

**BARRIERS WOMEN SURVIVORS OF GENDER-BASED VIOLENCE EXPERIENCE  
IN SEEKING LEGAL SERVICES IN MAKUENI COUNTY, KENYA.**

**LENNAH ASAMI KASYOKA**

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## DECLARATION

This research project is my original work and has not been presented for the award of a degree in any other university.

Signature\_\_\_\_\_

Date\_\_\_\_\_

Lennah Asami Kasyoka

Reg. No. N69/77358/2015)

This project paper has been submitted for examination with my approval as the university supervisor.

Signature\_\_\_\_\_

Date\_\_\_\_\_

Dr. Tom Ondicho

## **DEDICATION**

To my late dad Micah Olando Amang'ole who paid my school fees in the days when girl child education was not given value and to my mom Ruth Ateko whose faith and hope in me I cherish, my dear husband Kitts Kasyoka, whose moral support always took me to the next level, my sons Zoe and Raymond for whom this remains a considered challenge and all the survivors of Gender-Based Violence.

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## ABSTRACT

This study sought to investigate and highlight the barriers women survivors of gender-based violence experience when seeking legal services in Makueni County. The study also sought to explore the various forms of gender-based violence experienced by women. Specifically, the study sought to find out various legal interventions women survivors seek and the barriers they experience. This study adopted a qualitative research design featuring In-depth Interviews, Case Narratives and Key Informant Interviews as the main methods of data collection and information/data from secondary sources.

Primary data was collected from 20 women survivors of gender-based violence aged 18 years and above whose abusers were intimate partners. However, a few women survivors whose abusers were not their intimate partners were also included. The study was guided by the social learning theory. The data collected was analysed using thematic content analysis in line with specific study objectives. The study findings are presented in the form of narratives with verbatim quotes to magnify the informants' voices.

The study revealed that the most common form of violence meted on women by their intimate partners were physical violence, sexual violence, marital violence, economic violence and psychological/emotional violence. The study further revealed that survivors of gender-based violence sought help from a wide range of agencies within the legal set up including village elders, clan elders, sub-chief, chief, police and court. However, only a few cases were filed in court because of barriers which included ignorance of legal process and lack of referral systems of cases as some women reported being taken back and forth - like the police referring them to clan elders - when clan elders, who were unable to resolve the cases refer them back to the police. Other barriers hindering women from accessing legal services included economic dependency, poverty and illiteracy, corruption, poor referral systems for gender-based violence, culture and its socialization, law enforcement on institutional barriers, lack of awareness on laws and legal procedures/process, fear of consequences from family members and legal barriers.

Gender-based violence is a prevalent and a serious problem affecting women with long lasting consequences such as death, physical disabilities, emotional and psychological disorders like heart problems that include high blood pressure. There is need to fight GBV by all costs. We need to religiously protect women from violence. We have to start with the family and community so as to offer support to the women victims and help them to seek legal services. We have to unite the family, community, clan elders, chiefs, police, religion, county government, national government and courts of law in order to fight this glaring vice. There is an urgent need for the government to sensitize its citizens on the laws and legislation on GBV. Government needs to allocate adequate resources to train the police on human rights, prevention, protection from and response to gender-based violence.

## **LIST OF ABBREVIATIONS AND ACRONYMS**

ACORD	Agency for Co-operation and Research Development
AI	Amnesty International
AIDS	Acquired Immunodeficiency Syndrome
BPFA	Beijing Platform for Action
CEDAW	Convention on the Elimination of Discrimination Against Women
CRECO	Constitution and Rights Education Consortium
COVAW	Coalition of Violence against Women
CS	Commonwealth Secretariat
FIDA	Federation of Women Lawyers of Kenya
FGM	Female Genital Mutilation
GVRC	Gender Violence Recovery Centre
GOK	Government of Kenya
GPC	Global Protection Cluster
HIV	Human Immunodeficiency Virus
HPN	Humanitarian Practice Network
ICCPR	International Convention on Civil and Political Rights
ICJ	International Commission of Jurists Kenya Chapter
IMLU	Independent Medical Legal Unit
IEA	Institute of Economic Affairs
IRC	International Rescue Committee
KDHS	Kenya Demographic and Health Survey
KNBS	Kenya National Bureau of Statistics
KPS	Kenya Police Service
NACOSTI	National Commission for Science, Technology and Innovation
SGBV	Sexual and Gender Based Violence
UN	United Nations
UNICEF	United Nations Children’s Education Fund
UNDHR	United Nations Universal Declaration on Human Rights

UNFPA	United Nation Population Fund
UNW	United Nations Women
WHO	World Health Organization

## **1.0 BACKGROUND TO THE STUDY**

### **1.1 Introduction**

Gender Based Violence (GBV) is a serious and widespread global problem that affects the lives of millions of men, children, and women (UN, 2000; WHO, 2013). It is estimated that more than 1.3 million men, women and children aged between 15-44 years die each year as a result of GBV (UN, 2016; WHO, 2014 & 2016). GBV is defined as any act of violence against women that results or is likely to result in physical, sexual or psychological harm or suffering to women (UN 1993). Used narrowly GBV covers incidents of physical beating such as punching, stabbing, slapping, throwing acid and setting on fire and choking that may result in injuries ranging from minor bruises to killing (UNFPA, 2016 ; WHO, 2013). Used broadly also consists of repeated episodes of verbal abuse, harassment, confinement, threats, coercion or arbitrary deprivation of liberties and denial of freedoms (Humanitarian Practice Network 2014; UNFPA, 2013). Although the manifestations and forms of GBV experienced vary from place to place, there is no doubt that women are over-represented among the victims of GBV perpetrated throughout history, have been subjected to physical, psychological and sexual abuse by the men in their lives whether brothers, boyfriends or husbands within the family and home settings (UNICEF, 2000; Ondicho, 2000). Normally, GBV starts as minor attacks and escalates both in intensity and frequency with time.

