not the one who committed the crime, the perpetrator is set free and there are no protective orders issued to enable the victim access justice (this is what the law calls failure to establish a *prima facie* case against the perpetrator).

However, should the evidence reveal that the victim was indeed abused by the perpetrator; the perpetrator must be given an opportunity to tell the court his/her side of the story and call witnesses to support his/her case. This is followed by a decision of the court as to whether the statement and the evidence by the perpetrator absolves him/her from the accusation.

If indeed, the evidence absolves the perpetrator, then he/she is acquitted (set free) and no protective orders are issued to enable the victim access justice. It is worthy to note that it is only upon the court's finding that the perpetrator indeed committed the offence that protective orders can be issued to protect the victim. The entire process of establishing

whether or not the perpetrator abused the victim is lengthy and may take as long as three years (Judiciary, 2014). This discourages most victims of SA who in the meantime are left vulnerable to repeated abuse by the perpetrator.

### **2.4.3 The Stages in the Criminal Justice System**

There are five stages within the CJS that any reported case including SA must go through namely; reporting of the abuse, investigation and prosecution, testimony by witnesses/ victims, testimony by perpetrator and court decision (Novisky & Peralta, 2014; Dobash, 1979, Lockton & Ward, 1997).

#### **2.4.3.1 Reporting of the Abuse**

It is the cardinal rule of the working of the CJS that a report must be made to the police about the commission of a crime, so that the wheels of justice start rolling. Reporting SA is a highly personal decision left to the victims in the absence of mandatory reporting laws (Shai & Sikweyiya, 2015; McConville & Wilson, 2002; Dobash, 1979). While some victims report SA to the police, quite a number fail to report the abuse to the police and seek ADRM from family, friends, the clergy or other helping professionals such as counsellors (Davies, et al., 2015; Jones, 2011).

Some of the socio-cultural and economic determinants in reporting SA to the police include; negative attitude by the police towards the crime (Eriksson & Mazerolle, 2015; Rudolph & Hughes, 2001; Legal Services Commission, 2009). Some police officers perceive SA as a domestic matter that should be resolved at home and not reported to them while some blame the victim for provoking the abuse, especially female victims (Eriksson & Mazerolle, 2015; Jasinki, 2010; Dawson, Bunge & Balde, 2009; Weisz, Black & Neva, 2008).

Victims' fear of retaliatory attacks by the perpetrators is yet another determinant in reporting the abuse to the police (Davies, et al., 2015; Wormer & Bartollas, 2011). The social status of the victim and perpetrator in the society may also determine whether or not SA (Husain, et al., 2015; Jasinki, 2010; Dawson, Bunge & Balde, 2009; Weisz, Black & Neva, 2008). Victims' concerns about their families is also a factor which may determine

whether or not SA is reported to the police (Husain, et al., 2015; Jasinki, 2010; Dawson, Bunge & Balde, 2009; Weisz, Black & Neva, 2008).

Language barriers especially for VSA in a foreign country can also hinder reporting of the act to the police (Krist, Lazgare, Zang, & Ocampo, 2015; Wormer & Bartollas, 2011). Failure to take VSA seriously by the police and the societal stigma faced by male victims hinders them from reporting the abuse to the police (The Canadian Department of Justice, 2012; Raiford et al., 2012; Letourneau et al., 2012; Cohen, 2002; Khawaja et al., 2012; Haj- Yahia, 2003). The study sought to examine the CJS' response to spousal abuse and establish the determinants that hinder or enhance victims' ability to report the abuse that are unique to Nairobi County, Kenya.

#### **2.4.3.2 Investigation and Prosecution**

This is the second stage after reporting SA to the police. The police must collect evidence from witnesses and if it is sufficient to prove that the abuse occurred then the accused person is arrested and taken to court for prosecution. Some barriers to investigation and prosecution include the private nature of the family, which implies that SA occurs within the privacy of the family protected from the "public eye". Not many people therefore witness SA. The few who have information about the vice perceive it as a private family matter and consequently opt to stay away from testifying in court (Buzawa & Buzawa, 2003; Dobash, 1979; Haj- Yahia, 2003; Raiford et al., 2012; Krist, Lazgare, Zang, & Ocampo, 2015). Prosecution of the perpetrator involves the witness and victim's narration of the intimate details of the abuse in open court (Human Rights Watch, 1995; Shai & Sikweyiya, 2015). Many VSA shy away from revealing the embarrassing details of the abuse in court during prosecution. The gender construction of the roles of women and men, the negative attitude and ineffectual practices in the bureaucratic CJS re-victimizes VSA (Choi, 2015; Letourneau et al., 2012). The less vigour with which SA is prosecuted compared to other crimes is yet another barrier in prosecuting the crime (Human Rights Watch, 1995; Shai & Sikweyiya, 2015). This study sought to examine the CJS investigation and prosecution to find out if it hinders or enhances access to justice by VSA.

### **2.4.3.3 Testimony by Witnesses and Victims**

This is the third stage in the CJS where the prosecutor calls the victim and any witnesses who saw or have information regarding the incidence of SA to narrate the same in court. The CJS presumes that the perpetrator is innocent until sufficient evidence is produced in a court hearing. The threshold of proving criminal matters in court is high as any doubt sets the perpetrator free. In most cases, due to poor prosecution and the failure to meet the threshold, perpetrators of SA are found not guilty by the court. This discourages many witnesses and VSA from giving their evidence in court (Sonnis & Langer, 2008; Mayordomo, 2011; Neal & Edwards, 2015).

Under the CJS, for the VSA to be protected, there is the formal procedure that must be followed which demands that a complaint be formally recorded to the police and witnesses be called to court to give evidence. This is consistent with the societal perception in Kenya that spousal abuse is a domestic matter and most people who have evidence of the abuse will hardly appear in court to give evidence. This therefore makes it difficult for victims of SA to access the justice system. In addition, most VSA being women are dependent on their husbands. If they report the abuse to the justice system, because of its adversarial nature, the victim is likely to lose the financial support of the husband for herself and her children. This places the victim in a difficult position where she might want to report the abuse but at the same time fear losing the financial support of the perpetrator.

Another determinant is the repeated cycle of violence such that by the time the VSA and the witnesses are supposed to give evidence in court, the perpetrator may have apologized to the VSA and convinced him/ her to withdraw the case (Davies, 2009; Tonia & Hamel, 2006). Some VSA fail to testify because the CJS treats them as mere suppliers of information without regard to their concerns (Ptacek & Frederick, 2009; Shai & Sikweyiya, 2015). This study sought to examine the CJS and to establish the socio-cultural and economic determinants that influence the VSA ability to testify in court.

### **2.4.3.4 Testimony by Perpetrator**

This is the fourth stage in the CJS. It is the opportunity for the perpetrator to narrate his/ her side of the story in court and call anybody as a witness to support his/ her case. Due to the socialization process, the patriarchal nature of the society, the dominance and

control of the family by husbands, the subordinate status of women and the control of family resources by men, it becomes difficult for members of the family, including the perpetrators themselves, to testify in court. The associated stigma attached to SA is therefore a barrier in accessing justice by VSA in the CJS (Novisky & Peralta, 2014; Freeman, 2008; Dobash, 1979; Khawaja et al., 2007; Kimuna & Djamba, 2008; Henning et al., 2006; Mwale, 2002; Walter, 1997, Silvestri & Dowey, 2008).

Religious beliefs have also been found to serve as a barrier to accessing justice by spousal abuse victims (Aldana & Saucedo, 2008; Haj-Yahia, 2003; Wormer & Bartollas, 2011; Choi, 2015). Many religions teach tolerance and servitude in marriages, while perpetuating the subordinate position of wives and emphasises the dominant role of husbands. The religious teachings are therefore a barrier to accessing justice by VSA. This position is explained by the feminist, masculinities in crisis and the family conflict theories later in this chapter.

#### **2.4.3.5 Court Decision**

This is the final stage in the CJS where the court weighs the evidence produced in court by the victim and the perpetrator and their witnesses and makes a decision as to whether there is enough evidence to prove that SA occurred or not (Barnes, 2014; Zedner 2002). Where the evidence does not meet the threshold of proving that the perpetrator used violence on the victim, the perpetrator is set free (acquitted) and the case is closed (Barnes, 2014; Walgrave 2002). The danger with this position is that there may be factors that limited the attainment of the evidentiary threshold of proving that the abuse occurred and this has the potential of repeat or continued perpetration of the abuse by the perpetrator. As a result, the VSA feels helpless and may not report subsequent abuse to the CJS when it occurs (Carmen, 2006; Barnes, 2014).

Where the court finds that the evidence proves that the perpetrator used violence on the victim, then the perpetrator is found guilty (convicted) and may face punishment ranging from admonition, probation, counselling, fine and/or imprisonment (Freeman 2008; Kameri-Mbote & Akech, 2011; Eriksson & Mazerolle, 2015). In most cases, the punishment of the perpetrator ends the trial process and the VSA is left without any protection (Eriksson & Mazerolle, 2015; Iancu, 2010). The lack of adequate victim

protection by the court, the punishment of the perpetrator who may be the head of the family and the stigma associated with being in prison, present further complications for VSA, most of whom therefore decide not to report SA to the CJS (Eriksson & Mazerolle, 2015; Cerulli et al., 2011; Roberts & Burman, 2007; Human Rights Watch, 1995). This study sought to find out how different socio-cultural and economic determinants influence court decisions and their effect on VSA, access to justice in Nairobi County.

#### **2.4.4 The importance of the Criminal Justice System in resolving Spousal Abuse**

Despite the weaknesses of the CJS, its advantages include being state controlled, funded and managed by government trained staff equipped with necessary skills in dispute resolution due to the vast resources at the disposal of the state. Further, sanctions by the CJS on those who violate state laws that protect citizen's rights are enforced by state institutions such as the probation and prisons. Without undermining the ADRM, the state controlled CJS is by far the most legitimate system of dispute resolution that draws its legitimacy from its administration by a legitimately elected government to whom the citizens pay tax (McConville, 2002; Kameri-Mbote & Akech, 2011; Krist, Lazgare, Zang, & Ocampo, 2015).

The advantage of the CJS over the ADRM is based on the former's potential of effectively and efficiently addressing SA nationwide. However, the system does not seem to meet this ideal expectation as studies indicate that more cases are reported to the NGOs but fewer reach the police stations for prosecution. Of those that are prosecuted, even fewer reach conclusion by the courts (Palm, Hines, Armstrong, & Cameron, 2015; FIDA, 2011; Moul 2005; Iancu 2010; Legal Services Commission, 2009; Saucedo & Aldana, 2008; Williams & Houghton, 2004). This study sought to establish the socio-cultural and economic determinants to accessing justice by VSA.

#### **2.5 Access to Justice**

There is no universally agreed definition of the phrase 'access to justice'. According to Ladan, access to justice refers to instances where individuals who need help, find effective solutions available from justice systems, which are accessible, affordable, understandable to ordinary people and which dispense justice expeditiously (Ladan 2009).

This conception of access to justice fails to fully appreciate the place of ADRM. The definition fails to state the interface between ADRM and the formal justice system with regard to access to justice. One interpretation could be that provided the CJS meets all the requirements which are stated in the definition, then essentially such a justice system may not have a place for ADRM. Ladan further defines access to justice to include a fair and equitable legal framework that protects human rights and ensures delivery of justice. This definition is inadequate as far as this study is concerned as often, a legal framework that protects human rights almost always subjugates ADRM. This is because most ADRM do not uphold human rights.

According to the Global Alliance against Traffic in Women (GAATW), access to justice refers to the opening up of formal systems and structures of the law to disadvantaged groups in society and removal of legal, financial and social barriers (GAATW, 2014). Kariuki defines access to justice to include the use of ADRM, to bring justice closer to the people and make it more accessible (Kariuki, 2014). This definition finds support in *Kenya Bus Service Limited & Another v Minister of Transport & 2 Others*<sup>1</sup> where the court stated that the right of access to justice in the constitution requires one to look beyond the dry letter of the law, and that it is a reaction to and a protection against legal formalism and dogmatism.

For the purposes of the study, access to justice refers to the availability, accessibility, adequacy and efficiency with which services are rendered satisfactorily by concerned institutions of the CJS in addressing the needs and concerns of VSA. To say therefore that victims have access to justice within the context of the study implies that the CJS' agencies namely the police, the courts and correctional institutions are available and within reach by VSA who are able to present their complaints, needs and concerns which are addressed adequately and efficiently to their satisfaction. Therefore, at every stage of the CJS, namely; reporting of the abuse, investigation and prosecution, testimony by witnesses and victims, testimony by perpetrator and court decision, victims' concerns should be satisfactorily addressed.

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<sup>1</sup> Available at [2012] eKLR.

## **2.6 Determinants in Accessing Justice by Spousal Abuse Victims**

In this study, the word determinant is used to refer to variables that enhance or hinder VSA access to justice. Whereas there are several determinants in accessing justice by any victim of crime, the study is focused on three main determinants namely cultural, social and economic determinants. The focus is to find out the role that they play in either enabling the victims to access justice or serve as barriers.

### **2.6.1 Cultural Determinants to Accessing Justice by Victims of Spousal Abuse**

According to Macionis (2007) culture is defined as the values, beliefs, behaviour, and material objects that together form a people's way of life. Culture includes what people think, how they act, and what they own. Macionis argues that almost everything that an individual does, feels and thinks, is shaped by the basic elements of culture. Culture is a link to the past and a guide to the future. Culture can be material or non-material. Non-material culture refers to ideas created by members of a society while material culture refers to physical things created by members of a society. As an example, in some societies due to the traditional culture, SA is viewed as natural and normal.

Culture shapes individuals' way of thinking and feeling. Some traditional cultures perceive spousal abuse as a normal phenomenon that occurs within marriage. Victims brought up in such communities may think and feel that spousal abuse is normal hence find it difficult to report the incidences to the police. In this respect, culture therefore acts as a constraint/barrier in accessing justice.

Scholars generally agree that culture comprises of: symbols, language, perception, cultural values, cultural beliefs, cultural practices, cultural norms and religion (Eriksson & Mazerolle, 2015; Benson & Fox, 2002; Macionis J, 2007; Campbell, 2010; Summers & Hoffman, 2002).

The study identifies and examines the following variables under cultural determinants: cultural values, cultural beliefs, cultural practices, cultural norms, patriarchy and religion.

### **2.6.1.1 Cultural Values**

Values are broad principles that support beliefs (Eriksson & Mazerolle, 2015; Macionis, 2007). Values are culturally defined standards that people use to decide what is desirable, good and beautiful, and that serve as broad guidelines for social living. People who share a culture use values to make choices about how to live. Values can be described as abstract standards of goodness e.g. most communities value the family (union between a husband and wife) and emphasize the status of a married woman as a good woman. VSA therefore opt to remain in abusive marriages, instead of reporting the abuse to the police and breaking the marriage. If the marriage gets broken, the woman is seen as a failure and blamed. The social stigma attached to a divorced or unmarried woman is a hindrance to accessing justice.

Talking about the abuse is perceived as exposing marital problems. Women are encouraged to keep the abuse and any other negative information secretive. They are socialized that a good wife does not expose the ‘bad side’ of her husband. Such perceptions about SA serve to hinder the reporting or giving evidence on SA by victims, hence a barrier to their access to justice.

### **2.6.1.2 Cultural Beliefs**

Cultural beliefs are specific statements that people hold to be true. Beliefs are therefore particular matters that a community collectively considers to be true or not (Davies, et al., 2015; Macionis, 2007). Cultural values and beliefs affect people’s view of their surrounding and indeed contribute to the formation of their personalities. Men, therefore, become potential perpetrators while women become vulnerable to abuse and victimization. The belief that a man who does not beat his wife is weak encourages male perpetrated violence towards the female spouse.

### **2.6.1.3 Cultural Practices**

Cultural practices refer to patterns of social interactions that are unique to a particular entity, community or cultural grouping (Eriksson & Mazerolle, 2015; Campbell, 2010). As an example, the practice that requires the husband to pay bride price to the wife’s family signifies ‘ownership’ of the wife by the husband. This practice has led to a

perception of 'ownership' of the wife by the husband. It therefore encourages spousal abuse perpetrated by husbands while discouraging reporting of the same to the authorities for intervention. Indeed, many people avoid intervening in cases of SA since the cases are perceived to be domestic matters between a husband and a wife (Eriksson & Mazerolle, 2015; Moult 2005; Iancu 2010)

#### **2.6.1.4 Cultural Norms**

These are rules and expectations by which a society guides the behaviour of its members (Neal & Edwards, 2015; Macionis J, 2007). Proscriptive norms state what societal members should not do, such as a woman should never hit a man, should not expose the negative incidences in her home which may subject her family to shame, ridicule etc. Prescriptive norms state what members of society should do. For example, a woman must remain subordinate, submissive to the husband. A man must beat his wife so as to emphasize his dominant position and ensure he is in control of the wife. Wives are expected to obey their husbands and not question their authority. By reporting the SA, a victim is perceived to go against the societal norm of respecting the authority of the husband. SA results into victim blame. The victim must have committed a wrong for which the husband is supposed to correct her, through SA. To report SA is viewed as disobedience and disrespect to the husband and an embarrassment to the family. Most societal norms apply in everyday life while some depend on the situation.

Some norms are widely observed and have gained moral significance in the society and attained the status of a taboo. Such include a wife beating a husband. In the event of SA perpetrated by the husband, the wife is not allowed by the taboo to defend herself by hitting at the man. This leads to an enhanced situation of the vulnerability of the victim and continued abuse. In addition, it is a taboo to report the case to the police for prosecution- which might lead to jail. To have the perpetrator jailed due to reporting by the wife is a taboo.

Cultural norms describe how individuals should behave. A victim of SA is expected to persevere and improve her behaviour; for the perception is that 'she must have deserved it'. This inhibits VSA ability to report to the abuse to the CJS.

Counterculture is a cultural pattern that strongly opposes the widely accepted views within the society (Neal & Edwards, 2015; Jefferson, 1998). This may be because of urbanization, exposure or acquisition of new knowledge that changes people's perceptions and views about what they initially perceived as cultural norms. As an example, people socialized to believe in certain cultural norms may change their perception, attitude and behaviour as a result of exposure, urbanization or acquisition of new knowledge. Those who believe in equality, individuality, human rights, respect and dignity and protection of the law are likely to change their perception about SA as perceived in the cultural context in which they were socialized. Their change of attitude towards equality, inequality and human rights makes them view SA as a violation of an individual's right to respect and dignity. When this occurs, counterculture is said to have set in and the individual is more likely to report SA to the CJS system (Bagwell-Gray, Messing, & Baldin-White, 2015; Clennin, 2001, Roberts 2002).

#### **2.6.1.5 Religion**

Religion involves a set of symbols, invoking feelings of reverence or awe which are linked to rituals practised by a community of believers (Choi, 2015; Durkheim, 1912). According to sociologists, religion comprises of three elements namely belief in God or a supreme being, distinctive social practices that represent organized, highly patterned forms of action (rituals) and the existence of a moral community (Choi, 2015; Craig, Light, & Keller, 1994). Religion has a lot of influence on people's attitude, perception and behavior.

#### **2.6.1.6 Patriarchy**

Patriarchy refers to the rule of fathers- a form of social organisation in which males dominate females

#### **2.6.1.7. Traditions**

Tradition refers to those cultural features which, in situations of change, are to be continued to be handed on, thought about, preserved and not lost (Graburn, 2001) .

## **2.6.2 Social Determinants to accessing Justice by Victims of Spousal Abuse**

There are several social determinants that influence spousal abuse victims' access to justice. These include: social status, level of education, gender, socialization, societal role expectation, social stigma, social control and availability of psycho-social support.

### **2.6.2.1 Social Status**

This refers to the social position that a person holds which is associated with prestige. Status is part of social identity and defines relationships between individuals. Most people would want to know who the individual is (what is their status) before they can deal with them (Davies, et al., 2015; Simmel, 1950). The status one holds in the society may determine their behaviour. In SA cases, the social status may have an influence on VSA ability to access justice by reporting the abuse or failure to do so. Reporting the abuse to the authorities for intervention exposes the intimate details of the abuse that may attract social stigma that affects one's status in society. As a result, some VSA may opt not to report the abuse.

### **2.6.2.2 Level of Education**

Education refers to the social institution through which society provides its members with important knowledge including basic facts, job skills, cultural norms and values. Education is the structured form of socialisation in which a culture's knowledge, skills and values are formally transmitted from one generation to the next (Bayer, Wallis, & Hamberger, 2015; Craig, Light, & Keller, 1994). In addition to school, education may take place in a work place, in a club, in a governmental organisation, or even in front of a home computer or television set (Bayer, Wallis, & Hamberger, 2015; Craig, Light, & Keller, 1994). Whatever the setting, education is a conscious, intentional process. Knowledge gained in respect of SA may influence an individual's attitude and behaviour. It is therefore likely to influence their access to justice in SA cases.

### **2.6.2.3 Gender**

Gender refers to the personal traits and social positions that members of society attach to being male or female. Gender roles are the expected behaviours, attitudes, obligations and privileges that a society assigns to males and females (Eriksson & Mazerolle, 2015;

Basow, 1986). Gender stereotypes are oversimplified but strongly held ideas about the characteristics of males and females (Eriksson & Mazerolle, 2015; Rogers, 1986). The discussion of gender is closely related to societal role expectations in the society. This refers to behaviour expected of someone who holds a particular status e.g. a married woman or a married man. A person holding a status is expected to perform certain roles. For instance, a married man is expected to be in control of his house and show dominance over the spouse while a married woman is expected to be submissive and obey the husband (Ralph, 1937). The gender variable may therefore influence VSA access to justice in SA cases.

#### **2.6.2.4 Socialization**

Socialization is the complex lifelong social experience by which people develop their human potential and learn culture (Bagwell-Gray et al., 2015; Macionis, 2007). Social experience is the foundation of personality. A person's fairly and consistent patterns of acting, thinking and feeling are shaped by the socialization process. The personality of an individual is built by internalizing his or her own surroundings and experiences. The agents of socialization are the family, school, peers and the mass media. Some components of socialization include social control, social stigma and psychosocial support systems. Social control refers to attempts by society to regulate people's thoughts and behaviour (Davies, et al., 2015; Macionis J, 2007). Observing or breaking the rules of social life prompts a reaction from other members of the society in form of rewards or punishment. Social stigma refers to a powerfully negative label that greatly changes a person's self-concept and social identity.

#### **2.6.2.5 Social Stigma**

Stigma operates by overpowering the other aspects of social identity so that a person is discredited in the minds of others and becomes socially isolated (Eriksson & Mazerolle, 2015; Macionis, 2007). Social stigma may inhibit certain behaviour such as reporting SA. However, where there is strong psycho social support system, a VSA may be able to access justice. Psychosocial support refers to the comfort, assistance, and/ or information one receives through formal or informal contacts with individuals or groups to

help them overcome challenges they face (Reed, Hines, & Armstrong, 2015; Longress, 1995).

### **2.6.3 Economic Determinants to Accessing Justice by Victims of Spousal Abuse**

Economic determinants are derived from the word economy, which is the social institution that organizes a society's production, distribution, and consumption of goods and services (Macionis J, 2007; Krist, Lazgare, Zang, & Ocampo, 2015). Goods are commodities that range from basic human necessities such as food, shelter, clothing, medical services and housing. Services are activities that benefit others such as the work done by teachers or specialists in certain areas that benefit a wider group of people (Krist, Lazgare, Zang, & Ocampo, 2015; Macionis J, 2007).

Goods and services are valued by human beings because of the fact that they ensure the survival of the people by making life easier, tolerable and interesting (Krist, Lazgare, Zang, & Ocampo, 2015; Macionis J, 2007).

What people produce as workers and the services they pay for as consumers are an important aspect of social identity. How goods and services are distributed determines the lives of everyone. Some people might have more resources while others may have fewer or none. They depend on those who have. This determines how they relate to each other. Kenya's economy today, like anywhere in the world is a result of decades of social change. Economic determinants therefore signify goods and services that make life easier, interesting and tolerable for human beings. Human beings value goods and services because they ensure the survival of the people. There are several economic determinants that may influence one's access to justice such as: social class, occupation, employment status, income, wealth status, availability of rescue centres and legal services, distribution of resources and corruption.

#### **2.6.3.1. Social class**

Social class is used to describe people in terms of the economic opportunities available to them, the economic goods and resources they command, and the occupations or positions they hold in the economy (Longress, 1995). In 2002, Dr. Specioza Kazibwe, then vice-president of Uganda, made a shocking revelation that she had endured physical

abuse from her husband for years without reporting to the police. (Flanagan, 2002). Again in 2013, Oscar Pistorius allegedly shot his girlfriend Reeva Steenkamp after months of what one witness described as a “tense relationship” (McCoy, 2014). The two cases show VSA from high social class in the society not being reported to the CJS.

### **2.6.3.2 Occupation**

This refers to a person’s role in society or often a regular activity performed for payment (Longress, 1995). From occupations, there are different professions such as medicine, law, architecture, accountancy, social work amongst many others. A profession has been defined as a prestigious white collar occupation that requires extensive formal education (Craig, Light, & Keller, 1994). Occupations are characterised with status, privileges and societal expectations in terms of behavior. Many VSA may not report the abuse due to the associated stigma and victim blame which may conflict with the society’s expected conduct from a particular profession.

### **2.6.3.3 Employment Status**

Professionals can either be employed or set up their own firms and become self-employed. Employment therefore is a relationship between two parties, usually based on a contract where work is paid for, where one party is the employer and the other is the employee (Macionis J, 2007). Employees work in return for payment which may be in the form of an hourly or monthly wage.

Self-employment means earning from a business enterprise that is set up by the individual without working for an organization. However, most self-employed workers are small business owners such as plumbers, vegetable vendors who are not necessarily engaged in white collar jobs.

Unemployment is a situation where an individual does not have a job, stays at home and may be carrying out some work at home that is not paid for. Majority of women fall in this category where they are housewives carrying out domestic chores. Their work is not valued, quantified or paid for. Many of them depend on their husbands who may be professionals or self-employed as the breadwinner of the family

Occupation and employment status are associated with prestige and certain expectations in the society. Occupying an employment status that is regarded highly in the society carries with it the expectation of dignity. Therefore, victims of abuse who hold high employment status may suffer social stigma and therefore not likely to report to the CJS. On the contrary, victims of a lower employment status may be compelled to report to the justice system so as to seek the protection from the system itself and ensure they continue receiving financial support in cases where they are dependent on the perpetrator.

Previous studies have consistently revealed that poverty, low social class and unemployment are related to the violence inflicted on women (Conger et al, 1990; Fox & Chancey 1998). Fagan & Brown (1994) theorize that life transitions that lead to economic distress, for instance a man becoming unemployed may be important in the precipitation of the events that eventually leads to him being a perpetrator or a victim. Burgess and Draper (1998) similarly argue for the salience of ecological volatility, exhibited by economic limitations and job loss, in increasing the probability of marital violence under certain circumstances.

Nonetheless, spousal abuse, like all forms of violence against women is spread across the entire range of the income distribution within the greater society.

#### **2.6.3.4 Income**

Income refers to money received, especially on a regular basis, for work or through investments (Benson & Fox, 2002). Studies on the correlation between the economic posture of an individual and spousal abuse are still inconclusive (Benson & Fox, 2002). But there is ample evidence to show that economic distress may trigger violence in intimate relationships. Several studies show that there is no real link between an individual's propensity to perpetrate spousal abuse and their economic status, manifest through paucity and unemployment (Hamberger & Hastings 1991; Hart et al., 1993; Dutton 1995). However, many studies posit that women in matrimonial affiliations with low income, high debt, and male job instability are more likely to be victimized by their intimate partners than women in relationships that are more financially stable, and the seriousness of their victimizations are likely to be greater (Benson & Fox, 2002).

A study by Khasakhala-Mwenesi, Buluma, Kong'ani and Nyarunda (2010) indicated that social and economic background of a woman has a bearing on her chances of experiencing domestic violence. On the contrary, a study by the National Network to End Domestic Violence (NNEDV) posits that economic downturn itself does not cause spousal abuse or even domestic violence in general, but can exacerbate the factors that contribute to spousal abuse and even reduce the victim's ability to flee (NNEDV, 2013). The long line of research thus demonstrates that violence against women is inversely related to the victim's financial status.

While SA can be considered a universal problem affecting both the rich and the poor, anecdotal evidence indicates the problem is extreme in low income households (Eriksson & Mazerolle, 2015; Sampson & Lauritsen 1994). Yet, a review of literature shows that opinion is divided on whether or not income-related misfortunes can trigger SA. According to Duwury (2010) there is a strong statistical association between the socio-economic status of household and the risk of intimate partner violence. Amnesty International also shares this notion in their 2010 report on the vulnerability of women in informal settlements, where a correlation of the intensity of the violence and income is established. A study by Mutiso et al., (2010) also found some parallel between the demographic characteristics of women living in abusive relationships and their diminished economic status. In this study by Mutiso et al., (2010), random surveys in low-income households revealed that economic hardship contributed somewhat to the victim's reluctance to walk away from the abusive relationship or even take actions to report. Goode (1971) on the other hand argued that perpetrators who lack power; measured in terms of income, educational achievement, and occupation status as compared to their partners are more likely to use violence to obtain power in the relationship.

#### **2.6.3.4 Wealth Status**

Wealth resources include land, income, livestock, money, property that is inherited, real estate amongst others. In patriarchal societies, traditionally, the main resource was land and livestock that was therefore owned and controlled by the males in a family as the means of production. Land and livestock was inherited by males in a family who control its use for the benefit of the rest of the family members. It was therefore only males in the African

communities who owned land. Women's access to this resource was through the male members of the society. When women become VSA, if dependent on their spouse, then the fear of losing the benefits which accrue from the resources may hinder them from reporting the abuse to the CJS.

#### **2.6.3.5 Availability and access to Rescue centres**

Rescue centres are institutions that provide psychosocial, medical and at times legal services to VSA. They serve as havens where VSA can run to when the abuse occurs and receive protection, counselling, shelter, advice and other basic services. Availability of such services encourages victims to report to the CJS while the non-availability is a hindrance to victim's access to justice.

#### **2.6.3.6 Legal Services**

Legal services refer to advice and representation of the victim at the police station and the courts by a professional called a lawyer. Since the lawyer is a professional and earns their income from the legal practice, quite often their services are not free. The Advocates Remuneration Order that sets the minimum fees that an advocate can charge does not set a maximum. For an advocate to advise a client, a file must be opened for such purpose and instructions from the victim taken and recorded in the file. The cost for legal services is often way beyond the reach of ordinary citizens as every single activity undertaken by a lawyer attracts an expense. When such citizens become VSA, their lack of knowledge of the law and the justice system as well as their inability to pay for the services of a lawyer is likely to act as a hindrance to their access to justice.

#### **2.6.3.7 Distribution of Resources**

Resources include land, income, livestock, money, property that is inherited, real estate amongst others. Since Kenya is a patriarchal society, traditionally, the main resource was land and livestock owned and controlled by the males in a family as the means of production. Males in a family inherited land and livestock. They control its use for the benefit of the rest of the family members. It is therefore only males in the African communities in Kenya who owned land through family inheritance.

Before the promulgation of the Constitution of Kenya 2010, women only had user rights to the family inherited land as a resource. Their access to use the land was through the male members of the society. Before marriage, a girl is called the daughter of (name of the father) and her access to user rights of the family land is through her identity in relation to her father. When she marries, she becomes the wife of (husband's name) and therefore acquires user rights of her husband's family land and livestock, through her association with her husband. Women had no ownership rights as far as land was concerned and did not own any land in the patriarchal family system. They provide labour in the home and the farm, but they do not control the means of production, which means that if they ever leave the marriage, they lose the financial support and all that they have worked so hard for.

#### **2.6.3.8 Corruption**

Corruption refers to a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire a personal benefit (NNEDV, 2013). It is the abuse of entrusted power for private gain. The investigation, prosecution and final determination of spousal abuse cases may be affected by corruption particularly where the police officers or other officials in the CJS ask for bribes from the VSA before acting on the reported cases or where the perpetrator offers a bribe to the investigative and prosecuting agencies. In such cases, corruption becomes a hindrance to access to justice by VSA.

#### **2.7 Gaps in Literature**

Research conducted in various parts of the world indicates that VSA face several barriers in accessing the CJS. (Haj-Yahia, 2003; Iancu, 2010; WHO, 2011; Wormer and Bartollas, 2011; Husain, et al., 2015). Studies conducted in Kenya show that SA is a major concern and that both the government and the civil society have taken steps to address the plight of the victims (Forum on Global Violence Prevention, 2015; FIDA, 2011; GVRC, 2011; Kenya Police, 2011). Research on SA in Kenya has been conducted in various areas such as causes and impact as well as the extent of SA in the country (Forum on Global Violence Prevention, 2015; FIDA, 2011; KDHS 2003; WHO 2011). However, very little is known about the CJS response to SA and barriers faced by VSA in accessing the CJS in

Kenya. Few studies have been conducted in this area. No known study has specifically focused on social, cultural and economic determinants in accessing the CJS by VSA in Nairobi County, Kenya making it difficult to develop strategies of enhancing access to justice by VSA. This is the gap that the study sought to fill.

## **2.8 Theoretical Framework**

The study applies the feminist theory, masculinities theory, family conflict theory and the theory of justice.

### **2.8.1 Feminist Theory**

Advanced by Mackinnon (1987), the theory postulates that the historical social construction of gender as an idea of masculinity and femininity to refer to individuals with specific biological characteristics and differences is the cause of long standing assumption about characteristics of men and women which define their role, status, responsibility, expectation and interaction with each other. Several schools of feminist theory exist but the most relevant to this study are the Liberal, Marxist-Socialist, Cultural and Radical feminism. Underlying liberal feminist theory are concepts such as rationality, individuality, equality, liberty from interference from others or the state unless justified, availability of legal rights and the protection of an individual's private life. Liberal feminism advances the rights of women as individuals with rights that must be recognized and protected (Lockton & Ward, 1997).

Marxist- Socialist feminist theory argues that the structure and evolution of society is the determinant of social relations and class structures in society. Women's place in the society is determined by the relations of production in a capitalist society where men own the means of production whereas women provide labour, hence the inequality between the two (Barnett, 1998). Cultural feminism recognizes physical, psychological and social differences between men and women and argues for equality in the context of their differences (Barnett, 1998). Radical feminism advocates for a radical departure from women's conventional roles and stereotypes while focusing on the universal dominance of men over women and women's subordination to men (Lockton & Ward, 1997).

All the feminist schools of thought are in agreement that the terms men and women refer to biological differences and do not necessarily confer advantages, privileges, power and dominance by men over women who find themselves in a subordinate position in relation to the men. The theories examine men, patriarchy and masculine characteristics predominantly as sources of power, domination, inequality and subordination (Dowd, 2008). In a patriarchal society, formal power over public decisions and policy making is held by adult men in a society ruled by men, in a manner that reflects the values which underlie the traditional male ideal (Ruth, 1998; Plazaola-Castano, Ruiz-Perez, Escriba-Aguir, Monetor-Pinar, & Vives-Cases, 2011).

The feminist theory has been used in several studies to understand causes of spousal abuse by men towards women (Obura, 2014; Henning et al., 2008; Moore, 2008; Haj-Yahia, 2003). It was also applied to investigate the interactions and experiences of female VSA in the CJS (Baker, 2008; Iancu, 2010; Davies, et al., 2015). The above studies applied feminist theory in either male or female only respondents, hence their findings reflect gendered views. This study included the views of both male and female victims therefore striking a balance between the views of the respondents.

### **Relevance of the Feminist Theory to the Study**

The relevance of the feminist theory to this study was that it reflects the inequality of power between males and females in society under the concept of patriarchy which consists of structural and ideological elements (Dobash & Dobash, 1992; Tonia & Hamel, 2006). It attempts to explain women's economic dependence upon their male partners as they are powerless (Aldana & Saucedo, 2008; Tonia & Hamel, 2006) and adequately explains one of the causes of spousal abuse by husbands towards wives in an attempt to assert or maintain control over the victim as argued by Letourneau et al., (2012).

### **Critique of the Feminist Theory**

Despite the relevance of this theory to the study, it lacks an appreciation of the fact that the contemporary society is not exactly the patriarchal system as idealized by the assignment of gender roles by the patriarchal arrangement. The society is dynamic and several changes have occurred over time, resulting into overlaps and sometimes an exchange in the traditional roles of men and women. The theory assumes that spousal abuse

is perpetrated only by males and ignores incidences where wives are perpetrators of spousal abuse against husbands. Studies show that women are increasingly becoming perpetrators of spousal abuse while men become victims of the same (Bayer, Wallis, & Hamberger, 2015; Aldana & Saucedo, 2008; Noren & Norling, 2011; Henning et al., 2006). It is this weakness that is filled by the second theory, the Masculinities Theory.

