

Series 2 – Social Pillar: Gender, Youth and Vulnerable Groups

The Response of the Criminal Justice System to Spouse Abuse in Kenya

Dr Scholastica A. Omondi

Key Messages

The existence of the family as the basic unit of society is threatened by spouse abuse (SA)

The criminal justice system is ineffective and not suitable for resolving SA cases.

The impact of SA on family members negatively affects their ability to contribute towards national development at their maximum

There is need for SA prevention policy and an alternative dispute resolution mechanism.

Context

Spouse abuse (SA) is commonly known as domestic violence. It is also referred to as family violence, domestic disputes, intimate partner violence, wife abuse, wife battering, husband battering, and gender-based violence. SA also refers to violence between intimates living together or who have previously cohabited. SA is perpetrated in the form of physical, psychological, and verbal acts used to achieve control over an intimate partner. It characteristically includes acts of physical and mental cruelty progressing from a slap or shove, to a punch or kick, and more extreme manifestations of violence including suffocation, strangulation, attempted murder, and actual murder. 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 assault, mental and emotional harassment.

SA results in negative health consequences for the victim. 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. While there are no comprehensive statistics for male victims of SA, in Kenya, 44 per cent of

men and 45 per cent of women have experienced SA (KDHS, 2014). This indicates an increase in gender-based violence for both men and women. Reporting of SA by male victims is low due to social stigma associated with being a victim, negative attitude of the police towards prosecution of SA, and the socialization that a male has to be dominant over the female spouse. As a result, many male victims of SA do not report the abuse for intervention but suffer the consequences. Despite the above statistics of the known reported incidences of SA to the criminal justice system (CJS), research indicates that the majority of the incidences go unreported while only a smaller percentage is documented.

The objective of this policy brief is to highlight the systemic weakness of the CJS as a response mechanism to SA and to make recommendations for policy interventions that can effectively protect the family as the basic unit of the society from the negative impact of SA. Unless the response mechanism is effective, the family unit remains threatened as vulnerable victims fail to report SA for intervention. There is an urgent need for an effective intervention mechanism that can resolve SA and protect the family.

Approach and Results

A study was conducted in Nairobi in 2015 on the effectiveness of the CJS in protecting the family against SA. As the capital city, Nairobi is representative of the



population of the country. Respondents and key informants were purposively sampled based on their report to the CJS and their role in handling SA victims, respectively. The majority of the respondents (80 per cent) 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. The major weaknesses of the CJS in resolving SA are:

- the adversarial nature of the CJS.
- lack of a specific crime known as spouse abuse.
- lack of a mandatory reporting policy.
- lack of a no-drop policy
- strict rules of evidence that fail to take into account the vulnerability of SA victims
- the bureaucracy and formality associated with the trial process

These identified weaknesses need to be addressed if the CJS is to respond to SA effectively and protect the family as the basic unit of society. The government has a constitutional obligation under Article 45(1) of the Constitution to protect the family. The study concluded that the CJS is not effective in resolving SA. This means that more cases of SA are not reported. The implication is that many victims of SA suffer the consequences of unresolved SA silently, in some cases leading to homicides or suicides. SA, therefore, remains a threat to the family unit. Those affected by SA cannot contribute to nation-building to their maximum potential due to the effect of SA

on their performance. There is a need for an alternative suitable and effective dispute resolution mechanism that addresses SA while preserving and protecting the family unit. Although the CJS is perceived to deter potential offenders from committing crimes, it is ineffective in resolving SA. The prosecution of a spouse in SA cases tears the family apart and perpetuates the already strained marital relationship. The CJS should be preserved for specific cases that deserve prosecution and punishment of the offending spouse.

Policy Recommendations

The measures in Box 1 are thematically interconnected to promote oral health through disease prevention, reduce the need for restorations and encouraging best practice in the handling of dental amalgam waste.

Short-Term

- Train and maintain a register of multidisciplinary professionals who can be called upon to resolve SA cases to protect the family
- Develop a policy on the preservation and protection of the family as the basic unit of society. The aim should be to prevent SA, but where it occurs, resolve it and protect the family.
- Develop policies that would require mandatory reporting of SA, mandatory prosecution of reported cases that persist despite attempts to resolve the abuse, and a no-drop policy

Medium-Term

- Operationalize Article 159 of the Constitution and enhance the capacity of existing alternative dispute resolution mechanisms to address SA.
- Amend the Protection Against Domestic Violence Act No. 2 of 2015 to create an offence known as Spouse Abuse and provide for the penalty.
- Where the violence persists despite attempts to resolve the same, prosecute the offending spouse.

Acknowledgements

I acknowledge the input of the following: Prof. Wilson Otengah and Dr Daniel Muia who supervised the thesis that produced the findings which inform this policy brief. Thanks to all the staff and postgraduate students of Kenyatta University Sociology Department

References

- Bennet C.L., Goodman L., (2015), what is Empowerment anyway? A Model for Domestic Violence Practice, Research and Evaluation, Psychology of Violence American Psychological Association 5(1).
- GVRC Profile. (2011). GVRC Kenya Demographic Health Survey (2014 KDHS)

Authors

Dr Scholastica A. Omondi
(somondi@uonbi.ac.ke)
Department-Public Law, School of Law, University of Nairobi Kisumu Campus, P.O Box 19134-40123 Kisumu, Kenya

