
**PROBLEMATIZING DOMESTIC VIOLENCE WITHIN SOWETO SLUM IN
NAIROBI COUNTY IN KENYA**

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Abstract

Although the gender-based crime of domestic violence is the most prevalent form of violence against women and girls, it remains relatively well hidden and ignored, even in the giant slums of Kenya, a country which has domesticated in its 2010 Constitution key socio-economic and cultural rights contained in several regional and international Human Rights Instruments which it recently has signed. This work is based on a study carried out to establish whether the people living within Soweto slum in Nairobi County in Kenya (an apparently previously unresearched area) are affected by domestic violence. More specifically, the study sought to establish its prevalence within the slum and to unearth its causes and, in particular, to determine whether there is a link between domestic violence and the low social and economic status of the people; to find out what pluralist legal mechanisms affected people take to address it; to establish the State's obligation to address its contributing factors in slums such as Soweto slum, as well as the factors precluding the State from meeting its obligation to protect people from the violence; and, finally, to recommend appropriate legal and non-legal interventions to address the problem. Data was collected through interviews with key informants and individual interviews, focus group discussions, observations, photography, and case studies which were the main method used to collect insightful data about the problem. Methodologically, the 'dung beetle' and 'snow-ball' methods of the Grounded Theory approach were employed in the journey taken by the research which had a strong feminist and Human Rights stance. The salient findings are that poverty is one of the overriding contributory factors; that women are the main victims of the violence; and that they are physically and verbally abused. Most of them are of low educational background, are housewives and depend entirely on their husbands for their survival. The study also observed that gender-negative HIV attitudes as well as women's general lack of trust in the formal justice system as well as extramarital affairs between partners contribute largely to the violence and that there are certain commonalities in the causes of the violence among the fifteen case studies that informed the study. A key recommendation of this work is that urgent efforts of the State and several apparently generous donor programmes should be made to ensure that women in slums are economically empowered in an honest attempt to eradicate poverty, the universally accepted major cause of domestic violence. Unless this occurs, the long-term infrastructural development of slums such as Soweto (which is based apparently on no or insufficiently gender-sensitive research and which unfortunately remains the current pre-occupation of the State and its donors), will probably prove fruitless.

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Declaration

I Monicah Akoth Owenga declare that this is my original work and that it has not been presented for an award in any institution of learning. It is an honest and true effort of my personal research.

Signed.....Date.....

Dedication

To my angel Saraah, for your amazing strong will. In your eyes I saw him always and got the reassurance I needed. Live long Beautiful.

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To the Norwegian Embassy for International Development (NORAD), thank you for finding it worthy to sponsor me for this academic programme. Not only have you empowered me, but my little one as well. Many Thanks!

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And above all, to the Almighty God, from whom all mercies flow, for keeping me and my little angel safe throughout this study period.

List of International Human Rights Instruments cited

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

International Covenant on Economic Social and Cultural Rights

Convention on the Elimination of All Forms of Discrimination Against Women

Declaration on the Elimination of Violence Against Women

Vienna Declaration and Program of Action

African Charter on Human and People's Rights

African Union Solemn Declaration on Gender and Equality

African Charter on the Rights and Welfare of the Child

Convention on the Rights of the Child

Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa

List of Statutes and National Policies cited

Constitution of Kenya 2010

The Matrimonial Causes Act

Penal Code

Sexual Offences Act

The Water Act

The Family Protection Bill

National Land Policy Sessional Paper No 3 of 2009

The Water Strategy Plan 2007

Acronyms

ADRMS	Alternative Dispute Resolution Mechanisms
CEDAW	Convention on the Elimination of All forms of Violence Against Women
DEVAW	Declaration on the Elimination of Violence Against Women
KENSUP	Kenya Slum Upgrading Programme
KENWA	Kenya Network of Women living with HIV/AIDS
KISIP	Kenya Informal Slum Improvement Programme
NALEAP	National Legal Aid and Awareness Programme
NGO	Non Governmental Organization

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CHAPTER 1

1.0 INTRODUCTION

1.1 Background to the Research

Domestic violence is an internationally recognized problem yet remains the most invasive crimes to date. In its General Recommendation No 19 of 1993, the Convention on the Elimination of All Forms of Violence Against Women (CEDAW) Committee states that the definition of discrimination against women includes gender-based violence, that is *“violence that is disproportionately directed to a woman because she is a woman or that affects women disproportionately. It includes acts that inflict mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”*.

According to the United Nations (UN), the definition of domestic violence refers to the gender-based roots of violence, recognizing that *“violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”* It broadens the definition of violence by including both the physical and psychological harm done towards women, and it includes acts in both private and public life (UNCEF, 2003).

Domestic violence takes the form of wife battering, psychological abuse, verbal abuse sexual abuse, incest, economic abuse and ultimately death. It is the physical, verbal, emotional, psychological and/or sexual battering of a woman by her partner or spouse. It can involve the use of threatening or intimidating words or acts, hitting, use of a weapon, rape, imprisonment, financial control, cruelty towards her or other people and things she cares about and abusive and/or demeaning language. Even though there are occasional reports of male victims of domestic violence, the balance is heavily tilted towards females.

Domestic violence is a violation women’s rights and principles concerning the equality, security, liberty, integrity and dignity of all human beings as enshrined in Article 1 of the Universal

Declaration of Human Rights (UDHR)¹. In its preamble to the Declaration on the Elimination of Violence Against Women (DEVAW), the General Assembly states that it is acting out of its conviction that *“there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by states in respect of their responsibilities, and a commitment by the international community at large, to the elimination of violence against women”*.

On a global perspective, at least one in three women and girls has been beaten, coerced into sex or otherwise abused in her lifetime by a member of her family; for the majority of women the abuse is repeated over months or years (Women in the World Atlas 2003). According to the World Health Organization statistics, between 12% and 25% of women around the world have experienced sexual violence at some time in their lives. Four million women and girls are trafficked for sexual purposes annually (United Nations), while an estimated one million children, mostly girls, enter the sex trade each year (UNICEF).

The World Health Organization estimates that violence is the leading cause of death for women between the ages of 15 and 44, more than cancer, traffic accidents and combined malaria (Global Development International 2011).

Recently in May 2011, the Kenyan public learnt about the heinous acts of domestic violence that were meted out by the Nigerian High Commissioner to Kenya, Dr Chijike Wilcox Wigwe upon his wife (Star Newspaper May 26 2012).

In Kenya where it is responsible for most violence against women and girls, domestic violence must be understood as both a cultural and historical phenomenon. Kenyan society tends to penalize the victim of domestic violence more than the culprit. Even when a woman is seriously injured, her family prevails upon her to go back home and be a good wife. This mindset trivializes violations of women’s rights. The attitude cuts across all social systems from family to community and is even found among those charged with dispensing justice.

¹ Article on of the UDHR provides “All human rights are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

A recent study conducted by Fida Kenya in four provinces in Kenya show that 74.5% of women had suffered gender-based domestic violence within the homestead. Furthermore, 78% of the respondents indicated that they knew of others who suffered the violence frequently or very frequently (Fida Kenya 2008).

Violence, including domestic violence, deprives women of their ability to achieve their full potential by threatening their safety, freedom and autonomy. Many women suffer physical, sexual or even psychological violence and lose income as a result and their productivity is impaired. The violence also impoverishes their families, communities and societies. For these women in abusive relationships, poverty makes it harder for them to find avenues to escape. While economic independence does not shield women from domestic violence, access to economic resources can enhance their capacity to make meaningful choices. The violence keeps them poor in part because their poverty inhibits their ability to find solutions.

1.2 Statement of the Problem

Despite the few initiatives that have been taken by the government of Kenya to address domestic violence in general, such as the adoption of a rich human rights body affirming the rights of all human beings,² and the drafting of a Domestic Violence Bill, Kenyan communities are yet to stamp out or significantly reduce cases of domestic violence.

According to a recent survey by the Kenya Demographic and Health Survey, 39 % of women reported to have experienced gender-based violence since they were 15, and one in four reported experiencing violence in 12 months preceding the survey. The perpetrators were identified as husbands, and to a lesser extent, teachers, mothers, fathers and brothers (Kenya Demographic and Health Survey KDHS 2008-2009).

² Kenya has ratified several international human rights instruments such as the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All forms of Violence Against Women and on the Right of the Child. It is also a party to the African Charter on Human and People's Rights and the African Charter on The Right of the Child. It is also supportive of the principles enshrined in the UDHR and Declaration on Elimination of Violence Against Women.

The causes of domestic violence range from the low status the society accords to women to poor policy and legal frameworks that condone or ignore the prevalence and perpetuation of the vice. The victims of this vice include among others, women living in slums. A majority of residents in Nairobi, Kenya's largest city live in informal settlements and slums (Amnesty International 2010), in inadequate housing, with little access to basic necessities such as clean water, health care, schools and other essential public services. All people in Nairobi are at risk of domestic violence in all areas since the vice cuts across boundaries of culture, class, education, income, ethnicity and age. However it is more endemic in slum areas.

Women living in slum areas are at more risk of being abused than those in middle or upper class residential areas in Nairobi because of the environment in which they live. The inadequate access to essential services, particularly the lack of access to sanitation and public security significantly increases their vulnerability to violence (Amnesty International 2010:11). This group of women is on the face of it more vulnerable because of both social and economic inequalities, and the stresses and strains of day to day survival (Amnesty International 2011). They live in deprived environments where formal institutions are not easily accessible as their social networks also consist of persons of similar social and economic status.

Women and girls in these slums and informal settlements are particularly affected by domestic violence. According to the Kenya CEDAW Committee briefing on January 2011, it was noted that domestic violence is the most prevalent form of violence that women face in the slums and informal settlements (Amnesty International 2011).

The sluggish manner in which the society in Soweto slum and the government at large treat domestic violence within the slum dehumanizes the women as their concerns are trivialized by the society in which they play significant social and economic roles. The women suffer both physically and psychologically through being battered, dispossessed, killed, maimed and verbally abused in violent intimate relationships.

The Constitution of Kenya 2010 enshrines in Chapter IV the fundamental rights and freedoms of individuals. These provisions safeguard the rights of men and women alike, as well as those of children. In terms of Articles 27 and 28 the rights safeguarded are the rights to protection and equality before the law and the right to human dignity. Article 29(c) provides for the right not to be subjected to any form of violence, while Article 43 provides for economic and social rights. Article

29 (c) thus prohibits domestic violence. However there is no other law that explicitly provides for it. This is the present scenario despite the fact that the primary responsibility to protect women from violence both in the public and private sphere lies with the government.

This study thus sought to establish the extent of Domestic Violence within Soweto slum in Nairobi County. More specifically, it sought to establish whether domestic violence is a problem in Soweto slum, to unearth its causes thereof, to find out what pluralist mechanisms people take to address it, to establish the extent of the state's obligation towards its contributing factors as well as the factors precluding it from fulfilling its obligation while highlighting some of the identifiable gaps with a view to recommending appropriate legal and non legal interventions that can be put in place to address it based on the findings from the study. There was no focus on any particular form of domestic violence; rather, it was explored in general.

1.3 Why “Problematize” Domestic Violence?

This work problematizes domestic violence due to the recognition of the fact that it is a complex topic. Domestic violence involves complex interrelations of gender and sexuality, two concepts which are by themselves very problematic. Sexuality is a very complex topic and issues to do with it are rarely discussed, if ever, even among friends (Zinanga 1996: 3). In Kenyan heterosexual society where interrelations are highly characterized by male power over women, and perpetuated by heterosexual laws, I was alive to the fact that domestic violence is intricately linked to gender and sexuality and hence the difficulties that are presented while discussing issues related to it. This is especially so given that it predominantly occurs within the domestic arena, which is considered a private arena in just the same way as issues of sexuality are.

Not only does the culture of silence which surrounds this form of violence make it difficult to openly talk about it, but it also makes it difficult to get an account of its incidence, thus making it difficult to give a true picture of its existence. This is the position in most counties such as Kenya.

I was even more aware of the challenge of dealing with such a sensitive topic in contexts such as Soweto where economic inequality in itself already creates unease between spouses hence making the domestic sphere a tense environment. I was also alive to the fact that because of the heterosexual laws, seeking justice in domestic violence in Kenya is a cumbersome and complex process, one that

takes a strong woman to wrestle. Thus, it is because of this problematic nature of domestic violence that it was problematized in this study.

1.4 Justification for the Study

Having lived in a neighbouring estate to Soweto slum myself for sometime in my earlier years and witnessing the deplorable living conditions therein, I was curious to know how the people cope with the problem in view of the social and economic context of the slum. Apart from this, the eye opening session in the Gender Law and Sexuality course which I attended in the second part of this Masters Programme, made me realize that carrying out a study in a field like this one was imperative. This course opened my eyes to the concept of sex and gender, and its dimensions within the family sphere and so I was keen to explore these dimensions in a study such as this one.

Whereas a lot has been written on this topic, a study of the same within a context such as this slum would be useful in developing more literature on the topic while at the same time give useful insights into the different dimensions of the problem within undocumented slums such as this one. This study seeks to bring into the light the scope of domestic violence in the lives of women who are often assumed to be well represented through others in studies carried out in a few commonly mentioned slums.

Figure 1: Photograph of an ordinary scene in Soweto slum



1.5 Objectives of the Study

The following were the objectives of the study:

1. To establish whether domestic violence is a problem in Soweto slum within Nairobi County in Kenya.
2. To unearth the causes of domestic violence in Soweto i.e. whether there is a link between the low social and economic status of the people of Soweto, and domestic violence.
3. To find out what plural legal mechanisms people take in Soweto to address domestic violence.
4. To establish the state's obligation towards addressing factors that contribute to domestic violence in contexts such as Soweto slum.
5. To explore the underlying factors precluding the state from meeting its obligation to protect people from domestic violence in the context of Soweto slum.
6. To recommend appropriate legal and non-legal interventions to address the vice.

1.6 Assumptions

My assumptions were as follows:

1. People living in Soweto slum within Nairobi County in Kenya are affected by domestic violence.
2. The people's low social and economic status makes them more vulnerable to domestic violence.
 - 2(a) The women are illiterate and poor and therefore more vulnerable to domestic violence.
 - 2(b) Because they are poor they cannot afford legal services.

