

**Reconceptualising Domestic Violence in the 21st Century: Enhancing
Recourse for Male Victims under the Protection Against Domestic Violence
Act of Kenya**

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Aluta continua my little fighters!

Dedication

I would like to dedicate this work to the thousands of men who are, have been, and continue to be silent victims of domestic violence in Kenya. For those who feel like they cannot come forward because the society will not acknowledge their plight, for those who feel helpless in their situation and out of options, for those who hope for an end to the pain and sorrow, I pray that this work will pave a brighter future for you.

Declaration

I, LIZA NAGULE CHULA, do hereby declare that this dissertation is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:

DR. JANE WATHUTA

Abstract

Domestic violence is a serious public health, legal and social problem that permeates every sphere of human society. While historically, women have predominantly been on the receiving end of this vice, statistics from the Kenya Demographic and Health Survey of 2014 reveal that many men are also victims at the hands of women, a trend that is quickly assuming a worrisome dimension. However, a myriad of factors has led to the silencing of male victims of domestic violence throughout history, most notably stereotypical notions of gender. Numerous laws and policies have been made across the world with the intent of curbing this menace since it first became a global phenomenon with its claws dug deep into the roots of society. Kenya has recently jumped on that bandwagon with the enactment of the Protection Against Domestic Violence Act in 2015, becoming the first and only law that exclusively addresses domestic violence in the nation. While this is laudable, much still needs to be done as there are questions concerning the Act's applicability when compared to the reality of victims on the ground. Thus, this paper seeks to assess the adequacy of the current legal regime on domestic violence in Kenya, specifically with regard to male victims; and further investigate which factors impede access to justice for these men with a view of reconciling these with the current law. Options for reforming the current legislative regime will be sought by looking at other jurisdictions and what they have done to ensure access to justice for male victims of domestic violence.

List of Legal Instruments

- i. Constitution of Kenya (2010)*
- ii. International Covenant on Civil and Political Rights (ICCPR)*
- iii. Protection Against Domestic Violence (Act No. 2 of 2015)*
- iv. Universal Declaration of Human Rights (UDHR)*

List of Cases

- i. S v Baloyi and others (1999), Constitutional Court of South Africa.*

List of Abbreviations

DVAM	Domestic Violence Against Men
DVAW	Domestic Violence Against Women
FIDA	Federation of Women Lawyers
GSS	General Social Survey
KDHS	Kenya Demographic and Health Survey
KNCRC	Kenya National Crime Research Centre
NCADV	National Coalition Against Domestic Violence
NGO	Non-Governmental Organization
PADVA	Protection Against Domestic Violence Act
TDRMs	Traditional Dispute Resolution Mechanisms
UK	United Kingdom
UN	United Nations
USA	United States of America
VOM	Victim Offender Mediation

Chapter 1

Introduction

1.1 Background

Domestic violence has received a considerable amount of conversation in the society today as it is a phenomenon that permeates every level of society and transcends borders, cultures, nationalities, and race. All crimes have onerous effects on society, but domestic violence is distinguished due to its repetitive and multi-faceted character and the resultant immeasurable ripple effect on society and family life.¹ It affects millions of people and touches on the very dignity of man. Despite this, for decades, domestic violence was considered to be an issue proper to the private realm and as such, discussions surrounding it were not acceptable or regarded as a social issue.² Subsequently, the UN recognising domestic violence as a human rights abuse in the 1990s served to elevate its status and caused it to achieve a greater profile in terms of law and policy development in many countries across the world.³ Domestic violence has not only been widely acknowledged as a violation of basic human rights, but a growing amount of research continues to elucidate the health burdens, intergenerational effects, and demographic consequences of such violence.⁴ In Kenya, domestic violence has been rampant, and has gained notoriety in the last two decades, prompting Parliament to enact a Protection against Domestic Violence Act (PADVA) in 2015 to address this pertinent issue.⁵ Although the Act claims to provide some degree of relief for victims of domestic violence in the form of protection orders, there are still inherent social and cultural challenges in its application and implementation, specifically when it comes to male victims.

The numerous definitions of domestic violence range both legally and behaviourally from one jurisdiction to another. However, the author will isolate one definition for the purposes of this study that will be drawn from the PADVA which is in Kenya's legislative landscape. In the Act, domestic violence is defined as 'violence against any person, or threat of violence or of

¹ *S v Baloyi and Others* (1999), Constitutional Court of South Africa.

² Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence' Published Thesis, Utah State University, Moab, 2017, 1.

³ Harne L and Radford J, *Tackling Domestic Violence: Theories, Policies, and Practice*, Open University Press, London, 2008, ix.

⁴ Kenya Demographic and Health Survey 2014, 291.

⁵ Ngirachu J, 'Relief for Domestic abuse victims as President Kenyatta signs protection law' Daily Nation, 16 May 2015 – <https://www.nation.co.ke/news/Protection-Against-Domestic-Violence-Act-Uhuru-Kenyatta/1056-2718992-ovqnh5z/index.html> on 9 December 2018.

imminent danger to that person, by another person with whom that person is, or has been, in domestic relationship'.⁶ This wide definition notwithstanding, domestic violence is still commonly conceptualised as violence against women as evinced by the Kenya National Crime Research Centre (KNCRC) Report 'Gender Based Violence 2014'⁷ where they measured participants' knowledge and awareness of gender-based violence based on their varying descriptions of what it constituted. The report exposed, rather alarmingly, that the most common description was 'bodily harm inflicted by a man on a woman' as reported by 73.8 percent of female and 68.9 percent of male respondents.⁸ The roots of domestic violence at the societal level in Kenya include a deep-rooted culture of patriarchy and stereotypical views of masculinity that prescribe toughness or dominance as ways through which power and control over the victim are achieved.⁹

However, the old adage 'the hunter becomes the hunted' has become a lived reality in Kenya in the recent past following gruesome cases of 'husband battering' frequently reported in the Kenyan media.¹⁰ While it is true that women throughout the world are subjected to extreme acts of physical violence every day within the beguiling safety of domesticity, it must not be lost on society that men can be victims of such violence too. In Kenya, domestic violence against men (DVAM) is not an area of uncharted waters, even though advocating for its recognition is akin to swimming against the tide. In 2012, a men's group called *Maendeleo ya Wanaume*¹¹ engaged in a noteworthy initiative: a nationwide protest to boycott meals prepared by their wives and partners in response to the ongoing menace of female perpetrated domestic abuse in the country.¹² A survey conducted by the same group in Central Kenya and Nairobi in

⁶ Section 3(2) *Protection Against Domestic Violence Act* (Act No. 2 of 2015).

⁷ This was carried out in thirteen counties.

⁸ Kenya National Crime Research Centre, 'Gender Based Violence in Kenya', Nairobi, 2014, 23.

The least common descriptions of gender-based violence were any harmful traditional practices inflicted on a man; psychological harm inflicted by a woman on a man such as fear or shame; any type of abuse inflicted by a parent on a boy child; any type of abuse inflicted by a parent on a girl child; and other forms of abuse such as insubordination of men by women, discrimination of women, overworking women etc.

⁹ Kniss J, 'Masculinity and violence against women in Simenya, Kenya: Engaging men as part of the solution', SIT Kenya: Health, Urbanization, and Human Rights, 2016, 4.

¹⁰ Njuguna J, 'Causes and consequences of DVAM in Mukurwe-ini Constituency, Kenya' Unpublished Thesis, University of Nairobi, Nairobi, 2014, 3.

¹¹ Swahili; translated to 'Progress for Men' in English.

¹² 'Kenyan men urged to boycott meals in abuse protest', BBC News, 20 February 2012 – <https://www.bbc.com/news/world-africa-17094830> on 18 November 2019. This protest encouraged men not to eat in their respective homes; but to share meals together away from their homes while sharing their experiences with both physical and emotional domestic abuse. This was a symbolic stance since in the Kenyan culture, eating your wife or partner's meal is an important way for a man to express appreciation for his wife.

2012 found an increase of men abuse cases from 160,000 in 2009 to 460,000 in that year.¹³ Moreover, the Kenya Demographic and Health Survey (KDHS) of 2014 reports that forty four percent of men aged between 15 and 49 have experienced physical violence since the age of 15 as compared to forty five percent of women; and twelve percent and twenty percent respectively experienced physical violence within the twelve months prior to the survey.¹⁴ Based on these statistics,¹⁵ this study argues that cases of DVAM must be addressed and remedied just as well as those against women as there are hardly any disparities in the numbers. The study further contends that in the case where there are significant disparities, these may be due to the fact that many men underreport or fail to report incidents of domestic violence to the police for various reasons among them embarrassment, fear of disbelief, lack of support services, and society's view that men cannot (or possibly should not) be victims of domestic violence, thus trivialising their plight.¹⁶

In the media and platforms of public opinion,¹⁷ the domestic violence debate is largely dominated by outspoken feminist and women's rights perspectives that are often, explicitly or implicitly, based on or supporting the Duluth model.¹⁸ In the age of feminism where women are recognised as a vulnerable group needing protection;¹⁹ together with the surge of affirmative action programs to remedy a patriarchal society that historically subordinated women, there seems to be a gender bias that generally portrays women as victims of violence, and men as the perpetrators.²⁰ This is worsened by the fact that in traditional African societies,

¹³ Chinasa O, 'Domestic violence in contemporary times, cause and effects: An educational perspective' 5(9) *EPRA International Journal of Multidisciplinary Research*, 2019, 117. See also Adebayo A, 'Domestic violence against men: Balancing the gender issues in Nigeria' 4(1) *American Journal of Sociological Research*, 2014, 15.

¹⁴ Chapter 16, Kenya Demographic and Health Survey 2014, 291.

¹⁵ There are also numerous global statistics to support the existence of the phenomenon of DVAM which will be highlighted in detail in Chapter 4 of this study.

¹⁶ The various reasons why men do not readily report instances of domestic violence as frequently as women will be discussed in more detail in Chapter 3 of this study.

¹⁷ These include social media platforms such as Twitter and Facebook.

¹⁸ The Duluth model is the dominant model for treating domestic violence perpetrators. It rests on the foundation of a patriarchal theoretical framework and thus assumes that men use violence as a calculated choice in relationships to exercise power and control. According to the Duluth model, women do not and would not use violence against men because violence is an issue of power and control of which only men in a system of patriarchy are capable. Hines A and Douglas E, 'Women's use of intimate partner violence against men: Prevalence, implications, and consequences' 18 *Journal of Aggression, Maltreatment and Trauma*, 2009, 576.

¹⁹ This stems from the clamour over the last few decades for this protection, that has been consequently reflected in many international treaties and instruments.

²⁰ Dutton D, Corvo K and Hamel J, 'The gender paradigm in domestic violence research and practice part II: The information website of the American Bar Association' 14 *Aggression and Violent Behavior*, 2009, 31. See also 'Men as victims of domestic violence: Some issues to consider' Discussion Paper No. 2 (2001), Domestic Violence and Incest Resource Center, Melbourne.

men were allowed to ‘discipline’ their wives;²¹ yet it was taboo in many communities for a woman to raise a hand against her husband.²² This therefore gave rise to a concern, valid in its own respect, that the acknowledgment or concession that some women may be violent toward their male partners will be potentially used to defend male violence which activists have been fighting to eradicate since time immemorial.

Usually, when the word ‘abuse’ is mentioned, one’s mind conjures up an image of a victim who is either a woman or a child, but rarely a man as it does not naturally occur to us that the victim of abuse can also be a man.²³ In the same way, the picture that is always painted from surveys of domestic violence is that of a female victim and a male perpetrator. The problem with such surveys is that they frame domestic violence in the context of criminal behaviour; and because many victims, especially men, do not consider such acts to constitute a crime per se, compounded with many other factors, their victimisation rates are likely to be inhibited on account of non-reporting. The literature and findings in this area further suggest that the reason underlying why men choose to suffer in silence is the fact that the relevant authorities do not actively recognise domestic violence as a male, as well as a female issue; thus focusing only on female victims and in the process, silencing the voices of male victims.²⁴ This societal repression creates biases that negatively impact the way in which the relevant authorities deal with domestic violence cases, in that there exists a tendency to discriminate against male victims, thus impeding their access to justice, a right guaranteed in the Constitution of Kenya 2010.²⁵ This discrimination, in turn, causes male victims to feel reluctant to seek help. Such violence is therefore condoned by the implicit silence and passivity exhibited by the state and the law enforcing organs in the country.²⁶

²¹ Conroy A, ‘Gender, power and intimate partner violence: A study on couples from rural Malawi’ 29(5) *Journal of Interpersonal Violence*, 2014, 3.

²² This will be discussed in more detail in Chapter 3 of this study.

²³ This stereotypical thinking of domestic violence is understandable given the fact that historically, most of the victims were known to be women. Thobejane T and Luthada V, ‘An investigation into the trend of domestic violence on men: The case of South Africa’ 12(3) *OIDA International Journal of Sustainable Development*, 2019, 12.

²⁴ Lambert K, ‘Broken men break the silence’: Male domestic violence victims and their struggle to be heard’, ResearchGate, 2016, 2.

²⁵ Article 48, *Constitution of Kenya* (2010).