### **2.8.2 Masculinities Theory**

Developed in the 1980s, masculinities theory focuses on men's disadvantages or the limits of their gender roles (Buchbinder, 1994; Haddad, 1993). The theory argues that masculinity is the social construction of men's interaction with other men and women. There are situations when men feel powerless due to their position vis `a vis other men. Manhood is about defense against humiliation and underlying every action of a man is fear of defeat (Leverenz, 1986). Core elements of masculinity norms are negative norms such as not being a woman/ girl. Masculinity is therefore a set of practices that one constantly engages in or performs and therefore is interactive. The individual relates to the social and cultural construction of masculinity by living up to its expectations or ideals. Such ideals include the dominance of men over women, being seen as strong, powerful, independent, rational and successful. Men therefore have to constantly prove themselves to fit in the ideals of masculinity according to this theory.

Although men are supposed to exhibit dominance, power, control and are often powerful and empowered as a group, according to masculinities theory, they feel powerless as individuals. The perceived privileged men at times feel subordinated, or used, since they constantly struggle to maintain their perceived dominant position. Some men are indeed powerless. Others feel so because the demand of masculinity is that it must be constantly proven; it can never be simply achieved and claimed. The demands of it under the patriarchal society are that the man must struggle to remain dominant. The boundaries placed on men by the patriarchal ideology significantly affect them negatively as the expectation to meet dominant norms at times results into a disservice to them in their relations with fellow men and women.

## **The Crisis of Masculinities Theory**

Due to the changing nature of the society, expectations and roles traditionally attributed to men and women have changed/overlapped leading to a crisis in the dominant role of men in their interactions with women. This is what has been referred to as the crisis of masculinities theory as advanced by Philipps (1993). The crisis of masculinities theory postulates that the rapid economic restructuring that began in the labour markets of advanced industrial economies in the mid-1970s culminated in a rapid decline of industrial manual work for men in the 1990s. This resulted in unemployment and under employment for most men. Subsequently such men could not sustain their dominant position as the head of the family, controlling the family resources.

Changes in the global economy have also altered pre-existing social structures and household compositions with more women joining the workforce as a result of women empowerment and the notion of feminism. Consequently, the contemporary society has some women who control resources, are in powerful positions and therefore not dependent on male spouses. On the other hand, there are men who are dependent on their female spouses and therefore not in the traditional patriarchal, dominant, controlling and independent status of ideal masculinity (Eriksson & Mazerolle, 2015; Plazaola-Castano, Ruiz-Perez, Escriba-Aguir, Moneter-Pinar, & Vives-Cases, 2011; Dowd, 2008).

The crisis of masculinities theory was applied as an analytical tool for explaining domestic violence in Barbados in a study that found that although the country had experienced development as part of the global economy, it had reached a crisis level that would fit into a culture of violence associated with the changing roles of men and women in a developing society (Noreen, 2011). In this study, the theory was applied in investigating whether the changing global economy affected accessibility to the CJS by VSA.

## **Relevance of the Theory to the Study**

The relevance of the theory to this study is the argument that men's failure to maintain the traditional breadwinner role, and the alteration of the conventional family roles, when examined against the effects of economic change, can be used to explain not only violence by men against women but also violence by women against men. Likewise,

the changing roles in the family can influence access to the CJS by both male and female VSA.

### **Critique of the Theory**

Despite the relevance of the theory to the study, the crisis of masculinities theory tends to be more descriptive of men and masculinities rather than analysing how and why their power is sustained or how to resolve the crisis of masculinities. It does not address the issue as to whether men themselves might embrace equality since men seem to gain from the perpetuation of their dominant position and the subordinate status of women, even when it includes significant costs to them (Dowd, 2008; Tonia & Hamel, 2006).

Both crisis of masculinities theory and the feminist theory adequately address the interactions between men and women in the family. They attempt to explain why they may or may not have access to the CJS. They, however, do not adequately explain how this happens. It is this weakness by both the feminist and crisis of masculinities theory that is filled by the third theory known as the family conflict theory.

### **2.8.3 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.

Both conflict theorists and functionalists are in agreement that the family, whether nuclear or extended serves four specific functions in the society. The family provides socialization, practical and emotional support, regulates sexual activity and sexual reproduction as well as providing social identity to its members. The relationship between male and female spouses in a family are defined and regulated by the socialization process and cultural norms and practices to ensure the stability of the society.

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 into 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 (1884) 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. 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.

Foucault (1990) argued that all social relations are a product of the exercise of power. The family therefore serves to locate, confine and intensify socialization, comfort, sexuality and social identity for its members. Bilton, Bonnett, Jones, Lawson, Skinner, Stanworth and Webster (1996) all argue that the nuclear family subjugates a wife's life,

mind and identity. They view the nuclear family as the repository of patriarchy in modern society.

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.

Sprey (1969) introduced the conflict approach to family studies and argues that the family is a system that is constantly in conflict as a result of different personal competing interests from its members. Sprey identified husband and wife conflict as one of the areas of family conflict. Farrington & Keith (1993) see the family as a paradoxical institution that is expected to maintain social order, yet is characterized by processes that intensify conflict. This argument is further advanced by Larossa's (1977) who argues that conflict between spouses is a result of social inequality that results from the very nature of the spousal relationship, in which the husband has power and authority over the wife, and as the decision maker, the husband often furthers his own personal interests.

Polatnick (1984) takes the argument further and argues that men often do not take part in domestic work because in their view, it is not profitable to them. This leads to a situation in which the interests of the other members of the family, particularly the wife, may not be taken into account. As a result, conflict arises and continues as parties compete for the available resources that may include power, prestige or finances.

### **Relevance 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, 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.

Male victims of SA 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 ADRM 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.

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.

The conflict theory approach to family conflict views the family as the institution where capitalism is sanctioned as the husband's domain to maximize his benefits. Any interference by other members of the society is discouraged. Members of the family and public who witness the abuse may not be willing to testify in court. This explains why witnesses in SA may not be ready and willing to provide evidence in SA cases.

### **Criticism of the Theory**

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 and sexual 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.

#### **2.8.4 Theory of Justice**

John Rawls is the main proponent of the theory of justice. Under this theory, justice is defined as fairness. Rawls postulates that justice is a virtue of social institutions and that in the event any laws or institutions are found to be unjust, they should be reformed or abolished (Rawls, 1971). The need for justice in a societal setup is underscored on the premise that the liberties of equal citizenship are guaranteed and that the rights secured by justice are not subject to political bargain.

Rawls posits that there are two principles of social justice which should be used as the threshold for assigning rights and duties in societal institutions (Rawls, 1971). According to theory, the principles of justice are arrived at when individuals are in their original position that is under the veil of ignorance (Rawls, 1971). An individual in this state is unaware of the differences that characterize members of a society such as gender, race, religion and as such has to settle on principles which will still ensure fairness in the event the individual is in a disadvantaged position. Rawls postulates that the two principles of justice settled on in this position are; the Principle of Equal Liberty and the Difference Principle.

Under the principle of equal liberty, everyone is equal and should be treated equally. Therefore individuals in a society are entitled to the most extensive liberties on an equal footing. This is often referred to as egalitarian equality. The second principle is the difference principle. Under this principle, an injustice should only be allowed where it is necessary to avoid greater harm to the other disadvantaged groups of the society (Rawls, 1971). Social and economic inequalities should therefore be designed in such a way that they are of greatest benefit to the disadvantaged in the society and attached to offices and positions open to all under conditions of equality of opportunity.

### **Relevance of the theory to the study**

This theory reflects some of the social, cultural and economic inequalities which inhibit access to justice by VSA within the CJS as earlier highlighted in this chapter. Some of the VSA are unable to access the CJS because of their poor economic background. Due to their low financial status, some of VSA are unable to pay for legal representation as complainants in their cases and to further cater for court fees. The consequence of this is that the VSA are hindered from accessing justice. The unavailability of financial resources therefore inhibits access to justice by VSA. Patriarchy is also a cultural determinant which inhibits access to justice by VSA. Patriarchy entrenches the subordination of women and the dominance of men. The men therefore control the resources and most female VSA depend on their male spouses for financial support. This social inequality makes it difficult for female VSA to report SA.

The theory is also relevant as it focuses on the criteria of division and allocation of resources in a society. This study applies the two principles of justice advanced by the theory in order to recommend ways in which access to justice by VSA within the CJS can be enhanced. In the context of the study, division and allocation of resources should be such as to ensure that all the VSA regardless of gender, social, cultural and economic background have equal access to resources that can enable them access the CJS. This is in accordance with the principle of equal liberty. Further, there should be affirmative policies and programmes put in place which are intended to aid vulnerable VSA who may not be able to afford legal costs, court fees or health care services. This is in line with the difference principle where any social or economic inequality should be such as to uplift the disadvantaged in society.

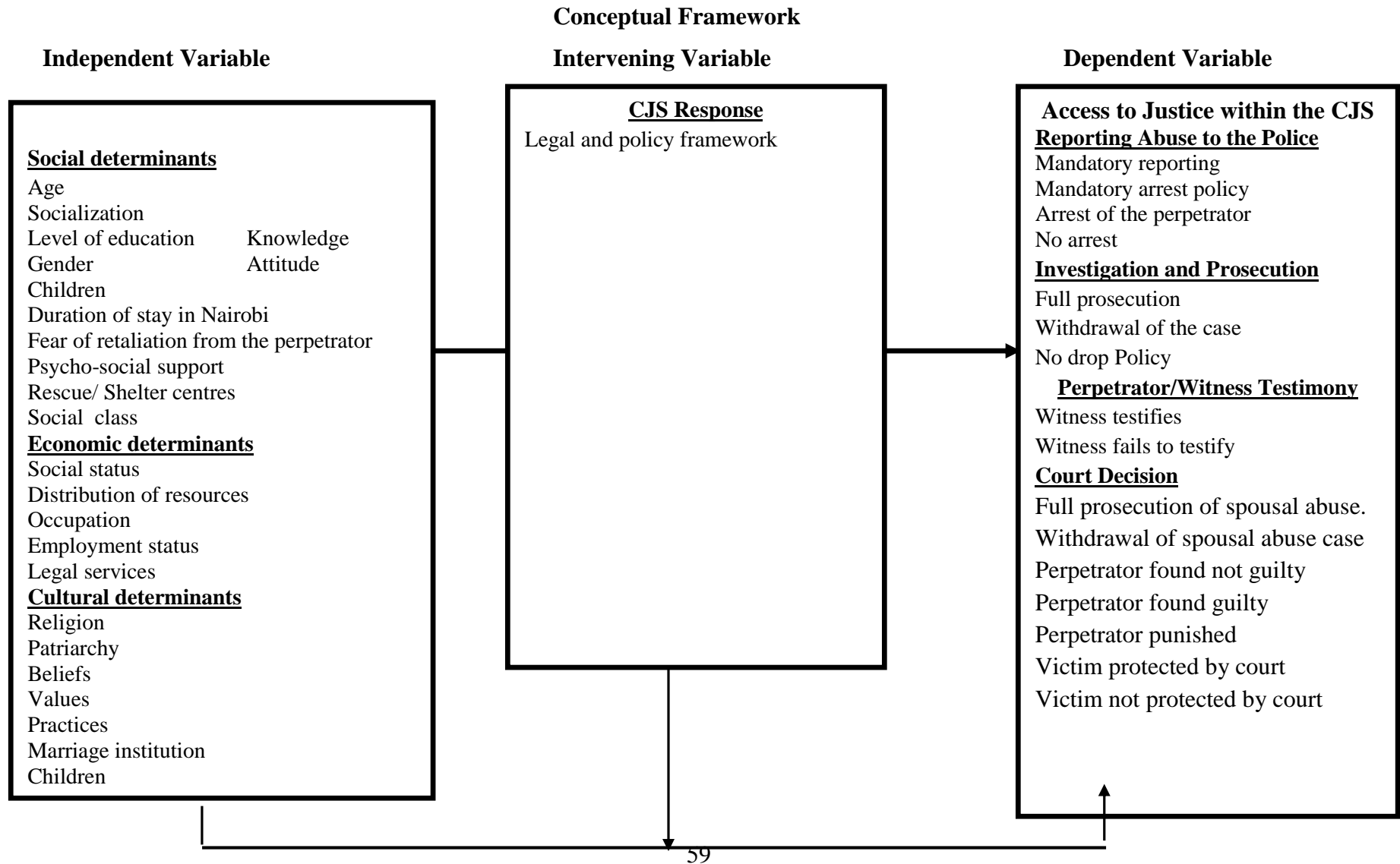
The theories used therefore adequately explain the relationship between the male and female spouse in a marital relationship, the constant struggle between the spouses and the family which may result or contribute to SA and the need to ensure that the CJS takes into account the social, cultural and economic determinants to enhance access to justice by the VSA.

## **2.9 The Conceptual Framework**

This section discusses various variables which are operationalized by the study in order to achieve the set objectives. It is a diagrammatic presentation of the theories of feminism, masculinities, social conflict theory of the family and the theory of justice and their relevance to access to CJS by VSA.

In this study, there are three categories of variables namely the independent, the dependent and the intervening. The relationship between them is illustrated by Figure 1 below.

**Figure 1: Conceptual Framework**



### **Relationship between the Variables**

The independent variable (determinant) operationalized in the form of social, cultural and economic determinants may or may not have a direct relationship on the dependent variable, (access to the criminal justice system) which is operationalized in the form of reporting the abuse to the police, prosecution, witness testimony and court decision. However, even in situations where the social, economic and cultural determinants may determine access to criminal justice system, there may be circumstances where other factors (intervening variables) may occur to alter the direct influence of the social, cultural and economic influence on access to criminal justice system as shown in Figure 1 above.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

This section presents the methods employed in the study to collect and analyse data. Specifically, it details the research design, variables, description of the study area, target population, inclusion and exclusion criteria, sample size determination and techniques. It also covers the validity and reliability of research instruments, data management and ethical aspects of this research.

#### **3.2 Study Design**

The study employed descriptive cross-sectional design. According to Cooper (2003), a cross sectional study is carried out once and represents the facts at that point in time. Although the study is largely qualitative in nature, quantitative approach was applied in sampling of the respondents to ensure that all of them are given an equal chance of being included in the study. Descriptive research studies aim at describing the characteristics of a particular individual or group (Mugenda, 1999; Nowak, 2012). This is a qualitative study about VSA's views on the CJS as a dispute resolution mechanism for SA. The qualitative nature of the study requires in-depth information about the CJS's response to SA. They are designed to obtain pertinent and precise information about the status of a phenomenon and to be able to make valid conclusions from the information gathered (Lokesh, 1984; Nowak, 2012). Descriptive research therefore determines and reports facts as they are. A descriptive cross-sectional study measures both the dependent and the independent variables at the same time that the study is carried out (Wasserheil-Smoller, 2004; Stangor, 2014).

#### **3.3 Study Area**

The study was carried out in Nairobi City County which is the capital city of Kenya, with a total area of 695km<sup>2</sup> and a population of approximately 4.3 million people, therefore making it the most populous county in Kenya, (KNBS, 2019). Nairobi City County, being the capital city, 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). As the capital city; it also houses the headquarters of all government departments and many non-governmental organizations rendering services to VSA.

The capital status of Nairobi City County means that it draws all communities in the country, therefore giving a fair representation of the society's different communities hence culture and socialization processes. It also has availability of facilities from government departments and non-governmental organizations which provide services to VSA hence an assumption of easier accessibility in terms of proximity and location of the various services.

Lastly, since most of the organizations that provide assistance to VSA have their headquarters in Nairobi City County together with government departments, majority of the population is presumed to be more exposed in terms of seeking assistance in SA. Nairobi City County therefore offers an opportunity to study the social, cultural and economic determinants that influence access to the CJS by married male and female VSA from various communities in Kenya.

### **3.4 Variables**

#### **3.4.1 Independent Variables**

In this study, the independent variable is the determinant in accessing the criminal justice system and its operational forms are the social, cultural and economic determinants which were measured using different indicators.

The social determinants were measured using indicators such as socialization process, social status, gender, age, level of education, knowledge victim's perception, attitude, social class, psycho-social support.

The cultural determinants were measured using indicators such as values, beliefs, practices, norms, religion customs, roles, rites, responsibilities and expectations.

The economic determinants were measured using indicators such as social class, occupation, employment status, income, wealth status, availability of rescue centres, income, and location of CJS agencies, shelter houses / rescue centres and legal services.

### **3.4.2 Dependent Variable**

The dependent variable in this study is access to justice. The indicators of access to justice were the reporting of spousal abuse to the police, investigation and prosecution of the case, the victims' testimony in court and the court decision that protects VSA. These were measured using the following indicators; reporting of the abuse- mandatory reporting, mandatory arrest policy, arrest of the perpetrator; investigation and prosecution- full prosecution, withdrawal of the case, no drop policy; witness testimony- witness testifies, witness fails to testify; court decision- no arrest, full prosecution of spousal abuse, withdrawal of spousal abuse case, perpetrator found not guilty, perpetrator found guilty, perpetrator punished, victim protected by court, victim not protected by court.

### **3.4.3 Intervening Variables**

While the independent variable serves as a stimulus to cause a response from the dependent variable, there are usually other factors (variables) that may possibly cause the same response. In the real sense, it is quite likely that there are many possible variables that could have an effect on the dependent variable. These if not controlled can contribute to an error in the research findings. The error producing variables are generally referred to as extraneous variables (Baumgartner, Strong & Hensley, 2002; Stangor, 2014). Although some authors (Babbie, 1992; Cook, 1979; Keppel 1991; Kirk, 1986; Stangor 2014) describe error producing variables as intervening variables, modifying variables or confounding variables, this study will adopt the term intervening variable to refer to any factor that is a source of unwanted or error variants.

The study includes the following as intervening variables namely; informal justice mechanism, corruption, and conduct of the perpetrator. The intervening variables in the study are corruption and ADRM

### **3.5 Target Population**

In this research, the target population was a total of 681 married male and female VSA. They included those who reported their cases to the police, FIDA Kenya headquarters and GVRC office (Nairobi Women's Hospital) in Nairobi County in the last 12 months (2012- 2013) preceding the study.

### **3.6 Key Informants**

The key informants in this study 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.

As at the time of the study, the police were still prosecuting cases on behalf of the state which explains why the study makes reference to police prosecutors. However, this position has since changed and currently the State prosecutors from the ODPP and not police prosecutors are the ones who prosecute cases. However, sexual and gender based violence cases are at times prosecuted by specially appointed private prosecutors.

### **3.7 Focus Group Discussion**

The focus group discussion comprised of two sets of female victims of spousal abuse, each set comprise of eight female victims of spousal abuse randomly selected from FIDA offices based on the available number of respondents present on the day the focus group discussion was conducted. The study also conducted a focus group discussion involving eight male victims of spousal abuse randomly selected.

### **3.8 Inclusion Criteria**

Only the following respondents were included in the study;

1. Married male and female victims of spousal abuse in Nairobi County who reported their cases to the police, FIDA or GVRC in the last 12 months preceding the study in 2013. Those who had stayed in the relationship for three years and above were presumed by law to be married, especially if they had conducted themselves in a manner that made people believe they were husband and wife.
2. Married male and female victims of spousal abuse who reported their cases to the police, FIDA and GVRC and gave consent to participate in the study.
3. The criteria for including the key informants was their role and experience in handling spousal abuse.

4. Participants in Focus Group Discussion were purposively selected on the basis of their availability and willingness to participate in the discussion.

### 3.9 Exclusion Criteria

The following were excluded from the study;

1. Respondents who had been selected but were not willing to participate in the study.
2. VSA who were not married and therefore did not fit into the study definition of spouses.
3. The respondents must have been 18 years and above. The law recognizes that only those who are adults can enter a marital relationship.
4. Officers who do not handle SA in the course of their work were excluded from the study as key informants.

### 3.10 Sample Size Determination and Sampling Techniques

#### 3.10.1 Sample Size Determination

**Table 1: Sample Size Population**

Police reports	28
FIDA	62
GVRC	46
<b>Total</b>	<b>136</b>

The total number of SA cases reported to the police in Nairobi County in the year 2011 was 140 (Kenya Annual Police Crime report, 2011). The total number of SA cases reported to FIDA in 2011 was 306 (RBM, 2011). The total number of SA cases reported to GVRC in the period of April 2010 to March 2011 was 235 (GVRC Annual Report, 2010-2011). The accessible population of spousal abuse victims in Nairobi City County in 2011 therefore was a total of 681. The sample size for the study is calculated based on the minimum of 10 % of the accessible population since this is a descriptive study according to Gay (1981) and supported by Mugenda and Mugenda (1999). The study

therefore interviewed 20% of the accessible population 28 respondents from those who reported to the police (20% of 140), 46 respondents from GVRC (20% of 235) and 62 respondents from FIDA (20% of 306). The total number of main respondents therefore was 136 (28+46+62=136), which equals to 20% of the accessible population (681). However, 2 respondents declined to be interviewed and so the total number of respondents interviewed was 134.

### **3.10.2 Sampling Techniques for the respondents**

This section presents the sampling techniques used for the respondents and key informants.

#### **3.10.2.1 Sampling Techniques for Respondents**

For the main respondents, the study developed three sampling frames from the available records of the reports of SA made by victims to the police, GVRC and FIDA respectively in 2011. Each VSA was assigned a number as follows: Police: 001-140, FIDA: 001-306, GVRC: 001-235. Systematic random sampling was applied to sample 28 respondents from the police sampling frame based on the following calculation.

#### **Systematic random sampling to determine respondents from Police sampling frame**

Total No. of spousal abuse reports to the police=140

Using the sampling frame, the study picked every 5<sup>th</sup> respondent from the sampling frame according to the assigned numbers giving a total of 28 respondents.

Accessible Population that reported to the police =140

Desired sample= 28

$140/28=5$ (interval-every 5th respondent on the sampling list)

#### **Systematic random sampling to determine respondents from FIDA sampling frame**

Total No. of spousal abuse reports to FIDA=306

Using the sampling frame, the study picked every 5<sup>th</sup> respondent from the sampling frame according to the assigned numbers giving a total of 62 respondents.

Accessible population that reported to FIDA= 306

Desired sample= 62

$306/62= 5$  (interval-every 5<sup>th</sup> respondent on the sampling list)

**Systematic random sampling to determine respondents from GVRC sampling frame.**

Total No. of spousal abuse reports to FIDA=235

Using the sampling frame, the study picked every 5<sup>th</sup> respondent from the sampling frame according to the assigned numbers giving a total of 46 respondents.

Accessible population that reported to FIDA= 235

Desired sample= 46

$235/46= 5$  (interval-every 5<sup>th</sup> respondent on the sampling list)

The study also considered the number of female and male VSA reports so as to ensure a balance between the two genders. In sampling the respondents from the police sampling frame, the study ensured that respondents were drawn from all the thirteen police divisions in Nairobi City County namely Langa'ta, Kilimani, Ngong, Kajiado North, Gigiri, Dagoretti, Central, Embakasi, Starehe, Makadara, Kayole, Kasarani and Buruburu police divisions.

Systematic sampling is quick, efficient and saves time and energy especially when populations exist on a definitive list or roster. Thus, it is simply convenient to select every n<sup>th</sup> element of the population, as opposed to using a table of random numbers, which is usually a little more time consuming. Systematic sampling provides for a broad sampling across a population and therefore, results in more accurate sample (Stangor, 2014; Baumgartner, 2002).

**3.10.2.2 Sampling Technique for Key informants**

Key respondents were purposively sampled due to their role in the various institutions that address spousal abuse. They included: 1 police officer from each of the thirteen police divisions, 2 magistrates from each of the three criminal courts in Nairobi namely Makadara, Kibera and Milimani Law Courts, one judge from Family division of the High Court, one judge from the Criminal Division of the High Court, one judge from

the Court of Appeal and one judge from the Supreme Court, 2 from FIDA, 2 from GVRC, 2 from gender violence desk at the police headquarters and 2 prosecutors from the Office of Director of Public Prosecutions (ODPP). The total number of key respondents was therefore 31.

Key respondents included: senior officers at the police headquarters gender desk, the executive officer and legal officer of FIDA, executive director and a social worker from GVRC and two magistrates each from Kibera, Makadara and Nairobi Law courts, one judge from Family Division of the High Court, one judge from the Criminal Division of the High Court, one judge from the Court of Appeal and one judge from the Supreme Court, as well as police officers in charge of prosecution. The criterion for including the key respondents was their role and hands on experience in handling SA.

**Table 2: Number of Respondents and Key Informants**

<b>Respondents</b>	<b>Population</b>	<b>Primary Sample</b>
<b>Primary respondents</b>	681	136 respondents
<b>Key informants (purposively sampled)</b>		31
<b>Focus Group Discussion</b>		24
<b>Total No. of participants</b>		<b>191</b>

The respondents were contacted using the contact addresses available at FIDA, GVRC and the Police.

### **3.11 Data Collection Tools and Techniques**

The study collected both primary and secondary data. Primary data was collected through the use of developed research instruments namely interview guides and focused group discussion guides. Secondary data was collected through a review of documentary information by visits to various institutions such as the police, the court and the NGOs and any other relevant literature.

### **3.11.1 Interview Schedule**

This is a guide consisting of a list of open ended questions flexible enough for the researcher to note unexpected responses and proceed with further exploration. Interview guides are useful in multi-subject and multi –site research for gathering comparable data as is the situation in this study. Personal/face to face interviews were conducted to obtain information from key respondents. They were conducted using structured questions that have the following advantages; ability to ensure completeness of response, opportunity to clear up misconceptions and follow up responses. Personal interviews are likely to make respondents more conscientious with interviewer’s presence while making the interview more objective than unstructured questions (Isaac & Michael, 1982). The interview guide was developed for the use of interviews of key respondents. These were executive directors of NGOs dealing with SA, government officers in charge of institutions in the CJS such as police officers in charge of the gender desk and magistrates handling the cases that are prosecuted in court.

### **3.11.2 Focused Group Discussion Guide**

Kayongo & Onyango, (1984) argue that couples barely experience marital problems in the first five years of marriage. The study conducted three focused group discussions comprising of eight participants each based on the following marital periods by respondents. The first focused group discussion consisted of respondents who had been married for five to ten years while the second group consisted of those who had been married for eleven to twenty years. The third group consisted of those who had been married for 21 years and above. People married for the same number of years are likely to experience similar problems during that period, hence the justification for the above classifications (Kayongo & Onyango, 1984). Focused group discussions have the advantage of stimulating participants to freely express their beliefs, feelings and needs some of which may not have been captured by the interview method.

### **3.12 Validity and Reliability**

Mugenda & Mugenda, (1999) describe validity as the accuracy and meaningfulness of inferences that are based on research results. It refers to the degree to which results obtained from the analysis of data actually represent the phenomenon that was under study. This can be ensured through scrutiny of the information, cross checking so as to ensure relevance, consistency, uniformity, completeness and accuracy of the information collected through the use of research instruments.

Reliability refers to the extent or the degree to which a research instrument yields results that are consistent in case the study is repeated (Mugenda & Mugenda, 1999; Stangor, 2014). To ensure this, it was important that the condition under which the study was carried out was standardized and external forces minimized as much as possible by using a wide range of sample of respondents.

Once developed, the research instruments were pre-tested in a pilot study within Nairobi County before the actual data collection began. This was important in order to ensure clarity of questions and sort out any ambiguities as well as ensure that the data collection methods are valid and reliable. This had the advantage of enhancing validity and reliability of the responses. The aim was to get the response from the respondents during the pilot study and use it to project the clarity of the questions and possible responses during the actual field study and therefore address any emerging issues. The respondents from the pilot study were drawn from the police, GVRC and FIDA. These were however not included in the main study.

#### **3.12.1 Data Triangulation**

The study ensured triangulation of data by cross- checking different methods applied such as interviews and focused group discussions. Flaws of one method were overcome by using another method through cross checking the processes for which data is insufficient to ensure its clarity, accuracy and consistency.

### **3.12.2 Data Management and Analysis**

Since this is a qualitative study, data analysis began immediately and proceeded along with the data collection. Data from interviews and FGDs was organized and coded into categories. The categorization was done in themes, concepts and patterns. The analysis of the different categories was done to establish any relationships. From the analysis, generalization and differences were formulated. This was aimed at establishing trends. Differences were used to synthesize explanations on SA. Such were checked and cross checked for accuracy and understanding and were modified as new information was being collected until all the collected data was coded and categorized.

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 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 chi-square test on the hypothesis showed no relationship between the social, cultural and economic determinants and access to justice by VSA.

### **3.13 Ethical Considerations**

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. The letters of authorization and permits are attached as appendices.

#### **3.13.1 Informed consent**

The study sought the consent of respondents after explaining to them the purpose of the research. Those who gave consent were included as respondents whereas those who did not had their views respected and were replaced by other respondents. Such responses were recorded.

### **3.13.2 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. The identity of the respondents remained anonymous as per ethical requirements.

### **3.13.3 Ethical research committee**

Necessary approval from relevant ethical research committee was sought before the study commenced to ensure that the requirements of ethical standards in research were 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.

### **3.13.4 Sensitivity of the research as it involves intimate feelings of the respondents**

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. There were two respondents who opted out of the study at the beginning of the interview. This was respected and upheld.

In order to legitimize the entire research process, the study proposal was submitted to the ethical research committee from the Ministry of Higher Education, Science and Technology to ensure that ethical standards in research are adhered to. This included obtaining informed consent from the respondents, observation of privacy and confidentiality and sensitivity to the feelings of the respondents due to the nature of the research. In addition, the researcher ensured the first disclosure of the results of the research findings would be to Kenyatta University for the award of degree of Doctor of Philosophy in Sociology.

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

A research permit was obtained from the Ministry of Higher Education, Science and Technology based on a letter of authority to seek a research permit which was copied to the Chief Registrar of the High Court, Inspector General Police and the Executive Directors of FIDA and of GVRC.

## CHAPTER FOUR

### RESEARCH FINDINGS AND DISCUSSIONS

#### 4.1 Introduction

This chapter discusses the study findings. The presentation begins with the socio-demographic data of the respondents and the status of SA in Nairobi City County. This is followed by a discussion of the findings based on the research questions that the study sought to answer. The findings are therefore presented as follows; the CJS's response to SA, Facilitators of access to justice by VSA, Barriers that hinder access to justice by VSA, Alternative Mechanisms of Dispute Resolution (ADRM) and a conclusion to this chapter.

#### 4.2 Socio-Demographic Information of the Respondents

The socio demographic data of the respondents is presented under 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 County by the respondents as shown in Table 3 below.

**Table 3: The Demographic Information of the Respondents**

<b>1.</b>	<b>Age</b>		<b>Frequency</b>	<b>Percentage (%)</b>
		18-24 years	9	6.7
		25-34 years	54	40.3
		35-44 years	41	30.6
		45-54 years	18	13.4
		55-64 years	9	6.7
		65 and above	3	2.2
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>2.</b>	<b>Gender</b>		<b>Frequency</b>	<b>Percentage</b>
		Male	7	5.4
		Female	127	94.6
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>3.</b>			<b>Frequency</b>	<b>Percentage</b>

	<b>Level of education</b>	No formal education	9	6.7
		Some primary education	17	12.7
		Completed primary education	25	18.7
		Some secondary education	16	11.9
		Completed secondary education	27	20.1
		College/polytechnic	27	20.1
		University degree	8	6.0
		Post graduate degree	5	3.7
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>4.</b>	<b>Type of marriage</b>		<b>Frequency</b>	<b>Percentage</b>
		Monogamous	86	64.1
		Polygamous	32	23.4
		Come we stay arrangement	16	12.5
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>5.</b>	<b>Marital Status</b>		<b>Frequency</b>	<b>Percentage</b>
		Still married	55	40.6
		Separated	65	48.9
		Widowed	8	6.0
		Divorced	6	4.5
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>6.</b>	<b>Number of children</b>		<b>Frequency</b>	<b>Percentage</b>
		None	9	6.7
		1	25	18.7
		2	47	35.1
		3	25	18.7
		4	17	12.7
		5	3	2.2
		6	3	2.2
		7	2	1.5

		8	3	2.2
		<b>Total</b>	<b>134</b>	<b>100</b>
<b>7.</b>	<b>Employment status</b>		<b>Frequency</b>	<b>Percentage</b>
		Not employed	50	37.4
		Employed in the public service	9	6.9
		Employed in the private sector	19	14.5
		Self-employed	41	30.5
		Others	15	10.7
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>8.</b>	<b>Level of income</b>		<b>Frequency</b>	<b>Percentage</b>
		Below K.shs 10, 000	43	32.2
		Between K.shs 10,000-50,000	27	20.0
		Between K.shs 50,000-100,000	5	3.5
		Above K.shs 100, 000	3	2.6
		Other	56	41.7
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>9.</b>	<b>Region of Origin</b>		<b>Frequency</b>	<b>Percentage</b>
		Eastern	21	16
		Western	19	14
		Nyanza	19	14
		Rift Valley	12	9
		Nairobi	3	2
		Upper Eastern and North Eastern	3	2
		Central	46	35
		Coast	8	6
		Non-Kenyans	3	2
		<b>Total</b>	<b>134</b>	<b>100</b>

<b>10.</b>	<b>Religion</b>		<b>Frequency</b>	<b>Percentage</b>
		Christian	125	93.0
		Islam	9	7.0
		<b>Total</b>	<b>134</b>	<b>100.0</b>
<b>11.</b>	<b>Duration of stay in Nairobi</b>		<b>Frequency</b>	<b>Percentage</b>
		Less than a year	11	8.5
		1-10 years	52	38.5
		11-20 years	27	20.5
		21-30 years	26	19.7
		Over 30 years	18	12.8
		<b>Total</b>	<b>134</b>	<b>100</b>
<b>12.</b>	<b>Knowledge of CJS</b>	Knew that SA is a violation of one's rights	<b>63</b>	<b>47.3</b>
		Did not know that SA is a violation of one's rights	<b>71</b>	<b>52.7</b>
		<b>Total</b>	<b>134</b>	<b>100</b>

#### 4.3 The Status of Spousal Abuse in Nairobi City County

Table 3 shows that SA cuts across age, gender, level of education, employment status, levels of income, ethnic and regional backgrounds as well as religion. Spousal abuse is therefore a national concern in Kenya. This is consistent with the finding that spousal abuse is a global problem that cuts across age, gender and other variables (Tonia & Hamel, 2006). Kenya is thus part of the global community affected by spousal abuse.

Both males and females are affected by the abuse. From the study, there were male VSA who endured abuse by female perpetrators. This finding dispels the notion that it is only women who suffer abuse from their male spouses. The study however found that more females (94.6%) than males (5.4%) report the abuse to authorities for intervention. This finding is consistent with studies such as Novisky & Peralta (2014), Akumu (2012), Bayer et al., (2015) and Tonia & Hamel (2006).

#### 4.3.1 Types of SA in Nairobi City County

The officer in charge of psycho-social support at GVRC, the FIDA legal officer and the officer in charge of the Gender Desk at the National Police Service Headquarters were all in agreement that the reports they receive about SA range from physical, sexual, emotional, psychological and financial abuse. Although physical abuse is the most recognized form of spousal abuse which is criminalized through the crime of assault, SA also takes other forms such as verbal, emotional, psychological and financial abuse. This is consistent with the findings by Freeman (2008). However, these forms of SA are not criminalized under the CJS which means that they cannot be prosecuted under the CJS.

According to the police officer in charge of the Gender Desk at the National Police Headquarters:

*‘Spousal abuse in Nairobi County takes the form of physical, sexual, emotional, psychological and financial abuse. The different ways include beating, slapping, kicking, verbal abuse, insults, denial of resources and necessities such as food, medical attention, eviction from residential premises amongst others’.* (Key Respondent no. 15)

The explanation by the police officer at the gender desk was supported by FIDA legal officer who 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)

A VSA interviewed at FIDA who appeared for the interview with visible injuries on the face and a bandage on the hand, confirmed the view of the FIDA legal officer. The respondent stated that;

*‘My husband beat me last night after sexually assaulting me, calling me in derogatory terms. When he was done with the physical and the sexual abuse, he locked me out of the house. In addition, he threw out my belongings. I went and stayed at a neighbour’s place for the night. They*

*are the ones who advised me to come and report to FIDA. I did not know where the office was so they brought me here'. (Respondent no. 12)*

#### **4.3.2 Respondents by Region**

SA affects people from all regions of Kenya. The VSA came from different regions of the country as shown by Table 3. Non-Kenyans are also victims of spousal abuse in Nairobi City County. This shows that SA is a social problem that cuts across the different regional and ethnic backgrounds. Table 3 shows that although the study was carried out in Nairobi City County, the respondents interviewed represent the different regions of the country. Nairobi draws people from all over the country making the study representative of the entire country. SA affects people from all regions of Kenya although reports from central region were the highest accounting for 35% of the respondents.

This is consistent with a study by the United Nations Economic Commission for Africa African Centre for Gender and Social Development (ACGSD) which found that SA occurs across all socio-cultural and economic backgrounds (ACGSD, 2007).