- 2(c) Men take advantage of the women's weak social and economic status to beat them.
- 3. The women as victims of domestic violence do not seek redress through the official judicial system but instead seek alternative dispute resolution mechanisms.
- 4. The Government of Kenya is not fully committed to fulfilling its social and economic obligations which would go along way to reducing women's vulnerability to domestic violence especially in slum areas.
- 5. There are political and economic factors which hinder the state from meeting its obligation towards protecting the Kenyan people against domestic violence in contexts such as Soweto slum.
- 6. As a way forward, the government should take measures to improve the legal and socio-economic lives of women in Soweto slum.

1.7 Research Questions

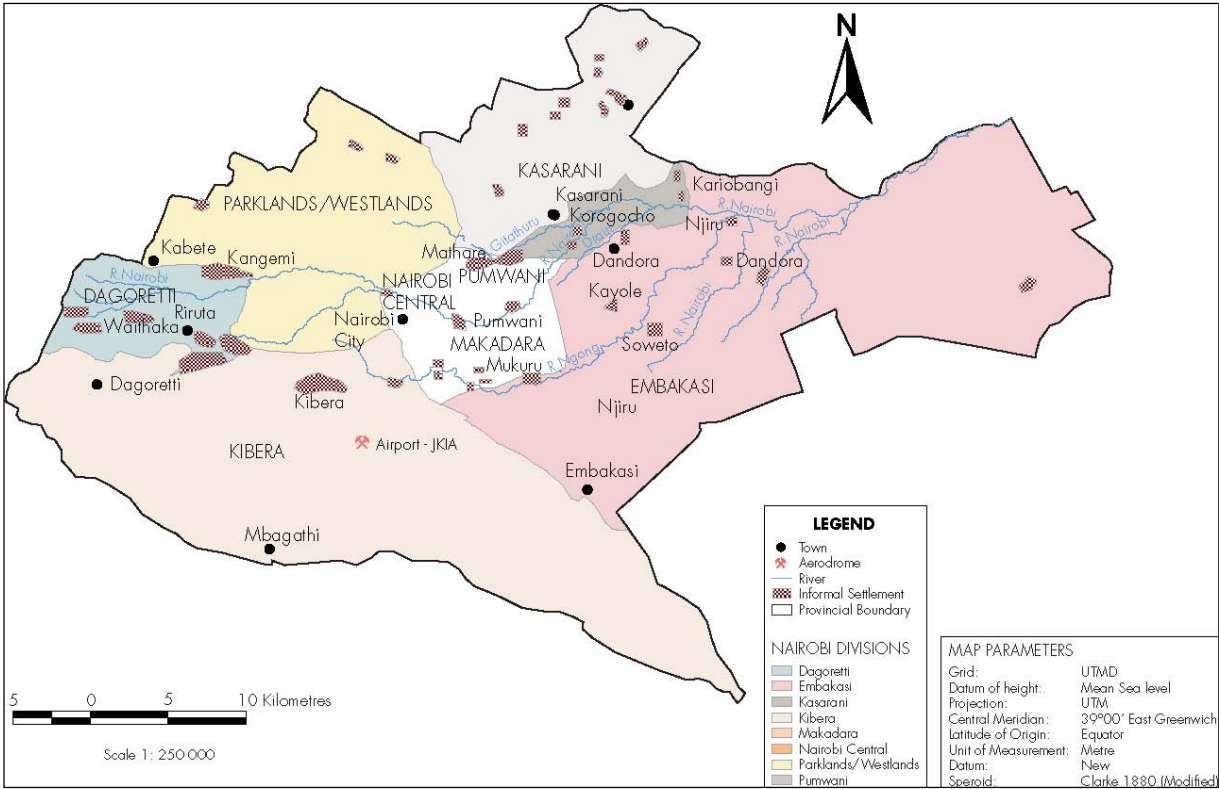
- 1. Are the people in Soweto slum within Nairobi County in Kenya affected by domestic violence?
- 2. Does the people's low social and economic status make them more vulnerable to domestic violence?
- 2(a) Are women in Soweto illiterate and poor? Does their illiteracy and poor status make them vulnerable to domestic violence?
- 2(b) What hampers the women from accessing legal services?
- 2(c) Do men take advantage of the women's weak social and economic status to beat them?
- 3. Which alternative dispute resolution mechanisms do people in Soweto slum take in case domestic violence?
- 4. How committed is the state towards addressing social and economic inequalities which would go along way to reducing people's vulnerability to domestic violence?

5. What are the underlying reasons for the state's failure to meet its obligation towards protecting women against domestic violence in contexts such as Soweto slum?
6. What measures and strategies should be put in place in order to address domestic violence in Soweto slum?

1.8 Demarcation of Research

The study was restricted to Soweto slum within Embakasi Constituency in Nairobi District. The study targeted men, women and children alike. As for men and women, there was no specific age targeted as the study was designed to be as rigid as possible in order to ease the identification of respondents. For children, ethical considerations were taken into account and so their identification and ability to be interviewed was left open subject to the prevailing circumstances of the child and or parent/guardian.

Figure 2: A map of the location of Soweto and its environs



CHAPTER 2

2.0 CONTEXTUALIZING THE RESEARCH SITE

2.1 Introduction

Kenya has the largest slums in the world. The country has a population of about 40 million,³ with women comprising more than half of this figure. The majority of the population live in urban areas such as Nairobi, Kenya's capital city. Roughly 2 Million people, that is over 60% of Nairobi's population live in the over 100 slums and informal settlements in the city. In these low-income slums and informal settlements, poverty is high, housing is of sub-standard quality and basic services are barely provided (Syagga, et al 2001:1). The Slum dwellers live with little or inadequate social services and social amenities such as food, clean water, improved sanitation, health care, schools and other essential public amenities. More recent studies showed that more than 71% of Kenya's urban population is confined to informal settlements (UN-HABITAT, 2009), and that this group of people who are living in abject poverty are trapped in their present situation because they are excluded from the rest of the society (World Economic Survey 2008).

As was observed by Umande Trust, an NGO which operates within one of the slums, the residents in these marginalized areas live in very inhuman and disturbing conditions, with severe lack of clean water supply, improved sanitation, housing, health services and lack of solid waste management facilities (Umande Trust, 2007). In 2007, the government admitted that access to clean water for the urban poor who live in these slums and informal settlements is only 20% (Amnesty International 2009). This is despite there being a Water Act⁴ in place to address such issues. The passage of the Act decentralized the water service provision to 117 water service providers throughout the country as opposed to the single National Water Conservation and Pipeline Corporation which had the mandate. Even after the introduction of a new water strategy in 2007, the situation remains the same. This strategic is aimed at ensuring that the government reaches at least 50% of this neglected urban population with safe and affordable water by the year 2015 in line with the Millennium Development Goals (MGDs).

³ According to the 2009 census report the figure was 38.6 million.

⁴ Chapter 372 Laws of Kenya

One of the greatest daily nightmares slum dwellers within Nairobi are forced to cope with is the lack of a functioning sanitation and drainage system. Toilets and latrines are limited in most of these low-income places and so the dwellers are forced to defecate into polythene bags and then throw them out of their shanties, right into a nearby footpath, or stream. It is from this deplorable state of sanitation system in the slums that the name “*flying toilets*” came into being. These people, each day, must endure the sight of filthy narrow alleys, and sludge and human waste from shallow latrines flowing into nearby streams, a situation, as one can imagine, gets much worse during the rainy season. Broken sewer lines that choke the already narrow pathways between rows of houses are common features in all the slums. The lack of latrines and poor drainage leads to the swamping of entire neighbourhoods with dirty water during rainy seasons. As a result, there are high incidents of diseases like typhoid, malaria and diarrhoea. Although some pay toilets which charge as little as Kshs 5⁵ have been set up in some of the slums, the cost still remains prohibitive as the residents cannot afford this.

There are few government schools and health centres in these slums and informal settlements and so residents are forced to rely on the private facilities, where they exist. The infrastructure is also very poor. All of these and much more are as a result of the lack of the most basic services.

These residents also live in substandard housing as a result of lack of tenure. Despite the provisions of the International Covenant on Economic Social and cultural Rights (ICCPR) to which Kenya is a party, with respect to the protection and fulfilment of the right to adequate housing for all, the Kenyan government is yet to make this realizable for these poor Kenyans. Currently, the government is working on a slum upgrading programme which is aimed at improving the lives of at least 5.3 million people by the year 2020. However The Kenya Slum Upgrading Programme (KENSUP) which was officially started in 2003 by the government in conjunction with UN-HABITAT has not met its objective as the government has not met the requirements of the UN-Committee on Economic Social and Cultural Rights in terms of its implementation towards ensuring “adequate” housing⁶. As a result very little progress has been made (Amnesty International 2009).

⁵ Approximately U.S \$ 0.05.

⁶ The Committee required the government to take note of (1) legal Security of tenure, (2) availability of services, materials and facilities and infrastructure, (3) location, (4) habitability, (5) affordability (6) accessibility and (7) cultural adequacy.

2.2 History of Kenyan Slums and Informal Settlements

Kenyan slums and informal settlements have a long history. They started developing in the colonial period when Africans moved from the city's designated residential areas which were reserved for Europeans and Asians (Mutisya, E. and Musaru, Y. 2009 198-199). Kenyans who came to the city in search of work had to create informal residential settlements outside the central business district and planned areas which were largely ignored by the colonial government (Amnesty International, 2009). However despite the fact that Kenya's economy continues to grow, these slums have continued to increase over the years. The reason for their continued existence is as a result of the government's failure to respond adequately to the plight of slum dwellers (Mitullah 2003).

2.3 The Impact of Slum Conditions on Women's Lives

The Kenyan government's negligence and failure to improve the living conditions of its slums and informal settlements by providing at least the minimum support on basic requirements and services has led to unimaginable suffering of slum residents (Mutisya, E and Musaru, Y. (2009:210). Latest reports show that for many women living in these slums and informal settlements, poverty is both a consequence and a cause of violence (Amnesty International 2010). While reacting to the state of Kenyan slums during her recent visit to Kenya, the Executive Director of UN Habitat stated;

'The incidence of crime, robbery and gang violence, as well as gender-based domestic violence in informal settlements undermines both macro and micro economic growth and productivity of a country's development, as well as social individual well-being.'

(Dr Anna K. Tibaijuka, The Executive Director, UN Habitat (2007).

The UN Special Rapporteur on adequate housing in his mission in 2004 to Kenya indicated that female-headed households in urban slums live in poorer housing conditions than their male-headed counterparts and also struggle to provide for their needs. The report further demonstrated that lack of proper sanitation in slum areas is a security hazard for women and that because of the proximate lack of these facilities or their lack of existence at all, women have to leave their homes at night to look for latrines, running the risk of being sexually assaulted or exposed to other personal attacks. The review of the same report in 2009 by the new U.N Special Rapporteur on adequate housing found out

that these challenges still exist. This position has been confirmed by a recent report by Amnesty International on ‘Insecurities in Nairobi Slums’ (Amnesty International 2010).

2.4 The Unreported Slums and Informal Settlements

While a lot has been done to highlight the context of slum conditions in Kenya⁷, only a few of the slums have received publicity. Of the many slums in Nairobi only about five have won the attention of the international community. These include: Kibera, Mathare, Korogocho, Mukuru kwa Njenga, and Sanai. These in reality are just a small fraction of the entire number. The bigger majority of these slums and informal settlements such as Soweto remain unmentioned in the literature of or even in some of the Government’s strategic plans, yet the living conditions in all these slums are the same and the people in these ignored slums and informal settlements continue to suffer. Indeed while doing a background literature review for this study, I did not come across a single piece of literature on this slum. This neglect may give the impression that the neglected ones have less deplorable conditions while the reality is that the conditions therein are much the same. They are just as deplorable as those which have received public attention. Even worse is the fact that their continued neglect continue to make the settlements a breeding ground for many more problems for their resident women and children.

The continued poor condition of Kenyan slums have persisted as a result of greed which is driven by capitalism on the part of certain individual most of whom are male politicians. Due to these egotistic and selfish politics most of the policies such as those on slum upgrading which are intended to address slum issues are not executed effectively.

In Kenya, political powers have been, since Independence from the United Kingdom of Great Britain, the single most predictable determinant of the fortunes and misfortunes of communities, especially in terms of the availability and accessibility of basic services and resources that enhance their wellbeing (Okoth, O. and Olang’, S. 2010). The slum dwellers have had to depend on the mercies of their respective political leaders who have always pursued their own interests. This greed

⁷ Several studies have been conducted and several reports written by individual scholars, NGOs as well as international organizations about Kenyan slums.

has resulted in political rivalry between ethnic groups as a result of which there has been disparities in the manner in which slum issues are addressed.

2.5 Background Description of Soweto Slum

Soweto slum is located in the eastern part of Nairobi, within Embakasi Central Constituency, not far from Jomo Kenyata International Airport. It is about 3 kilometres in length and 1 kilometre in width. It has nine sub-estates within it i.e. Khabagare, Mwroroto, Central, Bahati, Nzesha, Patanisho, Riverbank and two others. This small area has a population of about 100,000 people living within it (as per the findings herein). Embakasi Central Constituency under which it is located is about 14.30 sq km in size with a population of 185, 948.

It is started as a village over 50 years ago when the government was settling landless people who had moved to the urban area to look for employment. This was around the same time Soweto of South Africa came into being, hence, the name Soweto. The area, which is an urban setting, was originally inhabited. In 2002 it was upgraded to a sub-location.

From the outside, the slum does not appear to be one. It is surrounded with a brick wall on one side, making it look quite nice from outside. There are many massive dump sites around it as well as a dirty river passing by. There are very few sewer pipes. The outdoor toilets have metal basins inside of them. When they are full they are emptied by men (this is their main job) in the nearby river.

The slum is mostly made up of widows and children, single women and children as well as some married people. Prostitution and alcoholism is a very serious problem in the area. 90% of people have below secondary education and with no formal jobs. Instead the men rely on casual jobs at the city's industrial area while a majority of the women are housewives.

The slum has one government primary school but no government secondary school. There are no facilities offering adult education either. There is no government health centre, instead the residents rely on one private health centre which is within the slum and a Municipal health centre located in Kayole, the immediate neighbouring residential area.

In terms of dispute resolution mechanisms, the government structure in place consists of a police station which is located within the slum and a magistrate's court which is located some distance away. There is also a chief's office which operates as one of the unofficial dispute resolution mechanisms in cases of domestic violence. There is one only one NGO, the Kenya Network of Women living with HIV/AIDS (KENWA), operating within the slum.