²⁶ Njuguna J, ‘Causes and consequences of DVAM in Mukurwe-ini Constituency, Kenya’ 4.

1.2 Statement of the Problem

Despite decades of clamour for reform and the subsequent enactment of the PADVA, there still exists a dearth of appropriate legal redress for both male and female victims of domestic violence. This study claims that the situation for male victims has been particularly worse due to misconstrued ideas of masculinity, gender stereotypes and gender asymmetry.

The study argues that the PADVA came as a result of pressure from the international realm for states to address domestic violence in their local jurisdictions and comply with international treaties concluded on the same, as well as nationally from local feminists' and human rights groups' outcries for a law that protects women from the ever-prevalent menace of domestic violence.²⁷ Thus, the government caved under this pressure and did not conduct adequate preliminary research on the ground to tailor any intended legislation to the unique situation of its people. It may have even borrowed from international legislation specific to violence against women and as such, hampered its applicability to male victims. Further, the PADVA does not provide any long-term solutions for victims of domestic violence as it focuses solely on protection orders; which are in essence a short-term solution.

The PADVA has thus failed to be an adequate tool in combatting DVAM; and a long-term solution continues to elude the Kenyan justice system. The law on domestic violence in Kenya is so disconnected from the reality of victims on the ground rendering its applicability meaningless in most situations. This is demonstrated by the fact that it has been three years since its inception with no cases having been decided using its provisions, while the numbers of domestic violence cases in the country continue to soar. The study proposes that the answer lies in eradicating the biases inherent in society first by ensuring that the relevant authorities pay requisite attention to such cases by sensitising them; and changing cultural and societal perceptions on the idea of DVAM.

1.3 Statement of Objectives

- a. To assess the adequacy of the PADVA by reviewing its provisions in curbing DVAM since it came into formal existence.

²⁷ The pressure on the national level was especially given the fact that Bills on domestic violence had been tabled in parliament on several occasions over the past decade or so yet none had seen the light of day yet for various reasons. This will be briefly highlighted in Chapter 3 of the study.

- b. To determine how the existing perceptions of masculinity, gender stereotypes and gender asymmetry affect recourse for male victims of domestic violence.
- c. To explore various other factors that can play a role in either enhancing or hindering access to justice for male victims.
- d. To conduct a comparative assessment of how a few jurisdictions in Africa, Europe and America have afforded male victims of domestic violence access to justice so as to provide options for reform in Kenya.²⁸

1.4 Hypothesis

There exists a large number of male victims of domestic violence who are denied access to justice because of the societal misconceptions of masculinity, gender stereotypes and gender asymmetry, thus forced to stay silent about their plight. Their silence therefore does not reflect in surveys of domestic violence, leading to the assumption that it is only women who suffer this vice. As such, the PADVA impliedly excludes male victims of domestic violence from its scope of protection and has thus not been adequate in protecting male victims of domestic violence in Kenya.

1.5 Research Questions

- a. Is the existing PADVA in Kenya sufficient to address the plight of male victims of domestic violence?
- b. What is the correlation between societal factors such as masculinity, gender stereotypes and gender asymmetry and their likely effect on the implementation of the PADVA for male victims of domestic violence?²⁹
- c. How can other jurisdictions in Africa, Europe and America be comparatively used to assess and suggest options for reform in Kenya?

²⁸ This will not be a comparative study per se as it will involve sampling a wide range of jurisdictions without delving too much into analysis.

²⁹ Research objectives (b) and (c) have been merged into this research question.

1.6 Justification/ Significance and Scope of the Study

Society finally seems to be affording issues of domestic violence against women the requisite level of seriousness and thus actively searching for solutions to curb it. This can be attributed to most of the early research dealing with domestic violence which focused solely on female victims and the social factors that supported the victimisation of women.³⁰ Consequently, an astronomical amount of literature now exists that portrays domestic violence as a phenomenon borne out of a patriarchal social order where women are primarily the victims and men, the perpetrators.³¹ Such research has significantly impacted the pace of recent changes in the way in which law enforcement and social agencies respond to the needs of female victims.³² To attest to this, recent studies have shown a steady decrease in domestic violence against women which may be attributed to public awareness, legislation and campaigns against domestic violence; however, reports regarding men as victims of domestic violence were nearly static, if not increasing, over the same years.³³

From scanty research studies into the area of male victims of female perpetrated domestic violence, it is known that the issue is very complex and complicated due to the circumstances surrounding domestic violence. As such, this has resulted in very little research being conducted. Despite increasing acknowledgement that men can also be victimised, compared to the extensive literature on male-perpetrated domestic violence complete with a robust theoretical framework, the literature on female perpetrated violence is exceptionally scarce and predominantly based on quantitative data that is often complex and contentious with little in the way of a theoretical framework.³⁴ Furthermore, evidence is amassing that contradicts the notion that women's aggression is primarily in self-defence against abusive male partners.

While legislation may be enacted in national jurisdictions to address domestic violence, such legislation is peculiarly inadequate for those it purports to help. The predominant mode of redress continues to emanate from sociologists, psychologists, and activists, while a real solution continues to elude the law, lawmakers, and legal practitioners.³⁵ There are, therefore,

³⁰ George M, 'Riding the donkey backwards: Men as the unacceptable victims of marital violence' 3(2) *The Journal of Men's Studies*, 1994, 137.

³¹ George M, 'Riding the donkey backwards', 137.

³² George M, 'Riding the donkey backwards', 137.

³³ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 6.

³⁴ Dutton D, Spidel A and Nicholls T, 'Female perpetrators of intimate abuse' 41(4) *Journal of Offender Rehabilitation*, 2005, 1. See also Lambo L, "'We're not victims": Women's use of violence in their intimate relationships' Published Thesis, Concordia University, Quebec, 2019, 41.

³⁵ Meyersfeld B, 'Reconceptualising domestic violence in international law' 67 *Albany Law Review*, 2003, 373.

serious gaps in addressing such a pertinent issue in society that touches on the very rights of human beings. The proposed study seeks to fill this gap by highlighting the inadequacies of the PADVA and thus providing options to enable access to justice for male victims of domestic violence on account of a violation of their human rights.

It is important to note that the study limits itself to an assessment of the adequacy of the PADVA for only male victims of domestic violence and will not be investigating or making a pronouncement on whether it is adequate for female victims of domestic violence.

1.7 Literature Review

DVAM perpetrated by female partners is a widely under researched area of violence which is currently coming to the forefront of societal debates. It is an undeniable fact that male violence towards women in a domestic setting occurs; however, the problem arises where governments and the majority of society focuses mainly on male-perpetrated violence and refuses to believe or recognise that men can suffer from such violence too.³⁶ It should be noted that some of the sources that will be discussed are based on other jurisdictions, particularly in Europe and America and are, therefore, not directly involved with domestic violence in Kenya. However, the issues raised are relevant to our society and of importance in determining what male victimisation and domestic violence is essentially about.

In her article *'Broken Men Break the Silence': Male Domestic Violence Victims and their Struggle to be Heard*,³⁷ Katie Lambert explores the amount of help and support available for male victims of female perpetrated domestic violence with a focus on understanding the surrounding issues of society, government and masculinity. This article is important for this study as it sheds light on the conceptual ideas surrounding DVAM which are particularly instrumental in better understanding how to propose options for reform.

Moreover, in Jennifer Kniss's thesis *'Masculinity and Violence Against Women in Simenya, Kenya: Engaging Men as Part of the Solution'*,³⁸ she focuses on the primary prevention as opposed to the secondary prevention of domestic violence.³⁹ She posits that legislation acts only as a secondary measure of prevention, once the act has already occurred, and that we need

³⁶ This renders such men the 'forgotten' victims of domestic violence.

³⁷ Lambert K, "Broken men break the silence": Male domestic violence victims and their struggle to be heard'.

³⁸ Kniss J, 'Masculinity and violence against women in Simenya, Kenya: Engaging men as part of the solution'.

³⁹ This includes addressing the notion of masculinity.

to find a primary measure of prevention of domestic violence. Although this work focuses on domestic violence against women (DVAW), it is seminal in this study as it highlights how addressing a societal problem can lead to better legal results.

In *'Has Society Created Social Injustice for Male Victims of Domestic Violence?'*,⁴⁰ Deborah Vernon examines the prevalence of DVAM by proffering statistics from various regions across the world to concretise its existence. She then analyses the services available to victims of domestic violence, particularly men and concludes that men experience numerous barriers, both internal and external, when seeking services for domestic violence. To that effect, she puts forth various recommendations most notably education and awareness programs at all levels of society. This article is important to the study as it underscores the importance of social services for male victims of domestic violence which helps to draw parallels with the Kenyan justice system where such services are missing. It also provides various options for reform in legitimising the adequacy of the PADVA.

In *'Female Perpetrators of Intimate Abuse'*,⁴¹ Dutton, Spidel and Nicholls seek to substantiate whether females really are just as abusive as males in intimate relationships according to surveys and epidemiological studies. They conclude that female perpetrated abuse in intimate relationships is at least as common as male abuse. This article is an important source for validating the claim that men can also be victims of domestic violence, supporting a gender symmetry model, and in such cases, need to have their rights upheld.

Tsoaledi Thobejane and Victor Luthada in their article *'An Investigation into the Trend of Domestic Violence on Men: The Case of South Africa'*⁴² explore the unique plight of male victims of domestic violence in South Africa: a country with one of the highest incidences of violence in the world. They explore various reasons why women perpetrate violence against men in the South African society and why male victims in such situations do not readily report to the police. On this backdrop, they propose recommendations specific to the South African context, but which can also be adapted into other jurisdictions.⁴³ This work is also important to the study at hand as South Africa is on the African continent, thus closer to home: given the

⁴⁰ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence'.

⁴¹ Dutton D, Spidel A and Nicholls T, 'Female perpetrators of intimate abuse'.

⁴² Thobejane T and Luthada V, 'An investigation into the trend of domestic violence on men: The case of South Africa'.

⁴³ These include the training of law enforcement personnel and the implementation of appropriate sentencing policies.

two countries' similar cultural backgrounds, methods of dealing with victims of domestic violence in South Africa may prove to be effective in Kenya as well.

In Julius Gathogo's '*Men Battering as the New Form of Domestic Violence? A Pastoral Care Perspective from the Kenyan Context*',⁴⁴ he aims to establish that battering of men exists in Kenya and Africa at large despite the hidden numbers of victims. He reveals that the abuse of men has been present even in the traditional African society, exposing the magnitude of the challenge that has bedevilled the society for centuries. This work is important as it helps us to understand how DVAM in the traditional African society was dealt with, thus elucidating the breaks or gaps which have allowed such violence to prevail. Similarly, Anthony Adebayo in '*Domestic Violence Against Men: Balancing the Gender Issues in Nigeria*'⁴⁵ samples the social acceptability of domestic violence in various African and developing countries, bringing out the consensus of a wrong conceptualisation of domestic violence. This supports the present study's contention that domestic violence needs to be reconceptualised as it is currently understood based on archaic family structures rooted in male dominance and patriarchy. Adebayo uses the Kenyan experience of battered men as a deterrent lesson to the Nigerian society to encourage them not to fall into the same quagmire.

Finally, Wilmah Isaboke's '*What about Men: Questioning the Deterring Efficacy of Kenya's Protection Against Domestic Violence Act (2015) in Addressing Violence against Men in Kenya*'⁴⁶ specifically tackles the effectiveness of the PADVA in addressing the plight of male victims in Kenya. Isaboke outlines the prevalence of DVAM and the reasons why the Act is *ineffective*.⁴⁷ While this study argues that the PADVA is *inadequate*, Isaboke's work provides compelling reasons that reveal the inadequacies of the Act.⁴⁸

1.8 Research Design and Methodology

In answering the research questions, the research methodology employed included mainly secondary information in the form of desktop research. The Research Proposal had initially indicated the use of primary information in the form of field work, specifically qualitative

⁴⁴ Gathogo J, 'Men battering as the new form of domestic violence? A pastoral care perspective from the Kenyan context' 71(3) *HTS Teologiese Studies/Theological Studies*, 2015.

⁴⁵ Adebayo A, 'Domestic violence against men: Balancing the gender issues in Nigeria'.

⁴⁶ Isaboke W, 'What about men: Questioning the deterring efficacy of Kenya's Protection Against Domestic Violence Act (2015) in addressing violence against men in Kenya' Social Science Research Network, 2016.

⁴⁷ Emphasis added.

⁴⁸ Emphasis added.

interviews with organisations, male victims, and individuals campaigning for male victims which were to be conducted to test the hypothesis that men are generally shunned from legal redress when they are victims of domestic violence. However, this method was abandoned since many surveys have already been carried out and there exists a wealth of data to prove this hypothesis so there was no need to repeat it. Questionnaires were also out of the question as domestic violence, in any form, is an extremely sensitive issue and as such, the ‘cold’ nature and appearance of questionnaires may have raised concerns on ethical issues;⁴⁹ and more importantly, would not have produced the insight and understanding of DVAM needed to answer the research questions; it would only scratch the surface.