**Table 4: Distribution of Respondents by Region**

	Frequency	Percent
	6	4.5
Bungoma	3	2.2
Bunyore	1	.7
Bureti	1	.7
Busia	2	1.5
Central	3	2.2
Coast	1	.7
Dagoretti	1	.7
Eastern	1	.7
Eldoret	1	.7
Embu	1	.7
Gatundu	2	1.5
Githunguri	1	.7
Homabay	1	.7
Isiolo	2	1.5
Valid Kabete	1	.7
Kajiado	1	.7
Kakamega	2	1.5
Kangema-Muranga	1	.7
Kangemi	1	.7
Kano Plains	1	.7
Kawangware	1	.7
Kiambaa	1	.7
Kiambu	5	3.7
Kikuyu	3	2.2
Kinangop	1	.7
Kirinyaga	2	1.5
Kisii	1	.7
Kisumu	1	.7
Limuru	1	.7
Loitoktok	1	.7
	Frequency	Percent
Valid Machakos	6	4.5
Machaqkos	1	.7
Makueni	5	3.7
Maragua	1	.7

Marsabit	2	1.5
Matuu	2	1.5
Meru	4	3.0
Molo	1	.7
Mombasa	1	.7
Muranga	8	6.0
Muranga Kangema	1	.7
Nakatare	1	.7
Narok	1	.7
Narok South	1	.7
Ngong	2	1.5
Nyandarua	1	.7
Nyando	1	.7
Nyanza	6	4.5
Nyanza-Rarieda	1	.7
Nyeri	6	4.5
Ol Kalou	1	.7
Rift Valley	1	.7
Ruai	1	.7
Ruiru	2	1.5
Siaya	1	.7
South Nyanza	1	.7
South Nyanza	2	1.5
Taita	1	.7
Taita Taveta	1	.7
Tana River	1	.7
Tanzania	1	.7
Thika	2	1.5
	Frequency	Percent
Valid Uganda	1	.7
Vihiga	3	2.2
West Pokot	1	.7
Western	8	6.0
Wichlum-Nyanza	1	.7
Yatta	1	.7
Total	134	100.0

#### **4.3.2.1 Age**

Table 3 shows that SA occurs in marriages irrespective of one's age and duration in a marriage. Majority (47%) of VSA are the youthful population (ages 18-34 years). This reflects the demographic statistics gathered during the 2019 census which revealed that Kenya has a predominantly youthful population, (KNBS, 2019). This segment of the population has the potential to contribute greatly to the country's development (Baldry, Cinquegrana, Regalia, & Crapolicchio, 2017). However, the effects of SA may hinder or reduce their potential. They are likely to spend a lot of energy, time and resources in addressing the abuse instead of being gainfully engaged in the country's development.

#### **4.3.2.2 Gender**

Table 3 shows that both wives (females) and husbands (males) are VSA. However, more wives (95%) than husbands (5%) report SA for intervention. This is consistent with Buzawa and Buzawa's argument that although SA affects both male and female gender, more female victims than male victims are likely to report for intervention. Buzawa and Buzawa argue that the patriarchal society socializes men to be dominant and therefore reporting that a husband has been abused by the wife is likely to be viewed as weakness on the part of the man (Buzawa & Buzawa, 2003).

#### **4.3.2.3 Level of Education**

Table 3 shows that majority (83.5%) of the respondents who reported SA had some level of education ranging from primary to post-secondary training (Certificate/Diploma). This comprised of 20.1% of the respondents with post-secondary education, while a further 20.1% had completed secondary school, 18.7% of the respondents had completed primary school, 12.7% had some primary education while 11.9% had some secondary education. There was low reporting of SA by VSA without formal education (6.7%). Those with university degrees accounted for (6%) and post -graduate degree holders were (3.7%). The above statistics indicate that SA affects everyone irrespective of their level of education. However, majority of those who report for intervention have some level of education which indicates their awareness of the need to report. Nonetheless, a smaller percentage comprising of university and post-graduate degree holders reported the abuse. This indicates that level of education at the lower levels facilitates reporting of the abuse

although this is the group that is financially dependent on the abuser and therefore report to the authorities primarily for financial abuse to stop so that they can get financial support for their financial need and those of their children. VSA with university education and above may not be financially dependent on the abuser and therefore rarely find the need to report. In addition, their social status in the society may inhibit them from reporting the abuse due to the stigma attached to being a VSA. In the words of the social welfare officer from FIDA,

*'Those who come to report to us do so because they want financial abuse to stop. Those who can take care of themselves do not come to us. On the contrary, they do not report the abuse because they fear the social stigma that is attached to being a VSA'. (Key Respondent no. 18)*

#### **4.3.2.4 Type of Marriage**

Table 3 shows that SA affects all types of marriages. Most of the respondents (64.1%) were in monogamous marriages such as civil marriages carried out at the office of the Registrar of Marriages and those conducted in churches. 23.4% were in polygamous marriages such as African Customary Marriages and Islamic marriages. 12.5% of the respondents were in other forms of marriages such as 'come we stay'.

SA occurs in all forms of marriages whether monogamous (64.1%) (Church and civil marriages) or polygamous (23.4%). SA occurs in both Christian and Islamic marriages. However, more Christians (93%) than Muslims (7%) reported the abuse to the CJS, FIDA and GVRC for intervention. Therefore, despite the teachings of forgiveness, love and submissiveness, which are common to both Christianity and Islam, SA still occurs, and the mechanisms available within the religious structures may not be totally adequate in effectively resolving the abuse, hence the reports to the CJS, FIDA and GVRC.

#### **4.3.2.5 Employment Status**

Table 3 shows that majority of 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 and the private sector.

There was more reporting of SA by VSA who are unemployed or earn irregular income such as casual workers (41.7%), those who earn less than Ksh 10,000 per month (32.2%) and those who earn between Ksh 10,000-50,000 per month (20%). VSA who earn Ksh 50,000 and above accounted for only 6.1% of the respondents. SA therefore affects everyone irrespective of their employment status (Rievera & Finchman, 2015)

SA affects the unemployed (37.4%) and those in employment, whether self employed (31%), in the public (7%) or private sector (14%). The unemployed and self-employed are more likely to report the abuse than those in the private and public sector. SA affects victims of varied income levels. However, VSA who are unemployed or earn irregular income (41.7%) and those who earn below Ksh 50,000 per month (52.2%) are more likely to report SA than VSA who earn Ksh 50,000 and above (6.1%).

#### **4.3.2.6 Religion**

SA occurs in both Christian and Islamic marriages. However, more Christians (93%) than Muslims (7%) report the abuse for intervention.

#### **4.3.2.7 Duration of Stay in Nairobi City County**

Respondents had stayed in Nairobi for periods ranging from a few months to over 30 years. The highest reports were from VSA who had stayed in Nairobi for a period of 1-10 years. The reports of SA appear to decrease with the increasing length of stay in Nairobi. SA reporting was lowest amongst those who had stayed in Nairobi for less than 1 year.

#### **4.3.3 Status and Effect of SA on Respondents**

**Table 5: Effects of Spousal Abuse on the Respondents**

Separation	49%
Divorce	4%
Remained in abusive marriage exposed to the likelihood of aggravating abuse	35%
Remained in the abusive marriage but with little chance of abuse being aggravated	12%
<b>TOTAL</b>	<b>100%</b>

The study found that all victims who experienced physical abuse also suffered both emotional and psychological violence. There were victims who experienced emotional and psychological abuse without the physical violence. This finding supports the fact that physical abuse is often accompanied by both emotional and psychological abuse as argued by Baker (2008). However, emotional and psychological abuse can occur without physical violence according to (Baker, 2008). Therefore, to charge the perpetrator with only physical abuse as assault, may only protect the victim from physical violence, but leave them exposed to the dangers of both emotional and psychological violence which are also life threatening, yet more difficult to detect due to lack of visible injuries.

The study found that the respondents suffered immeasurable impact of the abuse as victims, as family members and as part of the society. This finding is consistent with studies by (Heise et al., 1994; Moore 1999; WHO 2002; Tonia & Hamel, 2006). Respondents reported undergoing pain and grief during the period of victimisation and beyond. This negatively affected their ability to undertake their daily activities. This finding is consistent with arguments on the effect of SA as advanced by (Martin-de-las-Heras, Velasco, Luna, & Martin, 2015; Iancu, 2010). Respondents reported that they experienced depression, aggression and trauma as part of the impact of the abuse on their health. This is consistent with the study conducted by Ahmadzad- Asl et al., which investigated the correlation between intimate partner violence and depression. The study found that depression and anxiety disorders were prevalent among female victims of intimate partner violence and therefore intimate partner violence significantly impacted the mental health of its victims (Ahmadzad- Asl et al., 2016)

SA is therefore not only a social but also a health concern which reduces the victim's ability and increases the cost of receiving help. As already shown in table 3, the study found that SA affects the youthful energetic segment of Kenya's population. It therefore is a national concern that needs effective interventions. This study finding is consistent with those of many previous scholars in this area such as Wong & Mellor, 2014; Heise, 1993; Plazaola-Castano, Ruiz-Perez, Escriba-Aguir, Moneter-Pinar, & Vives-Cases, 2011). SA therefore can potentially reduce the victim's life expectancy (Heise et al., 1994; Rudolph & Hughes, 2001; O'Leary, Tintle, & Bromet, 2014). SA is reported to affect the emotional, psychological and mental well-being of children within the household where

it occurs. Some of the effects of SA on children include; depression, aggression, disobedience, physical ailments and poor school performance (Macmillan & Wathen, 2014; WHO, 2011).

The study found that SA disrupted the family life of 53% of the respondents who were not staying together with their spouses due to separation (49%) and divorce (4%) as at the time of the interview. Although 35 % of the respondents were still married, they were in abusive marriages, exposed to the likelihood of the abuse continuing or aggravating. They continued to suffer the effects of SA with reduced potential for development of the country. Some of the effects of SA suffered by the VSA include low self -esteem, stress, reduced work performance, social stigma, self-blame, frustration and thoughts of suicide. These study findings are consistent with Macmillan & Wathen, (2014).

Table 5 shows that 49% of the respondents were separated while 4% were divorced because of SA. This gives a total of 53% of the respondents who did not stay together with their spouses as a result of the abuse. This indicates that SA disrupts the family and leads to separation and divorce (Justin, 2014). According to the FIDA legal officer:

*'In most of the cases which are reported to us, the spouses are already separated. Many of them wish that the abuse could be resolved and the families reunited. When they come here, they suffer a lot of psychological and emotional trauma. We have to take them through several therapeutic sessions to help rebuild their confidence and self-esteem. SA is very devastating to its victims who include children as well'. (Key Respondent no. 19)*

Some female respondents reported that on several occasions, they contemplated killing the perpetrators, their children and themselves. All the male VSA said that they could not rule out suicide if the abuse continues. In the words of one male respondent:

*'Being a male victim of spousal abuse is very frustrating as I cannot easily talk about it due to the social stigma and the cultural beliefs that a man must be in control of his home. Many of us suffer silently without solutions'. (Respondent no. 130)*

The male VSA interviewed by the study raised the concern that they could not get help from the society due to the social stigma, self-blame and the patriarchal perception of male dominance in a marriage. This argument is consistent with the masculinities in crisis theory as discussed in Chapter Two. Although 5% of the respondents were already divorced, they still experienced SA from the divorced spouses. This emphasizes the problem of SA in Nairobi County and the deep issues that characterize SA to an extent that the violence continues even when the spouses no longer live together.

The study found that 93% of the respondents had children who were reportedly affected by the violence. This shows that many children in Nairobi County live in families that experience SA. The respondents were concerned about the serious psychological, mental and emotional anguish that their children were subjected to due to SA. Such children according to the respondents performed poorly in school and exhibited violent behaviour. This finding is consistent with the argument as advanced by Luna and Martin, 2015, that SA results in violence that unless checked is transmitted from one generation to another predisposing the society to crime.

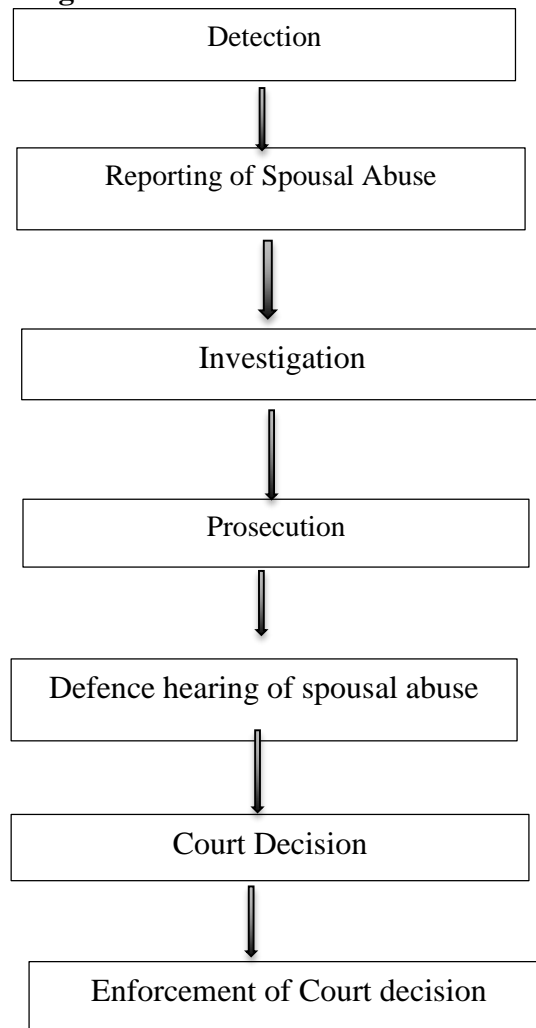
Although the study found out that the VSA knew that the abuse amounts to a crime which needs to be reported to the CJS, they however, deliberately reported to ADRMs such as FIDA and GVRC because what they wanted was a means to stop the violence but not necessarily a system to punish the perpetrator. The respondents only reported to the CJS in cases where the violence was severe and life threatening. They however, did not pursue the cases beyond the reporting if the violence stopped. In some cases, the violence was repeated after the reporting without effective interventions. This is consistent with the findings by Forum on Global Violence Prevention, 2015.

In the next section, the study discusses the CJS's response to SA.

#### **4.4 The CJS' Response to Spousal abuse**

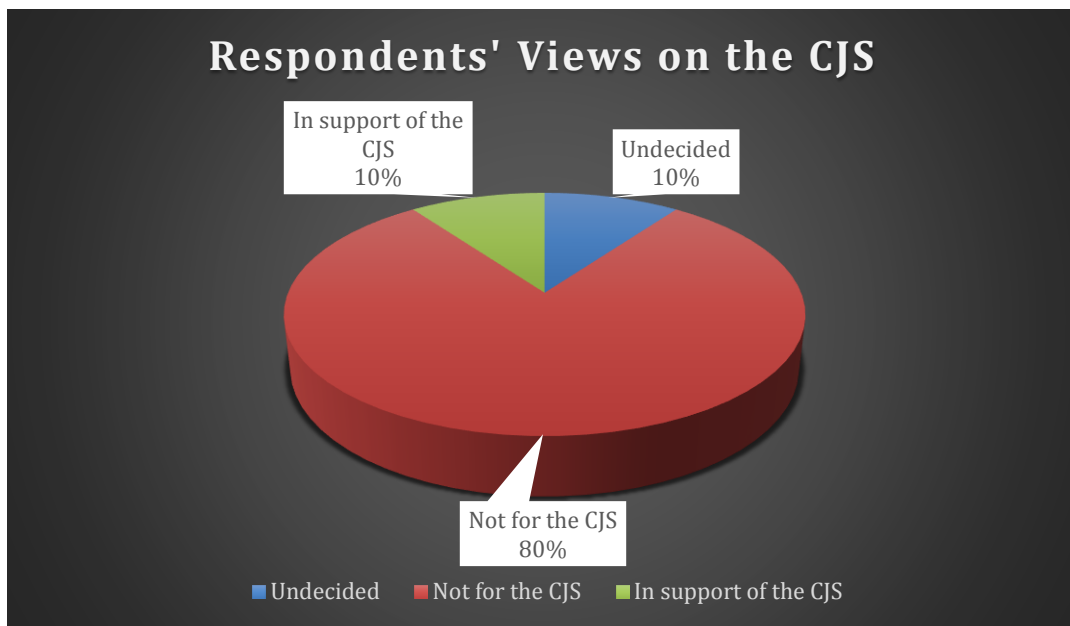
This section discusses the experience of VSA at various stages of the CJS. The different stages of the CJS are detection, reporting of SA, investigation, prosecution and defence hearing of SA, court decision and enforcement of court decision as illustrated by figure 2 below.

**Figure 2: The Various Stages of the CJS**



All VSA felt that the abuse invaded their dignity and respect. Some respondents reported feeling humiliated and degraded by SA and losing self-esteem after repeated abuse only to be subjected to a re-victimization process by the CJS. According to one respondent;

*I felt humiliated and degraded after being subjected to SA. I felt degraded after repeated abuse and the process of reporting to the CJS.*  
(Respondent no. 35).



**Figure 3: Respondents' Views on the CJS Response to SA**

From figure 3 above, all the respondents had the knowledge of how the CJS works and that they needed to report the abuse to the police and record a statement so that the perpetrator can be arrested and taken to court for prosecution. However, 80 % of the respondents were categorical that the CJS' approach of arresting the perpetrator, prosecuting him/her under the adversarial trial procedure was counterproductive to their main aim of resolution of the abuse. They were concerned that the CJS does not keep private and confidential the information about the abuse. They, therefore, deliberately avoided reporting to the police because of the formality, procedural technicalities, lack of confidentiality and privacy as well as the expenses associated with the CJS such as the lawyer's fees and other court expenses. Only 10% of the respondents were of the view

that the CJS' approach of dealing with crime can effectively address SA by prosecuting and jailing the perpetrator. 10% were undecided whether the CJS is an effective means of addressing SA.

The study therefore established that all reports of SA made to the police are treated as public reports and booked in the occurrence book. Subsequently, the investigation and prosecution process subjects the family to a public trial. According to victims, this amounts to washing their dirty linen in public. Many respondents were of the view that the CJS is not an appropriate avenue for redressing SA due to the public nature of the trial process. The inappropriateness of the CJS in reporting SA as established by the study is consistent with Letourneau et al., (2012), argument that VSA do not prefer the formal system as it does not address their concerns.

In the following sections, the study discusses the specific weaknesses of the CJS under various stages.

#### **4.4.1 Detection of Spousal Abuse by the CJS**

According to the Inspector General of the National Police Service at the time of data collection, there are several reasons that make it difficult to detect SA unlike other crimes:

*“Firstly, SA is difficult to detect because of societal perception of SA being a domestic matter to which third parties should keep off. Thus, most people will not pay attention to what may be suspected to be SA. Secondly, SA occurs within the privacy of a marriage where not many people outside the marriage are likely to know what happens unless the victim talks about it but because of social stigma and victim blame, many victims are rarely able to talk about the abuse making it difficult to detect. Thirdly, even those within the family set up who have information about the abuse, rarely voluntarily give the information because they do not want to be seen as interfering in a private domain due to their socialization. Fourthly, most VSA, especially women are financially dependent on the perpetrators who are mostly men and therefore rarely talk*

*about the abuse but opt to stay in the abusive marriage due to fear of losing the financial support from the perpetrator. Fifthly, emotional, psychological and financial types of SA are difficult to detect because the signs are not obvious unlike physical and sexual abuse. The above factors coupled with the lack of a specific law that defines spousal abuse as a crime therefore make it difficult for police officers to detect spousal abuse. Subsequently, most cases of SA are undetected.” (Key Respondent no. 13)*

The sentiments of the Inspector General of Police were echoed by a senior female police officer at the Gender Reporting Desk who stated that:

*“One of the most difficult challenges in handling spousal abuse is its detection. Victims hardly talk about it. Family and close friends may know that an individual is a victim of spousal abuse but they will not talk about it, neither will they report it to the police. But immediately the victim dies, neighbours come up and report that the deceased has been undergoing the abuse for long...why doesn't the society talk about it? As police officers, there is very little we can do, the problem is massive but there is very little we can do without the assistance of the members of the public.” (Key Respondent no. 15).*

The sentiments of both the Inspector General and the Senior Officer were further supported by a Respondent who stated that:

*“I have stayed in Nairobi for a period of over 10 years but nobody seems to care about what happens to their neighbour. Back in the village, close neighbours who are relatives may intervene but here everybody is concerned about their own welfare. If one has an issue, they have to report to the relevant authorities to address the issue. I have also come to learn that SA is a violation of human rights which must be reported. I am therefore able to report to the*

*authorities because there is nowhere else I can get help.”*

(Respondent no. 120).

This mirrors the argument by Owusu Adjah, et al., (2016) that cases of domestic violence are more prevalent among women who reside in urban areas in comparison to women in rural areas. This is because in rural areas, marriage is considered as a family affair which concerns the larger community. As such, various actors such as close and extended family, neighbours, friends and local authorities such as the chief may intervene to help the spouses resolve their dispute and stop the abuse. However, this is not the case in urban areas where people are socialized to be independent and self-reliant. Further, most people refrain in intervening in cases of SA given that it is an intimate and sensitive issue.

These findings further reflect the society's approach and attitude towards SA as a private domain in which others are discouraged from interfering in as expressed by the artiste Lady Issa in her song titled "*kuteleza sio kuanguka*". Music is a form of art that is used to pass and preserve cultural values from one generation to another. The part of Lady Issa's song that is relevant to this study are the Kiswahili words, "...*bibi na bwana wakigombana nyumbani wacha wenyewe mpaka wataelewana, lakini ukiwaingilia wakipatana utabaki na miari*". Literally translated into English, the words mean that when a husband and wife disagree or fight, do not interfere for you might be blamed.

This finding is consistent with arguments advanced by Buzawa & Buzawa (2003) that detecting SA is difficult since it occurs within the private confines of a home away from the public eye.

This study finding is supported by newspaper articles which show that SA can take place over a long period of time but is not reported to the police on time until after death has occurred. At this point, the police can intervene and arrest the perpetrator. In other cases, the perpetrator ends up killing himself or herself after killing the spouse as illustrated by various media reports in the recent past. For instance, on Thursday 22<sup>nd</sup> February 2019, a man was arrested allegedly for beating his wife for four hours and subsequently killing her (<https://www.nation.co.ke/counties/nairobi/City-man-beats-wife-death/1954174-4994184-17ux4dz/index.html>).

#### 4.4.2 Reporting of Spousal Abuse to the CJS

The study found that the second stage of the CJS is the reporting stage. Once a case is detected, it must be reported to the police by either the complainant or a member of the public and a report to that effect recorded in the occurrence book at the police station.

According to a police officer at the Crime reporting desk at Kasarani Police Station:

*“For the CJS to respond to SA the complaint must be reported to the police and recorded in the Occurrence Book by the complainant or any member of the public. However, for one to report, there is need for knowledge that the abuse is a crime and a violation of human rights which the police can act on. Reporting SA to the police is the last stage for VSA since most cases only come to the station after ADRM have failed to resolve the dispute. In addition, the social stigma and the need to preserve the marriage and not wash dirty linen in public prevents most victims from reporting the abuse to the police station. Other factors that prevent victims from reporting the abuse included their financial dependency on the perpetrator and the fear that the arrest and subsequent prosecution may lead to the family break up and loss of financial support.”* (Key Respondent no 12).

The study established that most VSA, especially females hoped for the first line of intervention by the CJS, but because majority do not have the legal competence required and the finances, they reported their cases to FIDA in pursuit of their welfare and that of their children. Such include housing, clothing, accommodation, medical care, school fees and food. Most of the respondents interviewed at FIDA had reported the abuse for this purpose. They were not interested in criminal prosecution of the abuse and punishment of the offender. This is partly explained by the fact that majority of VSA interviewed were dependent on their husbands for financial support. They feared to lose the support if the case is reported to the CJS for criminal prosecution. According to the legal officer in charge of FIDA,

*“Although all the VSA who report to our office are concerned about stopping the abuse, many of them are motivated by the prospect of having the perpetrator pay for housing, clothing, accommodation, medical care,*

*school fees and food as basic needs. The victims are mostly not interested in the criminal prosecution of the abuser or their punishment. Such victims are mostly dependent on the abuser for their financial need and support. Therefore, they fear that prosecuting the abuser may lead to the loss of financial support. Their main concern is therefore to find a way in which the perpetrator can be stopped from abusing them and to continue providing financial support.” (Key Respondent no. 19)*

The sentiments of the FIDA legal officer are confirmed by Respondent no. 129 who said that:

*“The only reason I have come to FIDA is to explore the possibility of my husband paying school fees and upkeep for the children and myself. I do not want him to be prosecuted because that may lead to his imprisonment. If that happens, our children and his people will blame me. I was also socialised that I should not be the cause of my husband’s imprisonment if he were ever to be jailed. I would therefore not report the abuse to the police because they will simply arrest him and take him to court for prosecution. That might lead to more problems for me than the solution I am looking for.” (Respondent no. 129)*

The sentiments of the FIDA Legal Officer and Respondent no. 18 are consistent with the facts of case study number 1 as shown below.

**Case study 1: This is a case of a middle aged female VSA interviewed at GVRC.**

The respondent was subjected to spousal abuse by her husband for over 10 years. Every time she thought of reporting the case to the criminal justice system, she was prevailed upon by friends and relatives not to do so. Finally, she reported to FIDA but despite visible serious physical injuries, she did not want the matter prosecuted. She just wanted the husband to be told to stop abusing her. The abuse was carried out by husband together with his brothers. As at the time of the interview the respondent had been ejected from her matrimonial home.

Most of the respondents stated that from their socialization, SA is a matter to be resolved within the family. This also explains why most of the respondents interviewed were from FIDA and GVRC compared to the cases that were reported to the police. FIDA, being an NGO concerned with the rights of women has the capacity to file civil proceedings in court on behalf of women VSA who report to their offices, seeking orders for custody of children, maintenance and financial support from their abusive spouses. FIDA also receives cases referred to it by GVRC.

The study found that when the abuse reports are made to the police stations, some police officers were reluctant to act and do not act efficiently, expeditiously and procedurally. According to one respondent,

*“The police are reluctant to deal with issues of spousal abuse. They do not act as swiftly as if it is a report of a bank robbery. Spousal abuse reports get minimal attention from the police.”* (Respondent no. 46).

The sentiments of Respondent no. 46 were confirmed by another respondent who stated that:

*“The process of reporting the abuse, investigation and complex court system are all hindrances to our access to justice. Nobody wants to hear our problems. Where can we go to for justice if we cannot go to the police and the courts?”* (Respondent no. 59).

The concerns of Respondents no. 46 and 59 were consistent with the views of the police officer in charge of the gender desk at the police headquarters who stated that:

*“Handling SA in the CJS is very problematic. There is no specific offence called spousal abuse. When spouses report to us cases of abuse, we are at a loss as to how to frame the charge and therefore resort to the general assault law, which states that “any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in the Penal Code, is liable to imprisonment for one year; Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.” (Key Respondent no. 15).*

The study found that some respondents interviewed complained of sexual abuse by their spouses within marriage but were unable to prosecute such cases. Although the Sexual Offences Act provides for sexual abuse, it however decriminalizes sexual abuse within a marital context. Sexual abuse cases such as marital rape therefore are not taken seriously when reported due to the societal perception on consent in marriage and the fact that the law does not criminalize such actions. One of the victims stated that:

*“I suffered sexual abuse several times but when I went to report the matter to the police they laughed! They told me that there is no legal provision to prosecute sexual abuse within marriage. They only took the assault case to court and did not mention the sexual abuse component” (Respondent no. 27)*

The views of Respondent no. 27 are consistent with the views of Key Respondent no. 15 who stated that:

*“Sexual abuse within marriage is a controversial issue in Kenya and it is not criminalized. SA victims therefore find it difficult to get protection from the criminal justice system because of the lack of criminalization of sexual violence by a spouse within marriage. One side of the argument is that once married,*

*consent for sexual intercourse is granted and does not cease so long as the marriage exists. The other side of the argument is that there is no blanket consent and it can be withdrawn under certain circumstances especially when SA occurs. Many victims of sexual abuse report to us about being sexually abused by their spouses but we are unable to take any steps due to lack of an enabling legislation and the contentious issue of consent within marriage (Key Respondent no. 15)*

From the above study findings, reporting SA to the police was therefore a last option taken by victims after ADRM failed to resolve the dispute. This finding means that fewer cases of spousal abuse are reported to the state for prosecution due to socio-cultural and economic factors. This is compounded by the fact that there is no crime specifically defined as spousal abuse as already discussed. For the few cases that are reported to the police, it is difficult to make a decision to prosecute and protect the victims.

#### **4.4.2.1 Lack of laws on mandatory reporting**

A review of the Protection from Domestic Violence Act in 2015 shows that the law does not make SA a crime. The Act however, provides that anybody can report the abuse on behalf of the victim to court and seek protection orders. The challenges faced in reporting was further explained by a magistrate interviewed who stated that:

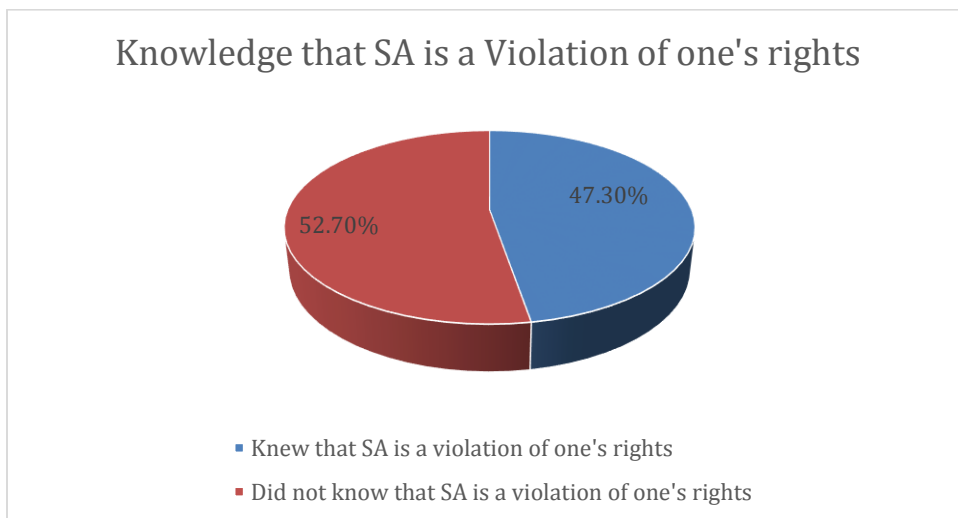
*“The Kenyan CJS does not provide for mandatory reporting of SA. There is no obligation on anybody who has information or witnesses SA to report it to the authorities for the protection of the victim. This has contributed to many cases of SA not being reported. Although the Protection from Domestic Violence Act 2015 provides that anybody can report SA to the police, it does not make it mandatory. In Canada and the USA, it is mandatory that anybody who has such information must report it to the authorities so that the victim can be protected. Should investigation be carried out which reveals that somebody knowingly withheld such information, the person is liable under the USA and Canadian Law to be prosecuted and punished. The absence of mandatory reporting in Kenya implies that where victims are not able to report themselves, then many cases may go unreported and as a result many*

*victims of SA suffer the consequences and are not able to benefit from the intervention of the CJS.” (Key Respondent no. 23)*

Confirming the sentiments of the magistrate, one of the respondents stated that:

*I have been subjected to spousal abuse for a very long time. I lived with my husband and every time he abused me I would scream and so everybody in the flats knew but none of them ever intervened or reported. I do not know whether there is a requirement for neighbours to report because nobody wants to be involved. Many people are of the view that spousal abuse is a domestic matter and they avoid interference. It was not until he almost killed me that I ran away. (Respondent no. 117).*

The study found that 52.7% of the victims knew that SA is a violation of their rights but nevertheless find difficulties in reporting the same to the CJS due to socio-cultural and economic factors. The knowledge of SA being a violation of one’s right is therefore not in itself a factor in reporting the abuse. The reporting of SA to the police is therefore not in pursuit of a right as such but as already argued, most respondents reported the abuse so as to stop it or due to economic dependency factors. Figure 4 below illustrates the percentages of the respondents who had knowledge and who had no knowledge of SA being a human rights violation.



**Figure 4: Knowledge that SA is a Violation of One's Rights**

#### **4.4.2.2 Absence of a specific law that criminalizes spousal abuse**

As already discussed in this chapter, the CJS' response to SA requires that for a crime to be prosecuted, it must be defined in a specific law. However, the study found that the police face the challenge of how to deal with reported cases of SA because of the absence of a specific law. Where there is no serious injury and in cases of financial, emotional, psychological abuse, the police find it very difficult to frame a charge. However, in cases of physical injuries, then the police can prefer a charge of assault or assault causing grievous bodily harm. According to a police officer interviewed at Kasarani:

*“There is no specific law that makes SA a crime and therefore we are at a loss on what to do with most of the cases that are reported to us, however serious they are, so long as they do not amount to assault, threat to life, damage to property and loss of life.”* (Key Respondent no. 12.)

The difficulties faced by the police due to the absence of a specific law that defines SA is consistent with the argument advanced by Sokolof & Prat (2008) and Barness (2014), all of whom argue that enactment of a specific law that defines and provides punishment for domestic violence is important in protecting VSA. According to the police officer interviewed at Kasarani:

*“The absence of a law that defines, criminalizes and punishes SA is a fundamental challenge in protecting VSA in Kenya. The police therefore refer most reports of SA to ADRM. This explains the pyramidal response of the CJS to SA. The police only act in cases where there is threat to life or serious damage to property or injury to the victim or in cases where the victim's life had already been lost since these are the situations which are provided for by the law under crimes such as threatening to kill, assault, damage to property and murder. The effect of non-specific law that criminalizes SA is that emotional, psychological and financial forms of SA cannot be prosecuted in Kenya while sexual and physical abuse can be prosecuted but only as sexual abuse and assault as provided for by the Sexual Offences Act and the Penal Code respectively. (Key Respondent no. 12).*

#### **4.4.2.3 Police Attitude and Societal Perception of Spousal Abuse**

The female respondents reported that male police officers at the reporting desk at times laughed at them and told them to go and sort out their domestic problems. This was based on the attitude of the police officers and their perception of spousal abuse as a domestic matter coupled with the lack of a specific law that describes the abuse as a crime. The male victims particularly found it very difficult to report the abuse to the police because of the societal perception and socialization that a man must be in control of his house. A male victim of SA is therefore viewed as a weakling. According to one of the male victims interviewed by the study:

*“When I reported to the police, the police (men) laughed at me and told me that I was a weakling, how can I be beaten by a woman? They could not understand my plight. After that I decided, I can never report the abuse to the police.”* (Respondent no. 128).

The sentiments expressed by the male victim above are consistent with the Masculinities in Crisis theory discussed in chapter two.

Although the Protection from Domestic Violence Act provides that anybody can report on behalf of the victim, the provision is negated by the societal perception and attitude that SA is a domestic affair and therefore reporting it is perceived to be interference in a private domain. Although this Act aims at protecting the victims of domestic violence in general, it does not make it mandatory for anyone with such information to report it to the authorities. It is left discretionary.

#### **4.4.2.4 Corruption**

The study found that corruption greatly affects the reporting of SA to the police. Some respondents said that at the reporting desk, the police asked them to pay some money to fuel the vehicle to go and arrest the perpetrator. For some victims, after they reported the abuse, the perpetrators paid money to the police and the case did not proceed beyond the reporting stage. In the words of one respondent,

*“The police are very corrupt. If you report your case and you have no money, they will not do anything. I went to the police station with bodily injuries and torn clothes after being beaten by my husband. The police officer at the reporting stage after listening to my story told me to pay Kenya shillings 2000 before he could go and arrest my husband. Where was I to get such kind of money?”* (Respondent no. 48)

Another respondent said that she reported her case to the police, her husband went to the police station where the matter had been reported and bribed the police officers. When he went back home, he beat up the wife again and told her that even if she reports, there is nothing that can be done to him because he has the police in his pockets.

#### **4.4.2.5 Language Barrier**

According to a magistrate interviewed by the study,

*“Language barrier is another challenge faced by VSA who report to the police but are not able to express themselves in either English or Kiswahili. Under such circumstances, they must get somebody to interpret what they say. Due to the sensitivity and privacy of SA, a VSA may not be comfortable divulging the details of the abuse to a third party. In addition, there is also a risk that some details of the abuse may be lost in translation as the third party may not bring out the details of the abuse as the VSA had intended. Violations that arise from SA are not dealt with as SA with its unique challenges.”*

Apart from victims finding it difficult to get assistance from the police when they report SA because there is no such specific offence, the police also find it difficult to assist the victims and can only in serious cases fall back on definitions of crimes which are close to SA such as assault. The above concerns of the magistrate were confirmed by a Respondent who stated that:

*“The court process is very difficult to understand. The lawyers use very difficult language that is only known to them. The conversation appears to be between the magistrate, prosecutor and the perpetrator’s lawyer. I was*

*not able to understand most of the things they talk about.”* (Respondent no. 60).

#### **4.4.2.6 Unfriendly court environment**

According to FIDA’s legal officer interviewed by the study:

*“The adversarial nature of the CJS makes the parties adversaries in court trying to out-do each other in terms of presentation of the best evidence to prove their case. The magistrate/ judge who presides over the dispute is required to be an impartial arbiter who waits for the evidence to be presented and makes the decision based on the strength of evidence by each party. The stronger party is therefore likely to win the contest while the weaker party loses. The contestation makes the court environment tense, unfriendly and one where the parties show their might. This environment is not only unfriendly to the VSA, who is already vulnerable and easily intimidated, but some are unable to face the perpetrator in court. The unfriendly environment therefore makes it difficult for VSA to participate in the dispute resolution process and access justice in the CJS.”*

The sentiments of the legal officer are confirmed by a respondent who stated that;

*“The court environment is very unfriendly. Whereas the perpetrator had a lawyer, I was not able to pay for one and therefore I represented myself. The court environment was unfamiliar with many people whom I would not have wished to be present. The magistrate just kept quiet and stared at me as my husband’s lawyer asked me very difficult and intimidating questions. I did not know how to conduct myself and whether what I was doing was right or wrong and if I could be punished for not doing the right thing.”* (Respondent no. 93).