Even though the state has put in place a slum upgrading programme, the Kenya Slum Upgrading Programme (KENSUP), which is aimed at improving the living conditions of people living and working in slums and informal settlements in Kenyan urban areas through the provision of security of tenure and social infrastructure, opportunities for housing improvement and income generation, the women in this slum still cannot afford better housing options. As a result women and girls living therein face cases of gender-based violence which are associated with living in substandard houses over which they do not have ownership rights.

Also, despite the government's formulation of National HIV/AIDS Strategic Plan which is aimed at reducing the negative social and economic impact of HIV/AIDS on women, the continued lack of housing rights of the women of Soweto in the context of HIV/AIDS, still affects their social means to mitigate the pandemic and also increases their vulnerability to violence particularly domestic violence.

2.6 Conclusion

This overview of the slum context is important as it enables a background understanding of the contextual realities of slum as well as a better understanding of the problem of study given these realities. It therefore presents an informed foundation for the formulation of a way forward in terms of addressing the problem in light of the findings herein.

CHAPTER 3

3.0 LITERATURE REVIEW

3.1 Introduction

In this chapter current literature dealing with domestic violence is discussed in the light of international human rights laws. A review of the existing theories on the same is done with a view to theoretically locating the present study.

3.2 Some International Approaches to the Prevention of Domestic Violence

Domestic violence as one form of interpersonal violence creates a heavy burden on the health of a nation as it causes social disruption as well as general obstacles to peace, health and wellbeing. The fear or threat of violence contributes to inequality between its citizens and limits their access to resources. (Particularly the vulnerable groups such as women and children) (Phinney A, and Horve S. de 2003). Just as the findings of this study show, women who experience violence have no peace and this prejudices their wellbeing. It is no surprise that the WHO in 1996 identified violence prevention as a public health priority.

As is rightly argued by the above authors, interpersonal violence such as domestic violence results from a complex interaction between risk factors operating within broader social, cultural and economic contexts such as the case in Soweto. Thus, according the authors, the likelihood of experiencing violence is influenced by factors operating and interacting across four levels. They are; (1) a person's individual characteristics (i.e. biology and personal history) and (2) proximal social relationships, (3) characteristics of the community in which one operates; and (4) societal factors that influence the violence such as policies and norms.

In the present study, the women who are the main victims of domestic violence become vulnerable to it due to the low social and economic status accorded to them on the basis of their sex. The women also typically have poor educational backgrounds and, as a result, their male counterparts take advantage of the unequal power relations between them by abusing them. The society in which they live perpetuates this scenario by treating them subordinate to men while the laws, policies and social

norms do not adequately address their concerns. As a result, they seek alternative dispute resolution mechanisms.

As the findings in this study show, poverty and economic inequality, weak economic and social safety nets and gender inequality, among others, are contributory risk factors to interpersonal violence. These three, among others, create a social environment that foments violence. The unequal power relations between men and women not only prevent women from realizing their full potential, but unequal opportunities for women also make them dependent on their partner. This scenario makes hence making leaving a violent relationship or gaining access to justice very difficult (Phinney A, and Horve S. de 2003).

The human rights approach to violence looks at interpersonal violence as the violation of one's rights to life, the right to security of the person and the right to health. In this regard, General Recommendation No 199 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) identifies gender-based violence as "*a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men*" and recommends that states address it. The Committee on the Economic Social and Cultural Rights (ESCR) in its General Recommendation No 14 declared that a wider definition of health encompasses social problems such as violence and hence puts an obligation on states to respect, protect and fulfil the right to health by taking appropriate measures to prevent interpersonal violence, providing adequate services to victims and by collecting data for surveillance purposes.

Based on these international recommendations, state action or inaction may perpetuate and/or condone such interpersonal violence and states that do not prevent, investigate and punish its perpetrators are, through their complicity, as guilty as the perpetrators. They are also expected to ensure that the measures they take are effective. States are thus expected to act with due diligence and, hence, by failing to do so, they may be held responsible for these private acts. States not only have a duty to investigate the violations when they occur but they also have an obligation to bring their perpetrator/s to justice.

In the light of these observations, it is therefore imperative to integrate both human rights approach and a public health approach in the prevention of violence. This is especially desirable given that the human rights approach uses the rationale that the prevention of violence is the obligation of states, depending on the treaties they have ratified. The public health approach rationale operates on the

basis that states have a duty to protect the health and welfare of residents by addressing significant threats to the health of a population, including interpersonal violence (Phinney A, and Horve S. de 2003:75).

As a strategy, therefore, both approaches should be integrated in the efforts made to prevent interpersonal violence as both of them advocate the importance of the prevention of interpersonal violence and service delivery to the victim. The Public health approach is also concerned with identifying interventions that effectively address risk factors and consequences while providing evidence about the cost effectiveness of programs and policies. Given that poverty, high unemployment, inadequate economic and social safety nets, and lack of education, all contribute to high rates of interpersonal violence, it is imperative for states to address concerns about the right to an adequate standard of living, the right to social security, the right to education and the right to equality and non-discrimination (Phinney A, and Horve S. de 2003:78-79).

In the present study, the government has not effectively addressed these rights, hence, the reason why the women in Soweto are still vulnerable to domestic violence. They have little education, live in deplorable housing conditions and are accorded low economic and social status. The government needs to take initiatives to effectively end violence in order that women in Kenya, particularly those in low income areas, can fully and freely contribute to the social, economic and political development of their communities. As noted by Fried S.T in her article *Violence Against Women* the government needs to effectively implement its policies by intervening in private matters. It needs to collaborate within a network of other regional states with who are free exchange ideas on how to end violence against women. In this respect it should allocate adequate funds for this. It should also work towards ensuring that relevant institutions and mechanisms, such as courts and police stations are in place and also increase women's access to them. It should also work towards adding support systems such as legal aid, and other systems necessary to meet new challenges such HIV which can result from increased violence against women as the findings of this research have shown to be the case (Fried S.T 2003: 99-101)

It is worth noting the impressive work that women have done themselves to end all types of violence aimed at them. Because of their efforts the world's understanding of violence has expanded a great deal. For instance it is now recognized that domestic violence does not only amount to a violation of women's human rights but to their right to health as well.

3.3 Theories on Domestic Violence

There are various theories that have been raised by African scholars on domestic violence. Five major ones stand out. These are (1) rights theory; (2) feminist theories; (3) “cultural” explanations; (4) “society-in-transition” explanations; (5) “culture of violence” explanations.

The rights theory is based on the reasoning that domestic violence is a violation of women’s rights as enshrined in the international instruments. Not all scholars agree with this. For instance Bowman argues that if this was the case, then there would be a lot of African literature based on this assertion. She says that instead the only evidence of this is the reference by a few African constitutions to “freedom from violence” which is based on the wording of various international human rights instruments. She further argues that tackling domestic violence using the rights theory is likely to cause further conflict given that African women exist less as individuals with their own rights and more as individuals within a community of multiple relationships (especially onto their husbands). As such, Bowman argues, women cannot and therefore should not demand individual rights (such as the right to freedom from domestic violence) because they do not ordinarily enjoy such rights within their communities (Bowman 2003:851-852).

Feminist theory affords another perspective of domestic violence. There are many opinions within this theory as put forth by different feminists. However Bograd identifies four main common traits i.e. (1) that, as the dominant class, men have differential access to material and symbolic resources and women are devalued as secondary and inferior to men, (2) that intimate partner violence is predictable and a common dimension of family life, (3) that women’s experiences are often defined as inferior because domination influences all aspects of life, (4) the feminist perspective is dedicated to advocacy for women (Bograd 1999).

Bowman argues that unlike the rights theory, the feminist theory has found its way into much African literature. She rightly argues that it is indeed very difficult to avoid interpreting domestic violence within an African context in terms of gender inequalities given the patriarchal nature of African societies in which the women’s place within these kinds of society was decidedly subordinate (Bowman 2003: 852). She further argues that domestic violence is but just one dimension of gender inequality. Although gender inequality is very widespread, it never gets discussed in detail by most scholars who often choose to treat domestic violence in sub-category of violence in general. I would argue that this has not been deliberate given the complexity of discussing domestic violence. Writing

on domestic violence in Ghana, Ofei Oboagye argues that domestic violence occurs due to the subordinate position, passivity, and economic dependence of married women in the country and that even though there is no single approach to this dilemma, changing the social order that teaches women to believe that they are insubordinate and thus depended on their husbands should be the primary objective in order to attain gender equality.

Control, the second promising theme, is most visible in the feminist literature, which has argued that partner violence is primarily a problem of men using violence to maintain control over "their women," a control to which they feel they are entitled and that is supported by a patriarchal culture. We would agree that "domestic violence" or "battering" as it is generally understood by professionals and by the public is primarily a problem of heterosexual male control of women partners (Johnson et al., 2000: 949).

Cultural explanations are another set of causal theories which are currently finding their way into African literature. This theory is based on the premise that African tradition and norms are the cause of most cases of domestic violence. The first explanation under this theory is that African culture treats wife battering as normal. Culture and tradition are used to justify men's control over women both economically and sexually. Traditionally men were regarded as having absolute right and control over family finances and resources and so a woman had no right to question him. If a man felt challenged over this or even if he felt jealous about his wife it was right for him to beat her (Amstrong 2000: 9-13). The other explanation is that the uneven distribution of power within traditional marriages, the impact of polygamy, the power of extended family members over a married couple, and the almost universal institution of bride price are to blame for the widespread occurrence of domestic violence. Amstrong, in her research on spousal abuse among the Shona of Zimbabwe, supports this reasoning. She states that according to her findings, most domestic violence arose when wives asked for finances from their husbands. She saw this as challenging the traditional male control over family finances. (Amstrong 2000:10). In a study of gender-based violence in Malawi, the findings showed that economic activities are linked to gender roles within households, where women take up a heavy workload but have little or no control at all over the proceeds of their labour. This uneven distribution of power within the marriage was seen as the cause of domestic violence (Saur et al 2005).

"Society-in-transition explanations" theory on the other hand, argues that urbanization is the root cause of domestic violence incidents as most societies are transforming from traditional cultures to

modern societies. This theory is premised on the reasoning that domestic violence occurs as a result of social changes and men's threat in the face of it. It is argued that many incidents of domestic violence erupt as a result of men's failure to support many wives or extended families in the modern economy, the women's growing independence as they take second jobs in the public sphere and interact with other men, and their inability to perform traditional work in the expected ways as they also work in the cash economy (Amstrong 2000:14&15). She further argued that the modern economy has taken away the man's traditional exclusive right over his wife/wives and her/their reproductive capacities. Traditionally, a woman remained married to a man and his family not only throughout his lifetime but also after death. Modern law however allows a woman to divorce and to retain custody of their children after divorce, as is the case in Zimbabwe. These situations, it is argued, would not have arisen in the African tradition. Furthermore, the traditional norms may not be able to control men's behaviour today due to a number of reasons such as the fact that a couple may live far away from their families of origin family who used to mediate over cases of domestic violence (Bowman 2003:856).

My position is that all these theories, with the exception of the last one, interact with one another and together they all explain the realities of domestic violence and women, albeit from different perspectives. My view is that society-in-transition explanations are nothing but flimsy excuses used by male defenders to justify the patriarchal ideology from which they benefit. It is just an easy way of maintaining the status quo. In terms of this present study, I locate it within the theories supported herein and argue that all these theoretical frameworks are important as they give different approaches to understanding the study problem.

3.4 The Existing Kenyan Legal and Policy Framework on Domestic Violence

Currently there is no specific law on domestic violence. Instead the laws under which domestic violence related cases are dealt with find expression in the Constitution, the Sexual Offences Act, the Penal Code, the Matrimonial Causes Act and the Customary Marriage laws. The Family Protection Bill which is intended to deal with domestic violence cases comprehensively is currently awaiting passage through Parliament.

The new 2010 Constitution which is the supreme law of the land of Kenya has in chapter IV on the Bill of Rights amplified provisions relating to fundamental rights and freedoms. The provisions

therein safeguard the rights of men and women alike as well as those of children. Apart from the recognition of general principles related to respect for human rights, gender equality, and non-discrimination, there are specific provisions relevant to the issue of Gender-based violence. Article 25(a) provides for, without any limitation, for the freedom from torture cruel, inhuman or degrading treatment. Article 28 recognizes the inherent dignity of every person and the right to have that dignity respected and protected. Article 29 provides for freedom of security of the person, which includes the right not to be subjected to: any form of violence in either the public or private sphere; to torture in any manner, whether physical or psychological; or to corporal punishment; or to be treated in a cruel inhuman or degrading manner⁸.

The Constitution also has comprehensive provisions on gender equality. Article 10(2) thereof incorporates ‘equality and non–discrimination’ in the national values and principles of governance. It provides for non-discrimination for both men and women in all its forms. Discrimination on the basis of sex is expressly prohibited for under Article 27(3) & (4). It is written in the same spirit as CEDAW.

The Constitution further comprehensively provides for social and economic rights under Article 43 thereof. Article 43 explicitly provides for the right to the highest attainable standard of health, the right to health care services, including reproductive health care and the right to emergency medical treatment, the right to accessible and adequate housing, the right to be free from hunger, the right to clean water in adequate quantities, the right to social security and to education⁹.

The Constitution also provides for strong equal protection before the law to include both full and equal enjoyment of all rights and freedoms under both the national values and the Bill of Rights. However, as the findings herein show, equality before the law for women remains a theoretical ideal in Kenya as women’s access to law, especially with respect to domestic relations, continues to be hindered by many factors such as poverty, low income levels, lack of knowledge of their rights as a result of poor implementation.

⁸ Article 29 (a)-(f) inclusive.

⁹ Article 43(1) (a-f).

Further, as far as protection from violence for women and girls is concerned, the Constitution does not expressly provide for it. What it does provide for are the rights to dignity and protection from inhuman and degrading treatment¹⁰.

The Penal Code¹¹ is currently the law under which most cases of domestic violence are prosecuted. The law provides for offences such as murder, attempted murder, grievous harm, and assaults among others. In instances of physical violence, the culprits are charged with varying offences depending on the degree of the violence inflicted against a victim. This law is, however, inadequate with regard to protection where violence is threatened against a potential victim and/or her children. It fails to recognize the different dimensions of domestic violence and only comes into effect after the victim has been attacked which may sometimes be too late. It also fails to provide recourse to a victim in cases where the violence is ongoing say, by removing the victim from the home environment so as to minimize the effects of the violence.