The desktop research considered works by various scholars and writers on domestic violence as a phenomenon, and particularly those who have highlighted the plight of male victims and the lack of support available for them in a society that still views them only as perpetrators. These works comprised mostly of journal articles, conference papers, discussion and research papers, dissertations, theses and some empirical studies since this is a relatively recent societal debate. Different theories behind domestic violence as well as related concepts were few and far in between but were considered particularly valuable in enriching the arguments propounded in the paper. Many viewpoints in this area of law were also canvassed before reaching a conclusion. The study also relied on reports by Non-Governmental Organizations (NGOs) and surveys for statistics of male victims of domestic violence in order to bring out the inadequacy of the current laws.

A comparative assessment was also carried out that sampled statistics from different jurisdictions around the world in a bid to show the prevalence of domestic violence against men. From these, there was a further selection of some jurisdictions such as South Africa on the African continent, and the UK and USA in the western region. South Africa was selected as it is one of the more progressive countries on the African continent where most countries share an economic and social reality; and because their Constitution is almost identical to the Kenyan Constitution. The USA and the UK were selected to demonstrate the approach that such countries in the western region have taken towards male victims of domestic violence as evidence of this has been heavily documented in those countries. It is important to note that this is not a comparative study *per se* as it merely sampled approaches and did not go further to critically analyse them in the context of their respective jurisdictions. This was done with

⁴⁹ Lambert K, “Broken men break the silence”, 19.

the goal of providing options for reform in the Kenyan jurisdiction and not for the purpose of criticising or analysing how effective or adequate those measures are in the jurisdictions sampled.

1.9 Assumptions

The study turns on the assumption that men do not report instances of domestic violence for a variety of reasons, including that they fear the social repercussions of such an admission. Therefore, the statistics are likely to significantly underestimate the actual extent of domestic violence towards men and fuel the misconceptions surrounding it.

1.10 Limitations

Some of the limitations that hampered the study were the fact that it was difficult to compare statistics of domestic violence before and after the enactment of the PADVA to demonstrate its inadequacy as most of the major surveys done in Kenya were done before the enactment of the Act. Both the KDHS and the KNCRC Report were done in 2014 and there have not been other ones since. Therefore, it would be difficult to ascertain the real statistics post the enactment of the Act.

1.11 Chapter Breakdown

In addressing the inadequacy of the PADVA for male victims of domestic violence, the following approach will be taken:

Chapter One – This chapter has set the foundational basis of the study providing the background, the statement of the problem, the hypothesis, research objectives and corresponding research questions, the justification of the study, research methodology and an extensive literature review.

Chapter Two – This chapter will serve as the theoretical and conceptual framework, featuring various theories and concepts that will be the lens through which the rest of study will be discussed.

Chapter Three – This chapter will be the core of the study and will feature an analysis of the PADVA in the context of the new constitutional dispensation, Kenya's obligations in

international law, and customary law measures for dealing with DVAM. In light of this, reasons for its alleged inadequacy will be proffered.

Chapter Four – The study will come to a crescendo in this chapter which will delve into the jurisdictions of other countries in Africa, Europe and America to analyse their attitudes and response to DVAM. This will be done in a bid to compare approaches and provide insights on options for the Kenyan jurisdiction.

Chapter Five – As the final chapter of the dissertation, it will focus on the findings of the study, the recommendations of the researcher, and the conclusion.

Chapter 2

Theoretical and Conceptual Framework

2.1 Introduction

To better understand why or in what ways male victims of domestic violence are particularly disadvantaged when it comes to recourse under Kenyan law, it is essential to examine theories, both legal and socio-cultural, that underpin DVAM. In this chapter, the author draws eclectically from various theories and concepts. The theories will be used to explain why female perpetrated DVAM occurs; while the concepts will be used to expose societal and cultural norms, perceptions, and attitudes around domestic violence which will better explain why male victims do not readily report such incidences. The theories do not suffice on their own as they simply explain the sociological aspects of domestic violence, that is why the concepts are proffered to explain what hinders access to justice for male victims which then underscores the legal aspect of the problem.

As highlighted in the preceding chapter, domestic violence has received increasing attention in the past decade; attention that has, unfortunately, framed the violence as essentially a masculine form of assaultive behaviour.⁵⁰ This popular view has contributed to increasing legal and social defencelessness for men. One must, however, concede that domestic violence and violent behaviour in general is strongly influenced by cultural and social norms. As such, efforts to prevent DVAM or afford adequate recourse must consider how social pressures and expectations influence individual behaviour. The following theories and concepts are rendered in support of the author's hypothesis.

2.2 Theories

2.2.1 Frustration-Aggression Theory

This theory was propounded by Dollard, Doob, Mowrer, Miller and Sears in their seminal 1939 book. Their hypothesis was that when people perceive that they are being prevented from achieving a goal, their frustration is likely to turn to aggression.⁵¹ Aggression, in this instance,

⁵⁰ McNeely R and Robinson-Simpson G, 'The truth about domestic violence: A falsely framed issue' 32(6) *Social Work*, 1987, 485.

⁵¹ This theory is closely related to the expressive violence theory which posits that violence serves the purpose of relieving frustration and anxiety triggered by challenges to traditional gender roles and norms. Expressive theories assume violence enters directly in the perpetrator's utility function.

is then seen as an instinctual response to frustration. What is especially noteworthy in the definition of frustration in their theory is that, unlike the use of the word in everyday language, frustration here is not understood as an emotional experience but as an interference with the occurrence of an instigated goal-response: therefore, an event instead of an affective state.⁵² When applied to domestic violence, marital or dating relationships⁵³ can trigger anger (justified frustration) or aggression (unjustified frustration) in either party. Justification is understood to be the opposite of arbitrariness; and studies have found that unjustified frustration produces more hostile aggression than justified frustration.⁵⁴ Concerning the intensity of aggression, Dollard and his team contend that the strongest aggressive reactions are those directed towards the perceived sources of frustration: this is one type of retaliatory behaviour.⁵⁵ In the other vein, the aggressive response to a frustration can also be directed toward individuals who are not directly responsible for the interference with the attainment of a goal: here it is said to be displaced.⁵⁶

This theory is relevant to the study as it gives weight to the argument that there are certain factors that tend to precipitate DVAM.⁵⁷ It also supports the notion that domestic violence is not only perpetrated by men but can also be inflicted by women who are frustrated or angry with their male partners when confronted with issues such as infidelity, drunkenness, or unfulfilled financial demands, with that frustration crystallising in aggressive bouts of violence.⁵⁸

2.2.2 Social Learning Theory

The social learning theory is based on models initially developed by Albert Bandura.⁵⁹ He posits that certain behaviours people exhibit are those that they have learnt from their social

⁵² Dollard J, Miller N, Doob L, Mowrer O and Sears R, *Frustration and Aggression*, Yale University Press, New Haven, 1939, 7.

⁵³ Generally, domestic relationships.

⁵⁴ Dill J and Anderson C, 'Effects of frustration justification on hostile aggression' 21(5) *Aggressive Behavior*, 1995, 359–369

⁵⁵ Dollard J, Miller N, Doob L, Mowrer O and Sears R, *Frustration and Aggression*, 7. See also Zillmann D and Cantor J, 'Effect of timing of information about mitigating circumstances on emotional responses to provocation and retaliatory behaviour' 12(1) *Journal of Experimental Social Psychology*, 1976, 38–55.

⁵⁶ Geen R, 'Effects of frustration, attack, and prior training in aggressiveness upon aggressive behavior' 9(4) *Journal of Personality and Social Psychology*, 1968, 316–321.

⁵⁷ This will briefly be discussed later in the study.

⁵⁸ Obarisiagbon E and Omege M, 'Emerging trend in the culture of DVAM in southern Nigeria' 9(3) *International Journal of Humanities and Social Science*, 2019, 53.

⁵⁹ He is a renowned social cognitive psychologist.

environments.⁶⁰ As such, people exhibit violent behaviours if they have been raised in social environments in which they observed domestic violence among their parents or other authoritative figures with whom they identify.⁶¹ For example, observing the beating of one's mother may create in a woman the consciousness about the need to take aggression as a form of defence.⁶² Moreover, the social learning theory suggests that a child learns not only how to commit violence, but also learns positive attitudes about violence when he/she sees it rewarded.⁶³ He/she thus learns destructive conflict resolution as a pattern of interpersonal communication⁶⁴ which they carry into adulthood. In line with this theory, victims and perpetrators of domestic violence are thought to have either witnessed abuse or directly experienced physical abuse as children, resulting in the development of tolerance or acceptance of violence within the family.

This theory is important, first and foremost, because it explains domestic violence as a human problem and not necessarily a gender problem as has been commonly conceptualised.⁶⁵ In addition, it is instrumental when considering the practicality of solutions to the prevailing problem of domestic violence especially in households where children are at risk of being exposed to and learning from this behaviour.

2.2.3 Resource Theory

The resource theory as propounded by Goode emanated from three theories namely: the exchange/resource theory, the social exchange theory, and the interpersonal resource-exchange theory.⁶⁶ This theory suggests a relationship between violence and wealth. The assumption is that all social systems, including the family, rest to some degree on force or the threat of force.⁶⁷ Thus, the decision-making power within a given family derives from the value of the resources

⁶⁰ See generally Bandura A, *Social Learning Theory*, General Learning Press, New York City, 1971.

⁶¹ The social learning theory is similar to the power theory in that it proposes that methods for settling family conflicts are often learned during childhood by observing parental and peer relationships. Bell K and Naugle A, 'Intimate partner violence theoretical considerations: Moving towards a contextual framework' 28 *Clinical Psychology Review*, 2008, 1098.

⁶² Nwanna C and Kunnuji M, 'Domestic violence by women against their intimate partners in Nigeria' 30(2) *African Population Studies*, 2016, 2642.

⁶³ Rakovec-Felser Z, 'Domestic violence and abuse in intimate relationships from a public health perspective' 2(3) *Health Psychology Research*, 2014, 1821.

⁶⁴ Rakovec-Felser Z, 'Domestic violence and abuse in intimate relationships from a public health perspective', 1821.

⁶⁵ This is to mean that both genders can learn and exhibit such behaviour.

⁶⁶ Goode W, 'Force and violence in the family' 33(4) *Journal of Marriage and the Family*, 1971, 624 – 635.

⁶⁷ Nwanna C and Kunnuji M, 'Domestic violence by women against their intimate partners in Nigeria', 2642.

that each person brings to the relationship.⁶⁸ As such, if the woman in the family brings more resources to the relationship, she is likely to use force and abuse her decision making power. This is based on the thinking that if men in the patriarchal society acquired their dominance and head-of-the-family status by virtue of them being the providers, then it is only logical that if the tables turn and a woman becomes the provider, she will naturally take the role of the ‘dominant man’ and start to emulate his machismo by abusing force.⁶⁹ Another important tenet of this theory concerns the notion of exchange. Within the family structure, people are bound to each other through ongoing transactions or exchanges.⁷⁰ Violence is then seen as an outcome of the inequity of exchange between the two parties. Thus, a woman who wants to be the dominant person in the family and is domineering, has a good job and income, and/or educated may choose to use violence to maintain that dominant position.⁷¹

This theory is important to the discourse as it highlights the changing nature of life in the 21st century: we no longer live in oppressive patriarchal societies where women are subjugated and silenced simply because they have less resources than a man. With the revolutionary empowerment of women across the world in the past few decades, a woman may have, and in many cases does have, more resources than the man in a domestic relationship. As such, this shift in the ‘power’ dynamic gives rise to a society where the idea of a vulnerable man at the hands of a woman is not an unimaginable reality. That is why the study argues for the reconceptualisation of domestic violence.

2.3 Concepts

2.3.1 Gender Symmetry

One of the main debates associated with domestic violence is whether there is a ‘gender asymmetry’ where men are more frequently perpetrators of the violence than women⁷² or whether there is a ‘gender symmetry’ where both partners, male and female, instigate the

⁶⁸ These include social, economic, personal and organisational resources. Nwanna C and Kunnuji M, ‘Domestic violence by women against their intimate partners in Nigeria’, 2642.

⁶⁹ Adebayo A, ‘Domestic violence against men’, 15.

⁷⁰ Goode W, ‘Force and violence in the family’, 624 – 635.

⁷¹ This theory is also closely related to the control theory which is based on the concept that many family conflicts result from an individual’s need to obtain and maintain power and control within a relationship. Threats, force and violent behaviours are intended to prohibit the less powerful members of the family from engaging in behavior that the controlling individual does not want, while establishing a demand for desirable behaviours to occur. As such, a wife whose husband is a drunk or is ‘dead-beat’ may want to use violence to control the drunken husband.

⁷² Dobash R and Dobash R, ‘Women’s violence to men in intimate relationships: Working on a puzzle’, 44(3) *British Journal of Criminology*, 2004, 326.

violence equally. The view put forth by most proponents within this sector is that of gender asymmetry. They contend that the prevailing preoccupation with male violence is justified because the number of female perpetrators is almost insignificant; that they are an aberration.⁷³ To the contrary, this study argues that there is a gender symmetry and that the statistics and surveys being circulated are highly misleading and carefully calculated to achieve a certain outcome.⁷⁴ Much of the literature about domestic violence also reveals a stark absence of comparative statistics for men and boys.⁷⁵ Even so, in those that make a conscientious effort to do so, the gender differences in domestic violence figures are not statistically significant.