#### **4.4.2.7 Bureaucracy and formality of the system**

According to a magistrate interviewed by the study:

*“The CJS all over the world is generally characterized by formality and bureaucracy that demands that certain procedures be followed as laid down*

*in the system. For example, even where a VSA walks straight to the court with visible injuries seeking protection, the bureaucracy and formality of the system demands that the victim first reports to the police station where the report is recorded, investigation conducted, the accused person formally charged and brought to court, the hearing takes place as scheduled, witnesses are heard and the guilt or innocence of the accused person is established first, before any protection can be given to the victim of the abuse. The lengthy bureaucratic process discourages many victims from seeking redress through the CJS due to their desire for instant justice, hence most of the respondents' preference for ADRM."*

The above sentiments of the magistrate are confirmed by a respondent interviewed by the study who stated;

*"I reported my matter to the CJS for prosecution but the bureaucracy is too much. It has been three years since I reported but the investigation is not yet complete. I have almost given up."* (Respondent no. 100).

#### **4.4.3 Investigation**

This is the third stage of the CJS. This is a major function of the police which must be carried out immediately upon a report of any crime being made to the police station.

According to an investigating officer at the National Police Service Headquarters:

*"Investigation of SA faces two major challenges. The first challenge is the police officers' inability in most cases to get information from the victim of the abuse, the perpetrator and family members or those who have witnessed the abuse. This is attributed to the attitude and perception of SA as a domestic matter in which interference should be minimal. The CJS requires that the police interrogate the victim, the perpetrator and anybody else who witnesses a crime and collect any information that may assist in establishing whether or not a crime occurred. Some victims of SA are unwilling to give information about the abuse to the police. This is because of social stigma, their dependency on the perpetrator for financial*

*support and fear of the repercussions of giving such information to the police i.e. uncertainty of the CJS. It is a major requirement of the CJS investigation that a victim of crime who is treated as the key witness and complainant must record a statement for the police to act. This requirement is difficult to fulfil in spousal abuse matters due to the unique nature of the abuse itself. The perpetrator also must be interrogated so as to get the full objective picture of the circumstances in which the alleged abuse occurred. Some perpetrators at times come together with the victim and inform us to stop the investigation because they have already sorted out the issue. In some cases, members of the public especially close friends and relatives who witnessed the abuse hesitate to come forward and give information because of their perception of spousal abuse being a domestic matter in which they do not want to be seen to interfere. Spousal abuse requires specialized skills as opposed to other crimes because of the sensitivity of the abuse.” (Key Respondent no. 15).*

According to the Deputy Inspector General:

*“As a police force, we lack specialized skills to investigate spousal abuse. A victim comes to the police station and complains about being abused by the spouse but when we arrest the accused person, the victims and members of the family come back to us and say that they are no longer interested in the matter and therefore are not willing to give us information about the abuse. Some of them come back and tell us to drop the case even in very serious cases where serious injuries have occurred. It becomes very difficult to proceed with these cases to court. Unfortunately, at times, we get reports later in some cases that the victim was finally killed because of the abuse. When that happens, we can only prosecute the perpetrator for murder. But the victim’s life is already lost. The biggest problem is that as a police force, we do not have specialized skills and capacity to investigate these sensitive cases. How do we get people who are not willing to talk to give us the evidence so that we go to court?” (Key Respondent no. 14)*

The study therefore finds that it is difficult to investigate reported cases of SA. As a result, fewer of the reported cases to the police are investigated successfully as many of them are dropped due to poor investigation or failure of witnesses to cooperate with the police and give evidence. The effect is that fewer cases reported to the police are investigated. This confirms the finding by UN Women (2012) that many cases of SA reported to the CJS globally face high attrition levels through the justice chain.

#### **4.4.4 Prosecution of Spousal Abuse**

This is the fourth stage of the CJS. Prosecution is the heart of the CJS. This is the presentation of the allegation and facts against the perpetrator before a court. The perpetrator is then given an opportunity to defend himself/herself. Both the victim and the perpetrator are responsible for calling their witnesses to present their testimony in court to support the party who called them (victim or perpetrator).

According to a magistrate interviewed by the study,

*“Spousal abuse cases are difficult to prosecute due to very strict rules of evidence that shield the perpetrators while placing high standard of proof on the victim to prove the abuse.”* (Key Respondent no. 23).

The sentiments of the magistrate are supported by the views of other key respondents. All the key respondents, Inspector General of Police, the two deputy commissioners of police, the officer in charge of the children’s desk and the police officer in charge of gender desk at the police headquarters, were in agreement that the CJS is not suitable for handling SA due to its adversarial nature which focuses on the guilt or innocence of the accused. If found to have committed an offence, the system punishes the offender, but does little to protect the victim of crime. This finding is consistent with arguments advanced by Freeman, (2008); Wormer & Bartollas,(2011); Sokoloff (2008); Baines, (2010), Iancu, 2010; Letourneau et al., (2012), all who criticised the CJS as neglecting the needs of VSA while focusing on the establishment of the guilt or innocence of the perpetrator.

Since most VSA are vulnerable and financially dependent on the perpetrators, the study found that most VSA are unable to ensure that their witnesses testify on their behalf.

The VSA themselves are intimidated by the perpetrators to withdraw the cases or not to testify at all. The perpetrators are in a more influential position to ensure prosecution does not proceed.

According to a magistrate interviewed by the study,

*“For prosecution to occur, as earlier on discussed, the prosecuting agency (Office of the Director of Public Prosecution or as represented by the police), must draft a charge according to a specific law passed by parliament which describes certain conduct as an offence and provides a penalty. It is this charge that is presented before a magistrate who reads it to the perpetrator. The accused person is expected to either admit that he/she committed the crime or not. If the accused accepts that he/she committed the crime (pleads guilty), then he/she is convicted and the court passes a sentence to punish him/her. However, where the perpetrator says that he/she did not commit the offence, a plea of not guilty is entered and the case is set up for hearing to establish whether the perpetrator committed the crime. The process of establishing whether the crime was committed requires that the prosecutor calls witnesses and the victim to give evidence in court in the presence of the perpetrator who has a right to ask them questions which they must answer. It is only when the evidence of the victim and the witnesses show that the crime occurred that the perpetrator is asked to defend himself/herself. If, however, the evidence of the witness and the victim does not show that a crime was committed, then the perpetrator is set free. Should the court find that the perpetrator committed a crime, he/she is convicted and a sentence passed to punish him/her. This is the process of prosecution.” (Key Respondent no. 24).*

The study found that prosecution of SA is faced with several challenges. According to the FGD, some of the challenges faced in prosecuting SA include: Inability, unwillingness of the victim of spousal abuse to go to court and testify, technicality of the court process, corruption, lack of a mandatory prosecution policy and lack of a no-drop policy as explained below. All these factors make it difficult for the CJS to protect VSA.

This finding is consistent with the arguments advanced by Buzawa & Buzawa (2003) that the CJS is not concerned about victims' protection and is characterized by bureaucracies which make it difficult to access justice in SA cases.

### **Challenges in Prosecuting SA as revealed by the FGD with Respondents interviewed at FIDA**

#### **Inability/Unwillingness of Witness to Testify**

It is a fundamental principle of the CJS and law that whoever makes a complaint must state the same in front of the person complained against (Kiage P, 2010). The accused has a right to ask the complainant questions which the complainant must answer. According to a magistrate interviewed by the study:

*“The requirement that the victim must testify is an age old pillar of the CJS that ensures that, the truth of a witness’ evidence is established, before it can be acted upon by the court, to curtail fundamental rights of the accused person. Although the principle has been upheld in the CJS, it is counter-productive in matters of SA. Insisting that the perpetrator must be present in court as the victim testifies disempowers the victim from coherently and confidently narrating the abuse. This is due to their vulnerability and the possibility of intimidation by the perpetrator. In addition, where the victim depends on the perpetrator for financial upkeep, requiring the victim to testify in court in the presence of the perpetrator discourages many victims from testifying.” (Key Respondent no. 24)*

The study found that many of the cases are withdrawn due to the inability of the victim to testify, hence the pyramidal response of the CJS to SA as discussed in figure 5. This is illustrated in the words of one respondent;

*“How can I face my husband in court and talk about the details of the abuse? If I do that, our children, his family members and our friends will blame me. He is likely to withdraw his financial support for the family. He is the breadwinner so what will I do with the children if he refuses to pay*

*for their upkeep. I just want the abuse to stop. I am not interested in washing our dirty linen in public by testifying in court.”* (Respondent no. 70).

The above sentiments are consistent with the explanations of the Social Conflict Theory of the Family discussed in chapter two.

The first prosecution challenge is the inability/ unwillingness of the VSA to go to court and testify against the perpetrator especially where the perpetrator is the breadwinner of the family. The study found that most female VSA were not willing to testify against their husbands in court because of fear of losing financial support, uncertainty of the outcome of the court process and for fear of societal blame if the husband is jailed because of her testimony in court. Some VSA who had reported their cases to the police and were called to testify in court refused to do so because of threat and intimidation by the perpetrators and their families. As at the time of the study, (2012-2013) there was no legal framework for the protection of victims of crime in Kenya. Although the Witness Protection Act, 2006 was in operation, its scope was limited to the protection of witnesses in the CJS and not the victims of the crime. In September 2014, however, the Victim Protection Act No. 17 of 2014 was assented to. This Act was passed so as to give effect to Article 50 (9) of the Constitution which obligates Parliament to enact legislation providing for the protection, rights and welfare of victims of offences. Under the act, victims of crime are now able to access special protection and support services thereby enhancing their access to justice within the CJS.

Some victims were also unable to testify in court because of the adversarial nature of the court process and the fear of not being accepted back in the husband's home by the relatives once they stand in court against their husband. This is consistent with a study by Haj -ahya (1991) which found that patriarchal ideology, negative and traditional attitudes towards women, familial patriarchal beliefs justified SA against wives therefore making it difficult for them to report.

Male VSA particularly found it very difficult to narrate to court how they were abused due to the publicity of the trial because of the societal perception. According to a male VSA:

*“The society perceives a man being the stronger spouse who must assert his control over the wife. Therefore, to stand in court and testify that I was beaten by my wife is very difficult. What will my family members, friends and colleagues think about me?”* (Respondent no. 125).

This finding is consistent with Masculinities and Masculinities in Crisis theory. Another reason why some cases did not proceed to prosecution is because the victims and the perpetrators referred the cases to ADRMs. This is discussed in detail later in this chapter. The study also found that some cases did not proceed to prosecution because the VSA and the perpetrators referred them to ADRMs which played an important role. This is consistent with the findings by Vetten, (2014).

### **Technicality of the Court Process**

The second challenge in prosecuting SA, according to a magistrate interviewed is the technicality of the court process. In the words of the magistrate:

*“The court process involves technical language and therefore requires the services of advocates which most victims cannot afford. In addition, the formality of the court process involves hearings being conducted on certain dates according to the court diary. This may occasion undue delays. Some victims may therefore be required to appear in court more than once to give evidence due to reasons such as missing court or police files on scheduled hearing dates. Some victims, having appeared in court for the first time without being heard, subsequently fail to turn up for hearing scheduled later. When that happens more than three times, the case is dismissed as it is presumed that the victim is no longer interested in pursuing the case.”* (Key Respondent no. 25).

According to the sentiments of the magistrate above, the study established that technicalities and delays in court hinder victims’ access to justice. This is consistent with UN Women (2012). According to a social worker interviewed by the study, the third challenge faced at the prosecution of SA cases is corruption.

*“The prosecution process is characterized by bribery allegations in which police officers take bribes from the perpetrator and fail to summon the witnesses to give evidence. Such cases fail to proceed and the victims lose faith in the process.”* (Key Respondent no 21).

According to a respondent interviewed by the study, when she reported the abuse to the police, they summoned her husband who bribed the police, went back home and beat her again and told her that there was nowhere she can report to. In her own words,

*“When he came back from the police station, he beat me more than the first time and bragged saying all the police officers are his friends and he has the money which I do not so he can do to me whatever he wants. Where do I go to now? What can I do? The third time he beat me, I went back to the same police station to report but the police officers laughed at me and told me to go back and take care of my husband and be a good wife. The police officers cannot be trusted to help you when you do not have money.”* (Respondent no. 62).

According to the FIDA legal officer:

*“fewer cases that are prosecuted proceed to the court decision making stage as most of them drop out because Kenya does not have a requirement for mandatory prosecution and a no-drop policy. A mandatory prosecution requirement ensures that once a case is set for prosecution, then the prosecutor cannot terminate it and the victim cannot withdraw the case. Neither can the victim refuse to testify. This ensures that all cases in which there is evidence to show that SA occurred are prosecuted to completion and a final determination made to protect the victim from further abuse. No drop policy simply means no case is dropped once prosecution begins. Since Kenya lacks such a provision, majority of the cases that are prosecuted drop off along the CJS either because of witness intimidation, bribery or reference to ADRMs. The lack of no drop policy and mandatory prosecution creates a gap that is filled by corruption to hinder access to justice by VSA.”*

#### **4.4.4.1 Lack of laws on mandatory prosecution**

According to the FIDA legal officer,

*“The Kenyan CJS has no provision for mandatory prosecution of SA. The implication is that where a case of SA has been reported to the police, even where the police find enough evidence to show that the abuse indeed occurred, there is no obligation on the prosecution to press on with the charge. This gap creates an avenue for corruption by the perpetrator to drop the charges. In addition, it makes VSA vulnerable to intimidation and harassment by the perpetrators so as to drop the cases.”* (Key Respondent no. 19).

The above views of the FIDA Officer explain why a high number of cases reported to the police did not proceed to the close of the prosecution, hence the pyramidal response of the CJS to SA in figure 5. According to the FIDA Officer,

*“Where there is a mandatory prosecution requirement like in Australia and the United Kingdom, VSA are protected from intimidation to drop the charges and the prosecutor cannot be compromised to interfere with the prosecution process.”* (Key Respondent No 19).

#### **4.4.4.2 No drop policy**

According to the police officer in charge of the gender desk at the National Police Service Headquarters, Kenya lacks a no drop policy.

*“No drop policy means that once the prosecution process has commenced, the case is prosecuted to the end without being dropped at any stage. This works together with the mandatory prosecution requirement. Neither the prosecutor nor the victim of SA can interfere with the progress of the case that must be prosecuted to the end. The no drop policy is therefore important and protects vulnerable witnesses who are likely to be intimidated into withdrawing the charges against the perpetrator. The no drop policy ensures that once a case is reported, the victim must record a statement. If the statement reveals that SA is likely to have occurred, the*

*victim must testify and give evidence against the perpetrator. The evidence is used to make decisions that protect the victim.*” (Key Respondent No 15)

From the explanation by the officer in charge of the Gender Desk, the absence of a no drop policy in Kenya is partly responsible for the high attrition of prosecution cases in the CJS, hence the pyramidal response by the CJS to SA.

#### **4.4.4.3 Technicality of the court language**

According to a social worker interviewed by the study:

*“The CJS has specific technical words that are applied during the dispute resolution process in court.”* (Key Respondent no. 20).

The study established that most respondents hesitate to report to the CJS because of what they hear about the technicality of the language used in court amongst other factors. According to one respondent:

*“The court process is very difficult to understand. The lawyers use very difficult language that is only known to them. The conversation appears to be between the magistrate, prosecutor and the perpetrator’s lawyer. I was not able to understand most of the things they talk about.”* (Respondent no. 60).

It is worthy to note that the official court language is English and Kiswahili. However, where a party does not understand either, the proceedings are translated but the translation may lose meaning since the court does not have professional language interpreters. Where for example there is need to interpret the proceedings into a particular ethnic language e.g. Kamba, Maasai, what the court does is to ask for any court clerk conversant with the language to step in and interpret. Since the court clerks are not professional language interpreters, the possibility of the translation changing the meaning of the words cannot be ruled out.

#### 4.4.4.4 Technicality of the Court Procedure

According to a magistrate interviewed by the study:

*“Most of the respondents find the entire CJS riddled with procedural technicalities. There are different steps to be followed before a conclusion is arrived at to enable a VSA access justice. Whereas most victims are interested in the final product of accessing justice which is their protection, the technical procedural requirements of the CJS require that even where a victim presents himself/herself with visible injuries as a result of the abuse, the court cannot issue protective orders until a complaint is formally filed, investigated, statements recorded, witnesses summoned to give evidence in court. It is after all the witnesses have testified that the court makes a decision as to whether there is a possibility that the perpetrator indeed committed a crime. At this stage, if the evidence does not reveal that an offence was committed or that the perpetrator is not the one who committed the crime, the perpetrator is set free and there are no protective orders issued to enable the victim access justice (this is what the law calls failure to establish a prima facie case against the perpetrator). However, should the evidence reveal that the victim was indeed abused by the perpetrator; the perpetrator must be given an opportunity to tell the court his/her side of the story and call witnesses to support his/her case. This is followed by a decision of the court as to whether the statement and the evidence by the perpetrator absolve him/her from the accusation. If indeed, the evidence absolves the perpetrator, then he/she is acquitted (set free) and no protective orders are issued to enable the victim access justice. It is worthy to note that it is only upon the court’s finding that the perpetrator indeed committed the offence that protective orders can be issued to protect the victim. (Key Respondent No 23).*

The entire process of establishing whether or not the perpetrator abused the victim is lengthy and this discourages most victims of SA who in the meantime are left vulnerable to repeated abuse by the perpetrator.

#### **4.4.4.5 Publicity of the trial**

According to a magistrate interviewed by the study:

*“It is the requirement of the CJS that any prosecution and trial of an accused person for a crime be conducted in an open court so that the process and the evidence against the perpetrator can be open to public scrutiny. This requirement does not take into account the sensitive nature of SA, the social stigma suffered by VSA, the societal stigma associated with SA and the need for privacy in protecting the victim’s concerns about the details of the abuse from being made public. The publicity of the trial process is indeed a contradiction of the society’s perception of a marriage as a private domain from which interference is discouraged.”* (Key Respondent no. 26).

#### **4.4.4.6 Requirement that witnesses must testify**

According to a police officer at the Gender Desk at the National Police Service Headquarters:

*“The CJS requires that apart from the victim of a crime, there needs to be another witness to support the allegations made by the complainant. This is important to protect suspected perpetrators from being punished on the evidence of the complainant alone. The requirement aims at ensuring that there is evidence from an independent source. Indeed, the law requires that the standard of proof of any criminal liability be beyond any reasonable doubt. In cases of SA, the requirement that other witnesses testify is to ensure that before the perpetrator is punished and his/her rights curtailed, it must not be in doubt that he/she perpetrated the abuse. One of the ways of clearing the doubt is by asking those who witness the abuse to testify as witnesses. The irony in SA cases is that the society perceives a marriage as a private domain in which the man as the dominant spouse and head of the family makes decisions and ‘controls’ members of his household who include his wife and children. Interference in matters of SA is therefore discouraged. Many people therefore view SA as a private domain in which they should not interfere*

*either by reporting the abuse to the CJS or by giving evidence in court. The fear is that when the evidence is used to convict the perpetrator and the marriage is broken, especially where the perpetrator was the sole breadwinner for the family, the witnesses may be blamed for interfering in family matters that is not their concern.”* (Key Respondent no. 15)

The officer’s comments are consistent with the views of a respondent who said,

*“When I reported to the police, they asked me for two witnesses. Now I had been beaten by my husband in our house, where could I get witnesses and the police insisted that without these two witnesses they would not prosecute.”* (Respondent no. 74).

From the above analysis, SA is complex and victims find themselves in situations where they are not able to testify and those who witness the abuse are equally unwilling to give the information to the authorities hence the collapse of the case. The above report confirms the complex scenario that VSA find themselves in because sometimes the abuse occurs within the confines of the home without witnesses, and an insistence on witness statements would mean a collapse of the case. This is illustrated by the newspaper excerpt below.



#### 4.4.5 Court decision

This is the fifth stage of the CJS. At this stage, the presiding judicial officer applies the law to the evidence presented in court so as to establish whether a crime was committed as defined by law. According to a magistrate interviewed by the study:

*“Once a case is fully prosecuted, the court must weigh the evidence of the VSA and the witnesses on the one hand and that of the perpetrator and any of his/her witnesses on the other. The court must therefore come up with a determination as to whether the victim has been abused or not. It is important to emphasize here that it is only physical and sexual abuse that are recognized as crimes by the Kenyan law. This means that psychological, emotional and financial abuse cannot be found to have been committed by the courts in Kenya even if they occurred. If the court finds that sexual or*

*physical abuse occurred, then the perpetrator is found guilty of the crime and a criminal record to that effect is entered in the police records. Subsequently, such a person is treated as a criminal by the CJS and the court has to pass a sentence which ranges between a fine, community service, probation, imprisonment for a period of up to 20 years depending on the nature of the crime. The implication of one being found guilty is very detrimental to the convicted person. The first implication is that the person is labelled a criminal and is barred from holding public office. There is also the social stigma that accompanies such labelling. Secondly, is the possibility of loss of a job if one was in employment and particularly if one is imprisoned. Therefore, if the perpetrator was the sole breadwinner of the family, the victim and the family lose the financial support. The consequences of imprisonment of an abusive partner are very detrimental to the survival of a marriage.” (Key Respondent no. 28).*

From the above effects of the court decision as explained by the magistrate, it is clear that the court decision and its effects may be counterproductive to victims of SA who simply want the abuse to stop and not the punishment of the offender. According to a social worker:

*“Most female victims move from their parents’ home to their husband’s home upon marriage. When the husband is imprisoned, they face issues of acceptability and possible eviction and therefore become dependants on their husbands for housing and other financial needs. The victims face the risk of eviction from their matrimonial home by the family members of the imprisoned spouse. Once evicted from their matrimonial home, some of them face an additional challenge of not being accepted back at their parental homes especially when they have children and more specifically, boys because of the issue of land and where they would settle. This is a challenge that the study found to greatly influence the high number of drop out cases from the CJS as the victims opted to stay in abusive marriages rather than be faced with the consequences of a conviction and imprisonment of the perpetrator.” (Key Respondent no. 22).*

The study also established that court decisions, unlike the ADRM, are not owned by the parties but are set by the law and once passed are imposed on the parties (victim and perpetrator). Most victims of spousal abuse were not exactly certain about the outcome to expect from the CJS. Many of them especially those dependent on their abusive spouses, were very emphatic that they do not wish their abusive spouses to be imprisoned but their desire is for the abuse to be stopped. However, the nature of the CJS is such that once a court makes a decision, it cannot be reversed by the same court and if any party (read victim of spousal abuse) is not satisfied, they can only appeal to the next level of the court. The appeal process is formal, expensive as it involves filing of appeal documents and grounds of appeal which are only understood by lawyers hence the expense. The process takes long and yet the victim may not be so sure of the probability of success of the appeal. The rigid nature of the court system and the finality of its decision coupled with the complex appellate system was found by the study to make it a hindrance to most spousal abuse victims' access to justice. As a result, the study found that some cases are dropped by the spousal abuse victims and the prosecution just before the court makes its decision.

According to one spousal abuse victim,

*“I cannot report the abuse to court because the process is so expensive and takes long. What would I do with the children if I report that my wife beat me and she is jailed? I would rather stay without talking about the abuse at all lest the court decides to jail her.”* (Respondent no. 127).

The finality of the court decision and its effect as explained above make it more difficult for SA cases to progress to that level in the justice system, hence the pyramidal response of CJS to SA. The findings above on the finality of the court decision and its effects on the family serve to hinder access to justice by VSA. This is consistent with arguments by Baker H (2008), that VSA prefer ADRMs to the CJS because of its flexibility and accessibility.

#### **4.4.5.1 Lack of a specific specialized mechanism in addressing SA within the CJS.**

The study found that due to the social stigma and the sensitivity of SA, most VSA prefer a special mechanism where they can report the abuse and the dispute is handled while preserving their privacy and dignity. However, the Kenyan CJS lacks a special mechanism and all criminal cases must be reported in the normal way by reporting the matter to the police station, where it has to be recorded in the occurrence book, witnesses are summoned to record statements and the matter is tried in an open court like other crimes without any special attention. This is therefore a major weakness of the CJS that hinders many victims from seeking the intervention of the CJS, despite its ability to enforce its orders and protect victims of SA.

According to one of the male VSA:

*“I would rather die than report the case to the CJS that is so insensitive and there is no specialized procedure of handling complaints about SA. This is a matter that requires experts and special sensitive procedure that does not tear the family apart.”* (Respondent no. 125).

From the concerns of the above respondent, aspects of SA that amount to sexual and physical assault are handled in the same way as other crimes. This is in disregard to the peculiar nature and sensitivity of SA and its effect on the victim, many of whom wish not to talk publicly about the abuse. The lack of sensitivity of the CJS to SA as an intimate matter to the victims was found by the study to hinder many victims’ access to justice. The study found that SA cases are prosecuted under the same ordinary court system that is characterized by the publicity of the trial. There is no specialized court that handles matters of SA.

#### **4.4.5.2 Enforcement of court decision**

According to a magistrate interviewed by the study:

*“Enforcement of the court decision is the last stage of the CJS. If the court found that the evidence presented in court does not show that SA occurred, then the perpetrator is set free. This may leave the victim more vulnerable to SA since no protection orders can be given unless the court finds that a crime was committed.*

*Where the court finds the accused person guilty and passes a sentence as stipulated by law which ranges from a warning, fine to imprisonment. It is the effect of imprisonment that in most cases is counterproductive to SA since many VSA are financially dependant on the perpetrators.” (Key Respondent no. 25).*

From the explanation by the magistrate, imprisonment of the perpetrator therefore results in loss of financial support for the victim and more strained relations between the families for both victims and perpetrators.

#### **4.4.5.3 The adversarial nature of the CJS and the resultant animosity between the parties after the court process that separates the family**

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 consistent with Belknap’s argument that VSA will still hang on in the abusive marriage because they are dependent on the perpetrators 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). It was surprising that only

a small proportion (4%) of the respondents were divorced as a result of the abuse as shown in Table 5.

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 above concerns by the respondent are consistent with the Social Conflict theory of the family discussed in Chapter two. Every member of the family acts in their personal interest which conflicts with that of other members of the family. In this case, the VSA considers the possibility of losing financial assistance amongst other factors and therefore is not interested in the termination of the marriage or the jailing of the perpetrator since this would have negative repercussions to the victim. This therefore raises the issue as to whether or not the CJS is the most appropriate way of handling SA.

#### **4.4.5.4 The mysterious nature of the CJS that makes it difficult to understand**

The study established that most respondents were not aware of the exact nature of the CJS process and what to expect after reporting SA. Many of them had never been to court before and did not understand the requirements that would enable them access justice. Coupled with the unfriendly court environment, the technical procedures, the bureaucracy, the technicality in the court language amongst other factors, many VSA, reported being anxious about the CJS and the process that they would be subjected to including the possible outcome of the report made to the police station.

Some victims wondered if the court would believe them. Others were afraid that since the perpetrators were in a more influential financial position than themselves, the perpetrators might influence the CJS. Some victims did not know exactly what the courts would do with their report. All these factors combined together show the general mystery of the CJS and the lack of understanding of its role in dispute resolution. Consequently, the study found that the anxiety experienced by VSA upon reporting the abuse to the

police, negatively affected the progression of the cases and contributed to the high attrition of the reports made to the police, hence the pyramidal response by the CJS to SA as illustrated in Figure 5 below.

#### **4.4.5.5 The Pyramidal Response of the CJS to Spousal Abuse in Nairobi County, Kenya**

As already discussed, the biggest challenge in responding to SA is the lack of a specific law that defines the abuse as a crime. Consequently, the police have to find out if any other offence was committed in the process of the abuse as per other existing laws. In most cases, the police therefore rely on the Penal Code and the Sexual Offences Act but which are inadequate since they do not specifically address SA in their definitions of crime neither do they deal with all forms of SA.

According to a senior police officer interviewed by the study:

*“As the police force, we find it very difficult to protect VSA. When they report to us, it is difficult to arrest and charge the perpetrator since there is no specific crime called spousal abuse in the Penal Code or any other law. For the police to act on reports of SA, there must be a specific crime defined by law as such, and whose ingredients must fit into the definition of the crime. In addition, the law must prescribe a punishment for the crime. The police can only institute investigation into reports of SA, and recommend prosecution if the report reveals that a specific crime has been committed.”* (Key Respondent no. 15).

The study established that the police often intervene in SA cases once life has been lost. Under such circumstances the perpetrator is arrested and charged with murder or manslaughter which are offences provided for by the Penal Code. However, at this point, it is too late to save life since the victim is already dead.

Most reports of SA are not acted upon by the police due to this legislative gap. However, where the abuse results into physically visible injuries to the victim, the police may prefer a charge of assault causing grievous bodily harm under the Penal Code which defines most crimes and provides penalties.

Many respondents, especially women reported suffering from economic abuse, but could not get any protection due to lack of a legislation that deals with this type of abuse. This is consistent with the argument of Postmus L. J et al., (2018) who posits that economic abuse within an intimate relationship has been viewed as an invisible form of abuse the effects of which are not easily perceived. As a result, economic abuse is considered a milder form of abuse as compared to physical abuse. Though economic abuse may be legally recognized as a form of SA, it is rarely criminalized. In Kenya, the Protection from Domestic Violence Act, 2015 recognizes economic abuse as a form of domestic violence. However, economic abuse is not criminalized under the laws of Kenya and therefore a case of economic abuse cannot be prosecuted under the CJS. According to one respondent:

*“Before I met my husband I was managing my own business and making good profit. After we married, he convinced me to have the business registered in his name. Since that time, I still work in the business, but he collects all the money at the end of the day. I cannot spend even a coin from the business. If I do so, he abuses me and beats me up. He only gives me Kenya shillings 200 per month. That is not even enough to buy my sanitary towels. I reported to the police but they told me that my problem is not covered by any law.”* (Respondent no. 24).

The Inspector General of Police had this to say about the challenges the police face in dealing with spousal abuse:

*“Victims come to the police stations with visible injuries. We book in the report and ask them to record a statement and bring witnesses who can support the allegation that it is the perpetrator who committed the offence. Immediately we arrest the perpetrator and prepare to take the matter to court, the victim comes back and says that they have resolved the matter and do not want it to proceed. At that point we cannot insist on prosecuting as there is no mandatory prosecution in Kenya. In addition, there is no drop policy. Instead of proceeding with the prosecution when the witnesses will not come and the case will be*

*thrown out in court, we allow them to withdraw the case. Unfortunately, in some cases after the withdrawal, we get reports the abuse continued and the victim was killed. At that point, we go and arrest the perpetrator and charge him/her with murder. Unfortunately, at this time, we have already lost the victim's life. This is how difficult it is for us as the police to handle SA cases. Unfortunately, many such reports are made but then subsequently withdrawn by the complainant. (Key Respondent no. 13).*

Where there is a mandatory prosecution requirement like in Australia and the United Kingdom, VSA are protected from intimidation to drop the charges and the prosecutor cannot be compromised to interfere with the prosecution process.

The absence of a specific offence, mandatory prosecution and no drop policy in Kenya is partly responsible for the high attrition of prosecution cases in the CJS, hence the pyramidal response by the CJS to SA.

The study found that people still view SA as a domestic affair from which they desist from intervening. According to one of the respondents interviewed:

*“I have been subjected to spousal abuse for a very long time. I lived with my husband and every time he abused me I would scream and so everybody in the flats knew but none of them ever intervened or reported. Many people are of the view that spousal abuse is a domestic matter and they avoid interference. It was not until he almost killed me that I ran away.”*  
(Respondent no. 117).

**Table 6: Status of Spousal Abuse cases in the CJS as at the time of the study**

	<b>Frequency</b>	<b>Percent</b>
Continuing	9	6.7
Never Reported	11	8.2
Dismissed by Police	12	9.0
Valid Withdrew	50	37.3
Referred	36	26.9
Concluded	16	11.9
Total	134	100.0

**Table 7: Gender Ability to Report Cross Tabulation**

		Ability to Report			Total
		Never Indicated	Yes	No	
Gender	Male		7	0	7
	Female		127	0	127
Total			134	0	134

**Table 8: Gender Ability to Report to Police Cross Tabulation**

		Ability to Report to Police			Total
		Never Indicated	Yes	No	
Gender	Male	3	2	2	7
	Female	17	90	20	127
Total		20	92	22	134

90(67.16%) of the Female respondents were able to report Spousal abuse cases to the authorities with 2 (2.49%) of the Male respondents being able to report to Authorities. There are those who never reported to the Police. 20 (14.93%) of the female respondents were unable to report abuse cases. 17 female respondents never revealed whether they were able to report or not. It was also established that 3 (2.24%) male respondents never indicated whether they managed to report to police or not.

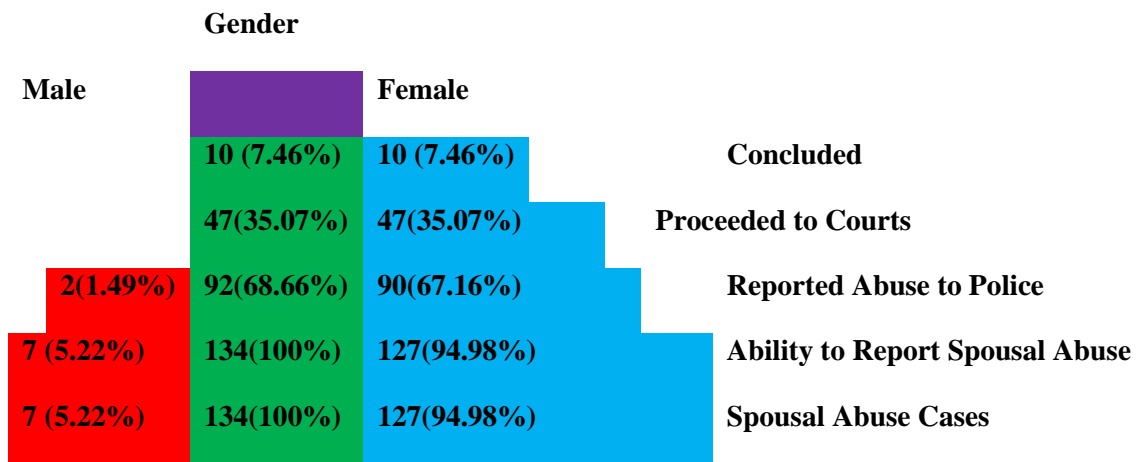
**Table 9: Gender Cross Tabulation on Whether the Case Proceeded to Court**

		Did the Case Proceed to Court?			Total
		Never Indicated.	Yes	No	
Gender	Male	7	0	0	7
	Female	80	47	0	127
Total		87	47	0	134

**Table 10: Status of the Case Cross Tabulation**

	Status of the Case							Total
	Continuing	Never Reported	Dismissed by Police	Settled by Police	Referred and Withdrew	Reported ADRs	Concluded	
Gender Male	2	0	0	0	3	1	0	7
Gender Female	7	11	11	6	47	35	10	127
Total	9	11	11	6	50	36	10	134

**Figure 5: The Pyramidal Response of the CJS to Spousal Abuse**



The progression of SA cases reported to the CJS results into a pyramidal response as illustrated figure 5 above.

The study interviewed 134 respondents, 127 female and 7 male. All the respondents were interviewed because they had the ability to report the abuse. Out of 134 respondents, only 92 respondents reported the abuse to the police comprising of 90 female and 2 male respondents. Out of the 92 cases reported, only 47 proceeded to the courts being only cases that were reported by the female respondents. Out of the 47 cases that proceeded to the courts, only 10 were concluded and finally determined by the courts.

This shows a high rate of attrition of SA cases reported to the CJS. From the police station to the final court decision, many cases fall off the CJS. They are either withdrawn by the victim or due to other factors such as intimidation of witnesses, corruption and lack of evidence. The implication is that such cases are prematurely terminated. The cases that go through the CJS beyond prosecution fail to meet the evidentiary threshold requirement

of the CJS which is beyond reasonable doubt. Consequently, even fewer of such cases reach the final court determination. The study findings show that out of the cases reported to the CJS, only 11% proceeded to the final stage while the larger percentage (89%) did not. The question therefore is, where did these cases go to? The study established that the cases that did not go through the justice system to conclusion but dropped off.

**Table 11: Total Number of Cases Handled by ADRM**

CASES	Frequency	Percent
Continuing	9	6.7
Never Reported	11	8.2
Dismissed by Police	12	9.0
Alternative Dispute Resolution Mechanisms	92	68.7
Concluded	10	7.5
Total	134	100.0

The table above shows SA cases, categorized as continuing cases, cases that were never reported, dismissed cases, and concluded cases and those that were handled by Alternative Dispute Resolution Mechanisms (Reported directly to ADR Mechanisms, Referred and Withdrew and Referred to ADR Mechanisms).