Since most domestic violence occurs within marriages, the Matrimonial Causes Act¹² also offers relief in the form of separation or divorce where the offender has been cruel to the victim, adulterous or has abdicated his conjugal duties for a period of three years. However, as the findings of this study revealed, most women cannot utilize this law as it operates in the formal system which a majority of women in Kenya cannot access due to financial constraints and other reasons. The findings show that due financial constrains and illiteracy which leaves them dependent on their male partners, the women cannot seek separation or divorce as these factors inhibits them from accessing the formal system.

Customary Marriage Laws also have a huge bearing on domestic violence. This is because most African Customary marriages in Kenya are conducted under these African Customary laws which are recognized though not codified. One of the ceremonies that are pertinent to these marriages is the giving of bride price. This practice perpetuates a lot of violence as men take advantage of it to treat their wives as their property i.e. by beating them based on the argument that they paid bride price for them. Also, most women choose to stay in abusive marriages since they believe that they owe this duty to their husbands, on account of the bride price they have paid for them. The findings herein

¹⁰ See Articles 28 and 29, respectively.

¹¹ Cap 63 Laws of Kenya.

¹² Cap 152 Laws of Kenya.

show that some women do not report incidents of domestic violence since they believe that their husbands have the right to abuse them in accordance with their culture, given that they have paid their bride price.

Apart from the laws, some efforts have been made as far as policy initiatives are concerned. The government has taken a positive step towards providing legal aid and awareness of legal rights. The National Legal Aid and Awareness Programme (NALEAP) whose mandate is to offer legal aid to needy Kenyans, was officially launched in 2008. However, the impact of this scheme is yet to spread throughout the country. As will be demonstrated in chapter five herein, many women especially in contexts such as Soweto, are still unable to access legal services. The programme has not been able to provide much legal services to needy Kenyans since the six pilot projects created there under to carry out its mandate currently only provide bare minimum advisory services as opposed to legal aid.

The Social Protection Fund is another initiative. It is a form of cash transfer programme which is targeted at supporting families with old members and children orphaned as a result of HIV/AIDS, among other reasons. The programme which was piloted for the first time in 2004/2005 was aimed at giving an allowance of Kshs 1500¹³ to needy homes. However due to poor management, the allowance is only given out to certain households twice a year.

The government has enacted the Employment Act No 11 of 2007 which is aimed at ensuring economic equality in line with the ILO Convention. However, there is no institutional framework to ensure equal opportunities for both men and women. As a result there is a gender disparity in access to education as a huge percentage of women drop out of school due to poverty and other challenges (Society for International Development) (2010). This ultimately reduces women to domestication where they are prone to domestic violence among other challenges, as confirmed by the findings herein.

¹³ Approximately U.S \$ 15.

CHAPTER 4

4.0 RESEARCH METHODOLOGY AND METHODS

4.1 Introduction

There is an inextricable link between theories, methods and methodologies in the research process (Bentzon et al 1998). Methodologies refer to the approaches taken in the field to prove or disprove the initial assumptions driving the research. Research methods on the other hand are the techniques employed to gather the desired data from the target group of the present study.

In this chapter I describe the research process. I place particular emphasis on my experience as a feminist researcher while emphasizing the methodological approaches I employed in collecting the data, the methods that I found useful and not useful. I also give detailed information about the problems I encountered in the field and summarize the chapter with my overall analysis of the methodological approaches.

4.2 Conducting Feminist Research

This study was conducted from the feminist and human rights perspectives. As an African feminist I was very alive to the different experiences of women of the black continent especially their oppression. I knew that as an African feminist carrying out a research in the African society, I was about to engage with respondents in a patriarchal society where women are presumed to be inferior to men who desire to maintain the status quo. Right at the beginning of my research, I had to seek permission from male gatekeepers to secure access to the respondents. I had to seek permission from the male assistant chief in order to see the male area chief in order to obtain his permission to interview people within his jurisdiction. Just as I had anticipated, this reaffirmed my initial assumption that I was delving into a society where men were enthusiastic about exercising power, however little.

As I embarked on the study I also anticipated negative responses from some of the respondents, especially men. I knew that as an African feminist it would probably not be easy carrying out a study on such a sensitive topic such as this one, given the conservative nature of African culture with

respect to such issues. However, this notwithstanding, I was also aware of the possible impact that my study would make on Kenyan society and so I braced myself for the task ahead of me. I knew, therefore, that in order to ensure that I would come up with an action oriented piece of work I needed not only to be proactive in the field, but also in the way I present my findings. In this respect therefore, the study adopted a two pronged approach which entailed desk review and qualitative interviews. The literature review entailed an analysis of existing literature which informed me about:

1. the background to and issues surrounding the slums in Kenya;
2. the existing legal and policy framework on the research problem; and
3. the international human rights law and existing theories on domestic violence.

4.3 Entry into the Study Area

In order to carry out the study I had to seek permission from the area chief. He gave me permission to interview women in the locality. I was overwhelmed at the great amount of authority that the chief commands as, in the first instance, I had to seek permission from the assistant chief in order to see him.

4.4 Grounded Theory

Grounded theory is an interactive process in which data and theory, lived realities and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. In grounded theory, the interaction between the data collection and then the collected data when analyzed indicates new directions and new sources of data (Bentzon 1998: 17).

In employing a grounded research process, the use of the dung beetle method is inevitable. *“In this method, the researcher collects data, sifts and analyses it, considers the implications of the findings, determines what to collect next to meet the needs and continues with the collection and analysis cycle. Through this process, new methodologies, perspectives and theories are developed.”* (Bentzon 1998:18).

A grounded theory approach was employed throughout the data collection process in this study. Using this approach, I went into the field to listen to the voices of women in relation to their experiences with domestic violence. Since my research was a qualitative one as opposed to a quantitative one (where numbers are concerned), I was concerned about obtaining deeper insights into a better understanding of the issues, I used qualitative research methods to collect the data. Qualitative methods of research are those methods through which the investigator tries to study all the elements present in a setting and people are the primary data gathering instruments (Tsanga 2003:41).

At the start I sought to interview the area chief and the police officers as persons in authority in order to get their views on the issue of domestic violence. From the interviews, several categories emerged for analysis: i.e., they unearthed the presence of domestic violence in the area, the low educational background of the people, the presence of heightened poverty as well as the plural dispute resolution mechanisms for domestic violence that the people take. Upon analyzing and sifting through this data, I always sought to listen to the voices of the women themselves. I did this by having focus group discussions, by carrying out case studies and by conducting individual interviews. I then went on to analyze the data in the light of the new findings that I obtained.

Using the grounded theory approach, group discussions were used at the beginning of the study. My initial assumption was that women would be more comfortable discussing their experiences of domestic violence if they were in a group. I had assumed that being in a group and hearing others tell their experiences would give them courage to open up. However, after conducting two discussion groups, I noted that this was not the case and immediately explored an alternative approach, the case study approach. I noted that these group discussions led to generalized responses to questions and issues raised as opposed to giving insightful responses to the issues from a personal perspective.

However, as with any field study, this study was not immune to challenges. I noted that part of the difficulty of using grounded theory is the possible conflict between the community's activities and the researcher's interest. Because of this, a group discussion held at the community's social hall was interfered with, as we could hardly hear one another talking due to the loud music that was being played in an ongoing youth event being held at the same venue.

Figure 3: Two photographs showing the youth event (right) which disrupted the group discussion (left)



Still, using a grounded theory approach “the snow-ball method” was particularly useful to identify most of the respondents for case studies. Here women who had been victims of domestic violence led or referred me to other fellow victims and they in turn led me to others. In the first instance, the area chief referred me to my first respondent for a case study. In the second instance, other respondents were identified in the same way through one respondent whom I had identified randomly. Altogether a total of 15 case studies were conducted. A few men were also interviewed as a follow up to issues that were arose out of the case studies.

This method was used because it turned out to be, at least according to my perception, a sure way of getting actual victims who would give factual data. I needed to get first-hand information from them about their own lived experiences. It was also used because I felt the interviews were more relaxed as the interviewees felt more at ease and hence comfortable to open up, given that they were familiar with my reference respondent. Upon analyzing and sifting through this data further, I sought to find out how the government was responding to the plight of the people and in particular that of the women through interviewing key respondents in the relevant ministries such as those in the Ministry of Education and that of Gender, Children and Social Development.

Table A: A Highlight of Case Studies

Number of case studies	Number of women	Number of men interviewed as follow-up	Total interviewees
15	15	7	22

Individual Interviews were also conducted. A total of 30 victims of domestic violence were interviewed to get an insight into the problem. 15 were interviewed in general while 15 were approached as case studies. Other respondents were also interviewed. These included different actors who have a bearing on the women's lives by virtue of the different positions they hold. The interviews were useful as they gave room for the researcher to probe underlying issues and to seek immediate clarification on issues that were not clear. They were also semi-structured in nature so as to ensure that only relevant issues were thoroughly explored. However respondents were often allowed to go outside the boundaries of the specific questions asked, especially where it was apparent that this was necessary to get more insights into the issue at hand. This also enabled a gainfully interactive process for both the researcher and the interviewee as it permitted room for the introduction of emerging themes that were important to consider.

Using the dung beetle method, some of my key respondents led me to other sources of data, in particular, to other actors such an NGO volunteer representative who volunteers her services to women with cases of domestic violence and whose data was very useful in helping to understand the problem from a feminist perspective.

Table B: Table of Respondents

	Key Informants	Individual interviews	Case studies	Focus Group discussions	Observations	Total
Chief	1					1
Assistant chief	1					1
Police officers		3				
Church officials		3				3
NGO representatives	5	3				8
Children's home personnel		4				4
Ministry of education officials		4				4
Ministry of Gender, Children & Development officials	1	3				4
Defence lawyers		1				1
Married women		15	15	1	4	30
Single/divorced women		4				4
Married men		7				7
Children		1				1
TOTAL						68

The sensitivity of the research topic presented another challenge during the data collection process. A number of respondents interviewed were hesitant to talk about their experiences with domestic violence. They felt that this is a private matter that ought to be discussed privately and instead considered that I was an intruder. This can be attributed to the fact that issues to do with sexuality are mostly dealt with in secret. It is taboo to discuss them openly, and with strangers (Tamale 2011). One respondent expressed this as follows:

According to our culture this is a private matter and I cannot talk about it. The way we were brought up, we were taught to deal with it privately. We were told not to air our dirty linen in the public especially as women.

Also, due to bureaucracy, I was not able to obtain the statistics for the reported cases of domestic violence from the police station in the past twelve months up to the deadline of the study which was set at the end of January 2012. The police officers whom I had requested to assist me with this kept sending me backwards and forwards. Finally the one who allowed me access to the police Occurrence Book gave me only fifteen minutes to glance at it. Even then he kept taking it away when people came to make reports. Apart from this, I was not even allowed to make a photocopy of it.

I also encountered some negative attitudes as some respondents, particularly male respondents, were dismissive. They felt that as a young woman I had no business venturing into a complex issue such as this one. One respondent in particular insisted on knowing my marital status as he felt that being unmarried woman makes one unqualified to discuss marital issues.

Apart from this, the study was conducted during the rainy the season when the study area was very muddy. Due to this, accessing the study area was a challenge in light of the poor road infrastructure. This limited my movement within the whole area on certain days. I had hoped to manoeuvre within the whole area in order to collect as much data as I could but this could not happen.

I also observed Alternative Dispute Resolution Mechanism (ADRM) proceedings before the area chief with a view to get insights into the principles that are employed by the chief while handling the domestic violence cases that go before him. I restricted myself to being an observer while carefully noting what was taking place. I noted that the chief used his judgment and ideas of justice to decide over the cases since he derived his authority from no particular law. I also observed the body language of the respondents as they addressed the chief and noted he wielded much authority over his subjects.

Apart from observing the proceedings before the chief, I keenly observed the body language of all the respondents I interviewed throughout the entire study period. By doing so I was able to get an impression about what was going on in an interviewee's mind. For instance, I was able to perceive whether an interviewee was comfortable or uncomfortable with a particular question or issue raised.

Further, I was able to get an impression about how the women in the case studies conducted felt about their experiences, even though I could not be sure about this. I got the impression that most had reached a point where they had given up fighting against their problems and instead had resigned themselves to them.

On one occasion, there was an arranged planned interview with the chief in which I hoped to observe an ADRM proceeding. The proceeding did not materialize as the women who were involved in the hearing chose rather that the chief give them birth certificates for their children than deal with domestic violence complaints.

The study was also enriched by taking pictures of the site and useful events. I found it imperative to take pictures of the slum in order to enable the reader get a clear impression of the slum context. It was my opinion that a study such as this one where the context the study area is of great significance, pictures would help a lot as they give more insight into the data. As they say, a “picture speaks more than 1000 words”.

Figure 4: Three photographs of typical street scenes in Soweto slum.



Secondary Sources of Data

Another method used in the data collection was the use of secondary sources of data. I made use of documentary evidence such as books, articles, newspapers and others print and internet materials. Most of the print materials such as books were obtained from the library. The library and internet thus provided me with background information on the concept of domestic violence, the international community's position on the same as well as the initiatives that have been put in place to deal with it. This initial desk review also enabled me to explore and understand the interrelations between domestic violence and other areas of operation such as development and education.

Given that domestic violence is a global problem, I looked at both international and local texts dealing with problem. The national statutes and policy documents were sampled and analyzed with a view to establishing their relevance to the problem of study.

Workshops addressing topical issues related to the research problem were also attended as they also offered some useful information that enabled the data sifting and analysis process. I was able to triangulate the information obtained with that which the key respondents such as the chief had given..

This method was useful as it helped me identify the gaps that existed in the already written literature and what was being done on the ground in terms of implementation which then enabled me identify ways of filling the gaps, hence, my recommendations.

4.5 Sex and Gender Approach

The existence of biological, social and cultural differences between women and men are not regarded as the main problem in women's lives. Rather law and society's systematic undervaluation of female activities and values are seen as the main causes of women's problems (Dahl 1987:13, Bentzon A.W. et al.1998: 91).