It is in this vein that Straus concedes that his assumption that domestic violence was about men dominating women has been contradicted by a mass of empirical evidence from his own research and that of others which found that women physically attack their partners at the same or higher rate than men; and that male dominance is only one of the many causes.⁷⁶ The exception to gender symmetry, he posits, is that the adverse effects of being a victim of domestic violence are much greater for women than they are for men.⁷⁷ This may be considered a difference in context, but one must bear in mind that the adverse effects are *consequences* rather than *causes* of domestic violence.⁷⁸

Erin Pizzey, known to be a staunch feminist, has also made a stand for the battered man. She believes that violence is not a gender issue as it is due to a dysfunctional background which both men and women can experience in their youth.⁷⁹ Thus, she conceptualises domestic violence as a family or societal issue. This conceptualisation is important as this study is hinged on the argument that men, just as women, should be acknowledged as victims of domestic violence so as to enable them to be equally protected under domestic violence legislation, thus enhancing their access to justice.

⁷³ A Submission to the Senate Inquiry into Domestic Violence in Australia, Submission 24.

⁷⁴ They do not take account of male victims that do not always disclose violence inflicted on them.

⁷⁵ A Submission to the Senate Inquiry into Domestic Violence in Australia. In some cases, this is because men were not surveyed; in other cases, survey instruments were biased and/or did not ask relevant and appropriate questions about female perpetration and male victims. In other extreme cases, the relevant comparisons were available but were not reported, presumably as doing so would undermine the predetermined narrative.

⁷⁶ Straus M, 'Thirty years of denying the evidence on gender symmetry in partner violence: Implications for prevention and treatment' 1(3) *Partner Abuse*, 2010, 334.

⁷⁷ Attacks by men cause more injury (both physical and psychological), more deaths, and more fear. Straus M, 'Thirty years of denying the evidence on gender symmetry in partner violence', 336.

⁷⁸ Straus M, 'Thirty years of denying the evidence on gender symmetry in partner violence', 336. Emphasis added.

⁷⁹ Lambert K, "Broken men break the silence", 10.

2.3.2 Masculinity

The concept of masculinity influences why men are viewed as perpetrators of domestic violence as it involves men asserting their authority over women; but it also influences why male victims of domestic violence find it difficult to seek help and support.⁸⁰ Male victims seem reluctant to seek help as their self-esteem and confidence has deteriorated due to the violence but, regardless, they still want to remain ‘manly’ to the outside world.⁸¹ Kimmel discusses the concept of hegemonic masculinity which, in his view, is the form of masculinity that essentially dominates other forms of masculinities: it is binding and has created a strict boundary of what it means to be a real man.⁸²

Moreover, Palin-Davis and Eirik both discuss the traditional gender roles embedded in society in terms of patriarchy, where men are privileged at the expense of women.⁸³ Eirik further contends that if a man fails at patriarchy then ‘he will no longer have that which makes him a man’,⁸⁴ a difficult reality to grapple with for those men who find themselves victims of domestic violence. When these gender constructions are challenged by women through violence, it disrupts the traditional ideology of the ‘dominant male’; therefore, male victims of female perpetrated domestic violence feel ashamed. The violence they experience has a feminising effect, causing them to feel less manly and thus, causing them not to report such violence.

2.3.3 Gender Roles and Stereotypes

The predominant view in society since time immemorial is that of men as the dominant sex. Violence against men has therefore been trivialised as influenced by social gender stereotypes that view men as heads of households, strong, defenders, and breadwinners.⁸⁵ Gender roles were defined even before the public notion of patriarchy came to the forefront of beliefs.⁸⁶ As such, historically, men who were found to be beaten by their wives were publicly humiliated through the ‘Skimmington’ where they would be forced to ride a donkey backwards holding its tail in order to conform to society’s role that they are the dominant sex and women are

⁸⁰ Lambert K, “Broken men break the silence”, 12.

⁸¹ Lambert K, “Broken men break the silence”, 12.

⁸² Thobejane T and Luthada V, ‘An investigation into the trend of domestic violence on men’, 14.

⁸³ Lambert K, “Broken men break the silence”, 12.

⁸⁴ Lambert K, “Broken men break the silence”, 12.

⁸⁵ Thobejane T and Luthada V, ‘An investigation into the trend of domestic violence on men’, 13.

⁸⁶ Lambert K, “Broken men break the silence”, 11.

subordinate.⁸⁷ This had the undesirable effect of repressing male victims specifically from speaking out about domestic violence inflicted upon them; thus keeping male victims invisible. The fact that so many people, including academics and government officials, are so unwilling to accept the unilateral abuse of men by women is testimony to the deep-rooted stereotypes accepted by society.⁸⁸

Moreover, domestic violence, whether committed against men or women, is strongly influenced by the gender relations in the country where it takes place.⁸⁹ One of the main reasons why men are reluctant to seek help in such cases is due to the shameful stigma attached to being a victim of a crime traditionally associated with women.⁹⁰ This is just one example of how social and cultural gender stereotypes can have negative effects on men. This stigma also undermines male victims' notions of masculinity such as their presumed ability to protect themselves, and they therefore feel they have 'failed' at being men. To make matters worse, there is a predominant 'anti-man' attitude adopted by society due to the hurt and pain that a small minority of men has inflicted on women. Considering this, one cannot be faulted for concluding that 'our anger towards men as perpetrators blinds us to men who are victims'.

2.4 Conclusion

In summary, the theories and concepts canvassed in this chapter are the main pillars on which the study rests as they will form the basis of discussion and understanding of the arguments that will be proffered in the subsequent chapters.

⁸⁷ George M, 'Riding the donkey backwards', 137. This will be discussed in more detail in the subsequent chapter.

⁸⁸ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 12.

⁸⁹ Watson C, 'Preventing and Responding to Sexual and Domestic Violence Against Men: A Guidance Note for Security Sector Institutions', Geneva, DCAF, 2014, 7.

⁹⁰ Watson C, 'Preventing and Responding to Sexual and Domestic Violence Against Men', 7.

Chapter 3

An Analysis of the PADVA in Respect to its Adequacy for Male Victims of Domestic Violence

3.1 Introduction

This chapter is the *sine qua non* of the study as it will propound the main arguments which will form the basis of any subsequent discussions herein. The chapter will begin by briefly outlining the history of the PADVA. Thereafter, it will meticulously discuss the provisions of the Act, highlighting the protection it purports to afford to victims of domestic violence. This will be done with the aim of assessing whether it is in line with Kenya's obligations under international law in the new constitutional dispensation. The chapter will also briefly discuss the manner in which DVAM was dealt with in traditional customary law societies, which will bring out historical, societal and cultural perceptions of DVAM. These will be compared against the PADVA with the purpose of determining whether the Act has sought to put an end to these perceptions or if it impliedly serves to perpetuate them; and whether it accords DVAM the seriousness with which it was dealt with back then.

3.2 The Protection Against Domestic Violence Act of 2015: An Outline

The PADVA was the first of its kind in Kenya. Prior to this Act, no other legislation existed that exclusively dealt with matters on domestic violence. In those times, laws such as the Penal Code and the Sexual Offences Act stepped in to fill the void, and victims often sought recourse through their provisions. After two failed attempts at enacting a law on domestic violence in 1999 and 2007,⁹¹ the 2007 proposed Bill was revised and the Protection Against Domestic Violence Bill was tabled before Parliament in 2012;⁹² which subsequently became the Protection Against Domestic Violence Act of 2015 after the President assented to it. The

⁹¹ On all these attempts, the main grounds for failure to enact the law were that it was purportedly an assault on local customs or had granted too many rights to women. Baraza N, 'Family Law Reforms in Kenya: An Overview' Presentation at Heinrich Böll Foundation's Gender Forum, Nairobi, 30 April 2009 – <https://www.scribd.com/doc/96679713/Nancy-Baraza-Family-Law-Reforms-in-Kenya> on 18 November 2019.

⁹² Federation of Women Lawyers Kenya (FIDA Kenya) and The Global Initiative for Economic, Social and Cultural Rights, *Joint Submission of Shadow Report to the Human Rights Committee on International Covenant on Civil and Political Rights*, Kenya 105th Session, 9 – 27 July 2012.

passing of the Bill signalled the long-awaited completion of the entire spectrum of family laws in Kenya.⁹³

Some of the biggest proponents and loudest voices pushing for the PADVA were female Members of Parliament such as Hon. Millie Odhiambo, Hon. Nyokabi Kanyua, and Hon. Christine Ombaka, just to name a few,⁹⁴ most of whom were also involved in the drafting of the statute. The Act was considered a ‘battle’ for female lawmakers because their male colleagues had already dismissed it as a ‘threat to the family unit’.⁹⁵ Nonetheless, in the eyes of the female members of Parliament, this was a crucial piece of legislation that would help shield women from unnecessary harassment and abuse in their homes.⁹⁶ As such, it is not surprising that the Act was met with jubilation among the female gender as one bears witness to the pictures of women smiling and celebrating together plastered all over the media with headlines connoting a feminine win shortly after the Act was passed.⁹⁷ Given this information, one may (justifiably) argue that the Act leaned more towards the protection of women or seemed to be a law designed for women from its very conception.

Just like other international legal instruments, the PADVA provides a broad definition of what constitutes domestic violence which positively demystifies the notion commonly held by the public that physical violence is the only form of domestic violence. As such, it extends the meaning of violence to include economic violence, emotional abuse, harassment, intimidation, sexual abuse, stalking and psychological abuse.⁹⁸ As a result, offences stemming from these forms of violence are now prosecutable under the Act.⁹⁹ The Act also recognises, although not directly, the effect of socio-cultural norms in the realm of domestic violence by banning certain and specific socio-cultural practices such as virgin testing, female genital mutilation, forced wife inheritance, child marriages and widow cleansing which are prevalent in a number of

⁹³ National Assembly Hansard Report, 19 August 2014, 47. The other family laws alluded to are the Marriage Act (Cap 150) and the Matrimonial Property Act (2013).

⁹⁴ National Assembly Hansard Report, 19 August 2014.

⁹⁵ Shiundu A, ‘With five new laws to protect women, why is gender violence still prevalent?’ Standard Digital, 5 March 2015 –<https://www.standardmedia.co.ke/article/2000153691/with-five-new-laws-to-protect-women-why-is-gender-violence-still-prevalent>> on 20 November 2019.

⁹⁶ Shiundu A, ‘With five new laws to protect women, why is gender violence still prevalent?’, 5 March 2015.

⁹⁷ For example: Muiruri F, ‘Law on domestic violence a win but should have addressed issue of shelters’ Kenyan Woman – <https://kw.awcfs.org/article/law-on-domestic-violence-a-win-but-should-have-addressed-issue-of-shelters/> on 21 November 2019.

⁹⁸ Section 3, *Protection Against Domestic Violence Act* (No. 2 of 2015).

⁹⁹ Section 3, *Protection Against Domestic Violence Act* (No. 2 of 2015). For example, economic violence, emotional abuse, stalking and verbal abuse, etc.

traditional Kenyan cultures.¹⁰⁰ It is also noteworthy that the PADVA provides that a single act may amount to abuse¹⁰¹ which further demystifies the notion that domestic violence must be an amalgamation of repeated acts for it to amount to an offence. Thus, the broad scope that the Act covers in its definitions guarantees the protection of individuals under different circumstances from varying forms of violence. The provisions of the Act also extend the scope and meaning of a domestic relationship.¹⁰² As such, one can conclude that the PADVA takes a wholesome approach to the issue of domestic violence.

The main avenue of recourse afforded to victims of domestic violence in the Act comes in the form of protection orders.¹⁰³ Remarkably, in terms of reporting domestic violence or applying for protection orders, the PADVA adopts a new position which extends *locus standi* such that a third party can make a report¹⁰⁴ or application on behalf of the victim.¹⁰⁵ This is contrary to the initial position under previous laws where only the victim could bring forth a complaint or apply for a protection order.¹⁰⁶ Such third parties (referred to as the Applicant's representatives in the Act) include police officers, probation officers, relatives of the victim, neighbours and medical practitioners.¹⁰⁷ This provision may be interpreted as a remedy to the problem that arises from the intimate relationship between the aggressor and the victim that often prevents the victims from reporting and seeking legal redress.

However, for a statute that claims to give effect to the Constitution's Article 45¹⁰⁸ the PADVA does little to attest to this. Protection orders essentially remove the victim from the abusive environment; or in other instances, serve to restrict access to the perpetrator while in the same house. This is all well and good in theory; however, one must ask themselves what good

¹⁰⁰ Ngirachu J, 'Relief for Domestic abuse victims as President Kenyatta signs protection law' Daily Nation, 16 May 2015 – <https://www.nation.co.ke/news/Protection-Against-Domestic-Violence-Act-Uhuru-Kenyatta/1056-2718992-ovqnh5z/index.html> on 12 November 2019.

¹⁰¹ Section 3(4), *Protection Against Domestic Violence Act* (No. 2 of 2015).