It was observed that 6.7% cases of Spousal Abuse were continuing, 8.2% of the VSA who participated in the study never reported to any authority. 9.0% of the spousal abuse cases were dismissed, 7.5% were concluded while 68.7% were handled by Alternative Dispute Resolution Mechanisms.

Frequency Table 11 shows that many of the reported cases of SA fail to proceed in the CJS due to factors such as witness intimidation, reference to ADRMs, fear of loss of financial support from the perpetrator, corruption, procedural technicalities, technicality in the court language amongst many other factors. The few cases that go beyond the prosecution stage face more challenges towards the court decision. Out of the prosecuted cases, only a few end up being concluded by the courts.

The pyramidal response of the CJS in Nairobi City County, Kenya, as revealed by this study is consistent with the findings of other studies in Africa and other parts of the world (Choi, 2015; Forum on Global Violence Prevention, 2015). All these studies show that VSA access to the CJS is still low in Africa and many of the cases reported to the system fail to reach the determination stage by the courts.

According to the National Case Audit Report 2013, it is not easy to identify cases of SA as they are classified under assault which were over 4764 and sexual offences which were 3039 (Judiciary, 2014). According to Court Case Delays-Impact Evaluation Diagnostic Report, it takes an average of 498 days from the date a criminal case is filed to conclusion (Judiciary, 2014). In addition to the delays in concluding cases, the study found that majority of SA cases reported to the CJS do not progress to the conclusion, but drop off without being finalised. Some are withdrawn by the victims while others are resolved through the ADRMs as many fail the test of the CJS search for the truth and are dismissed by the court at various stages. According to the Senior Police Office in charge of the Gender desk at the National Police Service Headquarters:

*“Many cases are reported to the police by the victims immediately spousal abuse occurs. However, many of such cases do not proceed beyond the reporting because of interference from family members, perpetrators or the intervention of ADRMs. The fewer cases that proceed to prosecution fail because of witnesses’ refusal to testify. In addition, many victims withdraw the cases citing fear of intimidation by perpetrators’ families, loss of financial support by the perpetrators amongst many other reasons. Very few cases that are prosecuted proceed to conclusion. The most challenging reason in prosecuting spousal abuse cases is the lack of a specific law that criminalizes spousal abuse. We can only prosecute reported cases of spousal abuse as assault. It is therefore difficult to know from our list of cases which assault cases are indeed spousal abuse since there is no crime called spousal abuse under the current laws. As a society, the general perception is that spousal abuse is a domestic matter and generally therefore*

*requires settlement out of the CJS. Many people who witness incidents of SA are unwilling to testify because of this perception as they do not want to be seen to interfere in domestic affairs of other people. In the absence of evidence to show that the abuse occurred, we are unable to proceed with the vast majority of SA cases reported to the police.” (Respondent no. 15)*

The concerns of the senior police officer above are supported by the explanation of a magistrate interviewed in Nairobi who also argued that:

*“Very few cases involving SA are filed in court as criminal matters. Many disputes involving spouses are resolved through ADRMs or filed in the civil court as applications for custody of children, maintenance and financial assistance by the victim against the perpetrator. The few cases that are filed as criminal matters are those that involve very serious injuries to the victim. Many of them do not proceed beyond the hearing stage. Witnesses hardly appear to testify in such cases and the victims are also likely to apply to withdraw the case on the basis that they prefer to settle the matter out of court. This is the trend in criminal cases involving spousal abuse which are filed as general assaults. The lack of a specific law that creates a specific crime called spousal abuse makes the problem more complex since the cases appear as assault cases. (Respondent No 23).*

Since the study established a pyramidal response to SA cases, the next section discusses the socio-cultural and economic facilitators and barriers to accessing justice by VSA in Nairobi County, Kenya.

## **4.5 Socio-cultural and economic facilitators to accessing justice by VSA in Nairobi City County, Kenya**

This section addresses the concern of objective 3 of the study that was to understand the social, cultural and economic facilitators to accessing justice by VSA in Nairobi City County, Kenya. The discussion is presented in three parts namely social, cultural and economic facilitators.

### **4.5.1 Social Facilitators of Access to Justice by VSA in Nairobi City County, Kenya**

The social facilitators discussed under this section include: gender, psychosocial support, age, victims' knowledge of the CJS system.

#### **4.5.1.1 Gender**

Table 3 illustrates that 95 % of the respondents were of the female gender while only 5% were males. Gender therefore is factor that influences reporting. Whereas female are more likely to report the abuse, males do not easily report the abuse. This finding is consistent with Buzawa & Buzawa (2003) who argue that reporting of SA is mostly by females than males.

The study found that more females reported SA due to factors such as: the presence of many NGOs. Nairobi City County has over seventy NGOs and faith based institutions that focus on awareness against SA and women's rights protection. Such organisations include FIDA, GVRC, WRAP, COVAW amongst others. The availability of these NGOs encourage reporting of SA by female victims, since they provide psycho-social services, legal advice and limited representation in court amongst other services. Female VSA are therefore encouraged to report to these organisations which are ready and willing to address some of their concerns. The main concern of female VSA in reporting include: stopping of the abuse, provision for their children and themselves which includes housing, clothing, school fees, health and accommodation. This reflects the patriarchal society in which the males control the means of production while the females provide the labour. Many of the female VSA stated that their main aim of reporting the abuse was to ensure that the abuse stops and they are able to get the financial and proprietary services from the abusers, which they would not otherwise have if they did not report or walked out of the

union. Indeed, this explains why most of the respondents reported to ADRMs rather than the CJS. According to one respondent:

*“I came here to report at FIDA because I want my husband to provide for our children. I cannot report to the CJS because that is unheard of. A woman is not allowed by our culture to report their husband to the CJS because SA is a matter that is private and domestic. Even if I report, I will be the one to be blamed yet I love my husband so much and I do not want him to go through the roughness of the CJS. That is why I came here to FIDA only to make sure that he provides school fees for the children.”*  
(Respondent no. 106).

However, the fact that only 5 % of the respondents were male implies that being male discourages reporting of SA. This is consistent with the Masculinities in Crisis Theory and the Feminist Theory which argue that in a patriarchal society, men are the dominant while women are the subordinate spouses. When a man becomes a victim of SA, the social stigma and socialisation together with one’s status are likely to impact negatively on a male victim’s reporting of the abuse.

According to one male respondent interviewed by the study:

*“How can I report to the police? They would laugh at me because a man is supposed to be in control of his house. Reporting to the police is a show of weakness.”* (Respondent no. 126)

Respondent no. 126 concerns were confirmed by another Respondent who stated that:

*“I have opted to suffer silently because talking about my wife’s abuse will only attract ridicule and stigma as well as blame on me as a failure. When I reported to the police, I found both male and female officers. The male officers laughed at me and told me to take charge of my house. They did not even book the report in the occurrence book. The women officers mockingly asked me, if men are also beaten.”* (Respondent no. 133)

The study also found that there are no centers or organisations where male VSA can report the abuse apart from Maendeleo ya Wanaume whose existence and offices were very difficult to locate. The fact that Maendeleo ya Wanaume offices cannot easily be located like women organisations such as FIDA explains the society’s perception of male SA which therefore hinders male VSA from reporting to the justice system. Gender therefore is a facilitator to female VSA reporting the abuse but not to male VSA.

#### **4.5.1.2 The Influence of Psychosocial Support on Access to Justice by Victims of Spousal Abuse**

The study found that where psychosocial support existed, from friends, relatives, colleagues, NGOs and other sources, the victims were able to access justice and felt strongly about reporting the abuse. Indeed, this is one of the reasons as to why FIDA and GVRC receive reports of SA due to their ability to give psychosocial support to the victims unlike the CJS which lacks mechanisms to offer such services. According to one victim:

*“Before I came to FIDA, my esteem was very low, I could not talk about the abuse to anybody. I lost interest in doing anything and I started to neglect myself. Since I came to FIDA. I have received encouragement, counselling, support and I also find other women who are victims of abuse. We are able to tell our stories and encourage each other. I am*

*now stronger and have been able to pick up my pieces and move on with life. FIDA is handling my case, my husband has been taken to court and I no longer fear that he can attack me any time because he knows that I am not alone.”* (Respondent no. 84)

#### **4.5.1.3 Effect of Age on Spousal Abuse Victims’ Access to Justice**

As shown in Table 3 on the age of the respondents, majority of the respondents were between the ages of 18 and 44 years accounting for 71% of all the respondents.

The implication is that VSA within this age bracket (young and youthful) are more likely to report the abuse for intervention than those outside this age bracket. This is explained by the possible influence of counter culture (i.e. many of them are not socialized to believe that spousal abuse is a domestic matter in which non-interference is encouraged). According to one respondent:

*“SA is a crime, a violation of human rights and an individual’s dignity which should not be condoned or encouraged and must be reported for intervention.”* (Respondent no. 94).

29 % of the respondents were 44 years old and above. Respondents aged 44 years and above reported that SA is a private domain and therefore many of them are discouraged from reporting which would publicize the abuse. These sentiments are consistent with that of the officer at the Gender Desk Headquarters who said that most of the reported ages involve the youthful population between the ages of 25-44 years. This is confirmed by the finding as shown in Table 3 on the age of the respondents.

Age therefore served as a barrier in accessing justice but in some cases as in the case of the youthful population, it appears to encourage reporting and therefore becomes a facilitator.

#### **4.5.1.4 Spousal Abuse Victims’ Knowledge of the CJS’ System’s Ability to protect them from Spousal Abuse and its Influence on Access to Justice**

The study found that 52.7% of the respondents knew that SA was a violation of their rights while 47.3 % of the respondents did not know that SA was a violation of their rights. Knowledge of the CJS’ ability to protect VSA alone did not serve as a facilitative factor

but needed other variables such as psychosocial support for the victims to access justice. Many of the victims opted to report to FIDA and ADRMs. They only resorted to the formal justice system in very serious life threatening or continued abuse.

According to one respondent:

*“Before I went to FIDA, I had tried all other avenues but none of them worked. My husband was powerful, very rich, had all the money to corrupt the chief and some police officers before the matter went to court. He was too arrogant to listen to our friends, relatives and even the church where we wedded. I had no choice because the abuse became very serious and so with the help of FIDA, I accepted to report to the police and press for prosecution. It was not an easy process. He tried by all means to intimidate the witnesses and me. This could not work. He feared the court summons and finally he was convicted and I am now safe. I thank the court for its ability to protect victims. However, his relatives no longer talk to me but blame me for sending their son to jail. Our children keep on asking why their father is in jail. I do not know how to handle all these. My freedom and safety has come with a big loss of financial support from my husband. I now have to take care of the children all by myself. I wish there is a way in which the court could stop the abuse without jailing him.” (Respondent no. 16)*

The views expressed by the Respondent above are consistent with Baldry et al., (2017), that VSA only report when the abuse becomes life threatening.

Although all the VSA interviewed said that they knew that the CJS could protect them and this is the basis upon which 35% of the respondents reported to the police, 65% did not report the abuse to the police because of various factors despite their knowledge of the CJS ability to protect them from the abuse. Such factors included; their financial dependence on the perpetrators, social stigma, socialisation, amongst other factors as discussed in various sections.

## **4.5.2 Cultural Facilitators of Access to Justice by VSA in Nairobi City County, Kenya**

Two cultural values facilitate VSA in reporting to the police: the first is the value of the institution of marriage while the second is the presence of children in a marital relationship.

### **4.5.2.1 The value of the Institution of Marriage**

Culturally, the marriage institution is valued as the basic social unit of society. It is a social system that provides its members with the opportunity for procreation, protection and a sense of belonging as well as psychological and emotional support (Jain, 2017). It is the social system that brings prestige and status to a man recognized as a husband and father while the woman is recognized as a wife and a mother.

According to one of the respondents,

*“Occasional differences and fights are part of marriage life, I have been beaten several times but I never reported because it happens to many of my friends. However, the first time I reported to the police, my life was in danger since I sustained serious physical injuries and I was traumatized. The case never proceeded as we resolved it amongst ourselves.”*  
(Respondent no. 35)

The above view is supported by the views of a police officer of the rank of Deputy Inspector General who said:

*“Even after we receive the reports, book them in the occurrence book, investigate and recommend prosecution, the victims fail to come back to the station and to give evidence in court. Majority of them say that they had resolved the matter and do not wish to proceed. This makes our work very difficult. In most cases the next time we receive a report about the same victim, the injuries received are severe or the victim has lost her life. By then, it is too late. At this point, however, a crime of causing serious bodily injuries can be preferred against the perpetrator if the victim is still alive. However, even at this stage, some victims still come back and say they do not want to*

*proceed with the case. The cases that seem to proceed are the fatal ones where the victim dies. In such circumstances, family members are willing to come and give evidence and the doctor's report helps to prove that the victim died as a result of injuries occasioned by the abuser. The murder cases are therefore easier to prosecute in cases of SA than when the victim is still alive."* (Key Respondent no. 14)

The above findings confirm that SA is largely viewed by the society as a domestic issue and not a criminal offence that deserves serious attention by the society. These findings are consistent with arguments advanced by (Benson and Fox, 2002; Davies, *et al.*, 2015).

From the views of the respondents above, since SA threatens the existence of the marriage institution, VSA seek the intervention of the CJS to save the marriage. This explains why many of the VSA interviewed said that they reported to the CJS so that the abuse can stop, but they did not want the perpetrator to be prosecuted and jailed since it could be counterproductive to their interest in the marriage. This argument is consistent with the social conflict theory of the family as discussed in chapter two.

#### **4.5.2.2 The presence of Children in the Marriage**

The second cultural value found by the study is in regard to children. 93% of the respondents interviewed by the study had children as shown in table 3. Children are so important in the African families for the continuation of the family lineage and are also seen as giving recognition to the parents for their ability to procreate (Bauldry *et al.*, 2017). They are also seen as sources of wealth, workers who provide for labour for the family. In addition, they are a source of social security to the parents in old age. SA threatens the existence of children. VSA are driven to seek intervention from the CJS to protect children. This is consistent with the argument of most VSA that they reported to the CJS to ensure that their children are protected.

### **4.5.3 Economic Facilitators of Access to Justice by VSA in Nairobi City County, Kenya**

The only economic facilitator established by the study was the availability of legal services by FIDA which enabled the court to enforce orders granted. This is illustrated in a case which was followed by the study from the beginning to the conclusion of the court case that lasted two years from 2013 to the end of 2015.

The strength of the CJS' ability to enforce its own orders is explained further by a magistrate interviewed by the study who stated that:

*“Once the perpetrator is found guilty and sentenced to imprisonment, the enforcement of the court decision takes place immediately. The convicted person is taken to prison to start serving the sentence passed. Indeed, the prisons is a government department established specifically to hold persons convicted within the confines of prison, away from the society as a punishment. A court does not act in vain.”* (Key Respondent no. 26).

All court orders are supposed to be enforced. Any breach of court orders is punishable by law. People therefore generally obey court orders to avoid further punishment.

## Case Study 2

*I had been subjected to SA for over six years. I resorted to different forms of ADRM such as friends, relatives, family members, the church and even a psychiatrist, but all these could not resolve the dispute with finality. The perpetrator was a businessman, well known and well-connected in the society. He was able to perpetuate the abuse in disregard of all the attempts by ADRM. However, I finally decided to report the matter to FIDA who took the case up and filed a court case for separation, maintenance of the children and finally divorce. In the meantime, FIDA reported the matter to the police who prosecuted the criminal aspect of the case. Because of the strong family support and FIDA's socio-legal and psychological assistance, witnesses were able to testify in court and the perpetrator was found guilty of assaulting me and sentenced to six months imprisonment. Immediately the court sentence was passed, the accused person who was on bond during trial was taken to the prison and the court issued orders stopping him from ever assaulting me or my children. In addition, he was made to pay the costs of the hospital expenses that I had incurred. It was easy for the court to enforce its order because of the backing by the law. The abuse subsequently stopped and the court granted me divorce while ensuring that matrimonial property was divided in a manner that enabled both myself and the children to sustain ourselves. All these orders were only possible because of FIDA's ability to offer legal advice and representation in court. The legal services are however expensive and many VSA cannot afford the services by lawyers. A strong legal representation and the justice system's ability, capacity and resources to enforce court decisions are important in protecting VSA.*

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

### **4.6 Barriers that Hinder Access to Justice by VSA in Nairobi City County, Kenya**

The study found that the following social, cultural and economic barriers hinder access to justice by VSA in Nairobi City County, Kenya.

#### **4.6.1 Social barriers to accessing justice by VSA in Nairobi City County Kenya**

The study found that the following are the social barriers that hinder access to justice by VSA in Nairobi City County Kenya; socialization, social stigma, attitude of CJS agencies' officers towards SA, fear of retaliation by the abuser, level of education and social status as explained below.

##### **4.6.1.1 Socialization**

The agents of socialization are the family, school, peers and the mass media (Eriksson, L. & Mazerolle, P. 2015). The study found that all the respondents came from families where they experienced domestic violence as children. They saw their mothers beaten by their fathers. They were socialized to believe that SA is a response to domestic conflict. Their socialization therefore inhibited their ability to report to the police in some cases.

The study found that since most victims come from communities where they were socialized to accept SA as a domestic private affair, they found it difficult to report the abuse to the CJS or indeed to narrate in court intimate details of the abuse, which attract public shame, blame and condemnation. Socialization therefore plays an important role in determining victims' access to justice. According to one respondent:

*“I cannot report my husband to the CJS. He will be arrested and the family will blame. My parents and friends tell me that this is normal after some time it will stop. Nobody will support me if I report the case to the CJS.”* (Respondent no. 5)

She believed that she attracted the abuse by failing to do things correctly the way her husband wants. She was therefore not in a position to report to the CJS. However, she only reported to the NGOs because she wanted maintenance for herself and her children. Yet another respondent was inhibited from reporting the abuse due to her socialization. In her own words:

*“My people don't want me to go to court. They said I should leave things as they are but I feel that I should seek redress.”*  
(Respondent no. 31)

Some respondents' attitude towards spousal abuse is that it is part of marital life but when the abuse threatens life they would report to the police. They reported that occasional beatings from their husbands are acceptable and tolerated because such beatings are a manifestation of love. Such kind of attitude hinders the reporting to the CJS. Such respondents only report to the police in life threatening situations. According to one of the respondents:

*“Occasional differences and fights are part of marriage life, I have been beaten several times but I never reported because it happens to many of my friends. However, the first time I reported to the police, my life was in danger since I sustained serious physical injuries and I was traumatized. The case never proceeded as we resolved it amongst ourselves.”*  
(Respondent no. 35)

The above view is supported by the views of a police officer of the rank of Deputy Inspector General who said:

*“Even after we receive the reports, book them in the occurrence book, investigate and recommend prosecution, the victims fail to come back to the station and to give evidence in court. Majority of them say that they had resolved the matter and do not wish to proceed. This makes our work very difficult. In most cases the next time we receive a report about the same victim, the injuries received are severe or the victim has lost her life. By then, it is too late. At this point, however, a crime of causing serious bodily injuries can be preferred against the perpetrator if the victim is still alive. However, even at this stage, some victims still come back and say they do not want to proceed with the case. The cases that seem to proceed are the fatal ones where the victim dies. In such circumstances, family members are willing to come and give evidence and the doctor's report helps to prove that the victim died as a result of injuries occasioned by the abuser. The murder cases are therefore easier to prosecute in cases of SA than when the victim is still alive.”* (Key Respondent no. 14)

The above findings confirm that SA is largely viewed by the society as a domestic issue and not a criminal offence that deserves serious attention by the society. These findings are consistent with arguments advanced by (Benson & Fox, 2002; Davies, et al., 2015) that socialisation plays a major role in determining whether SA is reported or not.

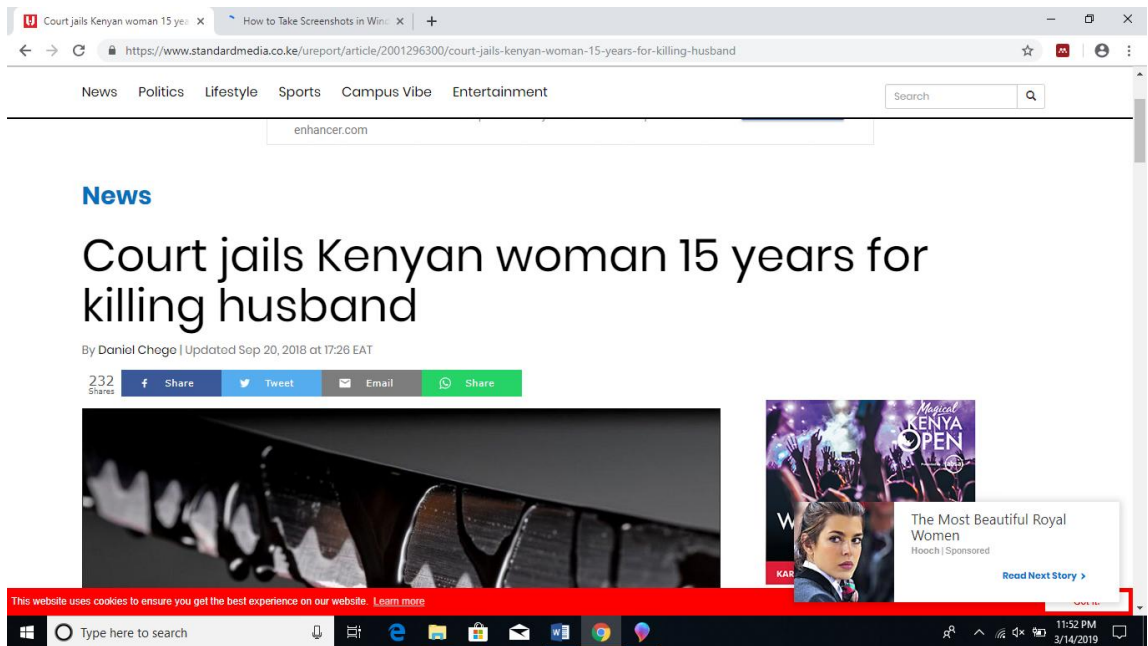
However, some respondents who grew up witnessing SA in their families managed to report the abuse. This is an indication of a break from the socialization process of constantly witnessing spousal abuse in the ordinary family life. They, however, reported to FIDA and GVRC for other purposes such as provision of necessities and medical attention. They were aware that SA is a violation of their right to dignity, is a crime against them and they need the protection from the CJS. They were, therefore, able to report to the police. This is despite some of them being socialized in families where domestic violence was a response to SA. The peers played a very important role in determining whether one would report the abuse to the CJS or not. Whereas some VSA were told by their peers not to report, that the abuse will stop gradually, some were convinced by their peers to seek redress from the justice system. According to one respondent:

*“I grew up in a family where SA happened every day, but this is not the case anymore. Today women are empowered and so when an abuse occurs to me, I would report to the police but only if the situation warrants it.”* (Respondent no. 73)

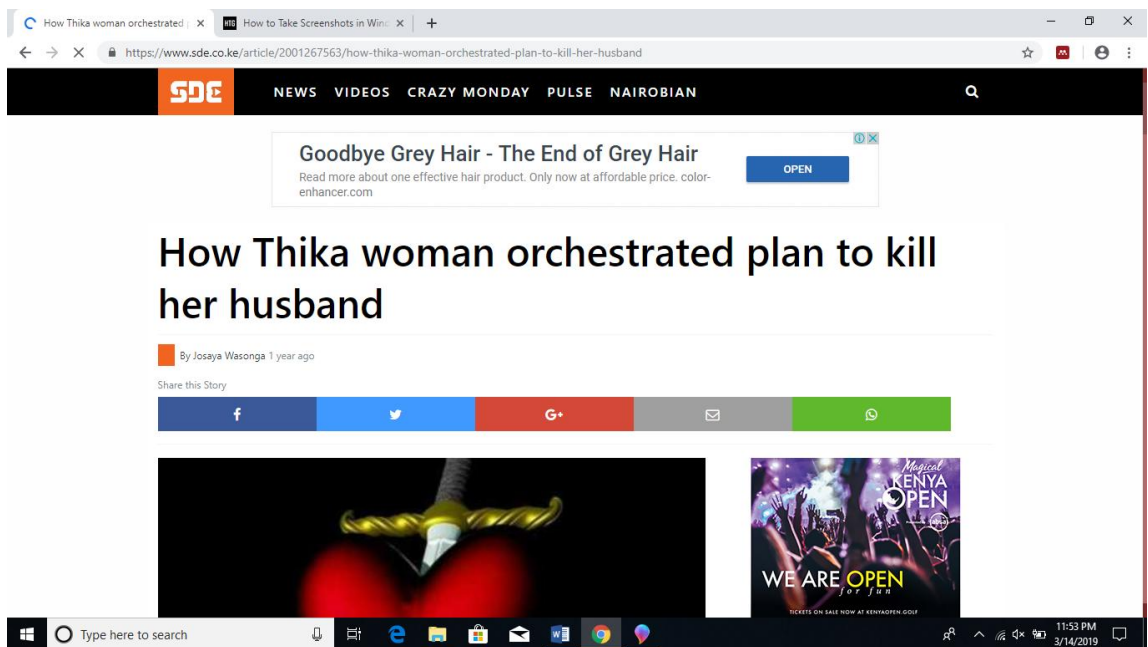
The above respondent, although socialized to believe that spousal abuse was a normal occurrence in a marriage had developed a different perception and attitude over time. The change enabled her to report the abuse for intervention.

The media has played a very important role in the socialization process. Many cases of SA are reported in both print and electronic media raising the awareness that SA is not acceptable and victims should report to the police. Many victims have thus been able to report and seek redress due to media input as a socializing agent. The media has played a very important role in especially exposing male spousal abuse perpetrated by females as illustrated below.

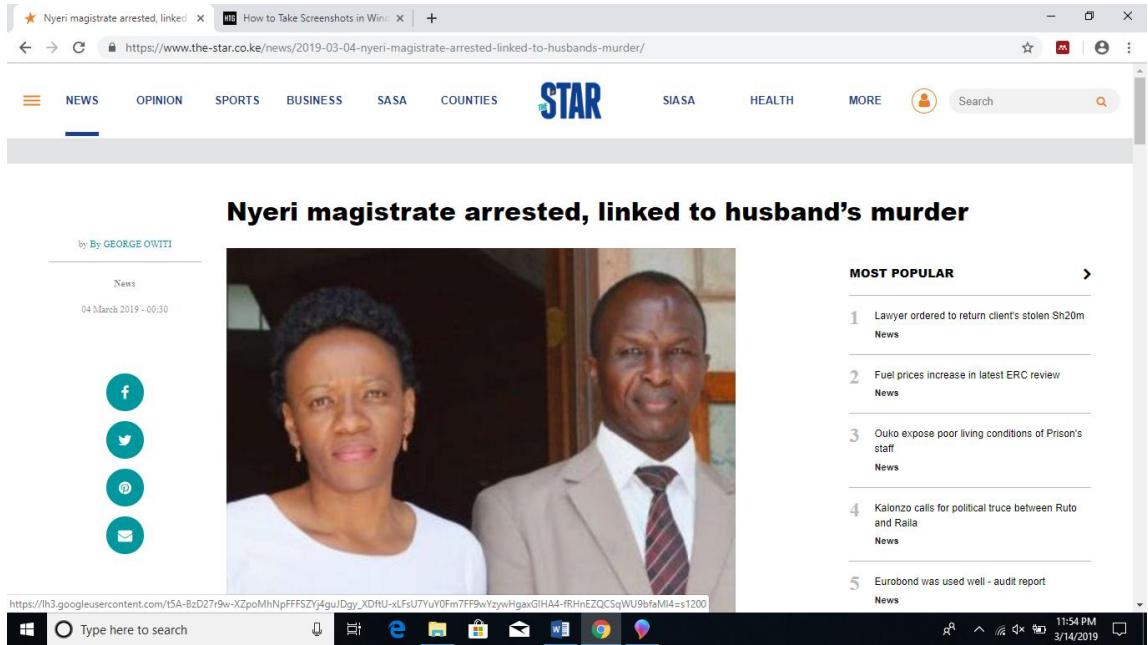
**Figure 6: Some Select Media Reports of Male Spousal Abuse Perpetrated by Females**



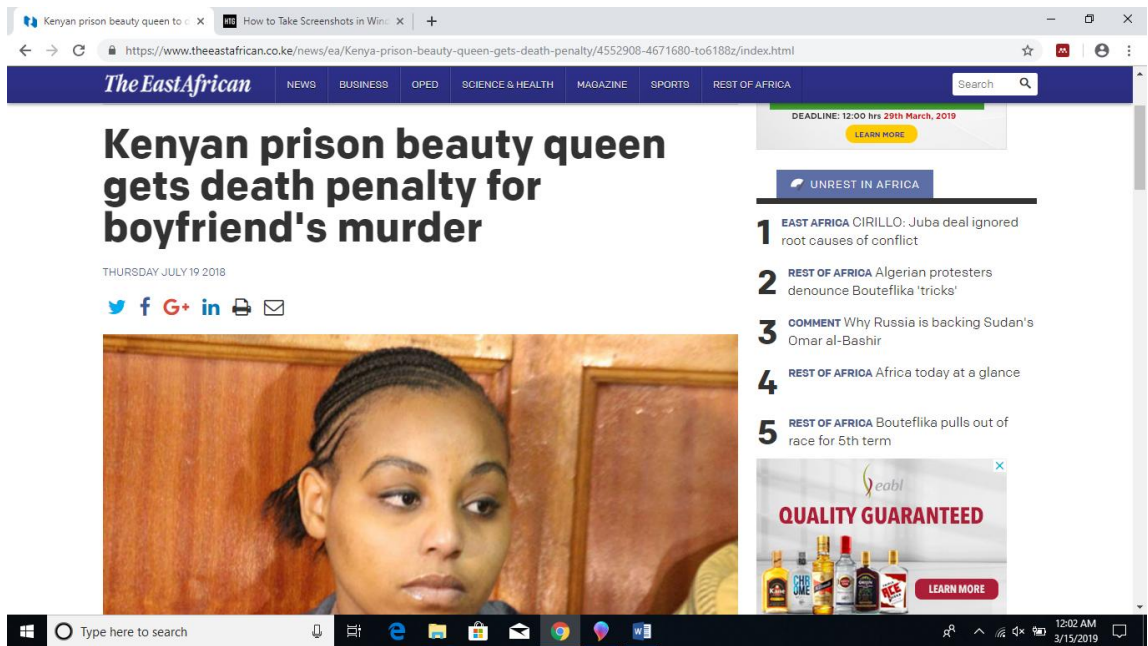
Source: <https://www.standardmedia.co.ke/ureport/article/2001296300/court-jails-kenyan-woman-15-years-for-killing-husband>



Source: <https://www.sde.co.ke/article/2001267563/how-thika-woman-orchestrated-plan-to-kill-her-husband>



Source: <https://www.the-star.co.ke/news/2019-03-04-nyeri-magistrate-arrested-linked-to-husbands-murder/>



Source: <https://www.theeastafrican.co.ke/news/ea/Kenya-prison-beauty-queen-gets-death-penalty/4552908-4671680-to6188z/index.html>

The study found that male VSA found it difficult to report the abuse due to social stigma, shame of victim blame as a result of cultural perception of SA being an expression of male dominance over the female spouse. This is consistent with masculinities in crisis theory.

Other aspects of socialisation which the study found to influence access to justice by VSA are: gender roles and stereotypes, victims' perceptions of SA, societal role expectation in a marriage, consideration of children in a marriage and social control as discussed below.

#### **4.6.1.1.1 Gender roles and stereotypes**

Gender is an important factor in the analysis of SA. According to a police officer in charge of the Gender Desk at the Police headquarters in Nairobi:

*“Although men are also VSA, many of them are unable to report to the police due to several factors”* (Key respondent no. 15)

The above response of the police officer explains the distribution of respondents by gender as illustrated in table 3 indicating that 95% of respondents were female while only 5% were male.

The study found that the gender of a police officer at the reporting desk or an investigation officer or a prosecuting officer or the magistrate in some cases influences victims' reporting of the case. Male VSA hesitate from reporting their cases to female police officers for fear of being ridiculed or laughed at. According to one male victim of spousal abuse interviewed by the study:

*“I would rather kill myself than tell people that my wife has abused me. I have opted to suffer silently because talking about it will only attract ridicule and stigma as well as blame on me as a failure. When I reported to the police, I found both male and female officers. The male officers laughed at me and told me to take charge of my house. They did not even book the report in the occurrence book. The women officers mockingly asked me, if men are also beaten.”* (Respondent no. 126)

The male VSA reported the difficulty in reporting to a male police officer that they had been abused by their wives. This is due to the socialisation of a man being the dominant spouse and the social stigma attached to being a VSA.

The study established that victims who approached the police to report their abuse would be discouraged by the attitude and remarks of male officers who did not consider the matter as serious. For most male officers, SA is considered a matter that needed other forms of resolution other than the CJS. According to one respondent:

*“I went to the police station to report the abuse. The officers laughed and told me that I should go back home.”* (Respondent no. 123)

The study noted that whereas there are several rescue centers and NGOs which focus on violence against women and therefore encourages reporting by female victims, there are very few such institutions that focus on men. This adds to the difficulty of male VSA ability to report SA.

Some female victims reported contrasting outcomes in their experience at the police station. Those who reported to female police officers described their (police officers’) attitude towards their suffering as one of understanding and compassion. Those who reported to male police officers described them (male police officers) as dismissive. According to one female respondent interviewed at FIDA:

*“I was beaten by my husband, my clothes were torn and my face was bleeding when I went to report to the police station. But upon making the report, the police officers laughed at me and told me to give them Kshs 2000 to fuel the car if I wanted them to go and arrest my husband. I did not have such kind of money and so I went back to my house, packed my things and went back to my mother’s house. However, my brothers also chased me away because I had two children and none of them were willing to accommodate me. I decided never to report to the police station again. Instead, I came here to FIDA to see if they can make my husband pay for the children’s school fees.”* (Respondent no. 108)

The study found that some stations in Nairobi City County had gender desks for reporting SA cases. One such station was Shauri Moyo Police Station. The officers at the

Gender Desk were women. This encouraged female victims of SA to report to Shauri Moyo police station, but discouraged male victims since it is at this desk that SA cases are reported. Male VSA who reported to male police officers said that they were laughed at and ridiculed by male police officers for not being in control of their houses. Such male VSA found it even more difficult to report the abuse to female police officers due to the patriarchal societal perception that males are the dominant spouses and must be in control of their households. This is consistent with the masculinities in crisis theory which explains the difficulties that male VSA experience in talking about SA. According to one respondent interviewed by the study:

*“How would you go to the police station to report to another man that your wife has assaulted you? Obviously, the mere mention of this will lead to ridicule because men do not consider women as potential perpetrators of SA. For a woman officer, it is even worse because your ego cannot allow you unless you are beaten by your wife when you are drunk and as at the time when you are reporting you are still drunk.”* (Respondent no. 125)

Many female VSA were dependent on their male spouses for financial support. Pursuing the SA case through the CJS therefore predisposes them to loss of financial support from their husbands. The study found the possibility of loss of financial support to be a barrier to some female VSA in reporting the case to the police or if already reported in pursuing it to its conclusion. However, there are some respondents who despite being dependant on their spouses for financial support, reported the abuse to the police and moved away from the abusive marriage. This is a small percentage accounting for 54 % who were divorced and separated as a result of the abuse as at the time of conducting this research as illustrated in table 5. 36% of the respondents remained in the abusive marriage due to their dependence on the perpetrators.

#### **4.6.1.1.2 Victims’ Perceptions of Spousal Abuse**

The study found that victims’ perception of SA in some cases influenced their ability to report to the CJS. Whereas some perceived SA as a normal occurrence in a marriage that should be tolerated, others viewed it as a show of love to the victim or that it is a man’s way of controlling his house or that it is a domestic affair not to be interfered with. To the contrary, some victims perceived SA as a violation of the victim’s human rights,

dignity and that it should not be tolerated. Such victims were therefore able to report to the CJS. According to one respondent:

*“I reported the physical form of spousal abuse because it is a violation of my right as a human being. The act is inhuman and degrading. It has taken away my self-esteem and made people disregard me.” (Respondent no. 116)*

According to another respondent interviewed at FIDA,

*“I came here to report at FIDA because I want my husband to provide for our children. I cannot report to the CJS because that is unheard of. A woman is not allowed by our culture to report their husband to the CJS because SA is a matter that is private and domestic. Even if I report, I will be the one to be blamed yet I love my husband so much and I do not want him to go through the roughness of the CJS. That is why I came here to FIDA only to make sure that he provides school fees for the children.”*  
(Respondent no. 106)

From the above discussions, it is clear that a victim’s socialisation and knowledge about SA determines their perception about SA.

#### **4.6.1.1.3 Societal Role Expectations**

The study found societal role expectations of females and males in the society to be a barrier to victims’ access to justice. The expectation that a woman should be submissive to the husband and that the husband should be the dominant spouse over the wife, leads to the expectation that a man shows his domination and control of his household through violence, amongst other means. This was found to hinder reporting of SA and prosecution in CJS in situations where the perpetrator believed he was carrying out a societal role expectation.