Such an approach involves building up legal and social science knowledge which encompasses the practices and perceptions of women and men. This allows one to engage empirical knowledge about

gender relations and local practices and procedures in a constant dialogue with theoretical generalization and concept building (Bentzon A.W. 1998: 25).

Sex is the biological differentiation between male and female, that is, a person's biological and physiological characteristics, and gender is the differentiation between masculinity and femininity as constructed through socialization and education, among other factors. That is, it refers to the cultural and social distinctions between women and men. These include the different attributes, status, roles, responsibilities, opportunities and privileges accorded to women and men, as well as their access to and control over resources and benefits (Bentzon 1998: 82).

Gender and sex analysis thus refers to the analysis of how people in an area share tasks. It also refers to how men and women experience the phenomenon being researched either as men or women. It seeks to find out how the situation came to be the way it is. This approach recognizes the fact that gender roles can cause serious restrictions upon women and girls in their lives. Gender is seen as a concept that involves cultural interpretations. *“Gender thus entails, on the one hand, men's and women's active roles in society and, on the other hand, ingrained social ideas about femininity and masculinity.”* (Bentzon A.W. 1998: 83).

In employing this analytical framework, I was able to analyze the power relation between the men and women within the domestic arena. I realized how the patriarchal ideology was used by the men to control the women even at the lowest levels of poverty. Patriarchy is the male control and dominance of women. The Kenyan societies are patriarchal and the patriarchal discourse is created and maintained by hegemonic laws (general, customary and religious). This socially constructed culture of dominance is used by men in an openly oppressive manner to dominate their wives instead of allowing them to go out and look for work to supplement their (men) meagre incomes. The men accuse their wives of infidelity when the women go out to look for manual jobs while their husbands are away at work at the industrial area. Even though they do so specifically in order to supplement their husbands' meagre pay, this displeases the men who believe that the women are challenging their privileged superiority over them.

Through this approach it became clear to me how the men take advantage of socially manufactured ideologies to abuse women through controlling the only powerful thing that belongs to them: their sexuality through sexual violence. This interplay between sex and power in the face of the unequal power relations between the two sexes became very clear as I analysed the case studies conducted.

4.6 Overall Analysis of Methodological Approaches and Methods

The above methodological approaches were very important to my field research report as they acted as my compass that gave me the direction I had to take throughout the field research. They offered me a practical approach to a range of theories. I was able to put to the test various theoretical frameworks. Through them I was able to test the authenticity and practicability of various theories about the problem and methodological approaches used to explore it. Unlike desk research, through the above methodological approaches, I was able to obtain firsthand information from interviewees, which is reliable, informative and objective. Apart from that, both the methodological approaches are gender sensitive and any gender expert may find the information in this field research report very useful.

Despite these few challenges encountered in the field, I managed to collect valid and useful data which enabled me to write this dissertation.

4.7 Conclusion

This chapter has outlined the methodology used in the collection of data as well as the theoretical frameworks that determined the selection of the methodological approaches and methods of data collection. In the next chapter I present the findings of the study.

CHAPTER 5

5.0 FINDINGS AND ANALYSIS

5.1 Introduction

In this chapter, I discuss the findings from the study in relation to national legal and policy initiatives that are currently in place as well as those that may need formulation in relation to international human rights standards on domestic violence. The findings are categorized under four thematic groups namely: (1) the socio-economic dynamics of domestic violence in the context of Soweto; (2) the existing formal justice system; (3) alternative dispute resolution mechanisms; and (4) the emerging themes. Under the first thematic group I discuss the various forms, frequency and the root causes of domestic violence. Under the second I present the official justice system in place in Soweto as well as women views on it. In the third and fourth thematic groups I explore the alternative mechanisms which the people take to resolve domestic cases as well as the emerging issues that need further exploring. In all these thematic groups I highlight what the government is doing to address domestic violence in Soweto.

5.2 The socio-economic Dynamics of Domestic Violence: Forms, Frequency & Root Causes of Domestic Violence

This thematic head combines the findings of assumptions 1 and 2 which addressed the question as to whether domestic violence is a problem in the context of Soweto slum and its causes thereof, i.e., to determine whether there is a link between the people's low socio-economic status to the vice.

The findings which proved that domestic violence is rampant in Soweto slum confirmed the hypothesis I held before embarking on the research. In confirming this, the area chief stated:

Domestic Violence is very rampant in this area. My office deals with such cases. No week passes by without receiving a report. I receive cases every day.

A female church official explained:

Every other day we are faced with women with marital problems such as domestic violence.

Yet another male respondent stated:

There are many cases of domestic violence here in Soweto. Both men and women fall victim though.

In order to collect factual data that the study sought to obtain, I found it imperative to establish what the people understood domestic violence to mean. I obtained data which relate to their understanding of the concept and in this regard the study showed that it was understood as violence that takes place within the domestic arena. One respondent stated:

Domestic violence is violence in the family.

Other respondents merely said that it is a private matter. Many respondents expressed this view. For them the subject was better discussed and dealt with privately without speaking about it in public. They felt that it is a matter that involved only the parties to a marriage union. One respondent stated:

Domestic violence is a private matter.

The study also showed that the violence mainly manifests itself in physical forms such as assault, rape and incest. A health worker explained:

These cases come to us in the form of patients seeking treatment as a first step and they are usually manifested in the form of assault, grievous harm, bruises or rape.

As it is demonstrated by the case studies which follow, the findings also show that this physical violence is often accompanied by verbal abuse. Most of the victims mentioned incidents of verbal abuse as having accompanied the physical violence they experienced.

Some interviewees stated that the violence is seasonal. Most incidents occur during specific periods of the year and at specific times of the day, mostly at night. It was stated that school holidays are the

periods most reports of domestic violence are received by both the nearby health centre and the structures of authority, such as, the police station and the chief's office. It was also stated that the violence occurs mostly at night, when the parties are together. The health worker at the centre explained:

They are very seasonal though. Most cases occur during school opening periods or during holiday. These are the times when women are most dependent on men for financial assistance such as school fees and other expenses. They also occur at specific times, i.e. in the nights. Most cases are received very early in the morning and the victims say they were beaten in the night.

The findings show that while men also fall victim to domestic violence, most victims are females. This is due to the low social and economic status of women as they are more dependent on their husbands and other male counterparts since a majority of them are housewives.

There is also a high level of illiteracy among the people. The area chief stated that while most people have only primary education, a few have been educated as far as form four while just a very small number possess education beyond secondary level.

Due to the high level of illiteracy many people are jobless. More than two thirds of the people are jobless. The men largely rely on casual jobs which they take up at the city's industrial area. These jobs are also seasonal; sometimes periods of unemployment can last for more than one or two months. The women on the other hand stay at home. A few of them who manage to break away from their husbands' control by sneaking out of their homes while their husbands are at work wash clothes for people in the neighbouring estates at a small fee, usually between Kshs100-150¹⁴.

¹⁴ Approximately between U.S\$ 1-2.

Figure 5: A photograph showing a rainy day in the market area of Soweto slum.



5.2.1 Poverty

Poverty came out as the major contributory factor of the violence. It causes financial constraints which ultimately result in violence both in the family and the public at large. Many respondents interviewed explained that the heightened poverty causes lots of tension which then results in violence in many households. One woman explained her own situation as follows:

We frequently have serious domestic problems that end up at the chief. He is very violent and usually vents his anger on me and my older children (12 & 9 years old). Most of the times he says I misuse the money, that I starve his brothers and that I am unwelcoming.

What also came out clearly from the study is the fact that the poverty takes different forms. Families descend into domestic violence because of a complete lack of income or over the very little that they do have. The case studies conducted highlighted these diverse dimensions.

Some victims explained that their husband's lack of provision was the cause of violence in their homes. The men became violent whenever they were asked for money for food and other basic necessities. The mere request for financial support caused the violence. One victim expressed herself as follows:

What brings conflict in our house is my husband's laziness. He does not provide for us and yet he wants to eat. When I ask for money for anything he becomes violent. He cannot find himself a job. Instead all he does is drink. When he comes home drunk he will start demanding for meat even when he did not leave money to buy some.

While another respondent lamented:

Our home is run by strict rules. He is in charge of literally everything including buying day-to-day food. As a wife, I have no charge of the kitchen, he takes stock of everything. He is always quarrelling when something is finished such as cooking fat, cooking floor, sugar, salt, paraffin; basically everything. He accuses me of being wasteful. Whenever I inform him that something is finished he quarrels and even beats me up for being uneconomical.

While for some women the complete lack of financial support was the cause of violence, for some, the fight over the little that is there is the main cause of the conflict. Despite the fact that what is there is barely enough, the men saw their wives and sometimes even the children as a threat to their little resources. One woman whose husband saw her sons from a previous marriage as a threat to his resources explained that her husband became violent when the children reached their teenage years as he felt that she and the children would disinherit him of his rental houses. This was despite the fact that the houses attracted very little income. She explained:

My husband started beating me a lot about fifteen years into our marriage. He suddenly started hating my first two children who were from my previous marriage. At that time my first son was about eighteen years old. Initially I thought it was because we only have female children together but I realized that this was not the case when he started accusing me of conniving with my sons with a view to killing him so as to inherit his rental houses. Whenever I intervened he would accuse me of taking sides with them. This got worse to the point where he insisted that I take them to their father. I refused to do so and the beatings became more and more frequent.

I sought to hear from the men about their views on this issue as a way of follow up to the women's voices over the same and I established that men feel that they own whatever little that the family may have and want to be recognized as owners. One male respondent said:

Most of the cases of domestic violence are caused by disrespect from wives. Men are the owners of wealth but women here show no appreciation.

Polygamy is an issue that pushes poverty to another dimension. One woman explained:

Our relationship has become very strained now. He no longer wants to shop as he used to, instead he tells me that I am not his only wife.

These highlights are just a few demonstrations of the different dimensions of the poverty.

The study further revealed that prostitution is rife in the area. Due to the heightened poverty, some women have resorted to prostitution in order to make ends meet. These are mainly single women who have children to fend for but without any alternative source of income. One respondent, a children's home director, while explaining the background of the children in the home, stated:

A few of the girls who are older than twelve ran away from their homes and join prostitution. These are mostly children of single mothers who are casual sex workers themselves. There are many of them (sex workers) here in Soweto.

5.2.2 Infidelity and Lack of Trust

Infidelity and lack of trust emerged as other contributory factors to the violence. The findings show that apart from the financial constraints which cause tensions in many households, infidelity pushes the already built-up tension to another level. One respondent gave her account as follows:

The problem I face with him is infidelity. Many women constantly call him on his cell phone but he does not want me to question him about this. He becomes very violent when I attempt to. We constantly have misunderstandings over this.

Another woman stated:

My husband has been having an affair with some lady here in this neighbourhood. Every day when he comes from work, he passes by the bar to see her. The worst is that he brings her here when I am away and sleeps with her in my bed.

Yet another lamented:

The reason I brought him before the chief is that he has rented a house for another woman in Mworoto area and no longer support me and the children. He no longer comes home either.

The infidelity can also be attributed to the poor housing conditions as revealed by some respondents. The houses stand very close together and as a result there is no privacy. Neighbours are forced to share common utilities such as toilets bathroom, and washing places. This substandard kind of housing presents couples with lots of challenges as was expressed by one woman. She stated:

He is always chasing after these women one after another. Our houses are constructed in such a way that the doors face each other and the corridors between the houses is too close that one can easily sneak into the opposite room within seconds. There is this particular mother of one whom he is currently having an affair with. He often sneaks into her house when we get back home and will not come out until it is dark.

Because of this, illicit associations are common. In particular, this creates mistrust between spouses especially on the part of the men who, because of their socialization as the hunters, feel that their wives are being lured by their male neighbours. They then turn to violence as a way of ‘protecting’ their wives. They do so by accusing their wives of infidelity and taking physical action when they feel their orders are not obeyed. One woman related the following:

He sleeps with my neighbour who is a married woman and he does not want me to question this. They even have a baby together. Sometimes he leaves the house as if he is going to the toilet and they meet outside the house and talk. We have a common toilet and bathroom that is shared between these twelve houses. Our neighbours from this plot and even those in the neighbouring plot often find them fondling each other.

Another respondent give her account of her experience as follows:

The reason why we have been fighting is that he thinks that I am unfaithful but I am not. When this started I had gone outside to wash plates at about nine pm after we had our supper. We usually wash plates at a common washing place out here since these houses are single roomed. While I was there he heard me greeting our neighbour who had just walked into the compound. When I got back into the house he asked me who it was that I was talking to and I said baba Tina. He insisted on knowing what we were talking about and I said he just greeted me and I returned his greetings. He did not believe this and instead kept on quarrelling me, that I am a loose woman who has no respect for her husband and that I had intentionally gone to wash plates at that time as we had planned to meet.

This lack of trust which is created by the poor housing system leads to the denial of women's right to liberty despite the constitutional guarantee to this right as the women's lives are constantly 'guarded' by their husbands. The respondent went on to explain:

He did not believe this and instead kept on quarrelling me that I am a loose woman who has no respect for her husband. He said it had been my plan to go wash plates at that time as we had planned to meet. We spent this night arguing over this. From then on, he has been observing every movement I make and whenever he sees me anywhere near the man even if we are both walking in or out of the compound he would quarrel me, and sometimes even slaps me or hit me with whatever he lay his hand on. The latest of these is a month ago when he beat me in front of our gate. The man was walking out of the compound then turned back to give some instruction to his daughter. I was airing clothes in the line at that time. When he saw this he called me into the house and asked why I was disobeying him even after he has warned me about this several times. Apparently he had been spying on us from the window all this while.

Yet another woman stated:

He says that I am always dressing badly so that my male neighbour's can see me. He accuses me of being unfaithful to him.

Because of these deplorable housing conditions which cause mistrust, the violence spills over into the public hence denying the women their privacy as their husbands attack them even in the presence of outsiders. The closeness of the houses makes it possible for the neighbours get to know about a couple's domestic issues. One respondent narrated her experiences as follows:

We are always quarrelling. Sometimes he comes to my shop and starts scolding me even in front of my customers. He sleeps with my neighbour who is a married woman and he does not want me to question this. They even have a baby together. Sometimes he leaves the house as if he is going to the

toilet and they meet outside the house and talk. We have a common toilet and bathroom that is shared between these twelve houses. Our neighbours from this plot and even those in the neighbouring plot often find them fondling each other.

