

THE VICTIM OF DOMESTIC VIOLENCE AND THE CRIMINAL
JUSTICE SYSTEM IN KENYA: A CASE FOR RESTORATIVE
JUSTICE?

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF SCIENCE OF LAW

By

Elizabeth Wanjama Muli

May 2002

ABSTRACT

Violence against women is an obstacle to the achievement of the objectives of equality, development and peace under international human rights law. Studies both in Kenya and US show the effects of spousal abuse on the woman, the family unit, the community and the economic and social development of the state. The specific phenomena of spousal abuse will be examined with the aim of exploring how the narratives of the individual victims of spousal abuse in Kenya can inform the global debate on the suitability of alternative dispute resolution in addressing domestic violence as a human rights violation.

By examining the social reality of the domestic violence victim in Kenya, the paper will try to explain the role of the social and cultural context of the victim in determining the efficacy of a justice system to deliver its promise of ensuring access to justice for those within its jurisdiction. The data from a survey conducted in Kenya will be analyzed to determine the impact of gender on victim's decision-making and experiences with abuse. A comparative analysis between the experiences of victims in Kenya and the US will be undertaken to determine the role of gender on spousal abuse victims.

The paper argues that the justice system should be accessible to all individuals irrespective of their social and cultural background. This is a universal interest that all States share. Far from destroying universal efforts to address violence against women, the thesis will further the goal of feminism by urging for the inclusion of diverse perspectives on human rights violations in the development of theories and strategies that seek to address domestic violence.

Table of Contents

Abstract	i
Acknowledgements	ii
Introduction	1
I. Background to Domestic Violence and the Legal framework in Kenya	10
The Pressure for Change	12
Development of Anti-Domestic Violence Law and Institutional Reforms	14
II. The Setting and the Social Reality of Victims of Abuse in Kenya	17
A. The Research	17
1. Methodology	
2. Data Analysis	
3. Operationalizing the Definition of Domestic Violence	
4. The Findings	
B. A Cost and Benefit Analysis: Factors Affecting Victims' Choices	26
1. Economic Factors	28
1.1 Monetary Costs of Using the Courts	28
1.2 Financial Dependency	30
2. Psychological Factors	34
2.1 Stigmatization	35
2.2 Privacy and Confidentiality	37
2.3 Fear of Reprisals	39
2.4 Maintenance of Family Relationships	41
III. Gender Hierarchy and Victims Responses to Spousal Abuse	46
A. Gender Hierarchy and the Nature of Spousal Abuse	47
1. Social and Cultural Context of Spousal Abuse Victims	49
2. Impact of internalization of Gendered Stereotypes	51
3. The Impact of Gender Hierarchy in the Family	54

B.	Gender Inequality in the Formal Justice System	55
	1. The Police Response to Domestic Violence	56
	2. Gender Inequality in Court Proceedings	60
C.	Gender Bias in Informal dispute Processes	63
	1. The “Ethic of Care” and Battered Women’s Participation in Informal Dispute Resolution	64
	2. Power Imbalances and Gender in Mediation	65
IV.	What Process is Appropriate?	72
A.	Meeting Expectations	73
	1. Police Insensitivity and Corruption as Obstacles to Accessing Justice for Victims	77
	2. Victims Lack of Technical Resources within the Police Department and Impact on Victims	78
	3. Process Procedures	79
B.	Pros and Cons of Mediation and Informal Dispute Resolution Processes	82
V.	A Model for Change	89
A.	A Restorative Justice Model	90
	1. Rationale	90
	2. Application of Model	91
B.	Components of the Process	94
	1. Third Party Neutral	94
	2. The Procedure	96
	3. Privacy and Confidentiality	98
	4. Costs of Process	99
	5. Communication and Participation	99
C.	Reforms outside the Community	101
	1. Battered Women Shelters	102
	2. Public Education	102
	3. Legislation	103
	Conclusion	109
	Appendices	112
	A. Summary of Interviews Fact Sheets.	
	B. Qualitative Interview Guide Questions.	
	C. Sample Interview Introduction Letter.	
	D. Analysis Tables.	

Bibliography