¹⁰² Section 4, *Protection Against Domestic Violence Act* (No. 2 of 2015). Those protected under the Act include married couples, couples that are divorced, couples that have separated, cohabitees, any family member including stepchildren, adoptees and co-parents

¹⁰³ A protection order is defined as the final order made by the court in a matter concerning domestic violence. A protected person, on the other hand, in relation to a protection order, means the person for whose protection the order is made, any child of that person's family or any person for whose benefit the order applies pursuant to a direction made under Section 18.

¹⁰⁴ Section 7, *Protection Against Domestic Violence Act* (No. 2 of 2015).

¹⁰⁵ Section 8(4), *Protection Against Domestic Violence Act* (No. 2 of 2015).

¹⁰⁶ This severely hindered access to justice for these victims especially in cases where they were too afraid to come forward.

¹⁰⁷ Section 2, *Protection Against Domestic Violence Act* (No. 2 of 2015).

¹⁰⁸ This Article recognises the family as the fundamental unit of society and the necessary basis for social order and as such necessitates the state to do everything it can to protect the family and ensure it stays at peace. The conclusion made here is inferred from a reading of the National Assembly Hansard Report of 19 August 2014, specifically the debate on the then Domestic Violence Bill.

separation serves in the long term.¹⁰⁹ This study argues that this is a temporary fix as permanently breaking up a family surely does more harm than good.¹¹⁰ As the Constitution recognises a family as the fundamental unit of society, without which the society cannot develop and progress, the social cost of dismantling them seems to be too high.

Section 6(4) of the PADVA places a positive duty on the Inspector General of Police to ensure the development of procedures provided under the Act by facilitating the training of police officers on how to effectively deal with family related matters or domestic violence.¹¹¹ Section 14 further provides for parties to engage in restorative justice avenues such as counselling or conciliation programmes as directed by the court.¹¹²

3.3 Progressive or Stillborn: An Analysis of the PADVA's Adequacy in Protecting Male Victims of Domestic Violence

While the study concedes that the PADVA is a well-intentioned and timely Act to address the growing national concern of domestic violence in Kenya, it raises some weighty questions as to its adequacy for male victims, as well as its resultant efficacy.

3.3.1 'Men's rights are also human rights': International Basis for Protection of Male Victims

The basis for abiding by international obligations in Kenya is Articles 2(5) and 2(6) of the 2010 Constitution which prescribe respectively that the general rules of international law will apply in Kenya¹¹³ and that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.¹¹⁴ As such, the following international instruments are of importance in recognising the rights of all persons, whether male or female.

¹⁰⁹ This must also be balanced with the consideration that, especially in instances where children are involved, growing up in a violent household may make children more susceptible to being violent themselves and extending that violence beyond the family confines as per the social learning theory.

¹¹⁰ This is especially in situations where children are involved.

¹¹¹ Section 6(4)(a), *Protection Against Domestic Violence Act* (No. 2 of 2015).

¹¹² Section 14, *Protection Against Domestic Violence Act* (No. 2 of 2015). Some jurisdictions have actively incorporated restorative justice means of dispute resolution such as victim-offender mediation into their systems. This will be discussed further in Chapter 4.

¹¹³ Article 2(5) *Constitution of Kenya* (2010).

¹¹⁴ Article 2(6) *Constitution of Kenya* (2010).

The Universal Declaration of Human Rights (UDHR) of 1948 is a milestone document in the history of human rights as it was the first to extensively pronounce the rights and freedoms of man; and serve as a common standard of achievements for all peoples and all nations.¹¹⁵ Article 1 of the UDHR states that *all human beings* are born free and equal in dignity and rights. It further provides that *everyone* is entitled to *all* the rights and freedoms set out *without any discrimination* including on the basis of gender.¹¹⁶ More importantly, the UDHR provides that no person shall undergo torture or harsh, inhuman or undignified treatment.¹¹⁷ Another international instrument which came after the UDHR and is largely influenced by its provisions is the International Covenant on Civil and Political Rights (ICCPR).¹¹⁸ The ICCPR protects the right to life in its Article 6(1). Similar to the provisions of the UDHR, Article 7 of the ICCPR provides protection for everyone from torture or cruel, inhuman or degrading treatment or punishment. Article 9(1) further protects the right to liberty and servility of person.

These two instruments have come to be known as some of the cornerstones of human rights law as we know it today. They guarantee freedom from torture or undignified treatment indiscriminately for both men and women, and it goes without saying that any subsequent legislation touching on human rights should be influenced by their provisions. As such, it is to be expected that national legislators will have these in mind when legislating on issues such as those of domestic violence in this context which are proper to the human rights realm. However, we find that the PADVA does not embody the spirit of the UDHR and/or the ICCPR by not considering or specifically addressing the unique plight of male victims. It does, seemingly, protect women but there exists a *lacuna* by virtue of the fact that the ICCPR and UDHR apply to both men and women alike, yet the PADVA arguably excludes an entire gender. On this account, Kenya has failed to fulfil its obligations under international law and the PADVA has afforded inadequate protection for male victims of domestic violence, if at all.

Apart from the ICCPR and the UDHR, there have been numerous other international conventions and declarations specifically protecting women from violence and

¹¹⁵ <https://www.un.org/en/universal-declaration-human-rights/> on 30 November 2019.

¹¹⁶ Article 2, *Universal Declaration on Human Rights*, 10 December 1948. Emphasis added.

¹¹⁷ Article 5, *Universal Declaration on Human Rights*, 10 December 1948.

¹¹⁸ Kenyan judges are no stranger to the ICCPR as they frequently invoke it in many cases brought before the courts since the advent of the new constitutional dispensation.

discrimination.¹¹⁹ This is understandable given the extent to which women had been subjugated in society at the time at which these laws were being passed. It is even remarkable that the CEDAW is openly committed to the goal of eliminating discrimination against women and does not assume a guise of gender neutrality.¹²⁰ However, this study argues that the scales have since tipped and men are now increasingly becoming in need of protection against female perpetrated domestic violence yet there exists no specific legislation in the international realm to address this; perhaps a lack of which has led to the insufficient attention given to violence against men and the subordination they are forced into.¹²¹ To that effect, the study challenges the international community to take this up as a matter of urgent attention.

3.3.2 Constitutional Basis for Protection of Male Victims in Kenya

The 2010 Constitution of Kenya appears, *prima facie*, to provide adequate protection for victims of domestic violence. With a novel and comprehensive Bill of Rights spanning an entire chapter and featuring exhilarative provisions aimed at promoting, protecting, and fulfilling fundamental political, social and economic rights, the new constitutional dispensation was received with much jubilation and zeal by a historically oppressed Kenyan population. Article 45 affirms the family as the natural and fundamental unit of society and a necessary basis of social order; and further provides that the family unit shall enjoy the recognition and protection of the state. As far as violence goes, the Constitution provides that every person has the right to freedom and security of the person, which is inclusive of the right not to be subjected to any form of violence from either public or private sources.¹²² The wording of the latter part of this provision can be interpreted to mean violence that occurs in a familial and domestic setting. Article 29 further provides for the protection from torture in any manner, whether physical or psychological,¹²³ subjection to corporal punishment¹²⁴ and treatment in a cruel, inhuman or degrading manner.¹²⁵

¹¹⁹ These include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the United Nations Declaration on the Elimination of Violence Against Women (DEVAW); as well as the Vienna Declaration and Program of Action of 1993, just to name a few.

¹²⁰ Raday F, Gender and democratic citizenship: The impact of CEDAW' 10(2) *International Journal of Constitutional Law*, 2012, 512.

¹²¹ Isaboke W, 'What about men', 3.

¹²² Article 29(c), *Constitution of Kenya* (2010).

¹²³ Article 29(d), *Constitution of Kenya* (2010).

¹²⁴ Article 29(e), *Constitution of Kenya* (2010).

¹²⁵ Article 29(f), *Constitution of Kenya* (2010).

Article 21¹²⁶ places a duty on the state and every state organ to observe, respect, promote and fulfil the rights and freedoms enshrined in the Bill of Rights. Read together with the aforementioned provisions of the Constitution, there is a rather obvious inference of a positive duty imposed on the state to provide safeguards against violence in general.¹²⁷ Being the supreme law of Kenya, any other legislation enacted within this jurisdiction is subject to the provisions of the 2010 Constitution, to the extent that it becomes null and void if it does not. In that line of thought, it can be argued that the PADVA does not align with the provisions of the Constitution mentioned above because it impliedly excludes an entire gender from its scope of protection, although this is not conclusive as a judicial pronouncement has yet to be made. However, this is a potential area where the state be found in breach of its duty to safeguard the freedom and security of *all* persons regardless of gender, including from any form of violence from private sources.

3.3.3 Treatment of DVAM in Traditional Customary Law Systems

There is a substantial amount of literature today which portrays domestic violence as a social enigma with patriarchal roots that places women as victims and men as the perpetrators. This thinking stems from traditional and cultural systems around the world that were characterised by patriarchal domination where men had a recognisable right to chastise their wives.¹²⁸ Female members of households could also be subjected to violence-enforced male supremacy.¹²⁹ Be that as it may, men were not given absolute freedom to chastise women in the way that they wanted; there were regulations and limits.¹³⁰ Women were also afforded appropriate redress mechanisms in the event that they were chastised for no cause.¹³¹ This kind of system was made possible by the fact that marriage in traditional African societies was not merely an individual affair between two parties, but represented larger familial and clan ties.¹³²

¹²⁶ Deals with the implementation of rights and fundamental freedoms.

¹²⁷ This can be narrowed down to domestic violence and related acts in this specific context.

¹²⁸ Kameri-Mbote P, 'Violence against women in Kenya: An analysis of law, policy and institutions' International Environmental Law Research Center, Working Paper Number 1, 2000, 4.

¹²⁹ Kameri-Mbote P, 'Violence against women in Kenya', 4. However, the use of this violence was limited to male members of the household; any third parties found to be exercising any violence on women were punished severely.

¹³⁰ For instance, a man was not allowed to cause physical damage to a woman that would incapacitate her from performing her functions in the home. Kameri-Mbote P, 'Violence against women in Kenya', 4.

¹³¹ For instance, one could return to her natal home or report the matter for investigation to established organs of the community. Kameri-Mbote P, 'Violence against women in Kenya', 4.

¹³² Kameri-Mbote P, 'Violence against women in Kenya', 4.

On the other hand, DVAM, historically known as ‘husband battering’, was rare in traditional African societies and attracted heavy penalties whenever it occurred. Amongst the Kikuyu community, a male member of the community who had undergone the weaning rites was referred to as a *mundurume*.¹³³ Having the elevated status of a *mundurume* did not merely signify an ascension from childhood to adulthood, but rendered one a leader, warrior, community soldier, and a responsible person who possessed a higher calling to protect the community at whatever cost.¹³⁴ Hence, it was a social taboo to see a battered ‘soldier’, an even worse occurrence if the violence was inflicted by a woman.¹³⁵ If it happened, a man or woman was required to go through a ceremonial purification.¹³⁶ This coincided with other forms of punishment against the ‘errant’ wife such as being returned to her parents after the council of elders had clearly established that she actually battered her husband.¹³⁷

Similarly, there also existed ways of dealing with battered husbands among the Luhya community of Western Kenya. Here, as soon as it was established that a woman battered her husband, elders from both sides would be summoned and the issue tabled before them.¹³⁸ If the occurrence of violence on the part of the woman was established beyond reasonable doubt, the marital house of the couple was ritually demolished to signify the end of that union.¹³⁹ In other cases, a woman who used violence against her husband would be warned publicly; and if she showed willingness to change, she could be accepted back into the community.¹⁴⁰ Failure to change, however, meant that, similar to the Kikuyu community, she would essentially be isolated from the community.¹⁴¹ In other African communities, women who battered their

¹³³ Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

¹³⁴ Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

¹³⁵ This was akin to an abomination which would annoy not just the living, but the ancestors and the unborn as they were all considered members of the extended family and society at large in the traditional African society. Amongst the Kikuyu community, this was comparable to having sexual relations with a person who had not undergone the all-important ritual of circumcision. Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

¹³⁶ This was a ritual to ‘vomit’ the evil deeds known as *korutwo thahu* or *gotahikio megiro*. Kenyatta J, *Facing Mount Kenya*, East African Educational Publishers Ltd, Nairobi, 1938, 132-133.

¹³⁷ In such instances, a woman would be forced to return to her parents with her children: an act that was believed to ‘uproot’ the bad seed from the family; and she was to remain unmarried until the dowry was returned. However, if the family of the battered *mundurume* was so poor as to not be able to return the dowry, the woman would remain unmarried indefinitely or even forever. Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

¹³⁸ Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

¹³⁹ Another one could be rebuilt if the man wished to remarry. Because it was a communal issue that affected the whole society, the man could ask for assistance to rebuild the house and have this given to him in the case of remarriage. Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

¹⁴⁰ Gathogo J, ‘Men battering as the new form of domestic violence? A pastoral care perspective from the Kenyan context’, 4.