Another woman explained:

When he comes, he does not want to spend even a second at the door. If I delay to open, even with five minutes, he will slap and scold me. He even accuses me of having a man in the house. He will then search our little house in and out, under the bed, moving back and forth from our bedroom to the sitting room despite the fact that our house is only separated manually by a piece of cloth.

In explaining women's experiences with poverty and domestic violence, one church official stated:

A majority of domestic conflicts here are caused by financial disputes and lack of trust in the family. As Christians we encourage the women to be faithful to their husbands and to try and engage themselves in income generating activities instead of just depending on their husbands. The challenge though is that a majority of them are illiterate and without any capital at all. We also encourage them to join women *chamas* (groups) where they can start by saving the little that they are given by their husbands for food.

This situation contravenes the provisions of the UDHR, the ICCPR and the ICESCR as they relate to the right to food, housing, education, and social security. The UDHR encompasses these necessities as guaranteed under the ICCPR and the ICESCR¹⁵. The UDHR provides that everyone is entitled to the rights thereunder. It thus requires states to ensure that everyone including women is free from all forms of violence, by eliminating discrimination in all its forms including sex.

¹⁵ See Article 1 & 2 of the UDHR, Article 2 & 26 of the ICCPR, and Article 3 of the ICESCR.

Figure 6: Two photographs of typical makeshift housing units in Soweto slum.



The findings further show that domestic violence has huge and varied impacts on women's lives. A Director of one Children's Home said:

Most of the children who are brought here are as a result of neglect by parents and violence in the homes. The violence includes sexual violence such as incest as well as physical violence towards both the children and between parents.

My initial assumption before I went to the field was that the government is not fully committed to fulfilling its obligations towards reducing people's vulnerability to domestic violence in places such as Soweto. However while in the field I discovered that there are some initiatives that it has put in place. These initiatives are aimed at eliminating poverty which as the findings show, is the major cause of domestic violence in the area. However, the findings also show that most of them are still in their initial stages. Furthermore, there is also poor prioritization of these initiatives.

Among these initiatives is the introduction of the Constituency Development Fund (CDF) which is channelled through the City Council of Nairobi. It is allocated to a constituency depending on its size. Usually it ranges between 2.5 to 3 Million. It was not possible in this study to establish the actual amount that the Embakasi Central Constituency had received in the budget preceding this study. However an interview with the area Councillor, he indicated that his office does indeed receive this money. While responding to how this amount has been utilized he stated:

We have used it to construct certain facilities such as this social hall and the public toilet.

The said social hall houses both his and the chief's offices. Within the compound there is a public toilet and a water kiosk.

Another initiative is the introduction of the Cash Transfer Programme. This is a programme that is targeted at certain groups in the Kenyan society. The programme is structured into three sub-programmes i.e. Social Protection, Community Development Cash Transfer and Orphans and Vulnerable Groups. It is a semi-autonomous programme run by both the government of Kenya and other stakeholders (donors). The objective is to empower these groups of people economically. However, the area Councillor confirmed that it is yet to be piloted within Soweto.

The findings also show that the government, through the Nairobi water company, has taken an initiative aimed at providing water to the people. The initiative which is implemented in phases (as per the nine sub-areas therein), was in its first phase at the time of this study. Apart from this, the government, through the Municipal Council of Nairobi, has embarked on a project for the improvement of the sewerage system in the area.

Of most concern to this study is the infrastructure improvement project which has been initiated by the government of Kenya in conjunction with three other development partners. The project, Kenya Informal Slum Improvement Programme (KISIP) is intended to run for a period of five years starting this financial year (2011/2012) and ending in 2015. It is intended to be implemented in 15 Municipalities in Kenya, Nairobi being one of them. These are Municipalities whose land tenure is already regularized. The project will be financed jointly by the World Bank which will provide US\$ 100 Million, Agence Francaise de' Development (AFD), Swedish International Development Agency (SIDA) and the Government of Kenya, who will contribute US\$ 10 and US\$10 Million, respectively.

Among its objectives are capacity building and infrastructure improvement which the government has prioritized over the others. The overall aim of this project is to improve the living conditions for slum dwellers in light of the government's recognition of the right of informal dwellers to adequate housing under the new Constitution. In Nairobi, Soweto slum is one of the two slums that were identified for this project.

While the improvement of infrastructure is indeed a long term methodological way of improving the living conditions of slum dwellers, it was felt in this study that it is not an issue of immediate concern in the context of Soweto. The improvement of infrastructure itself, without putting in place economic empowerment initiatives, will not immediately improve the living conditions of the people such as the housing realities which contribute to violence. In light of the findings of this study, which show that poverty is the overriding problem in Soweto, and that it results in negative impacts on the lives of the people, particularly women (through domestic violence), immediate poverty reduction measures should have been prioritized.

Figure 7: A photograph of the World Bank meeting convened to discuss the KISIP project.



The state has also taken steps to try to eliminate sex roles and stereotypes that contribute to violence in general and particularly in the domestic arena. Several bills have been formulated to address this such as the Equal Opportunity Bill. These bills are aimed at ensuring that all forms of sex roles and gender stereotyping are eliminated. This is particularly because the state recognizes the fact that due to the patriarchal nature of Kenyan society, certain roles such as child bearing and child rearing are relegated to women while others are such as public participation are restricted to men as is the case in Soweto.

5.2.3 Power Relations and Sexuality

The female sexuality is seen as something to be controlled. It belongs to the man and the woman is pleased only to the extent that she is able to please him (Machera 2004). The complex interrelations of power and control are played out upon the body in sexual relationships and the woman's body then becomes a site for contestation (Holland et al. 2003).

The power relations between spouses as a result of sex and gender factors, was also very evident. The study showed that sex and power relations also have a huge bearing on the violence. The effect of the apparently unequal power relations between the two sexes is often felt by the women as men tend to show their superiority over their wives through physical violence. Two things came out from this position. One, the fact that some of the men use domestic violence to control the women's sexuality by demanding conjugal rights whenever they feel like it, and, two, the fact that domestic violence results at times due to this unequal sex and power relationship. This situation which leaves the women as the victims was demonstrated in one case study where the violence resulted in the rape of the woman's daughter by her own husband. The victim narrated her experience as follows:

My husband raped our ten year old daughter and beat me when I tried to stop him from raping. I had gone to the market and left him sleeping on the sofa set. I did not take long at the shop. When I got back I found him on top of the girl in our bed. Our bedroom is separated from the sitting room using a bed sheet and so when I got in he did not notice. As he was beating me, he was telling me that he will do it again just to show me that he is a man since I cannot always give him what he deserves as his wife.

While another expressed her experienced as follows:

I know that he is sleeping with another woman. I know because I have personally caught him with her. When I ask him to stop this behaviour he says I am trying to control him as if he is a boy. He asks what my problem is and yet he gives me money to cook food and eat, that I should be sleeping with the children instead of controlling his timings.

The Sexual Offences Act¹⁶ criminalizes sexual relations between persons within certain parameters of affinity and hence protects particularly children from sexual relations within the family context. It defines new forms of sexual crimes that were previously not covered under the Penal Code such as trafficking in children and addresses them as crimes of violence as opposed to those against morality, as was previously the case. However, this Act, despite having positive provisions, also has a claw-back section which has the potential of deterring women from reporting cases of sexual violations of their rights. Section 38 thereof provides for punishment equivalent to that which the offender would have been given should the case be dismissed for want of prosecution. This section fails to take recognition of the fact that a victim of domestic violence by virtue of being a complainant has limited ability to influence the investigation process which is the exclusive prerogative of the prosecution. The section provides:

“Any person who makes a false allegation against another person to the effect that the person has committed an offence under this act is guilty of an offence and shall be liable to punishment equal to that for the offence complained of”.

This provision gives room for the perpetrator of an offence to get away with an offence even when he is guilty. In the instant case of incest, even though the matter was still pending in court at the time of this study, there is a possibility that the perpetrator may fail to be punished for the offence should the police fail to effectively prosecute the case.

Because men are part of the problem of domestic violence, I sought to interview the men in order to get their views on the issues that were raised by the women I interviewed. This was particularly because of the fact that the findings showed that they are the major perpetrators and also the fact that any process that is geared towards bringing meaningful changes in the lives of these women ought to engage the men as well, given that just as they are part of the problem, they should also be included in part of the solution. The findings showed that the men were quite undisturbed by the situation. Instead, they felt that their actions were justified. One man who was keen on maintaining the status quo stated:

As a man I have power over her and so I had to assert my authority by getting to the bottom of this. Adultery by a woman is a sign of a woman’s lack of respect for her husband. It is natural for a man to have an affair outside

¹⁶ Act No 3 of 2006.

marriage. A man is the head of his family and so he can do what he wants. He can have an affair but not the woman.

Another one said:

I often beat my wife to discipline her for stupid mistakes that she does. For example when I am back from work, after working hard for the money, I give her money to buy food and she decides to take her time. I like to have my food ready in time. I don't want to ask for it as if she did not know that food time is reaching. I am feeding her yet she seems unappreciative. This does not mean I do not love her. If I don't beat her occasionally, she will take me for a weakling. **I don't believe in equality between me and my wife because it is me who has married her. I paid bride price to her. She came to me with nothing. I am the head of our family and she must show me respect.**

5.2.4 HIV/AIDS

The findings show that HIV/AIDS also contributes significantly to the violence. While in the field, I found out that HIV/AIDS has a direct bearing on domestic violence in the area, as it presents an opportunity for violence. The findings show that men blame women for their HIV status when they discover that they are infected, irrespective of the fact that is they who are the ones who are most often unfaithful in their relationships. One HIV positive victim stated:

We constantly have domestic problems due to our H.I.V status. Whenever we want to be intimate we often quarrel since he does not want to use protection. We were tested two years ago when I was expecting our third child and were advised to be using protection. However, ever since he got that news he has become very indifferent, always moody and violent. He accuses me of contracting the virus from my work place despite knowing that the salon where I work only caters for female clients.

Apart from violence, the HIV also impacts negatively on the lives of the women given their low economic status. The study showed that some children are abandoned or neglected by their parents due to HIV and other related factors. Because of poverty, HIV parents die early due to poor nutrition and leave their children who are then taken into children's homes for lack of care. Women are particularly affected as they are often the child rearers.

A director of a children's home stated:

A majority of the children who are brought here are abandoned by their parents at birth, neglected by their parents or orphaned and neglected as a result of HIV/AIDS.

It was also established that there are no Non Governmental Organizations (NGOs) working on women's issues in Soweto except for one which deals with HIV/AIDS. However, even this one does not adequately cater for the victims due to insufficient funds. The officers therein who were interviewed indicated they are the only NGO operating within the area and that it faces financial challenges as a result of which they cannot adequately offer assistance to victims who are financially incapable even when they are neglected by their spouses. One of the officers stated:

Currently income generating support is given to only a few people since there are many people living with H.I.V countrywide and we do not have sufficient funding to cater for that. Even for the few who are given, they are given just a minimum amount say Kshs 1000/=2000/=¹⁷ and this is only given to a bed ridden member once she gets back to her feet (once she improves). This financial support which started in 2004 depends on the availability of funds. Last year we were able to give one woman but this year we have not given any so far due to lack of funds.

Of all these contributory factors, poverty came out as the overriding one. The findings show that the poverty seems to have driven the people to a point where some appear to have given up and as a result some people have resorted to alcoholism borne of intolerable frustration. One respondent said the following about her husband:

He is a perpetual drinker and often comes home late. When we got married he was a casual drinker but after our fourth child his drinking got worse.

In a recent research conducted by Fida Kenya on domestic violence economic abuse ranked high among the findings. This is a regrettable state especially in light of Kenya's commitment towards the first, third and sixth Millennium Goals, i.e. to eradicate extreme poverty and hunger, to promote gender equality and empowerment of women, and to combat HIV/AIDS, malaria and other diseases.

¹⁷ Between U.S \$ 10-20.

5.3 The Formal Justice System

The formal justice system in place consists of a police station and a magistrate's court. The Police Station (Soweto Police Station) is located right in heart of the slum. It is currently headed by an Officer in Charge of Station (OCS). This station was upgraded to its current status just one and a half years ago. It was previously a Police Post. According to Corporal Kiplagat, the station had over 40 police officers at the time of this study, 36 males and 6 females. Like all the other police stations in the country, it is guided by the Police Service Charter of (Revised 2009) whose motto is "*Utumishi Kwa Wote / Service to All*". According to the Charter its mission is:

"To provide quality service to meet the expectations of our customers, by upholding the rule of law and creating and maintaining strong community partnerships for a conducive social, economic and political development of Kenya".

However despite this motto, the findings point to the police's negative attitude towards cases of domestic violence. The findings show that instead of addressing them, they refer victims to the chief while claiming that dealing with such cases is the duty of the chief. One respondent explained:

The police do not assist in such cases. They say that solving domestic cases is the chief's duty. The few times they assist they must be bribed.

I sought to triangulate this information with the chief and his response was similar. He stated:

The police do not want to deal with them. They say those are chief's issues. The few that are referred to court are the ones where there are physical injury.

Upon sifting this information, I found it imperative to get the police's response to this and an interview with three officers showed that they were not ready to accept these negative sentiments. One officer denied the claims that police do not treat these cases seriously. Instead he said that the victims themselves are responsible for this, i.e., that it is the victims themselves who do not report domestic violence or withdraw cases soon after making a report. He stated:

Domestic violence is very rampant in Soweto. However the station receives few cases, most cases are dealt with by the chief because most victims prefer to go to him. Most of the ones received at the station are taken to court. The others that are not taken to court are withdrawn by the victims before they are taken to court.

Another officer while reacting to corruption allegations stated:

It is not true that we bribe, instead it is the complainants themselves who withdraw cases. As far as we are concerned, we do our best. The issue of bribe is a misperception.

Even though they admitted that domestic violence is rampant in the area, they were quick to point out that they only receive a few cases as most victims prefer to go to the chief or withdraw the cases soon after reporting, before they are taken to court, or even while the cases are pending in court.