In addition, where family members and neighbours perceived SA as a domestic matter in which a man exercises his dominant role and controls his house, it was difficult for those who witnessed the abuse to testify lest they are accused of interfering in private domestic matters. This is illustrated by the song *Kuteleza sio kuanguka* as discussed under the social and cultural perception of SA.

Likewise, where police officers perceived SA as a domestic matter, their perception served as a barrier to their ability to look at the abuse as a rights violation and process it within the CJS. In addition, female VSA who perceived the abuse as a normal occurrence in a marriage were hindered from reporting and pursuing the prosecution to protect themselves since they viewed themselves as being required to submit to the perpetrator spouses. Submission here includes being humble, forgiving, persevering, not talking about the secrets of a marriage such as the abuse itself. According to one respondent interviewed by the study:

*“I have no problem with him beating me once in a while, even if he wants to marry another woman that is okay. Polygamy is acceptable in our community. I grew up in a family where SA was common. I just want him to allow me to stay, but now he has chased me away.”* (Respondent no. 122)

The societal role expectations were found both within the society’s culture and from religious books such as the bible.

#### **4.6.1.1.4 Children**

All the respondents said that the main aim of reporting spousal abuse to the criminal justice system is to seek resolution of the dispute rather than separation and a consequent breakdown of the family. This study finding is consistent with the arguments of scholars that spousal abuse victims who have children with the perpetrator find it difficult to report the perpetrator (Eriksson and Mazerolle, 2015).

One victim from the focus group had this to say:

*“My husband left Ksh 100 for food that was not adequate to my eldest daughter who lamented that it was not enough but in response he beat her up. I couldn’t take it anymore and I hit him on the back of his head with a metal rod. He fell unconscious with my second blow and was presumed dead. The neighbours on arrival at the height of commotion and knowing my husband suggested that to cover up my supposed murder of my husband, I should report to the police that I did this out of rage when I found him sexually abusing my daughter. I couldn’t agree with this because of my faith, which does not allow one to lie, it’s a sin. Luckily, he regained consciousness after some time and*

*demanded to know why people were crowding his homestead. I explained to him what happened and he started beating me again. However, when the matter was reported to the police station, they hesitated to intervene. We resolved the matter amongst ourselves for the sake of our child.”* (Respondent no. 119)

However, some VSA opt to leave the marriage so as not to subject the children to the violence (Eriksson & Mazerolle, 2015). The study found that majority of the VSA who reported their cases to FIDA and GVRC were indeed seeking maintenance for themselves and their children rather than the prosecution of the perpetrator of the abuse. This accounts for 49% of the respondents who were separated and 5 % who were divorced who said that the only reason they had reported their cases was to seek maintenance for themselves and their children.

The low incidence of reporting by spousal abuse victims who do not have children may be an indicator that the absence of children may be lower impetus to resolve the dispute. This could be because the ties to the community or even the bond between the partners may be weaker where there are no children. Additionally, it may be easier for a spouse to walk away from a union that does not have children as compared to that which has children (Eriksson & Mazerolle, 2015). In this argument, the presence of children in a marriage therefore served as a factor that encouraged VSA to report the abuse to the justice system for intervention so as to protect not only themselves but the children as well.

93% of the VSA interviewed had at least a child, with a majority having more than one. All of them said that the abuse started after the birth of the first child. The following reasons were arguments advanced by the victims as to why the abuse took place after the birth of the first child. Some respondents argued that once the child is born, their husbands felt that the attention by the wife shifted from them to the child. The cause of conflict and violence as per this explanation is consistent with the social conflict approach to family violence. In this regard, the husband has his personal needs and interest, such as attention from the wife. The attention given to the child by the mother (wife) therefore offers

competition to the husband's needs for the same, hence the result of a conflict and violence.

Some respondents argued that upon the arrival of the baby, the baby care resource needs such as hospital bills, school fees, food, clothes, payment for house help amongst others, results into a competition for the available family income, hence a conflict between the husband and the wife.

In patriarchal societies, children belong to the male spouse (Asling-Monemi, 2003; Bawah, A. et al., 1999). As explained by the FIDA Legal Officer:

*“The male spouse, as the head of the family, controls the family resources, makes important decisions and has responsibility to provide for the family's needs. The female spouse therefore depends on the male spouse for the upkeep of herself and their children. Consequently, when a woman thinks of leaving the marriage, she asks herself how it is that she could leave her children. Some male spouses insist on supporting the wife and the children on condition that they continue staying with them. Most wives (mothers) therefore choose to remain in the abusive marriage due to their financial dependence on their husbands for their needs as well as those of their children. In such circumstances, if the victim reports the matter to the police, the abuser is subsequently arrested and if prosecuted and found guilty, the family may lose their only source of financial support who is the perpetrator. Reporting SA to the CJS in a marriage with children therefore becomes difficult for VSA who are solely dependent on the perpetrator spouse. (Key Respondent no. 19)*

In some situations, it is the concern about the safety of the children that makes female VSA report the abuse to the CJS. Children of a marriage can therefore hinder access to justice by a VSA, but in some cases they are the reason as to why VSA report to the CJS.

According to a magistrate interviewed by the study:

*“Although most of the communities in Kenya regard children as belonging to their father, under the Children Act, children of ten years*

*are best placed under the custody of the mother unless the court can prove that the mother is irresponsible. Most women are not aware of this point of law and thus stay in the marriage assuming that they cannot obtain custody of the children. This is as a result of not being aware that having children in case of a breakdown in marriage mostly favours them.”* (Key Respondent no. 24)

Children can therefore be a reason to stay in an abusive marriage, but on the other hand they can motivate the female victim to report to the CJS or any other authority because of the abuse since it spills over to the children. In addition, the need for maintenance and support from their husbands made many female VSA report the cases of SA to FIDA. According to the police officer in charge of the Gender Desk at the National Police Service Headquarters:

*“Children can also be a motivation to stay in an abusive marriage, especially if the woman fears that upon her walking away, the man is likely to marry another woman who may not take care of them properly. On the other hand, the victim may opt to leave the abusive marriage for the sake of the children’s peaceful upbringing.”* (Key Respondent no. 15)

The above respondent’s arguments support the views of Baldry (2017) that children are a key factor in reporting and accessing justice by VSA.

#### **4.6.1.1.5 Social Control**

Observing or breaking the rules of social life prompts a reaction from other members of the society in form of rewards or punishment. The study found that most societies in Kenya discourage reporting of SA by encouraging silence- arguing that perseverance pays at the end. Reporting the abuse to the police may lead to break up, separation, lack of respect, ridicule, shame, no inheritance, and no land use rights. According to one respondent:

*“When I went to report the abuse to the police station, I did not get much help from the police because of their negative attitude towards SA. They told me to go back and sort out my issues with my husband. When I went back*

*home, my in-laws were furious about the fact that I exposed domestic matters of the home and brought ridicule to them. They all ganged up and chased me from the home.” (Respondent no. 34)*

The view of this respondent demonstrates how the society regulates people’s thoughts and behaviour as a form of social control. In this case, blaming, ridiculing and chasing her away from her home, for reporting the abuse, hindered the respondent’s pursuit of justice.

#### **4.6.1.2 Social Stigma**

All the respondents interviewed said they suffered from societal stigma as they were blamed for being responsible for the abuse. According to the FIDA Legal Officer:

*“Many victims of SA were uncomfortable talking about the abuse especially reporting it to the police. Testifying in court, an open forum in the presence of the members of the public is a terrifying experience for those few who had to give evidence. The lack of a special sensitive private system within the justice system, of responding to SA compounds the problem. The experience of being a victim of SA is complicated by the social stigma that the society attaches to being a victim. The first thing is that the society blames the victim for having caused the abuse.” (Key Respondent no. 19)*

The study found that social stigma attached to spousal abuse acts as a barrier to victims’ access to justice. According to one respondent:

*“Reporting to the CJS is hard. I cannot tell people that I have been beaten because many of them will blame me for having attracted the abuse because of my failure. So people would not want to associate with me thinking that I am not a good wife. When I told my mother that I was beaten, she advised me not to report to the police because the issue will be public. Many people will get to know about it and our family will be looked down upon.” (Respondent no. 121)*

Despite the fact that VSA suffered social stigma which hindered them from reporting their case to the CJS, some respondents nevertheless suffered stigma but still reported their cases and pushed on with the cases. Social stigma is therefore a barrier to victim's access to justice but there are also victims who suffer social stigma but, are still able to report to the justice system for protection.

According to a respondent interviewed by the study:

*“At the police station, the officers at the reporting desk laughed when I told them I had been abused by my husband. In court, people laughed when I testified. It is not a pleasant experience yet one must give evidence in court for the magistrate to believe and act on the evidence. It is like being a VSA, one becomes condemned by the entire society.”* (Respondent no. 62)

The study found that social stigma is a big hindrance to the reporting of SA especially by victims who earn Kshs. 100,000 and above. This is attributed to victim blame when the society views the victim as deserving of the beating for some failure/ weakness on his/her part. Most victims interviewed said that after being subjected to the abuse, they felt embarrassed to talk about it and to face those they suspected to have known of the abuse. Reporting the abuse to the police station also has the disadvantage of the record being made public because police documents are public documents and the trial process is also public. This discourages many victims from reporting the abuse to the police due to the resultant social stigma attached to SA. According to one respondent:

*“Reporting to the CJS is hard. I cannot tell people that I have been beaten because many of them will blame me for having attracted the abuse because of my failure. So people would not want to associate with me thinking that I am not a good wife. When I told my mother that I was beaten, she advised me not to report to the police because the issue will be public. Many people will get to know about it and our family will be looked down upon.”* (Respondent no. 121)

**Figure 7: The Researcher Interviewing VSA at FIDA offices in Nairobi**



The researcher conducting an interview with Respondents at FIDA offices in a private room.

Note: Some VSA who had suffered extreme social stigma needed social support to enable them speak confidently about the abuse, which support was provided by FIDA.

#### **4.6.1.3 Attitude of Police Officers towards SA**

Knowledge influences attitude that subsequently influences the behaviour of an individual (Baker S, 2008; Baines 2010). Despite the establishment of Gender desks in most police stations in Nairobi County, the study found that most police officers had a negative attitude towards SA. This affected victims' ability to report SA to the police stations. Many police officers were of the view that since SA is not specifically provided for in Kenya as a crime, it cannot be effectively addressed by the police. The difficulty they faced in handling such kind of reports contributes to their negative attitude towards

SA. In addition, many of the police officers are Kenyans who come from communities where they were socialised that SA is a domestic matter that should be resolved at the domestic level and not reported to the CJS. The attitude of police officers therefore directly influenced the progress or drop out of the case in the CJS.

Positive attitude of police officers may enhance victims' reporting and access to justice while negative attitude by police officers may discourage victims' reporting and access to the CJS as in cases where reports are made to female police officers by female victims. However, despite the situation, the study found that most female victims were able to report the abuse to the CJS.

According to one female respondent interviewed at FIDA:

*"I was beaten by my husband, my clothes were torn and my face was bleeding when I went to report to the police station. But upon making the report, the police officers laughed at me and told me to give them Kshs 2000 to fuel the car if I wanted them to go and arrest my husband. I did not have such kind of money and so I went back to my house, packed my things and went back to my mother's house. However, my brothers also chased me away because I had two children and none of them were willing to accommodate me. I decided never to report to the police station again. Instead, I came here to FIDA to see if they can make my husband pay for the children's school fees."* (Respondent no. 108)

According to one male respondent interviewed by the study:

*"How can I report to the police? They would laugh at me because a man is supposed to be in control of his house. Reporting to the police is a show of weakness."* (Respondent no. 126)

The above concerns confirm the views of the then Inspector General of the National Police Service that SA is a private issue in the private domain which cannot effectively be handled by the police since there is no crime known as spousal abuse.

#### **4.6.1.4 Fear of retaliation by the abuser**

According to a prosecutor interviewed by the study:

*“The conduct of the perpetrator can affect victims’ access to justice in two ways. First, if the perpetrator cooperates with the CJS agencies, then it enhances victims’ access to justice. This is important because SA often occurs in private and the likely witnesses are the victim and the perpetrator. In addition, spouses are individuals in an intimate relationship and their cooperation is important in reporting the abuse. Secondly, when the perpetrator does not cooperate with the CJS, there is a likelihood of intimidation of the victim and witnesses, interference with investigation, bribery of criminal justice officials, non-attendance of court sessions and failure to obey court orders which are likely to hinder victims’ access to justice.”* (Key Respondent no. 16)

The study found that many of VSA especially women feared that the perpetrators would revenge once they reported the cases to the police. According to one respondent:

*“When I reported to the police station, my husband was summoned to record a statement. When he came back home, he beat me again and vowed to teach me a lesson for embarrassing him by going to report to the police.”*  
(Respondent no. 104)

Whereas the conduct of the perpetrator hindered many female VSA from reporting, there are those who reported their cases even after being threatened and intimidated against reporting by the perpetrators. This illustrates the determination and personality of a VSA in pursuit of justice as illustrated by case study 2.

#### **4.6.1.5 Level of Education**

The study found that the level of education is a social determinant that enabled many victims to report their case to the police or to FIDA or to GVRC.

From table 3 on the level of education of the respondents, it can be argued that majority (83.5%) of the respondents who reported SA had some level of education ranging from primary to post-secondary training. This comprised of 20.1% of the respondents with post-

secondary education, while a further 20.1% had completed secondary school, 18.7% of the respondents had completed primary school, 12.7% had some primary education while 11.9% had some secondary education. According to the FIDA Legal Officer,

*“Therefore, middle level of education such as primary, secondary and post-secondary certificate of diploma appears to encourage reporting of spousal abuse. This is explained by the new knowledge acquired that SA is a violation of one’s rights, dignity, respect and should not be condoned or tolerated. This knowledge influences the thinking of the individuals and change of perception and attitude towards SA as a violation which must be reported for the protection of the spousal abuse victim. Secondly, those with some level of education are likely to have some measure of financial independence either in employment or self-employment and therefore may not be totally dependent on the perpetrator spouse.”* (Key Respondent no. 19)

The study found that there was low reporting (16.5%) of SA by respondents with no formal education and those with university degree and post-graduate degrees. This comprised of 6.7% of the respondents with no formal education and 9.7% of the respondents with university degree and above. This suggests that few VSA with university level of education and beyond report the abuse. Education, therefore, plays an important role as a determinant in facilitating spousal abuse victims’ access to the criminal justice system but higher levels of education appear to hinder reporting of SA.

The higher education level can be construed as a barrier to reporting SA to the CJS. This could imply that few VSA with university level degree and above report the abuse to the justice system. It could also imply that VSA with university degree and above level of education do not seek the intervention of the criminal justice system or that they opt for alternative mechanisms. It could also mean that levels of spousal abuse for persons with a university degree and above are lower as compared to those with lower levels of education.

The low reporting of SA to the CJS by victims who hold university degrees and above being 9.7% may be explained by social stigma that is attached to being a VSA. According

to the police officer in charge of the Gender Desk at the National Police Service Headquarters:

*“Victims who hold university and above degree level of education are likely to be prominent people in society in key positions of authority. When they become victims of spousal abuse, they may suffer social stigma attached to being a victim and the perception that the victim is to blame for the abuse.”*

This is consistent with arguments advanced by (Neal & Edwards, 2015; Benson & Fox, 2002) that people with higher levels of education have a status in society and therefore fear the stigma and victim blame which is likely to affect their status in the society due to the offices they hold either in public or private positions. VSA holding a university degree and above and occupying senior positions in society may be hindered by associated social stigma and their class from accessing justice through the CJS (Neal & Edwards, 2015; Benson & Fox, 2002).

#### **4.6.1.6 Social Class**

According to the Institute of Economic Affairs, the upper class refers to a population that earns a monthly income of Kenya Shillings 102, 429.00 per month and above. Their source of wealth includes treasury bonds, real estate, stocks or other investments (KDHS, 2014). The more a family's income is generated from the above sources, the stronger their claim to being of the upper class (Macionis, 2007). They own the means of production or most of the nation's private wealth. Many of them are top executives in multinationals or senior government officers or own big business investments (Macionis, 2007).

Membership to the upper class is often the result of birth and the wealth is inherited. In this class are also those who earn their wealth other than through inheritance and are therefore called the working rich. They generally live in large homes, expensive surroundings, own vacation homes and send their children to private schools and good colleges. Of importance is their ability to influence national events in the country such as politics. This class guards their social standing in society and therefore protect any information or incidences that may attract social stigma to the family. Reporting spousal abuse amongst this class is therefore not very easy and the class therefore serves as a

barrier to accessing justice by spousal abuse victims. None of the respondents interviewed belonged to this class.

The middle class comprises of people whose average income is between Ksh 76, 000 to Ksh 102, 000 per month (IEA 2015; KDHS, 2014). This allows them to live in a comfortable neighbourhood that is fairly expensive but not as expensive as that of the higher class. They are likely to own several cars and real estate investments. Most of their children have graduate degrees and join high prestigious careers such as engineers, lawyers, architects, doctors, business executives and accountants amongst others. Unlike their counterparts in upper class, they have no direct influence over national or political events in the country. Nevertheless, they play an important role in this regard. None of the respondents interviewed belonged to this class since majority earned between Kshs. 1000 and Kshs. 20, 000 per month. Social class can be said to be a barrier to VSA reporting and access to justice in the middle class (Macionis, 2007). According to a police officer interviewed by the study:

*“The upper class who live around the Karen area do not report incidences of SA to the police. SA is hardly reported to the police station because the people who live here belong to the upper class. In two incidents, two prominent members of the society who live around the area who were abused did not report to us. In fact, it was the domestic helper who reported the abuse but on investigation the victims denied being abused.”* (Respondent no. )

The lower class forms the bulk of the country’s population. Their low-income status makes their lives insecure and difficult. They hold low prestigious jobs that provide little satisfaction and minimal income. Many of their children hardly complete high school education in the urban set up, they are mostly found in the slums such as Kibera, Mathare and Mukuru. Their income ranges between Kshs. 1,000 and 10,000 per month while some have no income at all and depend on casual jobs that are not permanent. Majority (73.9%) of the respondents were from this social class as illustrated by table 3 which therefore means that respondents from the lower class found it easier to report spousal abuse than

respondents from the higher social classes. Social class therefore hinders the upper class from reporting spousal abuse but encourages the lower class to report.

The study found that victims' social class affected their access to justice differently. Those of the higher social class in a society are unlikely to report the abuse because of the publicity that it would attract and the fear of how the public would view them after the reality that they are victims of abuse. As an example, the study found that Karen Police Station that is located in the Karen Area, one of the suburbs of Nairobi, records very few reports of SA.

The higher one's social class, the less likely the victim is to report the abuse due to the prestige attached to the social class. The lower the class of an individual, the more likely they are to report the abuse since there is little prestige to be lost by reporting. At the same time, those from the low social class may not report for fear of loss of financial support from the abusive spouse as already discussed in this chapter. According to a respondent interviewed by the study:

*"My social status affects my ability to report."* (Respondent no. 91)

#### **4.6.3.5 Availability to 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 run rescue centers for victims of spousal abuse 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 centers 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 County are those that cater for female victims of domestic violence and not male victims. Apart from Nairobi Women's Hospital, others are MSF in Kariokor and COVAW.

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 spousal abuse occurs in Nairobi City County. Male victims find it difficult to report the abuse in the absence of alternative accommodation even though some of them are able to afford alternative accommodation.

#### **4.6.2 Cultural barriers that hinder access to justice by VSA in Nairobi City County, Kenya**

The study found that cultural barriers that hinder VSA access to justice are: religion, patriarchy, cultural beliefs, values, practices and customs as discussed below.

##### **4.6.2.1 Religion**

Religion is considered a stronger force in the development of a society. Table 3 shows that 93 % of the respondents were Christians while 7 % were Muslims. The fact that only 7 % of the respondents interviewed were Muslims is explained by the fact that Muslims use the *Maslah* dispute resolution mechanism in resolving disputes which include SA. According to the police officer at the Gender Desk at Shauri Moyo Police Station situated in an area inhabited mostly by Muslims in Kariokor:

*“Immediately the abuse occurs particularly where it is serious or life threatening, the victim reports to us. However, before we take the case to court for prosecution, the victim comes back and asks to withdraw the case. Many of them explain that the matter has been resolved by their community elders (Maslah). This system of dispute resolution appears to work well for the Muslims who live here that very few cases proceed to court. In fact, we have appreciated the Maslah system and when the*

*reports are made unless it is life threatening, we now refer them back to the Maslah system to resolve the abuse.” (Key Respondent no. 11)*

The above expression by the police officer at Shauri Moyo police station explains the low reporting of SA by VSA who profess Islamic faith in Nairobi City County. However, the high number of reporting of SA by victims who profess the Christian faith may mean that the Christian teachings and system of resolving SA is inadequate or that despite the Christian teachings of forgiveness, love and submissiveness, VSA still report the abuse to the CJS and NGOs such as FIDA and GVRC. Therefore, religion appears to be a barrier to some VSA in reporting but to others it is not. According to the police officer in charge of the gender desk at Lang’ata police station:

*“On average, we receive 20 reports of SA cases per day. The victims often come to report when the violence is accompanied with very serious bodily injuries that are visible. We do book them under the crime of assault since there is no crime called spousal abuse. However, most of the cases do not proceed to court because the victims’ and the perpetrators’ families resolve them out of court. They come back to the police station to withdraw the case saying that the families have already resolved the matter. The Muslim community has a system of dispute resolution called Maslah that deals with spousal abuse amongst other issues. Unfortunately, after withdrawing the cases from the police, some of the victims come back to report that they have been subjected to spousal abuse again and seek police protection. The cycle continues and the matter never proceeds to full determination in court” (Key Respondent no. 1)*

The above explanation by the police officer supports the argument by Choi, 2015 that religion can be a barrier to accessing the CJS by VSA since family members of the victims and the perpetrators resort to the *Maslah* system and the victim is convinced to withdraw the case from the police (Choi, 2015).

Religious values are passed on to individuals from a very early age as part of the socialization process. Such socialization can be as a result of religious teachings of forgiveness and suffering in pursuit of spirituality. According to both the Quran and the

Bible as well as most cultural values in Kenya, a woman is supposed to be submissive to the husband. Christianity does not allow SA but encourages women to be submissive to their husbands while husbands are supposed to love them. This puts the woman in a subordinate position to the man. The man is placed as the head of the family (religion). This conforms to the patriarchal African family system.

The study established that some VSA were socialized to believe that spousal abuse is a manifestation of love from the abuser. According to one respondent interviewed at FIDA office in Nairobi:

*“I have no problem with him beating me once in a while, even if he wants to marry another woman that is okay. Polygamy is acceptable in our community. I grew up in a family where SA was common. I just want him to allow me to stay, but now he has chased me away.”* (Respondent no. 122)

The study found that some victims had been socialized to believe that when a woman is beaten, it signifies love. This view encourages SA. Despite a religious upbringing, some respondents believe in justice and are therefore able to report any form of abuse that they feel infringes on their right. Such victims would in most cases report the abuse, not for the perpetrator to be conclusively prosecuted but only to stop the abuse. The CJS aims at punishing the perpetrator, a goal that may not be a priority to most victims. This in effect renders the CJS unsuitable or inadequate in addressing SA.

Despite some respondents’ religious beliefs, the study found that they still reported SA to the CJS, albeit under different circumstances, but mainly to stop the abuse or the risk of the abuse aggravating. According to a female respondent interviewed at FIDA:

*“I grew up in a religious family that did not believe in violence and practised forgiveness. I would not be comfortable to report any form of abuse to the police as the punishment is very severe. Someone can be imprisoned for up to ten years and my conscience will not be clear.”* (Respondent no. 109)

#### 4.6.2.2 Patriarchy

Kenyan communities are patriarchal, in the sense that the woman leaves her home and settles in the man's home (Rotich J et al., 2016). Once the man pays dowry (bride price), the woman becomes the "property" of the man who pays the bride price. This leads to a perception that he acquires control over her. Everything that is owned by the wife belongs to the man. The boy child is highly valued than the girl child. He is seen as able to perpetuate the family lineage, and therefore a symbol of continuity of the family. On the contrary, a girl is viewed in terms of the number of cows she can bring and not as belonging to her home. Once a lady is married, she is not expected to go back to her mother's home.

According to the Agikuyu culture, a woman is given a bed by her family during the wedding to signify that she has no place in her father's home and has moved with her bed to her husband's place which becomes her permanent home (Kabira W, 1995). She is therefore expected to stay there and ensure that the marriage works.

According to the Maasai, upon marriage, the bed where the girl used to sleep in her mother's house is broken to symbolize the fact that she no longer has a bed in her father's home (Ferraro G, 2007). Therefore, she must make sure that her marriage works because the husband's home becomes her permanent home. To dissolve an abusive marriage, the dowry paid must be returned. When the family cannot return the dowry, the woman must remain at her husband's place.

The above cultural practices clearly explain the patriarchal nature of most Kenyan communities which encourage spousal abuse perpetrated by males on females since they perpetuate the notion of male dominance over submissive weak females.

In cases of male victims of SA, patriarchy serves as a barrier to the victim's ability to report the abuse for intervention. As explained by the masculinities in crisis theory, male VSA find it difficult to report the abuse because they are expected to be the dominant spouse in control of their houses. The social stigma associated with being a VSA and the socialisation of males being stronger together hinder SA victims' ability to report and pursue SA cases in the CJS.

The study found that some female respondents from Kikuyu community found it difficult to go back to their parents' home when abused by their spouses. According to one respondent of Kikuyu origin:

*“When I went back to my parents to report that I had been abused, my brothers told me that during your wedding we gave you a bed as a present. That in our tradition symbolizes the fact that your place is in your husband's home. Therefore, you have to go back and make your marriage work as there is no place for you in this home.”* (Respondent no. 102)

#### **4.6.2.3 Cultural Beliefs**

The respondents interviewed came from different tribes in Kenya including Luos, Kamba, Kisii, Meru, Gikuyu, and Taita amongst others representing different cultural beliefs. Some of the beliefs that the study found include: that SA is a normal occurrence in a family set up, that SA is a show of love among others.

The study found that most VSA were socialized to believe that SA is a normal occurrence in the family set up. It is a way of a man showing his love for his wife. It tests whether the wife is ready to stay as a 'wife' or may be considering leaving the union. The victim who perseveres the abuse is viewed to be one committed to the marriage. The belief that SA is a show of a man's love to his wife, indeed made some VSA provoke their husbands to beat them. But this belief may be explained by the cycle of violence theory which argues that the perpetrator shows remorse after the abuse, promises to change and engages in the conduct that is perceived by the victim as a 'show of love' to win her back (Eriksson & Mazerolle, 2015; Buzawa & Buzawa, 2003). Such conduct includes giving money, increased financial assistance, material gifts and some level of increased patience and commitment. However, after some time, the violence recurs. The study found that VSA are socialized to believe that the violence will end one day, but perseverance is the mark of a good, respected 'wife'.

The above discussion shows that cultural values and beliefs do affect people's view of their surrounding and indeed contributes to the formation of their personalities. Men, therefore, become potential perpetrators while women become vulnerable to abuse and victimization. According to a FIDA legal Officer interviewed by the study:

*“The stereotype that a man who does not beat his wife is weak encourages male perpetrated violence towards the female spouse. The study found that spousal abuse victims learnt from friends, families and religious organizations to think and act according to their cultural values and beliefs which they hold as “truth” and to pursue the goal of a ‘successful’ marriage through perseverance of the abuse and keeping ‘secret’ the bad/ negative happenings of the family.” (Key Respondent no. 19)*

The effect is that cultural beliefs become a barrier to detection, reporting, investigation and prosecution of spousal abuse in the criminal justice system. The culture of victimization ensures that nobody takes responsibility for the abuse. The study found that where values conflict, then depending on the victim’s personality, they may report the abuse to the CJS or not.

#### **4.6.2.4 Cultural Values**

The study found that although some VSA were socialized to believe that SA is a normal occurrence in a marriage, due to their exposure to the urban city culture of Nairobi, they since hold different values from the traditional cultural ones on SA. Such conflicting values include the concepts of the individuality of each human being as a dignified person who has a right to life, respect, dignity and protection by the law. The study found that different respondents had different views of values.

Those of middle level income, Kshs 76, 000 to Kshs 102,000/= per month and above valued their dignity more and so would not report the abuse, since doing so may expose their marital problems and subject them to shame, ridicule and blame as failures. The social stigma attached to a divorced or unmarried woman made many respondents not to report the abuse or pursue the same in the CJS. Respondents reported that perseverance and forgiveness were seen as values that keep the marriage instead of reporting to the police.

The lower income (Kshs 76,000 per month and below) appeared to value survival of the marriage more than their individual security, rights, dignity and protection. They opted to persevere with the abuse, not to report lest they break the marriage. They only reported

to NGOs to have the perpetrators pay maintenance, but not to have the perpetrator prosecuted.

#### **4.6.2.5 Cultural Practices**

The study found that some cultural practices hinder VSA' access to justice and make them stay in abusive marriages. According to the legal officer of FIDA:

*“An unmarried woman, separated or divorced in Luo customs are buried outside the homestead, behind the home. This amounts to throwing the body away. The social stigma, shame and victim blame of a separated/divorced woman referred to as a ‘go-come back’-odhi oduogo<sup>2</sup> perpetuates violence against the wife since going back to her parents’ home attracts individual and family shame. They therefore opt not to report to the police as reporting amounts to exposing her weaknesses, if she chased from her husband’s home, her going back to her parents’ home is characterized by the negative treatment. She is viewed as bringing dishonour and shame to her family.”* (Key Respondent no. 19)

According to a Senior Female Police Officer interviewed at the Kenya Police Headquarters:

*“In my Giriama community, a woman separated from her husband would only be allowed back after she pays a certain number of goats to the elders. This amounts to punishment since many women are not able to pay the penalty. The symbol of such payment also subjects the women to public shame.”* (Key Respondent no. 15)

Such cultural practices therefore discourage VSA from reporting the abuse to the CJS.

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<sup>2</sup> This is Luo phrase literally translated means go-come back woman referring to a woman who was married but divorced and therefore went back to her home of birth.

#### 4.6.2.6 Customs

According to the FIDA Legal officer:

*“One of the customs that greatly contribute to SA is the dowry/ bride price/ bride wealth. The Kenyan communities all have an aspect of dowry to be paid by the husband to the wife’s family. Traditionally bride wealth, dowry or bride price used interchangeably was viewed as an appreciation and acceptance of the relationship created between the family of the bride and the groom. It was never paid as a one-off payment which amounts to the concept of buying property. The dowry payment was never completed. It was simply meant to appreciate the bride’s parents and family for bringing her up and allowing her to get married to the groom. By giving birth to children for the groom, she greatly contributed to the building up of that family hence the need to appreciate her.” (Key Respondent no. 19)*

In support of the above, a magistrate interviewed stated that:

*“Today, the concept of bride price has totally changed and negotiations of bride price have taken the form of money payment and in some cases a one-off payment. This amounts to a sale of goods in which the seller sets the price and the buyer negotiates for an affordable price. This current practice has given a new dimension to the concept of bride price in which the groom/husband to be has to pay for the wife before taking her. Subsequently, the husband views the wife as his property which he paid for and therefore he has total control including perpetration of SA. It is not unheard for husbands to be today to take a loan or ask friends to contribute towards the payment of the bride price demanded by the wife’s parents which may be beyond his (husband’s means). It is not unusual to have the parents of the bride demand what the groom cannot reasonably afford. This leads to a situation where the groom has to raise the funds through loans or pre-weddings. The effect is that the wife belongs to the husband and he acquires control and dominance over her. She becomes his property. Subsequently, she is expected to ensure all the needs and*

*demands of the husband are met. Top most is the sexual needs of the husband. The custom has led to a situation where sexual violence occurs in a marriage, but is not considered as abuse, but as the right of the perpetrator. It raises the question of when does consent to conjugal rights begin and end in a marriage.”* (Key Respondent no. 22)

According to a police officer interviewed by the study:

*“The distortion of the concept of bride price has led to the notion of a wife being ‘bought’ and becomes the property of the groom. She therefore joins the list of other properties held by the groom which he can do with what he pleases. This has led to situations where once a woman is married and her bride price paid under such circumstances, when the abuse occurs, she finds it difficult to go back to her parents while the husband sees her as his property.”* (Key Respondent no. 7)

According to a respondent interviewed by the study:

*“The cultural perception is that once a man pays dowry, the wife belongs to him and consent is granted henceforth. He does not subsequently have to seek consent of the wife in sexual matters. This encourages sexual abuses especially during the period where the spouses are separated or not living together. Such customs in regard to bride price can hinder VSA access to justice. For the male VSA, it is difficult to explain how, ‘a woman whom he bought can subject him to SA’. For the female VSA, since her husband paid for her, she cannot go back to her parents’ home as she belongs to her husband.”* (Respondent no. 89)

Despite the findings that cultural determinants hinder access to justice by VSA, as already discussed, cultural determinants such as children and the marriage institution were found to enhance the ability of some VSA to report to the CJS.

### **4.6.3 Economic barriers that hinder access to justice by VSA in Nairobi County**

The study identified the following economic barriers that hinder VSA' access to justice: occupation and employment status, distribution of resources, corruption, access to legal services and social class and availability of rescue centers.

#### **4.6.3.1 Occupation and Employment Status**

Table 3 shows that majority of 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 spousal 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 were 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 could also 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 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.

The study findings in Table 3 showed that a large proportion of the respondents 42% were either unemployed or had irregular income, followed by those who earned Kshs. 10,000 or less (32%), Kshs. 10,000 to 50,000 (20.0%), Kshs. 50,000 to 100,000 (4%) and more than Kshs. 100,000 (3%). This indicates that VSA who earn above Kshs. 100,000 rarely report SA or there could be fewer women in the formal job market with earnings above Kshs. 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 who were unemployed, had irregular income or earned below Ksh. 50,000 per month, while it was lowest amongst those who earn above Kshs. 100,000 per month. Income level therefore affects reporting of SA. The lower the income, the more likely a spousal abuse victim 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.

#### **4.6.3.2 Distribution of Resources**

The study found that most of the respondents were female accounting for 95% while only 5% were male as per table 3. Due to the unequal distribution of resources as already described under the patriarchal family systems, most of the VSA being women, are dependent on their husbands for financial support. They feared losing financial support from the perpetrator, who in most cases is the sole breadwinner for the family. The unequal distribution of wealth in the marriage and the resulting dependence of the VSA on the perpetrator is therefore a barrier to their (victims') access to justice.

Female respondents reported that upon making a report of the abuse to the police, if the perpetrator husband was summoned or arrested and prosecuted, the consequence was strained relations between the victim and the perpetrator and his family. In some cases, it led to the withdrawal of financial support to the victim and her children. Many of the female respondents depended on their husbands to pay rent in Nairobi County. When they reported the abuse to the police, some were evicted from their houses and had to look for their own accommodation. In some cases, the perpetrator moved out of the house and refused to pay rent. This resulted into more problems for the female victims, most of whom had no relatives in Nairobi. Some opted to withdraw the cases and stay in the abusive marriage without reporting subsequent abuse. Others left the abusive marriage, but were not accepted at their home of birth by their brothers due to the patriarchal family system which is thus a barrier to access to justice by VSA. In the words of one respondent:

*“I went back to my house, packed my things and went back to my mother’s house where my brothers also chased me away because I had two children. None of my brothers was willing to accommodate me. I decided never to report to the police station again. Instead, I came here to FIDA to see if they can make my husband pay for the children’s school fees.”* (Respondent no. 85)

As illustrated by figure 5 on the pyramidal response of the CJS to SA, most reported cases did not progress through the CJS. The police explanation for the attrition was that many victims reported when the abuse had just occurred and particularly where the injuries were serious. However, when called to testify in court, many of VSA failed to turn up while others withdrew the cases for fear of loss of financial support from the perpetrator, the risk of the perpetrator being jailed amongst other factors. The female VSA worried about inability to raise monetary bribes for the police, pay legal fees, or raise children on their own without the support of the perpetrator.

Due to the benefit of education, some women acquired necessary skills and became employed or self-employed. They were therefore in a position to acquire and own their own property by buying. However, the Constitution of Kenya 2010 has provided women with a right to inherit any property from their families just as their male counterparts. This provision of the law is very difficult to realise because of different communities’ culture. In the patriarchal system, resources are owned and controlled by males as means of production, while women provide labour and only have user rights. Despite the provision of the Constitution on women’s rights to inherit property, the socialisation process makes it difficult to implement women’s right to inherit property and they may have to resort to the court process to ensure that they get their share of the property. The court process itself is characterised by bureaucracy and delays and prohibitive costs that hinder women’s access to property rights.

It is therefore, not only female VSA that are affected by financial dependence on their spouses. At the FGD, the study established that some women are the income earners in their families and therefore the husbands depend on them to provide for the family’s financial resources and pay rent. Some of the male VSA, were therefore unable to provide

for their families as per societal role expectation of a man in a marriage. Some of them had lost their jobs and were not able to secure other jobs. Some had no skills and level of education that would enable them secure jobs in Nairobi. Some were in casual employment and at times did not have income to sustain their families while some had been laid off from their places of work due to various factors affecting the economy. All these factors put the male victims in a situation where they were unable to provide for the family's needs. Their societal role expectation as the provider for the family was therefore taken over by their wives, hence role reversals in a community that has traditionally been socialized in a patriarchal system. This situation results not only into reversal of roles but puts the man in a helpless situation resulting into frustration, strain and conflict with their wives sometimes leading to their (husbands) abuse. This explanation is consistent with Masculinities in Crisis theory as discussed in chapter 2. Such male VSA found it difficult to report the abuse to their friends, relatives, churches and other ADRM. Being a male VSA is contrary to societal expectation that they (VSA) should be dominant and provide for their families. The situation is complicated by the social stigma (attached to being beaten by a wife), which is perceived to be a weakness by the male victim.