¹⁴¹ She would be disowned, have her house demolished, and be disallowed from drawing water from a common spring. Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

husbands would be communally cursed ‘never to get husbands’ or prosper during their lifetimes.¹⁴²

These are some examples of the way that Traditional Dispute Resolution Mechanisms (TDRMs) were used to resolve issues of domestic violence generally, and specifically against men. Although the examples mentioned here seem rather punitive and should be done away with, there are some restorative options that can be employed in our current social climate such as mediation between the two parties or with the involvement of various actors in the community.

Moving from Africa, in post-Renaissance France and England, the focus was not on punishing the women in such situations for being errant in their roles, but on condemning the men for presumably ‘allowing’ such violent acts to be perpetrated against them. Society ridiculed and humiliated husbands thought to be battered and/or dominated by their wives.¹⁴³ For instance, in France, a battered husband endured the Skimmington where he was forcibly trotted around town riding a donkey backwards while holding its tail; while in England, abused husbands were strapped to a cart and paraded around town while being subjected to the people’s derision and contempt.¹⁴⁴ Such treatments arose out of the patriarchal ethos where a husband was expected to dominate his wife, making her, if need be, the proper target for necessary marital chastisement; and not the other way around.¹⁴⁵

From the above discussions on how traditional African and European societies dealt with DVAM, the study argues that the failure of the PADVA to explicitly deal with DVAM or at least recognise it as an actual problem signifies a break from this. The PADVA should be able to deal with such violence if it claims to be for all genders; it should have specific modes of redress outlined for male victims if it acknowledges, as it should, that the society does not readily accept them as victims of domestic violence. On this account, the study concludes that the Act has proved to be an inadequate protection for male victims of domestic violence.

¹⁴² This was a big deal in the community at that time. Gathogo J, ‘Men battering as the new form of domestic violence?’, 4.

¹⁴³ George M, ‘Riding the donkey backwards’, 137.

¹⁴⁴ George M, ‘Riding the donkey backwards’, 137.

¹⁴⁵ George M, ‘Riding the donkey backwards’, 137.

3.4 Societal Factors Affecting the Adequacy of the PADVA for Male Victims of Domestic Violence

While Section 3.3 discussed how the PADVA has been inadequate for male victims in the legal sense on the backdrop of the state's duty, this section will focus on how the Act fails in the context of the socio-cultural sphere. This section is premised on the argument that the government did not consider the social and economic reality of Kenyans nor the socio-cultural norms, attitudes and perceptions of domestic violence present in the Kenyan society today. Had it done so, it would have crafted the law in a way that remedies or serves to change these attitudes and perceptions, specifically for male victims of domestic violence. The result of this is we have a law that is so disconnected from the reality of victims on the ground rendering its applicability meaningless in most situations. In light of this, the study contends that the PADVA is inadequate for protecting male victims of domestic violence on account of the following reasons.

First, the Act does not take into account the fact that abused men are usually not willing to step forward and lodge complaints or institute criminal proceedings against their respective partners for domestic violence due primarily to inherent paternalistic conceptions of pride and masculinity.¹⁴⁶ Male victims of domestic violence face numerous barriers in the process of reporting or help-seeking; they are often met with ridicule, hilarity or scorn.¹⁴⁷ Being a man and a victim of domestic violence is widely regarded as an unacceptable combination, perpetuating the social 'taboo'. Because of the masculinity norms prevailing in society, male victims face both internal (i.e. denial, fear of not being believed, shame, emotional confusion and ambivalence) and external barriers (i.e. lack of appropriate services, bias, societal protection of the perpetrator who is automatically deemed to be a victim because of her gender) to seeking help;¹⁴⁸ all of which contribute to the invisibility of DVAM. In particular, societal stigmatisation, gender biases, and a strong endorsement of sociocultural values appear to be the main reasons why abused men do not seek services. Others feel guilty for being irresponsible to their families, hence the silence amidst suffering.¹⁴⁹ This is detrimental to men

¹⁴⁶ Isaboke W, 'What about men', 12.

¹⁴⁷ Lambo L, "We're not victims", 39.

¹⁴⁸ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 14.

¹⁴⁹ Thobejane T and Luthada V, 'An investigation into the trend of domestic violence on men', 17.

as the probability of detecting these crimes and enforcing the sanctions is close to impossible, rendering the entire system dysfunctional.¹⁵⁰

Secondly, for women, the sanctions against their partners may be too heavy a burden for them to bear as well. As such, both parties may acquiesce to the situation which may be particularly hard for the victim but unavoidable due to the circumstances.¹⁵¹ This may have the resultant consequence of rendering the PADVA inoperable. This is particularly true for those women who are of a lower social status and who, due to one or another frustration, abuse their male partners on whom they depend for their livelihoods.

Thirdly, as long as the root causes of DVAM are not addressed and a proper awareness of the socio-economic reality of the Kenyan society not taken into account, the effectiveness of the PADVA remains low.¹⁵² Hon. Kajwang mentioned during one of the parliamentary debates on the Act that it appeared to be ‘elitist’ and ‘urbanite’ and that it was not designed to arrest the issue of domestic violence in a specialised manner.¹⁵³ Based on this, he wondered whether a law that is designed in a penal way, whose narrative comprises of phrases beginning with ‘the police shall’ and ‘the court shall’, together with a host of penal consequences, protection systems and so forth was a law that met the desires of the Kenyan people.¹⁵⁴ One of the key causes of DVAM in Kenya is poverty that has rendered some husbands ‘dead-beat’¹⁵⁵ and instilled the notion in women that they can batter their husbands back to financial ability and/or stability. This is made worse by the high rates of unemployment in Kenya, alcoholism, and a lack of support from the government.

As previously mentioned, DVAM in Kenya has been on a steady increase and in 2011, almost 500,000 men were reported to have been abused by their wives.¹⁵⁶ Many Kenyan women responded defensively to the news and statistics by stating that the rash of domestic violence reflects a deep-seated frustration with husbands and fathers often described as ‘dead-beat’. They claim that their male counterparts have forgotten their position and role in the family structure by not maintaining their patriarchal role of providing for their families,¹⁵⁷ instead

¹⁵⁰ Isaboke W, ‘What about men’, 12 – 13.

¹⁵¹ Isaboke W, ‘What about men’, 13.

¹⁵² Isaboke W, ‘What about men’, 13.

¹⁵³ National Assembly Hansard Report, 19 August 2014.

¹⁵⁴ National Assembly Hansard Report, 19 August 2014.

¹⁵⁵ Meaning a person who is not willing to work, does not behave in a responsible way, and does not fit into ordinary society – Cambridge Online Dictionary.

¹⁵⁶ Adebayo A, ‘Domestic violence against men’, 15.

¹⁵⁷ Primarily due to unemployment, with some men using their proceeds on alcohol and sex workers.

resorting to drinking heavily and even going so far as demanding the meagre financial gains of their wives which they have struggled so hard to earn in order to keep the family afloat.¹⁵⁸ Moreover, most of the women who commit such abuse against their male partners fit the profile of upward mobility and economic independence.¹⁵⁹

The last reason is that the PADVA seems to be a hurried response to meet Kenya's international obligation to realise the right of equal opportunities for both men and women in political, cultural, social and economic spheres. This is evinced by the 2017 Report of the UN Committee on the Elimination of Discrimination against Women where the Cabinet Secretary of the Ministry of Public Service, Youth and Gender Affairs in Kenya affirmed that Kenya had implemented measures to eradicate all forms of discrimination against women through the establishment of the National Gender and Equality Commission Act, the prohibition of female genital mutilation in 2011, and the adoption of the Protection against Domestic Violence Act in 2015.¹⁶⁰ This suggests that the PADVA had been part of a 'woman agenda' all along.

3.5 Conclusion

This chapter sought to investigate whether the PADVA is adequate for the protection of male victims of domestic violence using the yardstick of Kenya's international law obligations, the Constitution, and traditional African and European customary systems. Additionally, it sought to measure the PADVA's adequacy for male victims against the current societal climate in Kenya. From the foregoing discussions, it becomes clear that the PADVA is by various accounts inadequate as socially, it is so removed from the reality of male victims of domestic violence; and legally, it just does not measure up. Building from this acknowledgement, the next chapter explores options for reform from other jurisdictions which are either doing better or doing things differently with the hope of tailoring and incorporating some of those into the Kenyan jurisdiction.

¹⁵⁸ Adebayo A, 'Domestic violence against men', 15.

¹⁵⁹ This should, however, not be taken as the only profile as there have been isolated cases of DVAM perpetrated by women who do not fit into this profile.

¹⁶⁰ – <https://reliefweb.int/report/kenya/committee-elimination-discrimination-against-women-considers-report-kenya> on 21 November 2019.

Chapter 4

Options for Reform: Borrowing from Other Jurisdictions

4.1 Introduction

This chapter will begin by sampling some statistics from countries in the European, American and Oceanic regions to support the argument that DVAM is a burgeoning concern not just for African societies. The chapter will then delve into jurisdictions that have been more progressive i.e. those that have specific laws and services in place dealing with domestic violence with the aim of highlighting how those countries have supplemented or enforced their existing laws, if at all. This will be done with the goal of providing options for Kenya borrowed from those countries.

Unfortunately, no country in the world has yet to pioneer the task of legislating specifically for male victims of domestic violence in their jurisdictions or otherwise directly addressing the scourge of DVAM.¹⁶¹ Moreover, governments have been unwilling to recognise this as a problem of the same magnitude as male-perpetrated violence against women despite the glaring statistics. This is perhaps in fear of societal reprisal including from national gender support groups and international organisations that have fought decades to end violence against women that might view such recognition as taking ten steps back. Nonetheless, authors in various countries have remained adamant and written extensively advocating for the need to do so.

4.2 Global Statistics on DVAM: Real Threat or False Alarm

Recently, with the help of social media, evidence continues to grow through print and electronic media that while underreported and underdiscussed, DVAM is a major issue that needs urgent attention.¹⁶² However, the laws and social acceptability of domestic violence vary by country. As briefly highlighted in the introduction, statistics from around the world reveal a clear picture of the gender symmetry that exists regarding domestic violence.

In the USA, estimates from national family violence surveys show that within a given year, at least 12 percent of men are targets of some sort of physical aggression from their female

¹⁶¹ Such advocacy continues to emanate from social justice warriors and various gender and welfare groups.

¹⁶² – <http://centreforfricajustice.org/male-domestic-violence-in-south-africa-and-nigeria/> on 25 November 2019.

partners.¹⁶³ Adjunct statistics¹⁶⁴ indicate that one in three women and one in four men have experienced some form of physical violence; with one in five women and one in seven men having experienced some form of severe physical violence.¹⁶⁵

In Canada, a survey¹⁶⁶ carried out in 1999¹⁶⁷ revealed an overall victimisation rate of eight percent for women and seven percent for men, concluding that women initiated violence as often as men.¹⁶⁸ According to a later one in 2004, the percentage of males being physically or sexually victimised by their partners was six percent compared to seven percent of women.¹⁶⁹ However, the most recent survey¹⁷⁰ reported a reduction in domestic violence against women, but the figures for male victims remained unchanged.

In the United Kingdom, a 2010 survey¹⁷¹ showed that 7 percent of women and 4 percent of men were victims of domestic abuse in the last year.¹⁷² The most recent crime survey¹⁷³ estimated that 1.3 million women and 695,000 men experienced domestic abuse in the last year.¹⁷⁴ In Australia, a 2012 survey showed that 8.2 percent of all men have experienced violence by a female intimate partner which is roughly one in twelve, with almost a quarter of all victims of domestic violence being male.¹⁷⁵ The results of another study¹⁷⁶ revealed that both men and women reported equal rates of assaults by their partners, with both genders equally admitting to committing the assaults.¹⁷⁷

The results of a study conducted in the Netherlands in 2013¹⁷⁸ indicated that 96 percent of the men sampled reported abuse from a female partner. Several studies have also shown that some women were more likely than men to be physically aggressive. A report from Hong Kong

¹⁶³ According to a report by the United States Department of Justice, a survey of 16,000 Americans revealed that 22.1 percent of women and 7.4 percent of men reported being physically assaulted by a current or former spouse in their lifetime. Adebayo A, 'Domestic violence against men', 15.

¹⁶⁴ From the National Coalition Against Domestic Violence (NCADV).

¹⁶⁵ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 5.

¹⁶⁶ The General Social Survey (GSS) carried out by Statistics Canada.

¹⁶⁷ This was done with the aim of detecting family violence rates over a five-year period.

¹⁶⁸ Lambo L, "'We're not victims'", 27.

¹⁶⁹ However, females reported higher levels of repeated violence and were more likely than men to experience serious injuries. Adebayo A, 'Domestic violence against men', 15.

¹⁷⁰ The General Social Survey (GSS).

¹⁷¹ Conducted by the UK Home Office involving over 21,000 residents of England and Wales.

¹⁷² Adebayo A, 'Domestic violence against men', 15.

¹⁷³ This was conducted in England and Wales.

¹⁷⁴ Rees J, Male domestic abuse victims 'suffering in silence', BBC News, 1 March 2019 – <https://www.bbc.com/news/uk-wales-47252756> on 30 November 2019.

¹⁷⁵ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 8.

¹⁷⁶ This was conducted by Scott, Headey and de Vaus to determine if women were as violent as men in Australia.