Table C: Statistics of Cases reported at the Soweto Police Station between Jan-15th Dec 2011

Month	Number of cases received	Month	Number of cases received
Jan	-	July	4
Feb	-	August-	2
March	-	September-	3
April	-	October	3
May	-	November	2
June	-	1-15 th December	1
TOTAL 16			

A look at the station indicates the shortcoming of the state's doing in terms of ensuring that it meets the requisite standard for effective service delivery, hence, it cannot live up to its motto. It lacks certain facilities such as gender desk or a Victim Friendly Unit (VFU), to specifically cater for the gender specific cases such as domestic violence cases as is the case in other jurisdictions such as Zimbabwe. Thus, victims who go to make reports about domestic violence incidents have to go to the usual reporting desk where every other case is reported and here they enjoy no privacy.

Figure 8: Photographs of Soweto Police Station



Makadara Law Courts which is the other judicial structure in place is located about 16 kilometres away from the slum. It is a Magistrate's Court which deals with both criminal and civil matters. This distance is a factor which prohibits victims of domestic violence from utilizing the system given their financial incapacity and it is also indicative of a shortcoming on the state's part as it amounts to a denial of access to justice for these victims who may want to seek justice through the official system as provided for under section 48 of the Constitution. The section puts an obligation on the state, in accordance with international human rights standards, to ensure access to justice for all and that if any fee is to be paid, it shall be reasonable. The government can achieve this by having courts within reasonable reach of its citizens and through offering legal aid. Reasonableness in the context of this study means that the court should be located where women can access it without experiencing undue financial strain as is the case in this study.

The women expressed their concern about the cost of legal representation. They stated that seeking the services of a lawyer is costly and they cannot afford to do so given their low economic status. One victim stated:

I have never gone to a lawyer. Lawyers charge a lot of fees to act for you and I cannot afford that amount of money even if I wanted to go to court.

Besides this they also stated that they do not believe that they would get justice from the court due to unnecessary delays and corruption on the part of the judicial staff. One woman said:

Cases take long to be finalized in courts. The court is also very far away. The police are also a headache, they are corrupt and unreliable. A simple case of assault can be turned into a very long case that takes a very long time to be finalized.

The impact of National Legal Aid and Awareness Programme (NALEAP) whose mandate is to offer legal aid to needy Kenyans, and which was officially launched in 2008, is yet to reach the country's entire citizenry. The programme has not been able to provide much legal services to needy Kenyans since its six pilot projects currently only provide bare minimum advisory services as opposed to legal aid. As a result, needy women such as the victims of domestic violence in Soweto are still unable to access legal services.

5.4 Alternative Dispute Resolution Mechanisms (ADRM)

Women are generally regarded as disadvantaged economically, socially, and legally. Yet efforts that are made to improve their position sometimes fall short of their objective or may even adversely affect the position of the women that they were intended to benefit. Well-meaning legislators, development experts, legal researchers, women activists and others who want to have an impact on the position of women often do so from inadequately researched premises (Bentzon 1998:23).

To provide insights into the varied and complex possibilities and limitations that affect women's use or non-use of seemingly beneficial reforms, the law needs to be examined in its socio-economic and socio-cultural context (Bentzon 1998:27).

The study showed that whereas there is an official judicial structure in place, victims of domestic violence within Soweto slum who are mainly women do not utilize it due to a number of factors which inhibit them from accessing the system. These include financial constraints, socio-economic and socio-cultural challenges and lack of faith in the system. These socio-economic and socio-cultural factors include, among other factors, fear of losing economic dependency on their male counterparts, fear of stigmatization and incapacity to access the official justice system due to poverty. Due to these factors the victims seek alternative dispute resolution mechanisms (ADRMS).

Some victims prefer to have their cases adjudicated by their family members while others prefer to go to the area chief.

5.4.1 Financial Constraints and Poverty

Financial constraint is one of the factors that inhibit the women from accessing the official judicial system. Due to heightened poverty, the victims can hardly afford to feed themselves. They would rather, and this is rightly so given their economic context, buy food for their children than spend money on accessing justice. One respondent said:

Going to court requires a lot of money which I cannot afford. I am a housewife and entirely rely on my husband for financial support. We have four children to feed and he is a casual worker.

In terms of distance, the nearest court to Soweto is Makadara Law Courts which is located about 16 kilometres away. In order to get there one requires about Kshs 100¹⁸ each way. This is basically the average amount people earn in a day. Considering that most women depend on their husbands for financial support, going to court becomes unrealistic to them, not to mention the fact that legal representation is also quite expensive. The voices of the women were captured refer to this problem. One woman explained:

However even if we were to seek the assistance of the authorities, we have no sufficient income to do so, what we get on daily basis can hardly feed us. Most people have many children and they struggle to feed them.

5.4.2 Fear of Physical Violence & Loss of Financial Support

A majority of victims interviewed expressed concern about various consequences of reporting the incidents to the authorities. They stated that they feared reporting their husbands to the police because they are likely to face harsh consequences such as more violence, lose of financial support from the men or even separation/divorce. One respondent stated:

¹⁸ Approximately U.S \$ 1.

Going to court means a lot of things; he might be taken to prison and I will bear the consequences. I will also waste time going to court, the children will suffer and his family will blame me.

While another said:

I have never taken him to the police. If I take him to the police he may be locked up and the children and I will go hungry.

One widow who had experienced some of the consequences explained her experience as follows:

I once took him to the police and he was taken to court. He was charged with assault and remanded for one month before his family members bailed him out. This caused even more friction in our family and when he came out I was chased away by his family. We stayed apart for one year before my family members pleaded with him and his family to take me back. At that time he threatened to marry another wife.

Another woman stated:

I used to report him at the police whenever I missed my money and confirmed he took it. He would be picked by the police, put in the cells but would be back after an hour or so and then I would bear the consequence. He would slap me, abuse me and even chase me out of the house for humiliating him.

Yet others stated:

I would not dare go to the police or a woman's organization because if he found out, **I am sure he would kill me**. This man is so violent that whenever he is quarrelling or beating me he goes for his stick which he insists on keeping near our bed.

If I report him to the police we will most likely divorce and I know he will marry another woman.

I sought to interview the men with a view to establishing their view about this issue as I found it necessary to triangulate this very important data. They did not mince their words. Instead they categorically confirmed the women's fears. One man responded as follows:

According to our culture, domestic matters should never come to the open. I cannot take it lightly if my wife took me to court. That would be a pointer towards our separation.

Another respondent stated:

I particularly believe according to our culture that domestic matters are private matters, and one only needs to seek the assistance of the authorities when the matters gets out of hand.

5.4.3 Lack of Faith in the Official System

Lack of faith in the system also contributes to the women's preference for the ADRMS. Some of them explained that the system is corrupt and hence unreliable. One woman expressed herself as follows:

Going to court is a waste of time. You will never get justice.

Because of this lack of trust in the system, some women will not utilize it even if they can afford to. One woman stated:

It has now reached a point where I am fed up with reporting him because even if I do he will always buy his way out of the police.

5.5 Family Members' Interventions

Most victims stated that they prefer seeking the services of family members in cases of domestic violence given its taboo nature and the privacy with which it is associated, as opposed to other options. This is because they felt that it is a private matter which ought to be dealt with privately. Some felt that reporting these incidents amount to airing one's dirty linen in public, something which they considered taboo. One respondent stated:

I am not expected to report the father of my kids and my husband to the authorities.

While another said:

In most cases when we disagree or when he beats me up I inform our relatives (my in-laws and my parents) and we sit as a family.

Although no victim expressly stated this, the study revealed that due to poverty, even seeking justice before the chief is costly and hence unaffordable to women victims. In order to be issued with the chief's summons, a victim requires Kshs 100¹⁹ apart from the treatment fees in case of physical injury. In the context of Soweto where the people make an average of less than a dollar a day, seeking justice in a case of domestic violence is the least of a woman's priorities. In this case the most viable and popular option is to seek the intervention of family members. While explaining the procedure that a victim is expected to follow a health worker stated:

When the victims come here for treatment we issue them with the chief's letter of summons at a fee (Kshs 100). They are required to take it to the chief for stamping and signature. Thereafter they are required to take it to perpetrator to summon him to the chief for purposes of deliberating the case.

Most of the victims interviewed confirmed that they have preferred their family members once or twice due to various reasons. Their opinions were as follows:

I have reported him to his brother who has often solved our disputes.

I have never thought of reporting his violence to anyone other than his mother because our culture does not allow.

In most cases when we disagree or when he beats me up I inform our relatives (my in-laws and my parents) and we sit as a family.

I never reported him to the police or to the chief though. Instead I called my relatives from Uganda who came and talked to him on a number of occasions but in vain.

¹⁹ Approximately US\$1.

Although the women did not expressly say so, the findings also show that some seek the assistance of church officials as was shown by the evidence of one church official who stated:

As Christians we teach them how to stay peacefully and communicate effectively with their husbands while encourage them to be committed to the word of God. We do not advocate for separation of couples or going to the authorities since we believe in a family built in the words of God.

5.6 The Chief as Mediator

Unlike other jurisdictions like Zimbabwe where the position of chieftainship follows a particular lineage²⁰, in Kenya a chief is a civil servant who is a government appointee under the Department of Public Administration within the Ministry of State for Provincial Administration and Internal Security. Any interested person male or female can apply to the government to be appointed as such. The appointment is done by the Kenya Public Service Commission. The requirements for appointment are that: one needs to have secondary school qualification, ought to have lived in the area for which he/she is applying to be a chief for a period of 14 years and must be of good conduct. This is because of the nature of one of the chief's duties, i.e., that of maintaining order in his jurisdiction. This duty requires one to be well acquainted with his area of interest prior to his appointment and also to be a law abiding citizen. This is the main duty of the chief as provided under Section 6 of the Chief's Authority Act²¹. This is the Act which governs chiefs in their duties, including exercising the power to employ persons to assist him carry out his duties under section 7 thereof²².

In the case of Soweto the chief is a 36 year male. He had held the position for slightly over one year at the time of this study. Prior to his appointment he had lived in a neighbouring estate to Soweto for

²⁰ Zimbabwe still maintains the traditional system where one inherits the position of a chief from his father. Not anyone can become a chief. Instead to become one, he has to belong to the royal family.

²¹ Cap 128 Laws of Kenya.

²² Section 7 provides: (1) A chief or assistant chief may employ any person subject to his jurisdiction to assist him in carrying out the duties imposed upon him by this act or otherwise by law, and any person so employed may carry out and give effect to any lawful order given by a chief or assistant chief; (2) A person so employed under this section shall (a) be well known as a village headperson (b) work under the direction and authority of the chief through the assistant chief; (3) The remuneration and terms of service of a person employed under this section shall be from public funds as determined by the Minister in consultation with the Treasury.

a period of more than 14 years. Apart from performing his other public duties as relates to security in the area, he also presides over cases of domestic violence either alone or with the assistance of village elders.

Figure 9: A photograph of the chief and my field supervisor during her visit to Soweto slum.



The findings show that most women prefer to report incidents of domestic violence to the chief in cases where they do not resort to family members.

One respondent stated:

If he persists with bad conduct like physical assault I can report him to the chief and the matter settled there by the village elders in the presence of both families.

An interview with the chief showed that he receives at least four cases a week. In his own words he stated:

This office deals with such cases. No day passes by without a report on domestic violence. I receive cases every day. Usually I receive a case almost on a daily basis. In a week I handle about four cases in a week. Aside from

other cases such those of rent disputes I handle these cases almost on daily basis.

Apart from these domestic violence cases, he also presides over other cases such as land dispute, rent disputes, issues of trespass, petty theft cases, and also issues birth certificates. However, while observing some proceedings of these domestic violence cases, I noted that the Act does not give him any express authority to preside over these cases. Instead, I observed in the course of the proceedings, that he seems to employ only his own principles of humanity to decide them. I noted that he merely bases this authority from the provisions of section 6 which gives him the mandate to maintain order within his jurisdiction. Given that the Act does not expressly list the cases that a chief can preside over, but instead only gives him the mandate to maintain order within his jurisdiction, it can be argued that as a person charged with this responsibility, he finds these cases fitting well within this mandate, especially given that violence, whether in the private sphere or in the public sphere, is often associated with, or will always most likely result in some kind of disorder. Hence, in a way it can be argued that, in a way, by having the institution of a chief in Soweto, the government is in compliance with what is expected of it in terms of having in place structures to deal with domestic violence.

5.7 Unreported Cases

The findings further show that due to a number of reasons some victims do not report incidents of domestic violence at all. One victim admitted:

I have never reported him anywhere because he is my husband and the father of our children. Can you imagine what could happen if I reported him to the police for instance? People will start talking about us. I just try to talk to him. I also pray a lot. I believe God will one day bring peace to our house.

While another respondent stated:

These domestic cases, if you say you want report each incident, you will waste your time and money because he will be let off and always repeat it. Ultimately you will be a laughing stock among your friends and neighbours for failing to put your house in order. Apart from that, reporting may even lead to the dissolution of your marriage.

The study also showed that the women's decision on what option to take also depends on the level of the injury sustained. Some women opt not to report the incidents at all if the injuries are minor. The chief explained:

The level of the violence determines where the victims seek redress just like their level of enlightenment does.

He further stated that from his experience dealing with these cases he has noted that some element of culture as well as ignorance also contributes to this. Some women do not report incidents as they do not know that it is an offence. He stated:

Some women believe that they must be beaten by their husbands while some do not even know that it is an offence.

These findings confirm the recent report on the prevalence of Gender-based Domestic violence in Kenya. The report shows that only 8.7% report abuse to the police, 14% separate from their partners while almost 30% persevere in their relationships (Fida Kenya 2008).

As I had hypothesized, the findings show that victims of domestic violence prefer using ADRMs such as the family members' interventions as opposed to the official system. Out of the 30 women interviewed, 15 as case studies and 15 in general, 8 had resorted to their family members, 4 had reported to the police while 7 had reported their cases to the chief. The others said they would prefer to report to their family members but that if the violence persisted they would consider going to the authorities. This is an indication that in as much as the formal system is in place, there are unaddressed factors precluding them from utilizing it.

All these point to the fact that violence in slums, especially domestic violence, is still not treated with the seriousness it deserves by certain persons such as the police and even the women themselves. Therefore it is treated less seriously than it ought to be partly as a result of women's lack of knowledge that it is a serious crime.

5.8 Emerging Themes and Analysis

In the course of the study, the following issues which had not been anticipated, but which need to be explored further, emerged.

It emerged that the majority of children in the Children's homes within the Soweto slum are there as a result of domestic violence. It was not possible in this study to explore this aspect further as doing so would have given this study a different dimension.