Members of the FDG involving men agreed that it is very difficult for male victims of spousal abuse to talk about the abuse to anybody and especially to the police. According to one male victim of spousal abuse interviewed by the study:

*“I would rather kill myself than tell people that my wife has abused me. I have opted to suffer silently because talking about it will only attract ridicule and stigma as well as blame on me as a failure. When I reported to the police, I found both male and female officers. The male officers laughed at me and told me to take charge of my house. They did not even book the report in the occurrence book. The women officers mockingly asked me, if men are also beaten.”* (Respondent no. 126)

### **Loss of financial support by victim from the perpetrator**

All the respondents interviewed were in agreement that victims' access to justice is hindered by the possibility of loss of financial support by the perpetrator of the abuse if found guilty, convicted, sentenced to prison and therefore loses their ability to financially

take care of the family. In addition, the outcome of the CJS is predetermined by the law and the perpetrator and the victim cannot negotiate it. As a consequence, the adversarial nature and outcome of the criminal justice process in SA matters makes it difficult for the victim and the perpetrator to live harmoniously. Subsequently, this often leads to loss of financial support by the victim from the perpetrator because the CJS does not take into account the special emotional relationship and dependency by the victim on the perpetrator. 79% of the respondents were dependent on their perpetrator spouses for housing, clothing, food, and children's welfare amongst other expenses. They reported fear of financial loss as one of the challenges they faced in deciding to report the abuse to the CJS. Only 21% of the respondents did not rely on their spouses for the above needs as illustrated by Table 3.

### **The effect of patriarchal land ownership system in Kenya**

According to the FIDA Social Worker:

*“Kenya is largely a patriarchal society in which land inheritance and use is based on the patriarchal system. The study found that majority of VSA with low income who are unable to buy land for themselves, considered amongst other factors, the possible effect of reporting SA to the CJS, on their access to land and its use.”* (Key Respondent no. 18)

In this respect, many respondents reported that upon reporting SA to the CJS, the relatives of the husbands interfered with their use of family land. In the words of one respondent:

*“When my in-laws discovered that I had reported the abuse to the police, they chased me away from their home saying that since I had made their son be arrested, I had brought dishonour and shame to the family and did not deserve to stay on their land anymore.”* (Respondent no. 69)

Although Nairobi is an urban set up, the male head of households are still the ones who pay for the rent and many VSA, especially women reported being chased out of their houses by their perpetrator spouses, who in some instances moved out of the house and refused to pay the rent leading to the eviction of the victim.

#### 4.6.3.3 Corruption

Closely related to the wealth distribution is corruption of the CJS officers by perpetrators and VSA inability to pay bribes to police officers to effect arrest of SA perpetrators. The study found that corruption is a major intervening variable in the CJS in Kenya. Many victims interviewed said that although they managed to report the abuse to the police station, the cases did not proceed due to corruption.

One victim had run away from her marital home but did not get support from her immediate family. Her mother told her to go back to her marital home. She became a subject of sibling abuse from her brother who saw her as a competitor for family land to which he was the sole heir. She had to work in the quarry to sustain herself and her two children. She therefore opted to go back to her abusive husband for the sake of the children. The husband physically assaulted her again and tore her clothes. She ran to the police station covering herself with a piece of cloth. When she reported the abuse to the police, the male police officer at the reporting desk first asked her to remove the piece of cloth she was covering herself with so that they could see her naked. According to the VSA:

*“I was very humiliated. It was a re-victimization. I felt beaten again. To add insult to injury, the police asked me for Kshs. 2000 so that they can arrest the perpetrator. I had no money. I went back home, disappointed and opted never to return to the police station.”* (Respondent no. 30)

According to a respondent interviewed by the study

*“When I was beaten by my husband, I went to the police station to make a report and had to spend the only 50 shillings I had on transport. On arrival, the police officer at the reporting desk asked me to give them a bribe of Kshs 500 disguised as fuel for their car to arrest the perpetrator”* (Respondent no. 44)

The above sentiments of Respondent no. 44 were confirmed by Respondent no. 60 who said that:

*“When I reported the abuse to the Police, they asked me for Kshs 2000 before the P 3 form could be filled. In addition, they asked for Kshs 2000 for the transport of the officers to arrest my husband.”*

(Respondent no. 60)

Most female victims reported that after their husbands were summoned to the police station, they(husbands) managed to bribe the police officers and the cases were dropped. Corruption is a major weakness of the CJS and its ability to respond to SA effectively. Corruption affects the CJS’ ability to protect victims. Those without money therefore opt not to report to the justice system while perpetrators who have money are able to influence decisions at the police investigation level and at the prosecution level. The courts are not left out and the study found that some court decisions are based on the ability of one to bribe the judicial officer.

All the respondents interviewed said that the CJS is corrupt, insensitive and unfair. One respondent had this to say about the extent of corruption in the CJS:

*“The CJS is so corrupt that my husband managed to get a fake court order signed by a magistrate showing that I was served with court summons, attended court, and the court awarded custody of our children to my husband. The truth is I had never attended the court for this purpose. Yet the senior magistrate signed the order and gave him custody. Since my husband had the money which I did not have, he was able to bribe the entire CJS, so where do I go?”* (Respondent no. 64)

#### **4.6.3.4 Legal Services**

The study found that an average case reported and filed for prosecution in the CJS takes a minimum of six months (Judiciary, 2014). The total amount of expenditure incurred by the advocate during a trial roughly costs Kshs. 150000. This figure is broken down into the following items as per the Advocates Remuneration Order.

**Table 12: Costs Involved in Prosecuting a Case in the CJS**

<b>Item</b>	<b>Costs (Kshs)</b>
Taking instructions	5,000
Opening a file	20,000
Correspondence	10000
Court Appearance	20000
Drafting court documents (Pleadings and Submissions)	30000
Court filing fees	5000
Research	20000
<b>Total</b>	<b>120,000</b>

*Source: Remuneration Order*

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 and this is not often the case. 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, Maendeleo ya Wanaume was known to protect rights of men. However, despite several attempts, the study could not trace the location of Maendeleo ya Wanaume'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.

#### 4.6.3.5 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 due to the prestige that is associated with the status.

Victims of lower social status, which attracted fewer privileges, were therefore more likely to report the abuse to the authorities for intervention as they had very little prestige to lose by reporting the same. A female VSA interviewed by the study and who was a manager at a local microfinance institution 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)*

In concluding the discussion on the social, cultural and economic barriers of the CJS that hinder VSA access to justice, the study found that although the CJS is preferred because of its ability to enforce its sentences, the barriers discussed hinder VSA's access to justice. Many VSA therefore opt to have their cases resolved through ADRM as discussed in the next section.

#### **4.7 Alternative Dispute Resolution Mechanisms available in cases of Spousal Abuse in Nairobi City County, Kenya.**

The study found that when SA first occurs, it is reported to many of the ADRM. In this respect, the study found that all VSA interviewed had reported to one or more ADRM. It is only when the abuse persists or becomes life threatening that VSA report to the CJS. Other instances where VSA report to the CJS is to obtain maintenance for child support. However, many of the cases reported to the CJS are withdrawn or find their way to the ADRM. This explains the high attrition of the criminal cases in the CJS as shown by figure 5 on the pyramidal response of the CJS to SA.

All the ADRM seemed to be effective to some extent and that is why most victims reported to them at first instance when the abuse occurs. However, all of them lack effective sanctions making them inadequate in resolving SA especially cases of continuing abuse. ADRMs therefore in some cases act as intervening variables in VSA' access to justice in Nairobi County, Kenya.

##### **4.7.1 The various ADRM available in Nairobi City County**

The study found that the different types of ADRM available in Nairobi City County are as shown in table 13 below.

**Table 13: Various ADRM Available in Nairobi City County, Kenya as cited by the Respondents**

	<b>ADRM's available</b>	<b>Percentages</b>
1.	Chief	25
2.	Family	23
3.	Friends	21
4.	Church	15
5.	Social Worker	1
6.	NGOs	5
7.	Others	10

Table 13 above shows the preference of various ADRMs by Respondents who reported to them cases of SA. Before reporting the abuse to the CJS, VSA had sought intervention by reporting the abuse to various ADRM as illustrated by table 13 above. The following is a discussion of the specific ADRMs.

#### **4.7.1.1 Chiefs as ADRM in SA cases in Nairobi City County, Kenya**

The Chiefs Act (Cap 128 Laws of Kenya), defines chief and assistant chiefs to mean persons appointed to any area of the offices of chief and assistant chief, respectively, in the public service. The Act also provides that a chief has a duty to maintain order in respect of the area in which he/she is appointed. Reports of SA made to chiefs accounted for 25% of the cases reported to ADRM.

The VSA explained that they went to the chief because as government officers, they wield authority. VSA recognized that the chiefs had some powers to summon the perpetrator. This emphasizes the importance of sanctions in approaches to managing SA. However, despite their preference because of the sanctions and authority they hold, the victims complained of corruption by the chiefs, most of who asked them to pay bribes before they could take any action.

Other respondents said that when they reported the abuse, instead of the chiefs summoning the perpetrators and dealing with the abuse, the chiefs took bribes from the perpetrators and ordered the victims to go back home and sort out the issue with the perpetrator domestically. According to a respondent:

*“After I reported the matter to the chief, the perpetrator bribed the chief and the case could not proceed. The perpetrator came back and warned me that even if I reported him to the chief, there is nothing that the chief could do.”* (Respondent no. 11)

Although a majority of the victims are discouraged from reporting to the chief because they view domestic violence as a matter to be resolved between husband and wife, one victim found the chief helpless in addressing SA. The victim reported to the chief about an abuse, the husband followed her to the chief and stabbed her in the presence of the chief. The chief did not arrest the husband and hand him over to the police but instead, advised the victim to seek help from FIDA and wrote a letter to that effect. Whereas the chief is a government officer and is a link between the members of the government and the public, the chief found it better to refer the victim to FIDA, an NGO, than to the police for investigation and prosecution. This raises concern about the effectiveness of various government bodies and whether or not they work as a system. Another victim stated that

upon reporting of the abuse to the chief, instead of helping her, he made sexual advances towards her.

#### **4.7.1.2 Families**

The term family refers to a social unit of two or more persons related by blood, marriage or adoption and having a shared commitment to the mutual relationship (Roberts, 2002). VSA who reported to the family accounted for 23%. Although the family members were easily reachable by the victims and many of them were interested in seeing the dispute resolved as interested parties, due to their relationship with both the victim and the perpetrator, female respondents reported little help from their family members related to the abusive spouse. They however received support from their own family members.

In cases where the family members from both sides convened a meeting and listened to both parties, it was easier to resolve the abuse. However, where one family member or members convened a meeting from either the family of the VSA or the abusive spouse, it was not easy to resolve the dispute. Respondents were concerned that family members of the abusers often sided with them (abuser). Meetings convened by members of the VSA's family, especially the women, hardly resolved the dispute. Family dispute resolution system applied sanctions such as ensuring that the female VSA went back to her parents' home with (out) the children, until the dispute is resolved.

According to a senior police officer in charge of the gender desk at the Police Headquarters in Nairobi, the family as a form of dispute resolution system is not effective in resolving the abuse. In her own words:

*"I have handled many cases of SA in this office. They come here because the family cannot sort out SA as relatives take sides. They either support the husband or wife. Some communities have practices that are discriminative to VSA, especially women. According to the Giriama community, when a female VSA leaves her husband's home because of the abuse, and goes back to her parents' home, she cannot be accepted back at her husband's place, unless she slaughters a goat and serves it to the elders from the husband's side. This is a very expensive requirement. How many women victims can afford a goat? From my experience, VSA from this*

*community opt to stay in the abusive marriage and do not even leave due to the cost implications of going back.” (Key Respondent no. 15)*

The family sanction in respect of SA in this particular case is on the victim and not the perpetrator.

#### **4.7.1.3 Friends**

Reporting SA to friends by VSA accounted for 21% of the cases reported to ADRM. The respondents found it easy to reach their friends because of information technology such as a telephone call or short messaging service (SMS). Most friends only gave advice, consoled VSA or just listened to the abuse details. In such cases, VSA felt a relief having shared their problem with a close friend.

In cases of mutual friends, it was easier for the friend to listen to the sides of both the abuser and VSA and advise them. However, in situations where the abuse persisted, then victims had to seek further help from other systems of dispute resolution. Although friends were found to be helpful, they were not very effective in cases of persistent abuse due to lack of sanctions.

Some victims said that when they reported to their friends, some opted not to intervene, as they did not want to apportion blame to any spouse. In addition, they did not want to be seen as interfering in their friends' marriages. This finding is consistent with the argument advanced by scholars that people view marriage as a “private domain” in which they would rather not interfere with, but leave the spouses to resolve the dispute themselves (Forum on Global Violence Prevention, 2015; Campbell, 2010). Some respondents hesitated from seeking help from their friends for fear of being stigmatized and the need to keep the abuse details private. Majority of the victims reported that their friends advised them to seek help from other sources of ADRM like the church, the family or the CJS in cases where the abuse persisted or was serious, severe or life threatening.

#### **4.7.1.4 The Church**

The term church has been defined to mean the company of all Christians regarded as a spiritual body (Macionis J, 2007). Reports of SA to churches accounted for 15% of the cases referred to ADRM. As illustrated in table 3, 93% of the respondents were Christians

and only 7% were Muslims. Although the Bible in Ephesians 5: 25 urges husbands to love their wives and wives to be submissive to their husbands, the importance of a family, and the need for forgiveness, the study findings show that reporting of SA cases to the church may not be very effective.

Christianity values the family and teaches forgiveness. Most Christian victims interviewed reported that they believed in forgiveness and therefore forgave their abusive spouse as per the church teachings. However, they resorted to the church for intervention when the abuse continued. The respondents were of the view that the church is ineffective in adequately addressing the abuse. They attributed the church's ineffectiveness to lack of sanctions. In many cases, the abuse either continued or became severe after reporting to the church. According to one respondent:

*“I wouldn't expose family matters by reporting the abuse to our friends. My husband is a strong member of the church so I reported to our pastor. However, despite the intervention of the church, he has never stopped abusing me. That is why I came here at FIDA.”* (Respondent no. 3)

Religious beliefs influence VSA to seek a solution to the abuse and not a termination of the marriage. This is an indicator of the fact that religious beliefs alone are not a barrier to accessing the CJS by VSA, but they act together with other factors. The low number of respondents from Islam who reported the abuse to the CJS is explained by the fact that the *Maslah* system of dispute resolution among the Muslim community appears to be effective in addressing SA. At Shauri Moyo Police Station in Kariokor, the study found that reported cases of SA were withdrawn by victims and resolved under the *Maslah* system. The police officers interviewed at the station confirmed this and added that they recognized the *Maslah* system and referred many cases there from the police station.

#### **4.7.1.5 Social Workers**

Reporting to the social worker only accounted for 1% of the reports of SA to ADRM. A social worker is defined as a person engaged in the practice based profession of promoting social change and development, social cohesion, empowerment and the liberation of the people (International Federation of Social Work, 2014).

The study found that most victims did not understand the role of a social worker and how the social worker can intervene in cases of SA. It was unclear to the victims whether the social workers were government officers or people who charge fees for their services. In addition, respondents did not know how effective the social workers are in resolving the SA.

#### **4.7.1.6 NGOs**

The reports of SA made to NGOs other than FIDA and GVRC accounted for 5 % of the cases reported to ADRM. The NGOs include, COVAW, WRAP, Maendeleo ya Wanaume amongst others. Most of the NGOs that received the reports of SA had worked with the community on various aspects of community development and gained recognition as important institutions concerned about the community's wellbeing. Subsequently, when the abuse occurred, victims found it easy to report to them. This was attributed to their accessibility and status of recognition within the society. Many of the NGOs, however, could only give advice to the victims, but they could not do much on the part of the abuser and therefore were not able to resolve the abuse.

#### **4.7.1.7 Other ADRM**

This category includes: Traditional Dispute Resolution Mechanisms (TDRM), marriage counsellor, community council of elders, psychiatrists, and children officers. Marriage counsellors and psychiatrists charge money and most victims were unable to go to them due to the monetary requirements.

##### **4.7.1.7.1 Marriage Counsellors**

A marriage counsellor is a person who provides psychotherapy to help couples of all types recognize and resolve their conflicts to improve their marital relationships (Mayo Clinic, 2016). The perception of a marriage counsellor is a more modern concept. In addition, the counselling service is about victims and perpetrators voluntarily seeking the services of a counsellor. Therefore in the event that the perpetrator is unwilling to cooperate then the counselling sessions cannot take place.

The counsellor does not have sanctions and powers to summon those who refuse to appear before them. VSA, especially, women argued that the perpetrators/ husbands were

not willing to go to the marriage counsellors because of the perception that seeking counselling services is a mark of weakness in a man. These factors therefore contribute to the low reporting of SA to marriage counsellors.

#### **4.7.1.7.2 Children officers**

The role of children officers concerns the welfare of children. Therefore, when SA is reported to them, they only act where children are involved. However, due to their inability to resolve the abuse, they referred the victims to the police and to the courts.

#### **4.7.1.7.3 Traditional Dispute Resolution Mechanisms (TDRM) in Communities**

The study found that TDRM varies from community to community, but has some shared characteristics. The first time SA occurs, the victim is told by friends and relatives to stay, since it happens to many ladies. The second time it happens, the victim is told to persevere. When it becomes frequent and injurious, the victim is asked to tell her in-laws to sort it out. When this fails, she runs back to her home. Depending on the degree of the abuse, she might be told to go back to her matrimonial home or remain at her parents until her in-laws sort out the abuse. If it gets too severe, the in-laws are called to the victim's home (parent) where discussions are held to find out the root cause of the abuse. If the wife is the one at fault, she is told to go back to her husband and be a good wife. If the husband is the one at fault, he is fined and told to take back his wife.

If the abuse continues after these measures have been taken, then the woman would be asked to go back to her home until the man and his family goes for her. In all these times, she goes with her children. When the abuse cannot be sorted out completely, dowry is returned to the man's family and the marriage is dissolved. Due to the urban nature of Nairobi as the capital city, the study found that many spouses find it difficult to go through the TDRM that are commonly found in their rural homes away from Nairobi. This is attributed to the fact that in Nairobi people do not necessarily live according to their ethnic/cultural origin. Many people live in areas that are affordable to them.

#### **4.7.1.7.4 Community Elders as ADRM**

Community elders have been defined as persons recognized by their respective communities as having knowledge and understanding of the traditional culture of the community, including the physical manifestations of the culture of the people and their spiritual and social traditions (Spencis, 2016).

Nairobi City County being an urban area and the capital city, the study found that most people live in a neighbourhood that comprises people from different parts of the country. It is therefore very rare to find a neighbourhood with common norms, practices and values that brings them together, necessitating the roles of community elders who often are to protect the community values. There were however two exceptions namely the Muslim community, brought together by Islamic religion and the Nubian community who settled in the region known as Kibera.

The Nubians have a distinct social structure of dispute resolution by Nubian community elders who are respected and whose decisions bind the community. This explains why none of the respondents was from the Nubian community.

The Muslim community in Kariokor mainly comprised of Somali community. However, their way of life is based on Islamic teachings that regulate disputes as well. Elders handle the disputes, including SA in a system known as *Maslah*. In this respect, the study found that at Shauri Moyo Police Station, reports of SA do not proceed beyond the reporting stage to prosecution because even very serious life-threatening cases which are already reported to the police, are later resolved by the *Maslah* and therefore withdrawn from the CJS.

#### **4.7.1.7.5 Psychiatrists**

Psychiatrists are physicians who specialise in the prevention, diagnosis and treatment of mental illness (MedicineNet, 2012). The study found that VSA only reported to psychiatrists to seek medical attention in cases where the victims suffered psychiatric effects of the abuse. However, because of the negative perception of psychiatric illness, fewer victims report the abuse to the psychiatrists, who only deal with the psychiatric effect of the abuse but not the abuse itself.

#### **4.7.2. Advantages of the ADRM in resolving Spousal Abuse**

There are several advantages of ADRM that make it a preferred system for dispute resolution by VSA. Some of the advantages include: accessibility, cost effectiveness, expediency, absence of legal technicalities, respect by the community, absence of formalities and procedural technicalities, friendly nature of ADRM, and VSA's confidence in the ADRM. The advantages are discussed below.

##### **4.7.2.1 Accessibility**

VSA found it easy to report their cases to most ADRM such as friends, churches, relatives or community elders that could easily be reached on phone or physically. In situations where the victim had no money, they were able to send Short Messages Service (SMS) through the mobile telephone networks such as Safaricom, Airtel, Orange to the ADRM who would call them back, enabling the victim to report the abuse.

In Kariakor, an area predominantly inhabited by Muslim Somalis, the Muslim community has a specific dispute resolution mechanism called *Maslah*, which refers to a community council of elders. According to a police officer at the reporting desk at Shauri-Moyo Police Station within Kariakor, many cases of spousal abuse that are reported to the station, characterized by grievous bodily harm. However, majority of such cases do not proceed to the next level of investigation and prosecution since the *Maslah* summons the families of both the perpetrator and the victim and the abuse is resolved.

Subsequently, the victims either go back to the police station or report their desire not to continue with their earlier report of SA, or report to the police station that the matter has been resolved. The ease with which the abuse can be reported to the *Maslah* and the fast action taken in resolving the dispute makes it a better option for addressing SA. This is different from the police station, where at times the police fail to act on SA reports. They cite reasons such as lack of transport or fuel to be able to effect arrest of the perpetrator. In such situations, the VSA who reports to the police is asked to incur additional expenses in either providing the vehicle or fuelling the police vehicle in order to effect the arrest of the perpetrator.

Although police stations in Nairobi are not very far away from the residence of many VSA, and many of them can be reached by little expenditure in terms of travelling cost, the expected cost of transporting the police officers to effect the arrest of the perpetrator makes reporting SA to the police stations expensive as compared to the ADRM. According to one VSA:

*“... My husband beats me and he does not even give us money for food. I have to struggle to get some money to look after my children. I cannot again spend the same little money to go and report to the police station. In any case, they will not be able to listen to me the same way relatives would. My only option in that case is to call relatives to come and assist me in stopping this abuse...”* (Respondent no. 9)

The above statement by the respondent shows the preference to report SA to a relative rather than to the police station.

#### **4.7.2.2 Cost Effectiveness**

For most VSA, a convenient dispute resolution mechanism is that which can resolve the dispute without much expenditure. Most respondents said that when they need to contact a friend, they only need to call or send them a short message to call back so that they can communicate. In order to report the abuse to the church, the respondents said that they would simply walk to the churches located near their residence or just call a church leader. The information communication technology has made it easy to report the abuse. One respondent stated:

*“...I prefer to report to ADRM than to the police because there is no money to be paid...”* (Respondent no. 11)

In most cases, the victims report the abuse by reporting the incident in their own language that is often understood by the friend, relative or other forms of ADRM. This is as opposed to the police station where victims may have to report in English or Kiswahili because the officer at the reporting desk may not understand the victim's reporting language.

#### **4.7.2.3 Expediency**

Many victims found ADRM as the fastest way to get the help when needed. SA is often manifested by physical assault that may cause grievous bodily harm and serious injuries that may result into fatality, unless help is sort immediately.

Raising an alarm to friends or relatives that a victim is subjected to abuse can lead to a quick response from them. One respondent stated that more often when her husband got too violent, she was compelled to seek the assistance of neighbours.

*“When my husband gets violent, I am compelled to seek the assistance of neighbours who are within reach so that the abuse can stop...he would look at the door and whip me. At this juncture my only remedy would be to scream and call out to the neighbours who understood his violent behaviour. Many a times, he would only stop beating me after the neighbours come and plead with him to stop. (Respondent no. 17)*

#### **4.7.2.4 Absence of Legal Technicalities**

VSA preferred the ADRM because of the absence of legal technicalities that characterize the CJS. There is, for example, no formal procedure that one needs to follow to report SA to the church, family, friends and the chief. A simple act of stating that one has been abused is information that can be acted on. In addition, the ADRM is flexible and the aim is the resolution of the dispute and not so much the procedure of the resolution process.

#### **4.7.2.5 Respect of the ADRM by the Community**

The respondents said that they preferred the various ADRM because of the respect that the community had for the systems. For example, one would call a respectable friend to intervene when a dispute occurred. Likewise, the choice of family member to whom the abuse was reported was determined by the level of respect that VSA and/or the perpetrator had for that individual. Similarly, VSA went to church leaders for intervention because of their respect for the church as an institution. The Muslim community in Kariokor reported SA to the *Maslah* because of the community’s respect for elders who

constitute the *Maslah*. The *Maslah* resolved serious SA cases due to the community's respect for the system

#### **4.7.2.6 Informality**

VSA chose to report to ADRM because of its informality in terms of reporting and processing of disputes. The study finding is consistent with other scholar's arguments (Benson & Fox, 2002; Roberts, 2002). This supports the argument by Buzawa & Buzawa (2003), that ADRM is preferred because of its informality.

The study found that ADRM is devoid of the formalities that characterize the CJS. Victims are able to choose by themselves whom they want to deal with their case, as opposed to the CJS where one does not determine who hears their case. The parties can decide where, when and how the matter is to be heard. This flexibility is lacking in the CJS where the court hearings are conducted on official working days and hours.

#### **4.7.2.7 The Friendly approach by ADRM**

The study found that ADRM is friendly to the victims who felt at ease reporting the abuse for intervention. Since most of the people who handled the abuse were people known to the abuser or the victim or both, the familiarity and the friendliness in search of a solution to the abuse made ADRM preferred to the CJS. The focus of ADRM is the resolution of the abuse, as opposed to the CJS that seeks to establish the guilt or innocence of the accused person.

#### **4.7.2.8 The Flexible Nature of ADRM**

The study found that the ADRM are flexible and victims are able to switch from one mechanism to another without any problem. According to one respondent:

*“For years my husband and I had never known peace. He would take out his frustrations on the children and me whenever he felt like it. At first my in-laws would listen to me and even try to talk him out of his drinking and violence against us. But as he threatened to stop assisting them financially, they started avoiding me. Never responding to my pleas. At this point the only person I could turn to was (Mrs.....) my friend for many years. Given that she had known both of us for a long time, she*

*could not take my husband's abusive way...she is the one who encouraged me to come to FIDA..."* (Respondent no. 16)

#### **4.7.2.9 Spousal Abuse Victims' Confidence in the ADRM**

The study found that respondents who reported the abuse to ADRM had confidence that they were able to effectively resolve the abuse based on the respect for the various systems by the community. Since the systems exist and are recognized as avenues for reporting SA, they are expected to manage the conflict without causing undue suffering to the victims.

Although the ADRM seem to be preferred by VSA, the study established that the systems are characterized by weaknesses that make them inadequate in effectively solving the abuse. The weaknesses are discussed in the following section.

#### **4.7.3 Weaknesses of Alternative Dispute Resolution Mechanisms in resolving SA**

Although the ADRM are preferred by VSA as the first reporting point of SA for intervention, there are characteristic weaknesses that negatively impact on their ability to resolve the abuse. The weaknesses are the patriarchal nature of society, difficulty in enforcing decisions by the ADRM, non-binding nature of ADRM decisions, social and cultural perception of SA, lack of sanctions and corruption.

##### **4.7.3.1 The Patriarchal Nature of the Society**

Kenya is a patriarchal African country. The perception about the role of men and women therefore affects decision making by the various ADRM. For example, many female victims said that whenever they reported to their relatives and friends, most of them advised them to respect and be submissive to their husbands. To the contrary, the female victims were at times blamed for the abuse. Some friends and relatives advised the victims to persevere because SA is part of a marriage.

VSA, especially women found it very difficult to take measures against the abuser because of the patriarchal nature of the society, which recognizes the male abuser as the head of the family, who must be respected. Where the abusers were breadwinners, reporting the abuse to the ADRM might be interpreted as an attempt to undermine the authority of the abuser, who is the breadwinner and decision maker in the family. The

likely consequence of withdrawal of family support by the abuser was found to hinder VSA from reporting the abuse even to close friends and relatives.

The patriarchal society socializes men to be dominant and women to be submissive. As has already been explained, this encourages SA. Some female respondents reported that from the various ADRM they sought, they were advised to be submissive and view the abuse as a man's assertion of his dominance. In most Kenyan communities, the patriarchal nature of the family determines who controls the resources and therefore where family support comes from. VSA reported being advised and decisions being made by ADRM, taking into account the fact that it is the men who controlled the family resources. The study established that most of the ADRM are still captives of a patriarchal mind-set. The respondents were of the opinion that the general belief amongst many communities that a man should be the head of the household had permeated into institutions of ADRM. Many victims, particularly females, expressed their reservation about relying on their in-laws to get amicable solutions to their problem. According to them, in most instances the decision from the church, the relatives and friends are often to the advantage of the male perpetrator.

According to one respondent interviewed at FIDA who was solely interested in securing the future of her three children:

*"...all I wish to get now is the assurance that my children will get the support they need from their father. We have tried different ways of resolving our disputes, but every time I am encouraged to persevere...rarely has my husband found a person who will tell him to his face that he is the one who is wrong..."* (Respondent no. 20)

The study established that male VSA find it very difficult to get audience from community leaders because of the patriarchal nature of the society that expects them to be in control of their houses as the dominant spouse. In all communities, SA report by a male victim attracts stigma, shame, blame, ridicule and loss of self-esteem to the victim. Some male VSA stated that they would rather persevere the abuse than report to any of the ADRM and be a subject of ridicule.

As per the discussion in one of the FGD, the participants who were all men, were in agreement that the Kenyan society expects men to take charge of their homesteads and discipline any unruly wife. Because of this perception, when men themselves become VSA, many of them find it difficult to report the abuse even to close friends for fear of losing their standing in the society. This is consistent with the masculinities' in crisis theory. According to one of the male VSA:

*“When a man is beaten by a woman, it does not necessarily mean that she is stronger physically [sic] than him. He may be drunk or just tired...yet he cannot go out and tell the public that he was assaulted by his wife because no one will understand the circumstances”* (Respondent no. 127)

This argument underscores the dominant role of men and the submissive position of women in a patriarchal society that makes it difficult to believe a report by a male VSA.

#### **4.7.3.2 Difficulty in Enforcing ADRM Decisions**

One of the major weaknesses of ADRM is the difficulty in enforcing the decision. The study found that in some cases, the perpetrators ignored the decisions made by ADRM and the abuse continued. Amongst many other factors, this was attributed to the difficulty faced by the ADRM in enforcing their decision. The ADRM rely on the ability of the perpetrator to respect, observe and abide by the decision.

However, where the perpetrator chooses to ignore such decision, the abuse continues since ADRM lacks mechanisms to enforce their decision and ensure compliance by the perpetrator. In effect therefore, although the ADRM seems to be preferred by VSA as a first instance of reporting, its reliance on the goodwill of the perpetrator to abide by the decision is the major weakness that renders ADRM inadequate in resolving SA. When the perpetrator chooses to ignore the ADRM decision, the VSA remains exposed to further abuse without the protection of ADRM. One of the VSA described the inadequacy of the church as an ADRM to resolve SA in the following words:

*“I wedded in church and therefore have a lot of respect for the institution as the only place where I can go to seek solution for my marital problems. I wouldn’t expose my family matters by reporting to friends and in-laws. Since my husband is a strong member of the church, I thought making my report to church would provide a solution to the problem. However, despite the intervention of the church, he has not stopped abusing me. Where else can I go to since I do not want to expose my family matters in public?”*

(Respondent no. 105)

From the above, it is clear that the major weakness of the church as one of the ADRM is the lack of a mechanism to enforce its decision to stop SA. This weakness leaves victims exposed to further abuse.

One respondent interviewed at FIDA stated that she had resorted to the NGO because all other means had failed. The couple had been married for five years and remained very close to the church. Naturally, the church was therefore the best place to report the abuse. However, the church could not issue sanctions against the husband. The female respondent interviewed said that:

*“...my husband told me that even if I report to the church, the only thing the church can do is to tell him that he will burn in hell...”* (Respondent no. 97)

#### **4.7.3.3 Non-Binding Nature of ADRM decisions**

The study found that another weakness of ADRM is their non-binding nature on the perpetrator who can choose whether to respect the decision and abide by it or not. This combined with lack of sanctions makes ADRM inadequate in resolving SA, while leaving VSA vulnerable and more exposed to continued abuse. According to a female respondent who reported the abuse to church:

*“Every time I reported the abuse to the church, when summoned by the church minister, my husband would promise to do everything I complained about such as paying school fees, stop abusing me and show respect to me. Immediately we leave the church, he would be back to his*

*usual abusive ways. The church has no way of forcing him to pay school fees, respect and stop abusing me.” (Respondent no. 92)*

#### **4.7.3.4 Social and cultural perception of SA**

The study established that when the abuse occurs the first time, the female victims are encouraged by friends and relatives to persevere because SA is perceived as a normal occurrence and is viewed as a man’s way of showing his dominance and taking charge of his household. This perception explains why family members and relatives hesitate to ‘interfere’ in SA since the marriage ‘is seen as a private sphere from which third parties need not interfere’. Some female victims reported that every time they reported to their relatives, those from the husband’s side and from their own side supported the perpetrator because of the perception that the abuse is a way of exercising control of his household.

Many of the respondents said that their relatives and friends encouraged them to resolve their disputes amongst themselves.

The study also established that male victims found it difficult to report to their in-laws, their own friends and relatives due to the socialization that a man is stronger and the head of the family and has the authority to discipline an errant wife. Therefore, when a man becomes a VSA, the stigma associated with the abuse makes the male victim appear as weak, vulnerable and unable to control his own house.

Lady Issa’s song titled *Kuteleza sio Kunaguka* which has already been discussed in this chapter captures the society’s socialization about SA. The song emphasizes the African communities’ perception and response to SA. Such kind of perception negatively affects the ability of VSA to report to their relatives and close friends for intervention on SA. This is a major weakness of the ADRM. In the words of one of the spousal abuse victims:

*“Every time I am beaten, when I report to my in-laws, they instead blame me for being at fault and tell me to improve my way of interacting with my husband. They do not intervene. They say this is a matter that I should resolve with him yet I am not able to make him see his fault.” (Respondent no. 86)*

#### 4.7.3.5 Lack of Sanctions

All the respondents said that many ADRM lack sanctions. They thrive on the assumption that the parties to a dispute will realize that it is in their best interest to respect the guidance and advice given by ADRM.

#### 4.7.3.6 Corruption

Like the formal justice system, the study established that corruption is a major challenge faced by VSA who reported their cases to the chiefs. Unlike all the other ADRM that lack enforcement mechanisms of their decisions and sanctions, the chief's office, being the government link with the people has the force of law, enforcement mechanism and can pass sanctions, making it one of the most effective ADRM. However, the chief's ability to resolve SA was found to be greatly affected by corruption. Respondents reported that when they asked for assistance from the chiefs, the chiefs asked them for *Kitu kidogo* (a Kiswahili word meaning something small which means a payment to the chief to facilitate the desired action). Many respondents especially women who were dependent on their abusive husbands were unable to seek redress from the chiefs because of their inability to pay *kitu kidogo*. In the words of one respondent:

*"I reported to the chief after being abused severally by my husband. But he asked me to pay kitu kidogo which I did not have. Despite the fact that I had physical injuries I was not attended to as those who had money paid and their concerns were addressed."* (Respondent no. 85)

The other aspect of corruption established by the study is that once reports were made to the chiefs by the VSA, the chiefs summoned the perpetrators who gave the chiefs *kitu kidogo* and the cases were discontinued. According to one female respondent:

*"I reported to the chief who summoned my husband but after they talked the chief told me to go home and take care of my home, that I am the one who has a problem. At home, my husband continued beating me and told me that even if I report to the chief there is nothing that will be done to him because he has money which he has paid to the chief."* (Respondent no. 90)

As a representative of the government security organ at the grassroots, the chiefs' offices serve as the middle ground between the mainstream CJS and ADRM. Indeed, as key respondents, all the chiefs interviewed confirmed that they get at least one case of SA every week. The data gathered also showed that chiefs stationed in low income neighbourhoods had the highest number of reported cases. For instance, Kariobangi location, located on the edge of the sprawling Mathare slums recorded the highest number of reported cases of SA, with an average of at least two cases daily. In contrast, Karen location had not had any report of SA within the month when the interview was conducted.

Data gathered from the police as key respondents also showed that the chief's office appeared to be the most preferred mode of marital dispute resolution. Many police officers said that they at times refer matters to the chief for resolution. In effect therefore, the police who refer matters to them and the community who believe that they have the ability to enforce their decisions recognize the chief's office. However, the ability of the chief's office to resolve SA is negatively affected by corruption that discourages many VSA from reporting their cases.