¹⁷⁷ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 9.

¹⁷⁸ This consisted of 380 men responding to a questionnaire regarding the characteristics of the abuse they sustained, whether physical or psychological.

acknowledged a seven percent increase in male victims of domestic violence between the years 2010 and 2011.¹⁷⁹ Such a rise was attributed to gender equality and the fact that Hong Kong was no longer a male-dominated society per se.¹⁸⁰ South Africa is another country that is no stranger to domestic violence, having one of the highest rates in the world.¹⁸¹ Sadly, domestic violence against women is so pervasive in the society that female perpetrated violence has gone undetected and largely unacknowledged.¹⁸² The Moshate Organisation¹⁸³ receives between 25 to 30 abuse complaints from men on a monthly basis.¹⁸⁴

The above statistics have proved, in overwhelming fashion, that DVAM has been an ever-present phenomenon across the world for a while now. This means that we should accord the requisite seriousness when dealing with male victims of domestic violence as they are just, if not more, vulnerable than women. The ensuing section will explore how different jurisdictions have dealt with domestic violence in general, and if possible, DVAM.

4.3 How Different Jurisdictions have dealt with Domestic Violence

This section will begin by examining what has been done in Africa since countries on the continent share a common cultural and economic reality to some extent. Thereafter, an examination of the how the jurisdictions of the UK and the USA have dealt with DVAM will ensue as their legal systems are far more advanced as compared to Kenya and other countries in Africa.

4.3.1 South Africa

On the African continent, the study isolates South Africa owing to the fact that Kenya and South Africa's constitutions are almost identical in the wording of their provisions and in their progressive nature.¹⁸⁵ South Africa is known to have pioneered the human rights agenda in

¹⁷⁹ 558 reports were made by male victims in 2011 up from 520 incidents reported in 2010.

¹⁸⁰ The pressures of women working outside the home to support their families may result in their use of violence to reduce their stress.

¹⁸¹ South Africa is infamously known as the 'rape capital' of the world due to the distinctly high incidences of sexual violence that occur within its jurisdiction every day.

¹⁸² It has thus become South Africa's 'hidden crime' – <http://centreforafricanjustice.org/male-domestic-violence-in-south-africa-and-nigeria/> on 25 November 2019.

¹⁸³ This is an organisation in South Africa that focuses on domestic violence against men and boys.

¹⁸⁴ This is evidence of the existence of DVAM even if unacknowledged by the government and the wider society – <http://centreforafricanjustice.org/male-domestic-violence-in-south-africa-and-nigeria/> on 25 November 2019.

In addition, Lifeline, an NGO concerned with domestic violence in South Africa acknowledges the incidence of domestic violence against males but states that the prevalence of such violence is unknown due to underreporting.

¹⁸⁵ Although, South Africa is far more advanced and progressive as it has had a longer period to actualize many of the provisions in its Constitution which has existed for more than a decade before Kenya's came into existence.

Africa, with its Constitution being the first in Africa to contain an elaborate and near-exhaustive Bill of Rights. Having been plagued by Apartheid for years, it has also made notable progress since it attained independence in 1994 to enact specific legislation, policies as well as resources and services to cater to its historically oppressed people. Using this as a precursor, it is not surprising that South Africa has been fiercely tackling domestic violence especially against women.¹⁸⁶ In the past few years, the South African Government has employed an interventionist approach in solving the persistent scourge of DVAW, the result of which, among other legislative reforms, has been the Domestic Violence Act.¹⁸⁷ Numerous policies and legislative reforms have consequently been adopted to complement and strengthen the objectives and mandate of the Act.

These are the 2003 Police Framework and Strategy for Shelters for Victims of Domestic Violence in South Africa which is in line with police officers' duty to assist victims and complainants by making arrangements to find suitable shelter;¹⁸⁸ and the 2004 Integrated Domestic Violence Training Programme Manual.¹⁸⁹ Moreover, in 2008, a set of guidelines to be used to help magistrates deal with domestic violence effectively were launched¹⁹⁰ as another step forward in ensuring that domestic violence victims were acknowledged and protected through the help of the courts. In addition to this, numerous family court centres have been set up¹⁹¹ with the aim of bringing under one roof all matters relating to the family¹⁹² to be dealt with accordingly by the judiciary. Sexual offences courts and *thuthuzela* care centres were also set up.¹⁹³

By comparison, Kenya's Constitution is a mere fledgling, having not even completed a decade in formal existence. However, this is merely speculative.

¹⁸⁶ This is owing to the disrepute the phenomenon has caused the country within the international community.

¹⁸⁷ The Act is viewed as one of the most progressive and inclusive pieces of legislation. It is in many respects similar to Kenya's. The study even goes so far as to contend that the Kenyan drafters may have borrowed the PADVA in its entirety from the South African one; a contention that makes more sense when one considers that the Act in South Africa was enacted in 1998 while Kenya's came into force more than a decade later in 2015.

¹⁸⁸ Section 2, *Domestic Violence Act of South Africa* (No. 116).

¹⁸⁹ The sole purpose of the Training Manual was to assist law enforcement agents including prosecutors, police officers, magistrates, counsellors, health practitioners and victim assistant officers to effectively deal with domestic violence.

¹⁹⁰ They were launched by the Department of Justice and Constitutional Development.

¹⁹¹ These have been set up in Durban, Johannesburg, Lebowa, Port Elizabeth and Cape Town.

¹⁹² Includes those concerning divorce and family violence.

¹⁹³ Sexual offences courts were created to reduce secondary victimisation of domestic violence victims by improving management of cases through the courts, thus allowing for more effective prosecutions by specially trained prosecutors. The *thuthuzela* care centres were established as one-stop service centres where victims could have access to a number of services including the police, counselling, doctors and prosecutors. Bendall C, 'The domestic violence epidemic in South Africa: Legal and practical remedies' 39 *Women's Studies*, 2010, 109.

4.3.2 Western Jurisdictions – UK and USA

Generally, in western jurisdictions,¹⁹⁴ legislation on domestic violence is enforced by a whopping amount of services and resources available for victims of domestic violence, whether male or female. The adequacy of these services, however, specifically for male victims of domestic violence, remains to be seen. While in the United Kingdom, the police have moved a long way from the stereotypical view of domestic abuse as a crime only affecting women and as such are far more inclusive in their approach,¹⁹⁵ some jurisdictions still have police that suffer from these stereotypes and other cultural norms. However, the challenge that remains in the UK is ensuring that men are actually referred to local domestic abuse services and that they are well funded to stand the test of time.

The predominant criminal justice policy that exists in western countries has been mandatory arrest policies which mandate, or in some cases strongly encourage, police officers to make an arrest in any call involving domestic violence.¹⁹⁶ These policies have led to an increase in female perpetrators being arrested for domestic violence particularly in ‘dual-arrest’ situations: those that are seemingly mutually volatile and in which police cannot determine which party is the perpetrator of assault, therefore arresting both parties.¹⁹⁷ Dual arrest situations have allowed many researchers to investigate possible gender differences between male and female perpetrators of domestic violence which could have various implications for differential treatment programs;¹⁹⁸ however, they have been found to be abused by those police officers who are still bogged down by gender stereotypes and biases who make dual arrests even if the man is the one who called in the violence and there are no signs or marks of abuse on his female partner.¹⁹⁹ Domestic violence hotlines are also available,²⁰⁰ though these have been riddled with controversy due to the inherent biases and gender stereotypes carried by the hotline operators which hinders them from affording appropriate help to a male victim calling in.

These jurisdictions also make use of restorative means of dispute resolution such as victim-offender mediation (VOM), which is the oldest and most widely practiced expression of

¹⁹⁴ Such as the UK and the USA.

¹⁹⁵ Campbell D, ‘More than 40% of domestic violence victims are male, report reveals’ The Guardian, 5 September 2010 – <https://www.theguardian.com/society/2010/sep/05/men-victims-domestic-violence> on 30 November 2019.

¹⁹⁶ Hines A and Douglas E, ‘Women’s use of intimate partner violence against men’, 576.

¹⁹⁷ Hines A and Douglas E, ‘Women’s use of intimate partner violence against men’, 576.

¹⁹⁸ Hines A and Douglas E, ‘Women’s use of intimate partner violence against men’, 576.

¹⁹⁹ This brings into question the effectiveness of these arrest policies.

²⁰⁰ It should be noted that most of these cater primarily to female victims of domestic violence.

restorative justice.²⁰¹ A recent survey found more than 300 VOM programs in the United States and more than 1000 in Europe.²⁰² Although VOM programs are most commonly used when it concerns juvenile property offenses and minor assaults, there have been efforts to broaden the scope of VOM to include adult offenders and serious violent crimes.²⁰³ In most VOM programs, the mediator²⁰⁴ meets initially with the victim(s) and the offender separately. Following these separate sessions, which help prepare the victim(s) and offender for subsequent dialogue, there is a mediation session.²⁰⁵ The goal of the mediation is ultimately to create an environment that allows the parties to engage in a dialogue in which emotional and informational needs are met and in which a plan for the offender ‘to make things right’, as much as possible, is developed.²⁰⁶

4.4 Conclusion

This chapter sought to prove, first and foremost, that DVAM is a real and urgent concern using statistics from around the world to attest to the prevalence of it. The second limb of the chapter focused on what different jurisdictions are doing to address this concern with the aim of ultimately assessing the viability of these options for Kenya. As the chapter comes to a close, it is important to note that a majority of the services and policies outlined herein work or have worked mainly for female victims of domestic violence. As such, in the subsequent chapter, the study will detail how they can be specially adapted for male victims of domestic violence in the Kenyan context.

²⁰¹ Nugent W, Williams M and Umbreit M, ‘Participation in victim-offender mediation and the prevalence and severity of subsequent delinquent behaviour: A meta-analysis’ 14(6) *Research on Social Work Practice*, 2004, 408.

²⁰² Nugent W, Williams M and Umbreit M, ‘Participation in victim-offender mediation and the prevalence and severity of subsequent delinquent behaviour’, 408.

²⁰³ Nugent W, Williams M and Umbreit M, ‘Participation in victim-offender mediation and the prevalence and severity of subsequent delinquent behaviour’, 408.

²⁰⁴ This is usually a trained volunteer.

²⁰⁵ Nugent W, Williams M and Umbreit M, ‘Participation in victim-offender mediation and the prevalence and severity of subsequent delinquent behaviour’, 408.

²⁰⁶ Nugent W, Williams M and Umbreit M, ‘Participation in victim-offender mediation and the prevalence and severity of subsequent delinquent behaviour’, 408.

Chapter 5

Findings of the Study, Recommendations and Conclusion

As the discussion comes to a close, this chapter will detail the overall findings of the study and propose recommendations based on the different approaches outlined in the preceding chapter; thereafter concluding. While the progressive approaches of other countries have generally been toward female victims of domestic violence, there has been an increasing amount of advocacy campaigning for the same to be afforded to men. As such, this chapter echoes the voices of such authors albeit with a specific inclination to Kenya.

5.1 Findings of the Study

“The sad part is the way husband abuse is treated at the moment is exactly the way wife abuse was treated thirty years ago.”²⁰⁷

Throughout this discourse, it has become evidently clear that female victimisation is deeply entrenched in the discourse of domestic violence. The limited research regarding male victims of domestic violence in itself is a strong indicator of the unique challenges men face when they report or seek assistance as victims rather than perpetrators of domestic violence. Admittedly, Kenya can and should be commended for enacting the PADVA. However, this study argues that for there to be adequate protection for male victims of domestic violence, a multi-faceted approach is not only necessary but desirable. The law on its own cannot cure the epidemic of domestic violence: it needs to be supplemented with other reforms of a social, administrative and economic nature lest it risks being a dormant piece of legislation merely decorating Kenya’s legislative landscape.

As mentioned in Section 3.2, the PADVA requires the Inspector General of Police to facilitate the training of police officers on how to effectively deal with family related matters or domestic violence.²⁰⁸ However, this is still to be realised more than three years down the line as no such training has been carried out. To make matters worse, a big fraction of the members of the police force, who are instrumental agents of intervention and change: valuable middlemen as envisioned by the Act, are oblivious and/or ignorant about the laws and procedures relating to

²⁰⁷ This was said by Dr. Sotirios Sarantakos – <http://mensrights.com.au/domestic-family-violence/violent-women/> on 30 November 2019.

²⁰⁸ Section 6(4)(a) *Protection Against Domestic Violence Act* (No. 2 of 2015).

domestic violence. This serves to perpetuate the plight of male victims of domestic violence in Kenya who are widely discriminated against based on long-standing gender stereotypes and concepts. Therefore, the facilitation of such training for the police should be accorded the highest priority as it would help to change the deeply embedded stereotypical attitudes and perceptions of law enforcement agents.

Moreover, there exists a dearth of resources or services available for victims of domestic violence,²⁰⁹ with most of the limited ones available catering only to abused women and children. This essentially leaves men out of the equation and renders them destitute, yet the PADVA presents domestic violence as a gender-neutral phenomenon. On a rather dismal note, the public institutions that are responsible for caring for victims of domestic violence do not offer housing, psychological support, or appropriate medical treatment.