The government's poor prioritization of issues of immediate concern to the people such as poverty reduction initiatives especially in low-income areas such as Soweto also emerged as an issue that needs to be explored further. In the light of the many studies that have shown that low-income dwellers are the poorest population, it is imperative to establish the reason for the government's continued poor prioritization of measures involving them.

CHAPTER 6

6.0 CONCLUSION AND RECOMMENDATIONS

It is a fact that my country Kenya is very big. But is it too big for basic rights and justice to extend to all its citizens?

6.1 Conclusion

Despite the government's commitments to relevant international instruments, eliminating domestic violence is a matter of national responsibility hence it must fulfil this responsibility especially because laudable international aims alone cannot themselves translate into effective measures.

It was not possible in this study to cover all the examples of the state's action or inaction as this was beyond the scope of this study. However a few specific examples are highlighted to illustrate where the state's action is lacking in reducing the people's vulnerability to domestic violence especially in the context of Soweto.

Poverty came out as the overarching factor underlying the prevalence of domestic violence in Soweto. Among other contributing factors are HIV, infidelity and lack of trust in the formal justice system. The victims who are mainly women not only suffer physical violence but also verbal and economic abuse. Due to heightened poverty and the high level of illiteracy, the women are domesticated hence vulnerable to domestic violence. Their roles are mostly that of wifing and mothering.

As part of the solution to the problem, I recommend in this dissertation that the government should urgently take immediate measures to address domestic violence within Soweto Slum. This includes addressing the poverty situation as a major contributory factor to the violence.

The government should prioritize the issues of immediate concern to the people instead of prioritizing the issues of long term goals. That is, as was also suggested by the women, it should prioritize initiatives that are immediately aimed at improving the economic and social lives of the people of Soweto especially women, i.e., put in place economic empowerment initiatives while at the same

time put in place the long term measures such as improvement of infrastructure (e.g., sanitation, housing, roads) in order to reduce women's vulnerability to violence.

The government's prioritization of developing infrastructure which is currently underway is a classic example of poor prioritization. While it is no doubt a laudable long term economically uplifting initiative, it is not immediately beneficial to the people of Soweto particularly its women. This is because until the women's economic status improves they will not derive any direct benefit from spectacular infrastructural development. In this regard the government and the development experts have failed to identify the immediate needs of the people.

Apart from this, women in Soweto are yet to benefit from the programmes which would improve their economic status hence reduce their vulnerability to domestic violence such as the Women Enterprise and Development Fund, and the Social Protection Fund which the government has put in place.

All these point to the fact that the state has not lived up to its commitment and obligation towards ensuring women's realization of their social and economic rights such as the right to food, healthcare, adequate housing among other rights guaranteed in the Constitution and as well as in the regional and international human rights instruments²³.

6.2 Recommendations

In order to improve the situation, the following recommendations are given, some of which were suggested by the women.

²³ Article 1 of the UDHR provides that everyone is entitled to enjoy all the rights enshrined in the Declaration. These rights encompass all the rights provided under the ICPR and the ICESCR such as the right to food, housing, education and social security among others. See also Article 2 & 26 of the ICCPR, and Article 3 of the ICESCR.

6.2.1 Implementation Interventions

The Government needs to put in place immediate/short term and long term measures aimed at improving the living conditions of the people. The short term measures should include: the economic empowerment of the women and an effort to deconstruct the women's attitudes i.e. conscious raising (or, getting the women to understand that they do not have to depend on the men financially in order to live) and improving literacy among women by giving them access to adult education.

The long term measures on the other hand should include things like improving infrastructure. The government should establish a legislative framework for the Women Enterprise Fund. It should come up with a policy on the implementation and management of The Women Enterprise Fund so as to ensure that the fund is shared equitably among all the most deserving women in the society. It should speed up and equitably roll out the Women's Enterprise and Development Fund so as to reach all the needy women such as those living in Soweto.

The government should put in place adult education programmes within the slum so as to ensure the women who do not have the basic knowledge they require to claim and realize their rights can get education. Awareness programmes should also be taken both by the government and NGOs such as women's organizations to empower women on the skill they require to utilize the micro finances.

The Government should also speed up the implementation of the Cash Transfer Programme in order to ensure it is rolled out in Soweto in order that it benefits the needy women. Even though the monthly stipend is minimal, it can improve their economic status to some extent hence reduce their economic dependency on their husbands to some extent, however minimal.

6.2.2 Social Interventions

More NGO organizations dealing with women's issues such as empowerment, advocacy and HIV should be established in the area so as to address these various concerns of the women. Joint effort should be taken by both these organizations and the government to offer legal awareness programmes as well as legal aid services.

It could also be useful if more donor organizations offer to fund gender projects within the area while the existing one should increase its budgetary allocation to cater for programmes that are aimed at fighting domestic violence through gender sensitization of the various actors in the system such as the police.

The government should also consider borrowing some ideas from other jurisdictions like Zimbabwe as they relates to measures which can be employed to address gender violence in the country.

Bibliography

Amnesty International, (2010) *Insecurity and Indignity: Women's Experiences in the Slums of Nairobi, Kenya*, London.

Amnesty International (2010) *Kenya: Briefing to the Committee on the Elimination of All forms of Discrimination Against Women 48th Session*, 2011 Amnesty International Publications, London

Amnesty International, (2009) *The Unseen Majority: Nairobi's Two Million Slum-Dwellers*. Amnesty International Publications, London

Amnesty international, (2004) *Making Rights a Reality: the Duty of States to Address Violence against Women*, (AI Index: ACT 77/049/2004).

Amstrong, A. K. (1998) *Culture and Choice: Lessons from Survivors of Gender Violence in Zimbabwe*. Violence Against Women in Zimbabwe Research Project, Harare.

Banda, F. (2005), *Women, Law and Human Rights: An African Perspective*. Hart Publishing, Oxford and Portland, Oregon.

Banda, F. (1995) "The Provision for Maintenance for Widows and Children in Zimbabwe: Discussing the Dilemma of Divorced Women under Customary Law in Zimbabwe", 2 *CARDOZO Women's L. J* 71-81

Baraza, N (2009) *Family Law Reforms in Kenya: An Overview*. A presentation at Heinrich Boll Foundation's Gender Forum in Nairobi. April 30. Available online at: http://www.hbfha.com/downloads/Nancy_Baraza_-_Family_Law_Reforms_in_Kenya.pdf Accessed on 2012 March, 15

Bograd, M (1999) "Strengthening Domestic Violence: Intersections of Race, Class, Sexual Orientation & Gender" in *Journal of Marital and Family Therapy*, 25 (1999) 3 275-289

Bowman, C.G. (2003) "Theories of Domestic Violence in the African Context" in *American University Journal of Gender, Social Policy and the Law*, 1-1-2003 pp 847

Coomaraswamy, R. (1994), Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences, in Accordance with Commission on Human Rights Resolution 1994/45', pp4-9. Available online at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/75ccfd797b0712d08025670b005c9a7d?OpenDocument>. Accessed on 2012, March, 12

Craven, Z., (2003) *Human Rights and Domestic Violence*, Australian Domestic and Family Clearinghouse Topic Paper Available online at http://www.adfvc.unsw.edu.au/PDF%20files/human_rights.pdf Accessed on 2012, March, 12

Dafe, F., (2009) *No business like slum business? The Political Economy of the Continued Existence of Slums: A case study of Nairobi*. Working Paper No 09-98. Development Studies Institute, London School of Economics and Political Science.

Fida Kenya, (2008) Gender-based Domestic Violence in Kenya: A Study of the Coast, Nairobi, Nyanza and Western Provinces in Kenya pg 26, Nairobi

Fida Kenya *CEDAW Shadow Report: Kenya 48th Session 17th January-4 February 2011*, Nairobi

Fried, S. T., (2003) "Violence Against Women" in *Health and Human Rights: An international Journal* Vol. 6 No 2 PP 89-111

Gnanadason, A., Kanyoro, M. and McSpadden (1996), *Women, Violence and Non Violent Change* Geneva, World Council of Churches

Bentzon, A.W, et al., (1998) Pursuing Grounded Theory in Law: South-North Experiences in Developing Women's Law Harare, Mond Books; Oslo- Tano Aschehoug

Global Development International (2011): *Action against Gender-based Violence*, Accessed on 2012, March, 15 Now unavailable online at;
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSDNET/0,,contentMDK:22758747~menuPK:64885113~pagePK:7278667~piPK:64911824~theSitePK:5929282,00.html>

The Rio Declaration (2009) Global Symposium on Engaging Men and Boys on Achieving Equality, Rio de Janeiro March 29-April 3 2009, Men Engage Men and boys for gender quality. Available online at Accessed on

Hellum, A. et al., eds. (2007). *Human rights, Plural Legalities and Gendered Realities: Paths are Made by Walking*. Harare, SEARCWL with Weaver Press. (North-South legal perspectives series, 4)
Holland, J. et. al., (2003) "When Bodies Come Together: Power, Control and Desire" in Weeks, et al., eds. *Sexualities and Society: A Reader*. Cambridge Polity Press: pp 84-94

Kenya National Bureau of Statistics (KNBS), (2010). *Kenya 2009 Population and Housing Census*.

Kothari, M (2004) Adequate housing as a component of the right to an adequate standard of living: Addendum: Mission to Kenya (2004, 2, 9-22), UN Doc.E/CN.4/2005/48/Add.2. the Special Rapporteur.

Machera, M. "Opening a Can of Worms: A Debate on Female Sexuality in the Lecture Theatre" in Arnfred, S., ed. *Rethinking Sexualities*, Uppsala The Nordic Africa Institute

Musembi, C.N., Kameri-Mbote, P., and Kamau, W., (2010) *Kenya's Constitution of 2010: Enhanced Prospects for Gender Equality?* Undertaken on behalf of UNIFEM, (Part of UN-Women).

Mutisya, E. and Yarime, M. (2011) "Understanding the Grassroots Dynamics of Slums in Nairobi: The Dilemma of Kibera informal Settlement" in *International Transaction Journal of Engineering, & Applied Sciences & Technology*, Vol. 2 pp 97-213 Available at: <http://tuengr.com/vo2/197-213.pdf> Accessed on 2012, April, 5

Ofei-Oboagye, E. (2000) Promoting the Participation of Women in Local Government: The Case of Ghana, Institute of Local Government, Legon

Okoth, O. and Olang', S. (2010) Balaa Mitaani: The Challenge of Mending Ethnic Relations in the Nairobi Slums. Nairobi. Friedrich Ebert Stiftung (FES)

- Pamoja Trust (2009), *An Inventory of the Slums in Nairobi*, Matrix Consultants, 1998.
- Phinney, S., and Hovre S. de (2003) “Integrating Human Rights and Public Health to Prevent Interpersonal Violence” in *Health and Human Rights: An International Journal* Vol 6 No 2
- Saur, M., SL. Nda, S. H. (2005), Nkhanza, Listening to Peoples Voices: A study of gender Violence Nkhanza in three Districts in Malawi, Text No 21, Kachere Series. Zomba
- Society for International Development (SID), (2010) Kenya’s Vision 2030: An Audit From an Income and Gender Inequalities Perspective, Nairobi
- Syagga,P., Mittullah, W. and Karirah-Gitau S. (2002). *Nairobi Situation Analysis Supplementary Study: A Rapid Economic Appraisal of Rents in Slums and informal settlements*. Prepared for the Government of Kenya and UN-HABITAT, Nairobi: Collaborative Nairobi Slum Upgrading Initiative, Government of Kenya and United Nations Centre for Human Settlements. (Habitat)
- Syagga,P., Mittullah, W. and Karirah-Gitau, S. (2001). *Nairobi Situation Analysis Consultative Report*. Nairobi. Collaborative Nairobi Slum Upgrading Initiative, Government of Kenya and United Nations Centre for Human Settlements. (Habitat)
- Tamale, S., (2011) “Paradoxes of sex work and sexuality in modern-day Uganda” in Tamale, S. eds. *African Sexualities: A Reader*, Fahamu Books, London & Pambazuka Press, Capetown
- Tamale, S., (1993), “Law Reform and Women’s Rights in Uganda” in *East African Journal on Peace & Human Rights* Vol. 1 No 2
- The Centre on Housing Rights and Evictions, (2008). *Women, Slums and Urbanisation: Examining the Causes and Consequences*, Geneva,
- Tibatemwa–Ekirikubinza, L. (1999) *Women’s Violent Crimes in Uganda: More sinned against than sinning*. Fountain Publishers, Kampala
- Tibatemwa–Ekirikubinza, L. (2007) *Men’s Violent Crime Against Wives in Uganda: A Reaffirmation of Masculinity?* Faculty of Law, Makerere University, Kampala
- Tsanga, A.S. (2004) *Taking Law to the people: Gender, Law Reform and Community Legal Education in Zimbabwe* Harare, Weaver Press and Women’s Law Centre, University of Zimbabwe.
- Tsanga, A. S. and Stewart J., eds. (2011) *Women & Law: Innovative Approaches to Teaching, Research and Analysis* Harare, Weaver Press and SEARCWL, University of Zimbabwe
- Umande Trust Kibera (2007) *The Right to Water and Sanitation in Kibera in Nairobi, Kenya*
- United Nations (2010) CEDAW Committee on the Elimination of All Forms of Discrimination Against Women 48th Session, 2011
- UN-Habitat (2003) *The Challenges of Slums: Global Report on Human Settlements*. Nairobi
- United Nations, (2006) *The Millennium Development Goals Report*. United Nations: New York.

U.N HABITAT (2008) UN-HABITAT and the Kenya Slum Upgrading Programme Strategic Document. Nairobi

United Nations, Department of Economic and Social Affairs, (2008): *World Economic and Social Survey Overcoming Economic Insecurity*.

Yllo, K. et al., eds. (1988) *Feminist Perspectives on Wife Abuse*. Sage Publications. Newbury Park, California pp 318. Available online at: <http://www.amazon.com/Feminist-Perspectives-Abuse-Focus-Editions/dp/0803930534>. Accessed on 2012, March, 15

Yount, K. M (2005) “Resources, Family Organization and Domestic Violence Against Married Women in Minya, Egypt” in *Journal of Marriage and Family* 67 (2005) 579-596

Zinanga, E. (1996) “Sexuality and the Heterosexual Form: The case of Zimbabwe”, *SAFERE* Vol 2 No 2 (1:-6)