Despite its weaknesses, many respondents reported their cases to the chief's office because of the ability to enforce the decisions since it is an administrative structure of the government that has formal recognition and authority. When its decisions are ignored, the chief can report to the police for the prosecution apart from other measures and sanctions that the chief's office can impose. Therefore, victims preferred to report their matters to the chiefs instead of other forms of ADRM because of its ability to enforce decisions and pass sanctions or involve the police. Despite their weaknesses, the study established that the ADRM are to some extent successful in resolving SA especially at the first stages or the onset of the abuse. This is explained by their preference by most of the respondents interviewed.

#### **4.8 Conclusion**

In summary, SA reporting to ADRM is first made to a friend, relatives or church. If this does not work, then they move to the chiefs, who would either refer them to the police or advise them to report the matter to any relevant authority. Some were referred to NGOs

like FIDA, GVRC. Others were community council of elders, psychiatrists, children officers, marriage counsellors and the *Maslah*.

The study found that many respondents know that they can seek protection from physical abuse from the criminal justice system, but preferred to explore other mechanisms of dispute resolution and only reported to the CJS as a last resort. The constitution recognizes alternative methods of dispute resolution so long as they are not repugnant to justice and morality and inconsistent with the constitution. However, as at the time this study was conducted, there was no law in place to regulate ADRM and give them the force of law hence their inadequacies. Subsequently therefore, in very serious cases involving threat to life and property, the study found that the reports were made to the police as the first entry point to the CJS.

## **CHAPTER FIVE**

### **SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

This chapter presents a summary of the findings, conclusions and recommendations. The presentation is in line with the objectives as set out in Chapter 1 and entails legislative, policy, administrative, research and programmatic recommendations to enhance VSA access to the CJS in Kenya.

The study sought to answer the following research questions.

1. What is the status of spousal abuse in Kenya and the CJS response?
2. What are the social, cultural and economic determinants that facilitate access to the criminal justice system by spousal abuse victims in Nairobi City County, Kenya?
3. What are the social, cultural and economic barriers that hinder access to justice by victims of spousal abuse in Nairobi City County, Kenya?
4. Apart from the criminal justice system, what other alternative mechanisms are available in resolving spousal abuse in Nairobi City County, Kenya?
5. How can access to the criminal justice system by victims of spousal abuse be enhanced in Kenya?

#### **5.1 Summary of the Study Findings**

The study found that SA is a national concern and the respondents sampled came from all regions in the country which means that SA is a national problem. SA affects the youthful segment of the society. This is the most productive population. It therefore means that they cannot be able to participate meaningfully in the nation's development because of the effects of the abuse. SA as a national concern needs urgent intervention yet the CJS' response is pyramidal. The cases filed in the CJS fall off along the way and only a few reach the decision making stage. In effect, the CJS' response is inadequate and ineffective in dealing with SA. Indeed, this is illustrated by the many cases of SA which continue to occur despite the operations of the CJS.

The following factors are responsible for the pyramidal response of the CJS to SA in Nairobi City County.

**Table 14: Social, Cultural and Economic Barriers that Hinder Access to the CJS by VSA in Nairobi City County, Kenya**

<b>Social Barriers</b>	<b>Economic Barriers</b>	<b>Cultural Barriers</b>
Socialization	Occupation	Religion
Social stigma	Employment status	Patriarchy
The attitude of criminal justice agencies officers towards spousal abuse	Distribution of Resources	Beliefs
Fear of retaliation from the abuser.	Legal services	Values
Level of education	Social status	Practices
Social class		Customs

Despite the barriers, the following facilitators were found to encourage VSA to report the abuse.

**Table 15: Social, Cultural and Economic Facilitators that facilitate Access to Justice by VSA in Nairobi City County, Kenya**

<b>Social Facilitators</b>	<b>Cultural Facilitators</b>	<b>Economic Facilitators</b>
Age	The marriage institution	Availability of legal services by FIDA
Gender	Children	
Victims' knowledge of the CJS		
Psycho-social support		

For the cases which did not go through the CJS, the study found the following ADRMs as the preferred options by the respondents.

**Table 16: ADRM Preferred by the Respondents**

	<b>ADRM available</b>	<b>Percentages</b>
1.	Chief	25
2.	Family	23
3.	Friends	21
4.	Church	15
5.	Social Worker	1
6.	NGOs	5
7.	Others	10

VSA preferred ADR mechanisms due to their advantages which include: accessibility, cost effectiveness, expediency, absence of legal technicalities, respect for the ADRM systems by the community, informality, the friendly approach by ADRMs, the flexible nature of ADRMs and VSA's confidence in the ADRMs.

Despite their preference by VSA, ADRMs have the following disadvantages: the patriarchal nature of the society, difficulty in enforcing ADRM decisions, non-binding nature of ADRM decisions, social and cultural perception of SA, lack of sanctions and corruption

## **5.2 Conclusion**

The study makes the following conclusions on each of the objectives of the research:

### **5.2.1 Objective 1**

Spousal abuse is a national threat to the family. It causes suffering and disruptions of the family leading to separation, divorce and members of the family experiencing violence for those who opt to remain in the abusive marriages. Children are affected as they experience the abuse as it occurs between the parents. This leads to a situation where child victims of spousal abuse are socialized that spousal abuse is part of family life and therefore they become adults likely to perpetrate or become victims of spousal abuse. The effect is inter-generational perpetuation of spousal abuse in the absence of deliberate effective intervention.

The CJS response to SA is inadequate and does not take into account the social, cultural and economic determinants that hinder its access by victims. The adversarial nature, technicalities and formalities of the court as well as the legal costs make it difficult for VSA to find justice. As a result, 89% of cases reported to the police drop off the justice system while only 11% are finalized by the court.

### **5.2.2 Objective 2**

The social determinants that facilitate access to the CJS by VSA are psychosocial support, age, children, value to marriage, financial & legal support. The cultural determinants that facilitate access to the CJS are the value of the marriage institution and the presence of children in a marriage.

The economic determinants that facilitate access to the CJS are social status determined by distribution/ control of resources, availability of legal services and rescue centers. There are more organizations offering such services for women than men, this explains why 95% of female VSA and only 5% of men reported their cases.

### **5.2.3 Objective 3**

Kenya is a patriarchal society in which males and females are socialized that women are subordinate to men who are the dominant spouses. This situation makes it difficult for male spouses to report the abuse while the female spouses being dependant on the husband only report so as to get financial support for themselves and their children. The socialization inhibits the VSA from reporting the abuse due to concerns about social stigma attached to being a victim, social status, fear of perpetrator and the attitude of the police. Cultural factors such as religion, patriarchy, beliefs, values, practices and customs hinder access to the CJS by VSA. Further, the VSA who are financially dependent on their spouses are reluctant to report their cases for fear of losing the financial support. The distribution/ control of resources by the perpetrator therefore hinders access to CJS by VSA.

### **5.2.4 Objective 4**

The ADRM available in Nairobi County for resolving SA are: Chiefs (25%), Family (23%), Friends (21%), Church (15%), NGOs (5%), Social Workers (1%) and Others (10%). Most of the Respondent VSA resorted to the Chiefs as an ADRM. This is because the Respondents identify with the Chiefs which is the lowest level of Government on the ground and also because the chief is chosen amongst the community and amongst those who command some respect from the community. It is therefore a preferred medium of reporting SA as compared to the CJS due to its accessibility. There is low reporting to professional ADRM such as psychiatrists, counsellors and social workers because these are people who are not known to the spouses yet SA is an intimate concern that Respondents do not want to expose to anybody they do not know.

### **5.3 Recommendations**

The study makes the following recommendations on each objective as discussed below:

#### **5.3.1 Objective 1**

The President should declare spousal abuse as a national concern that threatens the family as the basic unit of society. The President should further direct the Cabinet Secretary in charge of the Ministry of Labour and Social Protection (in collaboration with Kenyatta University Sociology Department and other NGOs working in the area of Gender- Based Violence such as FIDA, GVRC, Maendeleo ya Wanaume) to formulate a policy on family protection.

In addition, the Cabinet Secretary in charge of the Ministry of the Labour and social protection, Department of Social Protection in collaboration with chiefs, NGOs, Academia, Faith based Organizations, Women groups, Youth groups, Men groups should spearhead a national debate on spousal abuse cascaded to the regional, county and household levels so as to re-socialize the society on relationships between spouses.

Although there exists a social protection department under the Ministry of Labour and Social Protection, this study recommends that there is need for the President to create a specific ministry in charge of families and social protection due to the concerns about several issues that affect the family which needs to be addressed since the family is the basic unit of the society. Such a ministry would have departments such as:- Family department, Youth Department, Children Department and gerontology department (the study of the aging so as to take care of concerns about abuse and neglect of the elderly in the community, in line with Article 57 of the Constitution which provides for the Older members of the society).

#### **5.3.2 Objective 2**

The Attorney General (AG) in collaboration with the Law Society of Kenya (LSK), the Law Reform Commission (LRC), Office of the Director of Public Prosecutions and Parliament should initiate reform on the current laws such as the Sexual Offences Act and the Protection against Domestic Violence Act to create an offence known as SA that

recognizes all the different forms of the offence such as psychological, emotional, financial and sexual aspect. This is because the current laws only recognize physical abuse. The Sexual Offences Act should specifically be amended to criminalize sexual abuse within marriage. These laws should further provide for mandatory reporting of spousal abuse, mandatory prosecution of spousal abuse and a no drop policy to ensure that cases of spousal abuse are not dropped off the CJS. SA related cases should be waived by specifically providing so in the Protection against Domestic Violence Act. In addition, Parliament should amend the Protection of Domestic Violence Act to provide for a Support Fund for VSA.

The Government in collaboration with the Office of the Attorney General and the Ministry of Public Service and Gender, Ministry of Health and County Governments should create one stop rescue centres across the country where VSA who report the abuse can access all services including medical, legal and psychosocial services. This is a centre that should be opened at every county and with time at every sub-county level so that many VSA can access the services. The services should include: residential, emotional support, child care services, financial support, support groups, psychiatrist services, social services, legal services, life skills coaching, mediation services, medical and health services. This is one step will also serve as a rescue centre.

The LSK together with the National Legal Aid Service established under the Legal Aid Act, 2016 should ensure that vulnerable VSA who are not able to afford legal fees get free pro-bono legal representation as and when is required. These reforms should be aimed at enhancing the facilitative determinants to accessing justice by VSA within the CJS.

### **5.3.3 Objective 3**

The Cabinet Secretary of the Ministry of Labour and social protection in collaboration with the Kenyatta University Sociology Department and NGOs dealing with SA cases such as FIDA, GVRC, Maendeleo ya Wanaume, should have a discourse on the social, cultural and economic barriers which hinder access to the CJS by VSA. This discussion should be propagated on a national, county, community and household levels.

The ODPP office should conduct a capacity building program for the prosecutors so that they understand the social, cultural and economic barriers that inhibit access to the

CJS by VSA. This should be done in conjunction with the Commission on Administrative Justice (CAJ).

The Judicial Service Commission (JSC) in collaboration with the Office of the Attorney General and the Office of the Director of Public Prosecutions particularly the Sexual and Gender based division should also spearhead capacity building programs and trainings for all courts and tribunals to take into account the social, cultural and economic barriers which inhibit access to the CJS by VSA.

#### **5.3.4 Objective 4**

The Judicial Service Commission (JSC) in collaboration with Parliament and Commission on Administrative Justice (CAJ) should create a quasi-judicial system such as a Family tribunal composed of experts from different disciplines to handle cases of spousal abuse. The tribunal should comprise of multidisciplinary experts such as sociologists, psychiatrists, restorative justice experts, family mediation experts, lawyers, victimologists, social workers, family therapists and any other experts who can help in detecting and resolving SA at an early stage and preserve the family unit. Only very serious and life threatening cases which cannot be resolved by the Tribunal should be prosecuted through the CJS.

The Cabinet Secretary in charge of the Ministry of Internal Security and Defence in collaboration with the Cabinet Secretary in charge of Labour and social protection and KU Sociology department should undertake the capacity building of the chiefs as the major avenue of ADRMs to enable them deal with SA since they were the most preferred ADRM by the Respondents. This is in line with implementation of Article 159 of the Constitution and the Policy on Alternative Dispute Resolution.

#### **5.3.5 Further Research**

There is need for national research to be carried out by sociology department Kenyatta University in collaboration with the National Crime Research Centre, a state corporation under the Office of the Attorney General and Department of Justice, on the causes and effect/impact of SA on the family in Kenya by identifying and documenting the specific

causes of SA, the research findings will assist in the development of specific policies and interventions to address SA in Kenya.

The study therefore achieved its objectives. The overall one was to investigate the socio-cultural and economic determinants of access to the CJS by VSA in Nairobi County, Kenya and the specific objectives were to;

1. Establish the status and the response of the CJS to SA in Nairobi County, Kenya.
2. Understand the social, cultural and economic determinants that facilitate access to the CJS by VSA in Nairobi County, Kenya.
3. Determine the social, cultural and economic barriers that hinder access to justice by VSA in Nairobi County, Kenya.
4. Identify the available alternative mechanisms of resolving SA in Nairobi County, Kenya.
5. Generate suggestions on how to enhance access to justice by VSA in Kenya.

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## APPENDICES

### Appendix A: List of Respondents

#### A. SPOUSAL ABUSE VICTIMS

1. An unemployed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
2. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
3. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
4. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
5. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
6. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
7. An unemployed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
8. An employed female in the private sector respondent aged between 18 and 24 years interviewed at FIDA in Nairobi.
9. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
10. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
11. An unemployed female aged between 18 and 24 years interviewed at FIDA in Nairobi.
12. An unemployed female aged between 18 and 24 years interviewed at FIDA in Nairobi.
13. An unemployed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
14. An unemployed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.

15. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
16. An unemployed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
17. An unemployed female respondent aged between 65 and above years interviewed at FIDA in Nairobi.
18. An unemployed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
19. A self-employed female respondent aged between 65 and above years interviewed at FIDA in Nairobi.
20. An unemployed female aged between 18 and 24 years interviewed at FIDA in Nairobi.
21. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.
22. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
23. A self-employed female respondent aged between 55 and 64 years interviewed at FIDA in Nairobi.
24. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
25. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
26. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
27. An employed female in the private sector respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
28. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
29. A self-employed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.

30. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
31. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
32. An employed female in the public service respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
33. An employed female in the public service respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
34. A self-employed female respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
35. An employed female in the public service respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
36. A self-employed female respondent aged between 65 and above years interviewed at FIDA in Nairobi.
37. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
38. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
39. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
40. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
41. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
42. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.
43. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
44. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.

45. An employed female in the public service respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
46. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
47. A self-employed female respondent aged between 25 and 34years interviewed at FIDA in Nairobi.
48. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
49. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
50. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
51. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
52. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
53. 53 An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
54. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
55. A self-employed female aged between 35 and 44years interviewed at FIDA in Nairobi.
56. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
57. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
58. An employed female in the private sector respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
59. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.

60. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
61. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
62. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
63. An employed female in the public service respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
64. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
65. A self-employed female respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
66. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
67. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
68. A self-employed female respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
69. An employed female in the public service respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
70. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.
71. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
72. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
73. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
74. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.

75. A self-employed female respondent aged between 45 and 54years interviewed at FIDA in Nairobi.
76. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
77. An unemployed female aged between 18 and 24 years interviewed at FIDA in Nairobi.
78. An unemployed female aged between 18 and 24 years interviewed at FIDA in Nairobi.
79. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
80. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
81. An unemployed female aged between 18 and 24 years interviewed at FIDA in Nairobi.
82. . An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
83. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
84. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
85. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
86. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
87. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
88. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.
89. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.

90. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
91. An employed female in the private sector respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
92. An unemployed female aged between 35 and 44 years interviewed at FIDA in Nairobi.
93. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
94. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
95. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
96. A self-employed female respondent aged between 35 and 44years interviewed at FIDA in Nairobi.
97. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
98. An employed female in the public sector respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
99. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
100. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
101. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
102. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
103. An employed female in the public service respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
104. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.

105. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
106. A self-employed female aged 45-54 years interviewed at FIDA in Nairobi.
107. A Female Casual worker aged 25-34 years interviewed at FIDA in Nairobi.
108. A self-employed female aged 25-34 years interviewed at FIDA in Nairobi.
109. A non-employed female aged 25-34 years interviewed at FIDA in Nairobi.
110. A self-employed female aged 55-64 years interviewed at FIDA in Nairobi.
111. A female casual worker aged 45-54 years interviewed at FIDA in Nairobi.
112. A female casual worker aged 45-54 years interviewed at FIDA in Nairobi.
113. A retired female aged 55-64 years interviewed at FIDA in Nairobi.
114. A self-employed aged 35-44 years interviewed at FIDA in Nairobi.
115. An employed female in the casual jobs respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
116. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
117. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.
118. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.
119. A female casual worker aged between 35 and 44 years interviewed at FIDA in Nairobi.
120. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.
121. A self-employed female respondent aged between 35 and 44 years interviewed at FIDA in Nairobi.
122. An unemployed female aged between 45 and 54 years interviewed at FIDA in Nairobi.
123. A female casual worker aged between 25 and 34 years interviewed at FIDA in Nairobi.
124. An unemployed female aged between 25 and 34 years interviewed at FIDA in Nairobi.

125. An employed female in the private sector respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
126. A self-employed female respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
127. A self-employed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
128. 130. A self-employed female respondent aged between 45 and 54 years interviewed at FIDA in Nairobi.
129. A self-employed female respondent aged between 25 and 34 years interviewed at FIDA in Nairobi.
130. A self-employed male respondent aged between 55 and 64 years interviewed at Shauri Moyo in Nairobi.
131. A non-employed male respondent aged 35-44 years interviewed at Shauri Moyo in Nairobi.
132. A self-employed male respondent aged 18-24 years interviewed at WRAP in Nairobi.
133. A self-employed male respondent aged 25-34 years interviewed at WRAP in Nairobi.

## **B. KEY RESPONDENTS**

### Police Officers

1. A female police officer in charge of the Gender Desk interviewed at Lang'ata Police Station.
2. A female police officer in charge of the Gender Desk interviewed at Kilimani Police Station.
3. A female police officer in charge of the Gender Desk interviewed at Ngong Police Station.
4. A female police officer in charge of the Gender Desk interviewed at Kajiado Police Station.
5. A female police officer in charge of the Gender Desk interviewed at Gigiri Police Station.

6. A female police officer in charge of the Gender Desk interviewed at Dagoretti Police Station.
7. A male police officer in charge of the Gender Desk interviewed at Central Police Station.
8. A male police officer in charge of the Gender Desk interviewed at Embakasi Police Station.
9. A female police officer in charge of the Gender desk interviewed at Starehe Police Station.
10. A male police officer in charge of the Gender Desk interviewed at Makadara police Station.
11. A female police officer in charge of the Gender Desk interviewed at Kayole Police Station.
12. A male police officer in charge of the Gender Desk interviewed at Kasarani Police Station.
13. The Then Inspector General of Police of the National Police Service interviewed at the National Police Service Headquarters.
14. An officer of the rank of Deputy Inspector General interviewed at the National Police Service Headquarters.
15. An officer in charge of the gender desk interviewed at the National Police Service Headquarters.

#### Prosecutors

16. A male prosecutor interviewed at the Kibera Law Courts.
17. A female prosecutor interviewed at the Milimani Law Courts.

#### Representatives of institutions

18. A female officer in charge of Psycho-Social Support at FIDA interviewed at FIDA.
19. A female legal officer at FIDA interviewed at FIDA.
20. A female officer in charge of psycho-social support at GVRC interviewed at GVRC.
21. A female officer providing psycho-social support at GVRC interviewed at GVRC.

#### Judges and Magistrates

22. A magistrate of the rank of Senior Resident Magistrate interviewed at the Makadara Law Courts.
23. A magistrate of the rank of Chief Magistrate interviewed at the Makadara Law Courts.
24. A magistrate of the rank of Chief Magistrate interviewed at the Kibera Law Courts.
25. A magistrate of the rank of Resident Magistrate interviewed at the Kibera Law Courts.
26. A magistrate of the rank of Principal Magistrate interviewed at the Milimani Law Courts.
27. A magistrate of the rank of Senior Principal Magistrate interviewed at the Milimani Law Courts.
28. A judge in the family division of the High Court interviewed at the Milimani Law Courts.
29. A judge in the criminal division of the High court interviewed at the Milimani Law Courts.
30. A judge in the Supreme Court interviewed at the Supreme Court.
31. A judge from the Court of Appeal in Kenya interviewed at the Court of Appeal

**Appendix B: Some Images from the Field**

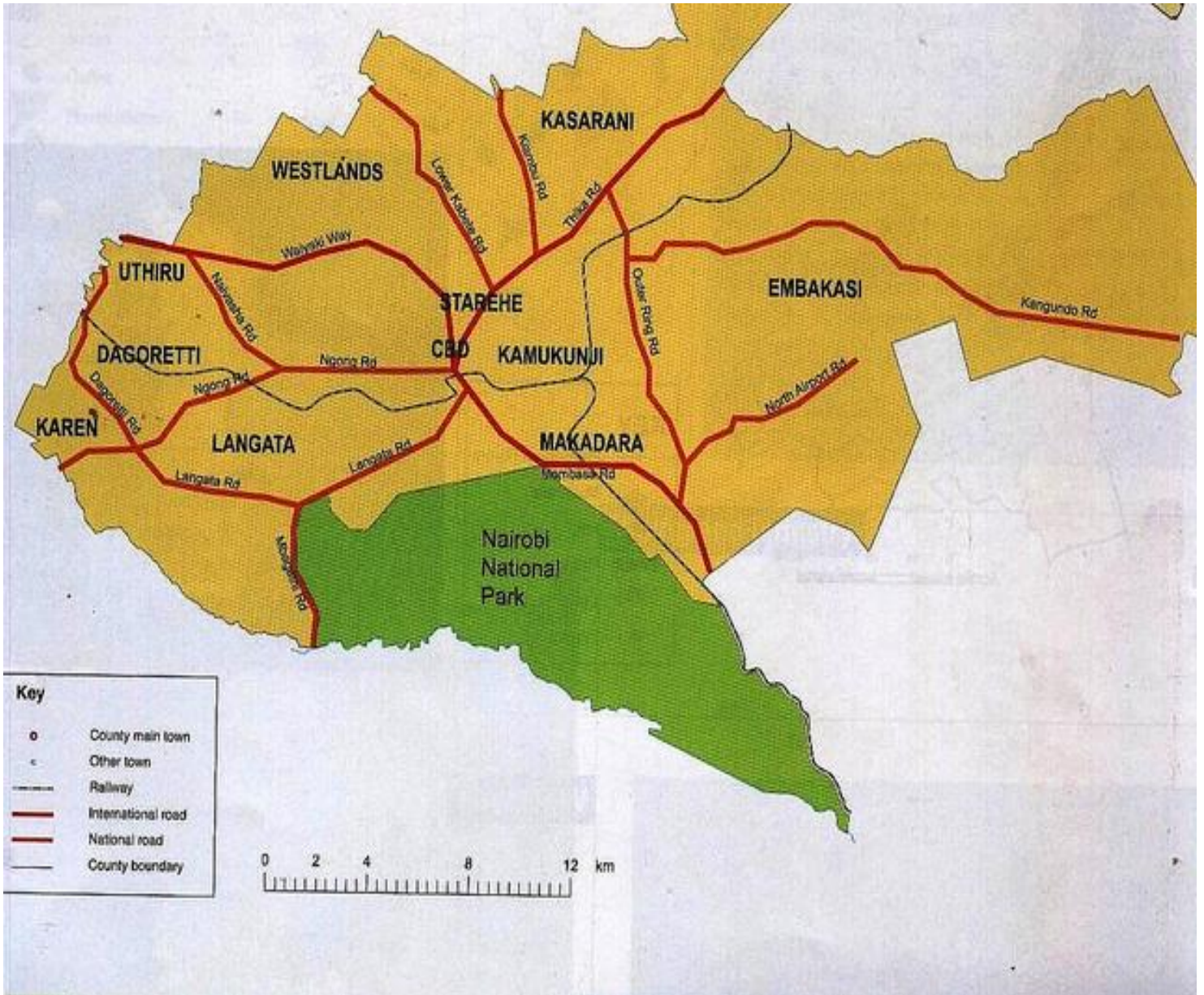
Some Participants in a Focus Group Discussion at FIDA Nairobi Offices



The Gender Desk at Shauri Moyo Police Station



Appendix C: Map of Nairobi City County



## **Appendix D: Informed Consent Guide**

Research Title: SOCIO-CULTURAL AND ECONOMIC DETERMINANTS OF ACCESSING THE CRIMINAL JUSTICE SYSTEM BY VICTIMS OF SPOUSAL ABUSE IN NAIROBI CITY COUNTY, KENYA.

Researcher: Scholastica Omondi (Ph.D. Candidate Department of Sociology,  
Kenyatta University)

Please read (listen) to the following information.

The purpose of the research is to fulfill the requirements of the Kenyatta University, Department of Sociology for the award of a degree of Doctor of Philosophy.

The aim of the research is to investigate the socio-cultural and economic determinants of access to the criminal justice system by victims of spousal abuse in Nairobi City County, Kenya.

The findings of the research will be used to make recommendations that may inform policy makers in improving the delivery of service and accessibility of the criminal justice system to victims of spousal abuse.

The research will be carried out by observing and recording the procedures that the victims of spousal abuse are taken through in the criminal justice system.

It will also interview the selected spousal abuse victims to get their views about the procedures that they undergo in the criminal justice system.

The views of criminal justice officers who interact with the spousal abuse victims in the criminal justice system will also be sought.

Your participation in this research is voluntary, and you can withdraw from the study at any time without any consequences to you.

There are no risks whatsoever associated with the research.

There is no material benefit for participating in this research, but your contributions will improve the delivery of service and accessibility to justice by victims of spousal abuse.

Your responses, views and opinion will be received and held in strict confidence for the purposes of the research only.

You will not be linked to the data collected in any way and your identities will not be revealed in any way at all.

A subject number will be assigned to you and only that number will be used in the data collection forms, which will be locked in the researcher's office.

At the end of the study, the data set will be shredded as a means of disposal.

If you consent to participate, you will be interviewed by the researcher who will ask your views on various aspects of the criminal justice procedures and CVSA.

You may now ask any questions concerning the above points for clarification.

I HAVE READ & UNDERSTOOD THE NATURE AND PURPOSE OF THE RESEARCH AND VOLUNTARILY ACCEPT TO TAKE PART IN THE STUDY.

-----

(Signature of subject/ thumbprint of respondent)

-----

Date

-----

(PRINTED NAME OF RESPONDENT)

-----

NAME OF RESEARCHER

In case of any questions, please contact:

Researcher

Tel: +254722233934

Email: [chicorac2003@yahoo.com](mailto:chicorac2003@yahoo.com)

The Chair,

Kenyatta University Ethical Research Committee

Tel:

Email:

**Appendix E: Interview Guide for Spousal Abuse Victims**

**Serial No.**.....

**Date and Place of Interview**.....

**Section A: Demographic Information**

1. Gender

- (a) Male [ ]                      (b) Female [ ]

2. Age (Tick where appropriate)

- (a) 18-24 years            [    ]  
(b) 25 – 34 years        [    ]  
(c) 35-44 years            [    ]  
(d) 45-54 years            [    ]  
(e) 55- 64 years          [    ]  
(f) 65 years and above [    ]

3. Highest level of education( Tick where appropriate)

- a) No formal education                      [    ]  
(b) Some primary education                      [    ]  
(c) Completed primary education                      [    ]  
(d) Some secondary education                      [    ]  
(e) Completed secondary education                      [    ]  
(f) College/ Polytechnic                      [    ]  
(g) University degree                      [    ]  
(h) Post graduate degree                      [    ]  
(i) Other (specify)                      [    ]

4. Current marital status( Tick where Appropriate)

- (a) Still Married [    ]  
(b) Separated [    ]  
(c) Widowed [    ]  
(d) Divorced [    ]  
(e) Other (Specify) \_\_\_\_\_

5. Type of marriage?

(a) Monogamous [  ]

(b) Polygamous [  ]

(c) Polyandrous [  ]

(d) Come We Stay Arrangement [  ]

(e) Other, specify (specify) \_\_\_\_\_

6. If monogamous what type of marriage?

(a) Traditional Marriage [  ]

(b) Church Marriage [  ]

(c) Civil marriage [  ]

(d) Come we stay [  ]

(e) Any other [  ]

7. Do you have children?

(a) Yes [  ]

(b) No [  ]

(c) any other \_\_\_\_\_

8. If yes how many? \_\_\_\_\_

9. Indicate the gender of the children?

(a) Male \_\_\_\_\_

b) Female \_\_\_\_\_

10. What is your current occupation?

(a) Not employed [  ]

(b) Employed in the public service [  ]

(c) Employed in the private sector [  ]

(d) Self-employed [  ]

(e) Others (specify) \_\_\_\_\_

11. If employed/self-employed, what is your monthly income in Kenya shillings?

- (a) Below 10,000 Kshs [    ]
- (b) Between 10,000-50,000 Kshs [    ]
- (c) Between 50,000- 100,000 Kshs [    ]
- (d) More than 100,000 Kshs [    ]
- (e) Others( specify)\_\_\_\_\_

12. Please state which part of the country you come from? \_\_\_\_\_

13. What is your religion?

- (a) Christian [    ]                      (b) Islam [    ]                      (c) Hinduism [    ]
- (d) Buddhism [    ]                      (e) Traditional religion [    ] (f) Atheism [    ]
- (g) Unitarianism [    ]                      (h) Paganism [    ]                      (i) Jehovah's witness [    ]

Other, (Judaism, Rastafari, Sikhism, Zoroastrianism, Spiritualism, Mormonism, Jainism, Shinto, Taoism, Baha'i) please specify.

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14. How long have you lived in Nairobi County?

- (a) Less than an year [    ]                      (b) 1-10 years [    ]
- (c) 11-20 years [    ]                      (d) 21-30 years [    ]
- (e) Over 30 years [    ]

15. Where do you live in Nairobi?

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**SECTION; B: Socio-Cultural and Economic Determinants of Accessing the Criminal Justice System.**

16. What is your perception about spousal abuse?

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17. What is your community's cultural perception of spousal abuse?

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18. How comfortable are you narrating the details of spousal abuse to the police, the court or other people?

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19. What norms/ beliefs/ customs and practices are associated with spousal abuse in your ethnic community?

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20. What is your religion's position on spousal abuse?

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21. What roles/expectations or practices/customs encourage spousal abuse in your community?

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**22. Social determinants to accessing the criminal justice system (the police and the courts).**

(a) The way you were socialized (brought up in your family), would you easily report spousal abuse to the criminal justice system?

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(b) Please explain how your social status affects your ability to report spousal abuse to the criminal justice system?

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(c) What would you say about stigma and its effect on reporting spousal abuse to the criminal justice system?

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(d) Please explain how your social class has influenced your ability to report spousal abuse to the criminal justice system?

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(e) What role does psycho-social support system (family, your friends, relatives, counselors, NGOs) play in your decision to report spousal abuse to the criminal justice system?

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(f) Would you be able to pursue the case if the perpetrator threatens to repeat the abuse after you report? Please explain.

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**23. Cultural determinants to accessing the criminal justice system.**

(a) What are the norms regarding spousal abuse in your community?

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(b) Are there any values attached to spousal abuse in your community? Please explain.

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(c) What is the traditional belief about spousal abuse in your community?

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(d) How does your community view the practice of spousal abuse?

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(e) Does the society's expectation of you as a woman/man predispose you to spousal abuse?

Please explain

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(f) What is the customary practice in your community about spousal abuse?

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(g) What are the rites (procedure) regarding spousal abuse in your community?

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**24. Economic determinants to accessing the criminal justice system.**

(a) Do you have adequate finances that can enable you pursue the spousal abuse in the criminal justice system? Please explain.

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(b) What is your source of income?

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(c) How far is the nearest police station from where you live?

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(d) How does the distance between where you live and the police station affect your ability to report spousal abuse when it occurs?

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(e) Do you have access to a shelter house/rescue centre where you can seek help when the abuse occurs? Please explain.

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(f) Do you have access to legal services? Please explain?

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(g) Do you have access to other social services like counseling, self-support groups, psychotherapy, etc.? Please explain.

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(h) Do you belong to any support networks of victims of spousal abuse?

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**SECTION D: Spousal Abuse Experience by Victims**

25. How long have you been married to your current spouse?

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26. When was the first time you experienced spousal abuse?

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27. How often does the abuse occur?

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28. Tell me about your experience of spousal abuse. How it occurs.

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**SECTION D: Alternative Mechanisms of Conflict Resolution**

30. Have you ever reported the abuse anywhere?

(a) Yes [    ]

(b) No [    ]

31. If 'Yes' indicate where you reported it to

(a) Friend [    ]

(b) Family [    ]

(c) Church [    ]

(d) Social worker [    ]

(e) Community elders [    ]

(f) NGOs [    ]

(g) Chief [    ]

(h) Others(specify)\_\_\_\_\_

32. What factors enabled/encouraged you to report the abuse?

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33. What was your experience in reporting the abuse?

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39. If yes, what was your experience in reporting the abuse to the police?

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40. Were you satisfied with the way the police handled your report?

(a) Yes [ ]

(b) No [ ]

Please explain further

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41. What difficulties have you faced since you reported the case to the Police?

(a) Yes [ ]

(b) No [ ]

Please explain.

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42. Suggest ways to improve the process of reporting spousal abuse to the police?

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43. Do you know that once a spousal abuse case is reported to the police, it should go to court for determination so as to protect you as the victim from further abuse?

(a) Yes [ ]

(b) No [ ]

If yes, please explain what you know about how the courts handle cases of spousal abuse?

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44. Has your case of spousal abuse been taken to court?

a. Yes [ ] If yes proceed to question 46.

b. No [ ]

45. If No, why?

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**SECTION F: Spousal Abuse and the Court Process (for Victims Whose Cases Are in Court)**

46. What has been your experience since the case was filed in court?

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47. What factors enabled you to have the matter proceed to court?

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48. What difficulties have you faced since the case was taken to court?

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49. What is your expectation from the court in addressing spousal abuse?

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50. Suggest ways of improving the court process in addressing spousal abuse cases.

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**Section G: The following questions apply only to spousal abuse victims who have given evidence in court.**

51. What was your experience as a victim of spousal abuse giving evidence in court?

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52. What did you like about the way the court handled your case?

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53. What did you not like about the way the court dealt with your case?

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54. Suggest ways on how to improve the court process in dealing with spousal abuse cases?

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55. What do you think about the way the Police and the courts handle spousal abuse cases?

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56. Suggest ways of improving the way the police and the courts deal with cases of spousal abuse?

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**Appendix F: Interview Guide for the Key Respondents**

1. Name of the institution

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2. Rank of respondent.

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3. Role of the respondent in the institution.

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4. Gender.

(a) Male [ ]

(b) Female [ ]

5. Age (Tick where appropriate)

(a) 18-24 years [ ]

(b) 25 – 34 years [ ]

(c) 35-44 years [ ]

(d) 45-54 years [ ]

(e) 55- 64 years [ ]

(f) 65 years and above [ ]

6. Respondent’s role in handling spousal abuse cases.

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7. What is your experience in handling spousal abuse cases?

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8. What would you say about the following and their influence on spousal abuse victims, access to the criminal justice system?

(a) Social determinants

Victim's perception

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Socialization process

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Social status

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Stigma

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Social class

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Knowledge

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Level of education

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Age

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Psycho-social support

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Fear of retaliation from the abuser

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(b) Economic determinants

Availability of resources

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Income

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Location of CJS agencies

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Shelter house/ rescue centre

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Legal services

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Other social services

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Physical and human resource

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Ineffectual bureaucratic process which is under-funded and over burdened

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(c) Cultural determinants

Norms

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Values

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Beliefs

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Practices

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Roles

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Customs

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Religion

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Rites

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9. In your view, what difficulties are faced by spousal abuse victims in the criminal justice system?

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10. What is your view about the adequacy and effectiveness of the criminal justice system in addressing spousal abuse cases?

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11. Apart from the Criminal justice system, what alternative mechanisms exist for addressing spousal abuse in Nairobi County Kenya?

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12. Suggest ways of enhancing access to justice by victims of spousal abuse?

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## **Appendix G: Focused Group Discussion Guide**

1. What is your experience in reporting spousal abuse cases to the police?
2. What is your view about how the courts handle spousal abuse cases?
3. Apart from the criminal justice system, what alternative mechanisms of dispute resolution are available for resolving spousal abuse in Nairobi County Kenya?
4. What social determinants enhance spousal abuse victims' access to the criminal justice system?
5. What social considerations hinder spousal abuse victims' access to the criminal justice system?
6. What economic determinants enhance spousal abuse victims' access to the criminal justice system?
7. What economic considerations hinder spousal abuse victims' access to the criminal justice system?
8. What cultural determinants enhance spousal abuse victims' access to the criminal justice system?
9. What cultural considerations hinder spousal abuse victims' access to the criminal justice system?
10. What difficulties are faced by spousal abuse victims in the criminal justice system?
11. Suggest ways of enhancing access to the criminal justice system by victims of spousal abuse.