While a good number of women's NGOs²¹⁰ do exist and step in most times to provide assistance to female victims of domestic violence,²¹¹ very few organisations or help exists for male victims. As such, sometimes it would seem the only viable option available to male victims would be reparations through the criminal justice system.²¹² In the best-case scenario, a female perpetrator would be found guilty and locked away; but this study begs the question: what good does breaking up the family unit bring to society in the long run?

Moreover, male victims of domestic violence also face numerous barriers in the process of seeking help. They have cited various reasons for not reporting their abuse to the authorities including being advised by religious leaders to seek the face of God rather than 'wash their dirty linen in public'; fear of embarrassment that goes with the shame and exposure of being seen as a weak man; fear of being laughed at; fear of the taboo or abomination associated with the cultural dictates of African societies; fear of divorce in instances where a man relies on his more resourceful wife for his daily upkeep; and close friends who downplay the magnitude of the problem.²¹³

Both Kenya and South Africa have sought to end domestic violence aiming to protect and promote the rights of women both in private and public spaces. However, they have been silent

²⁰⁹ Especially those that can afford immediate help or provide long-lasting solutions such as rehabilitation.

²¹⁰ These include, among others, the Coalition on Violence Against Women (COVAW), the Federation of Women Lawyers - Kenya (FIDA-Kenya), the Centre for Rehabilitation and Education of Abused Women (CREAW) and the Women's Resource Access Programme (WRAP).

²¹¹ This can be in the form of providing shelter for up to six weeks.

²¹² The justice system itself is marred with its own incompetence and inefficiencies based on prevailing negative attitudes towards male victims of domestic violence.

²¹³ Thobejane T and Luthada V, 'An investigation into the trend of domestic violence on men', 17.

on the closely related enigma of DVAM, despite Kenya claiming that its PADVA covers both genders equally. While Kenya has taken a more legal approach with the enactment of legislation, South Africa has adopted a hybrid system, addressing both the legal and socio-cultural factors related to domestic violence.²¹⁴ The approach taken by the latter has been more effective in addressing the specific needs of female victims of domestic violence thus far, though this study challenges South Africa to afford the same services and assistance to male victims in their jurisdiction in order to nip the scourge of DVAM in the bud.

All in all, these findings affirm the hypothesis of this study that there exists a large number of male victims of domestic violence who are denied access to justice because of the societal misconceptions of masculinity, gender stereotypes and gender asymmetry, thus forced to stay silent about their plight. Their silence therefore does not reflect in surveys of domestic violence, leading to the assumption that it is only women who suffer this vice. As such, the PADVA impliedly excludes male victims of domestic violence from its scope of protection and has thus not been adequate in protecting male victims of domestic violence in Kenya.

5.2 Specific Recommendations

The specific recommendations take a multi-faceted approach and are proposed with the aim of strengthening the Kenyan legal system's treatment and response to DVAM. Since the PADVA outlines two main authorities in the implementation of its provisions – the courts and the police – the specific recommendations are made regarding these.

Following the example of the South African jurisdiction, one legal measure that can be undertaken by Kenya is the establishment of courts or tribunals that are designed to specifically hear and adjudicate matters related to domestic violence. In Kenya, the Family Division of the High Court primarily deals with civil matters that arise in a family setting such as divorce, succession and children's matters; but unfortunately, not domestic violence and any criminal liability it may come with. The establishment of a separate court exclusively dealing with domestic violence and related crimes such as those established in South Africa will therefore be more effective in overcoming the existing challenges of the Kenyan courts.²¹⁵ This will prevent the double victimisation that many male victims of domestic violence experience.

²¹⁴ This has been secured by setting up special facilities and policies to provide aid to female victims of domestic violence.

²¹⁵ These include backlogs which lead to protracted cases.

Kenya's governmental system is particularly advantageous as the quasi-federal nature brought about by counties in the new constitutional dispensation allows for a system where court systems can be decentralised. It is in this vein that the study proposes the establishment of semi-formal courts in every electoral area or district so that the common citizen can access courts more easily²¹⁶ if domestic violence is to be enforced through the court system. To complement this, the strengthening and employing of TDRMs and other restorative justice methods such as mediation to adjudicate or resolve non-fatal or minor cases of violence on the community level will perhaps bring about a greater sense of justice to victims and help them to heal and repair relationships within the family, thus strengthening their bonds.

As regards the police, the study proposes intense training and guidelines for police similar to those implemented in the South African system that sensitises them on handling male victims of domestic violence and instructs them on how to deal with such victims. To this effect, the Government should establish a fund that can be used exclusively to train police officers on how to offer the kind of protection that the PADVA promises.

5.3 Further Recommendations

In light of the findings of the study as narrated in Section 5.1, this section will propose general recommendations based on the discussions herein aimed at enhancing access to justice for male victims of domestic violence in the Kenyan justice system.

The first recommendation the study proposes which has been rather predictive throughout this discourse is an overhaul of the PADVA since it is inadequate as it stands for male victims of domestic violence. Traditionally and culturally, there has existed a covert attitude and improper treatment of men who suffer domestic violence as they simply do not fit the bill of the victim *strictu sensu*. Considering this, the drafters of the PADVA should have explicitly included a special or specific provision distinguishing DVAM as a unique category of violence.²¹⁷ This would have protected men and given them a voice as Hon. Mbarire rightly envisioned.²¹⁸ Simply alluding to the idea of an extended scope of victims and stating, rather sweepingly, that the Act applies to both genders is hiding under the obscure guise of gender neutrality. As it stands, Hon. Nicholas Gumbo's statements in Parliament during debate of the Bill still ring

²¹⁶ This is because domestic violence requires immediate attention and action if it is to be dealt with effectively.

²¹⁷ This would afford it equal protection due to its pervasive nature in a rapidly urbanising society where gender roles are being reversed, if not erased altogether.

²¹⁸ National Assembly Hansard Report, 19 August 2014.

true: that there is a silent theme when reading the Act which is that of violence that only flows from men to women and the experience of male victims thus tends to be overlooked.²¹⁹

While it is true that a statute cannot be expected to capture all forms of violence because they keep emerging faster than the law can catch up, by being conscientious, legislators can reasonably be expected to provide a legislative environment that allows for dynamism. As such, this study proposes that the Act be amended to reflect the dynamic and contemporary nature of violence that we have known by introducing provisions that explicitly protect men.²²⁰ In addition, the penal nature of protection orders and quasi-civil nature of compensation orders is telling of the effectiveness of such remedies. During the parliamentary debates, Hon. Kajwang can be remembered asking what new aspect the PADVA was bringing to Kenya's legislative landscape that was not already captured in the provisions of the Penal Code and the Criminal Procedure Code.²²¹ Domestic violence is a social problem with socio-economic roots, thus it cannot be addressed solely through legislative means: there should be a socio-economic policy to complement it.²²² As it is, the PADVA is without a government policy or a sessional paper to explain it or breathe life to its provisions: it simply exists in a vacuum. It almost seems as if the Act was passed without thought of how it would benefit the common citizen, a sentiment that was shared by Hon. Kajwang.²²³

On another note, protection orders may have worked in other jurisdictions but the mistake the drafters of the PADVA made is assuming it is a one-size-fits-all universal solution. Protection orders are only effective where there are additional measures to supplement them.²²⁴ In Kenya, there are already limited social services for female victims who readily fit the common bill of victims of domestic violence, which leaves almost none available for male victims. Furthermore, the only authorities or organs of enforcing the PADVA are the police and the court as provided in the Act. If the police, devoid of training and sensitisation, are the ones perpetuating archaic gender stereotypes and outrightly dismissing victims of domestic violence (both male and female), one wonders how effective this arm of recourse is. It then comes as no

²¹⁹ National Assembly Hansard Report, 19 August 2014.

²²⁰ The irony of it all is that these same sentiments were conveyed by Hon. Gumbo in the parliamentary debates yet were presumably not acted upon. National Assembly Hansard Report, 19 August 2014.

²²¹ He suggested that either the penal system is failing, or we need to review the Penal Code; and that we should look at what the two statutes have failed to do and work toward filling that gap. Moreover, he posits that issues that lead to domestic violence are deeper than a system which is penal in nature.

²²² Hon. Kajwang underscored the need to operationalise Article 43 of the 2010 Constitution of Kenya before operationalising Article 45.

²²³ National Assembly Hansard Report, 19 August 2014.

²²⁴ In any case, other jurisdictions have supplemented their legislation on domestic violence with the relevant social services for victims in what can be termed a more holistic approach to enforcement.

surprise that it has been three years since the implementation of the PADVA with no case having been prosecuted under its provisions.²²⁵

In order to really transform how domestic violence is dealt with in Kenya and provide access to justice for male victims, one must understand that this is not merely about shielding one party from another; it is about delving to the root of the problem. Chapter 3 highlighted some of the reasons women proffered as to why they get frustrated and resort to violence.²²⁶ As unfortunate as this may be, violence is not and cannot be the answer. Such men need to be rehabilitated and such women counselled. The problem is that there are no dispute resolution mechanisms for family systems outside of the penal/criminal system. Thus, counselling services and rehabilitation programs are a good place to start, especially in cases where it would be too costly to remove female perpetrators who also double as the primary care givers of the family. Appropriate sentencing policies must be developed in this regard, including compulsory attendance at such programs designed for abusive partners.²²⁷ As with all cases of domestic violence, there is an explainable cause.²²⁸ As such, providing counselling for such women would yield a more lasting solution or effect on their behaviour as it will allow one to get to the root of the problem and tackle it accordingly. The Kenyan Government is thus urged to invest in restorative methods of resolving such cases such as victim offender mediation as discussed in Chapter 4 and provide more income generating activities for men who are unemployed in the same way that these were provided for women in affirmative action programs. The study advocates for solutions that restore and repair the family system rather than breaking it up.

In addition to that, the study contends that in order to address the menace of DVAM, we must first change the attitudes and perceptions of the general public.²²⁹ To this effect, there should be greater advocacy to enlighten the public about the existence of DVAM by government agencies, religious groups and civil rights organisations: this will help balance the gender discourse on domestic violence.²³⁰ In conjunction with this, education and training programs

²²⁵ This calls into question its significance if what it provides for continues to be prosecuted under the Penal Code – where is the novelty?

²²⁶ They claim that their male counterparts cannot provide for their families due to unemployment, using their proceeds on alcohol and sex workers, among other factors.

²²⁷ Thobejane T and Luthada V, 'An investigation into the trend of domestic violence on men', 17.

²²⁸ Many women who use violence are doing so out of some built up frustration either towards their partner or towards their situation as per the frustration aggression theory.

²²⁹ These include those which are plagued by incorrect stereotypes about gender and corrupted by the Duluth model of thinking.

²³⁰ Adebayo A, 'Domestic violence against men', 18.

about victims of domestic violence are imperative and should include male victims in order to dispel the myths, stereotypes, and stigma surrounding the notion of men as victims of domestic violence.²³¹ At the micro level, people should be encouraged to engage in open dialogues with friends, family, neighbours and co-workers acknowledging that men can be victims of domestic violence too.²³² At the mezzo level, awareness can be spread through education and workshops for service providers, social workers, law enforcement officers and judicial officers as well.²³³ Finally, at the macro level, providing information that both men and women can be victims of domestic violence to the public through public announcements in radios, television and newspapers and/or national media campaigns especially during Domestic Violence Awareness Month in October would be appropriate.²³⁴

Borrowing from the jurisdictions studied in the western region, this study proposes the establishment of more services and organisations to cater exclusively to male victims of domestic violence such as hotlines and shelters. It is an unfortunate reality that a male victim can call a hotline only to be informed that it does not offer services to his demographic, with some even referring the caller to batterer programs. The personnel operating these hotlines should also be specifically trained to deal with male victims²³⁵ so as to enhance access to justice for them.

5.4 Conclusion

*'Being a victim [of domestic violence] seems to be coded as a female experience. Men experience serious difficulties when victimized in domestic relationships, both because of internal barriers they may have to address and because of the treatment received from professionals. These difficulties appear to be intrinsically linked to dominant gender stereotypes and double standards that affect society as a whole, and professionals in particular.'*²³⁶

This quote aptly captures the spirit and findings of this study. Male victims of domestic violence cut across all ages, educational levels, and socioeconomic classes and deserve the

²³¹ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 34.

²³² Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 34.

²³³ Vernon D, 'Has Society Created Social Injustice for Male Victims of Domestic Violence', 34.

²³⁴ This will sensitise those who are unaware and encourage those who are silent victims to emerge from behind their cloaks of invisibility and come forward to report their experiences.

²³⁵ This includes referring them to any supplementary services such as counselling or the police as need be.

²³⁶ Lambo L, "We're not victims", 41.

same recognition, sympathy, support and services that are available for female victims. It is quite saddening that effective measures of justice are still not applied or understood in ways that can support or favour male victims in Kenya. The risk that male victims will remain invisible or the 'forgotten' victims of domestic violence and thus left out of state responses to domestic violence is still very significant and remains so until more work is done to ensure their rights and concerns receive the same level of attention as accorded for the female gender. As such, Kenya should aspire to pioneer the recognition of DVAM on a national level.

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