Gender-Based Violence is not by any chance a new phenomenon in Kenya but an old problem that has been aggravated by modern conditions. The problem is so rampant that it is often viewed as a normal part of a woman's life especially in marriage (KNBS and ICF Macro, 2010). Despite being a widespread problem, relatively little is known about violence against women by men, not only because cases go unreported or unacknowledged by the law enforcement agencies but also because it is accepted as man's fair means of disciplining (his wife/wives) of women generally. It is very difficult to estimate the actual incidence of GBV in domestic settings because it's a hidden and invisible problem (Commonwealth Secretariat, 1992; UN Women, 2015). Most abused women rarely tell anyone about their victimizations and most women /families often deny the existence of the problem out of the fear that tacit acknowledgment will jeopardize the integrity of the family

(MRC, 2013). In most Kenyan societies GBV is often tolerated as part of normal behavior and is justified in the name of traditional culture (Maurice, 2013). As a consequence, the violence goes on largely unrecognized, unreported, and unpunished, and therefore, continues unabated (Terry & Hoare, 2007).

Gender-Based Violence in Kenya is a criminal offense and there are several pieces of legislations that deal with the vice. These include the Sexual Offences Act; Domestic Violence and Protection Act, the Marriage Act, Penal Code, Matrimonial Property Act and Anti-FGM Act to protect women against all forms of GBV perpetrated by men on women. The Constitution of Kenya in chapter four, the Bill of Rights, provides rights and freedoms to be enjoyed by women and avoid any form of discrimination against women in Kenya. All these laws are meant to ensure women enjoy their dignity and integrity in the society and keep them safe from any form of violence. Despite the existence of these laws women still continue to suffer from GBV. Some scholars such as Ondicho, (2000) have argued that there is a difference between law in theory and law in practice. The existence of a law does not mean that it is being applied. The government is obliged to sensitize its citizens on these laws and ensure there is a budget for their enforcement. All the institutions of law enforcement must be trained and equipped on how to prevent, protect and respond to GBV for proper implementation of the laws.

Several civil society organizations in the country have not only spearheaded awareness and advocacy campaigns against GBV but have also been helping survivors to seek legal redress by offering legal aid for free. For example, the Kenya Federation of Women Lawyers (FIDA) reports that in the year 2015 alone it received 3,181 new cases of GBV and filed 153 cases in court for legal redress. Out of these cases, 53 were successfully litigated and concluded through court process (FIDA, 2016). Given that out of 3,181 cases reported to FIDA only 153 ended in court implies that there are serious barriers that women experience in their quest for justice. It is worth noting here that most incidents of GBV that are reported to the police and taken to court by the survivors of GBV are often horrific in one way or another. This study therefore seeks to examine the barriers and experiences of women survivors of GBV when seeking legal redress in Makueni County of Kenya.

## **1.2 Problem statement**

A study by Kenya Demographic Health Survey (KDHS, 2014) shows an increase in cases of violence perpetrated on women in the age brackets 15-49 by men, (National Crime Research Centre NCRC, 2014). For example studies by Ondicho (1993), Olungah (2006), indicate that Kenya recorded an increase in the number of criminal cases, on bodily harm, inflicted on women by men. Gender Violence Recovery Centre at Nairobi Women's Hospital (2012) recorded 2,532 cases of gender-based violence, the number of which shows an increase in violence against women. In addition, data obtained from the Kenya Police Service records in the year 2011 indicates that 1,072 cases of domestic violence against women were reported within one year alone (KPS, 2011). FIDA Kenya, 2015 overall report shows that since its inception in 1985 it has handled 300,000 cases of women survivors of gender-based violence seeking redress of which 255,000 cases were successfully litigated in courts of law all over Kenya and that at least 10,000 new cases per year are received. The overall rate of cases litigated and completed was rated at 85% (FIDA, 2015). These numbers do not translate to cases reported in the courts in order to prosecute the offenders, which would otherwise protect the rights of the women survivors. These studies confirm that GBV against women is a prevalent problem in Kenya by Ngugi (2008); Muyanga (2011) Musau et al (2012); Ondicho (2013); Syombua (2014); Ondicho (2018).

Some of the gender-based violence cases that were highly publicized in the Kenyan media include that of Judith Mwendu from Makueni County, whose hands and one leg were chopped off with a machete by her husband after a domestic quarrel in December 2015 (Ondicho, 2018), another one was Fatuma from Wajir County where a woman was stabbed with a knife by her husband, which got stuck in her cheek bone (Kamau, 2016), Jackline Mwendu from Machakos County, whose limbs were chopped off by her husband in a domestic quarrel for not bearing children in their marriage of seven years (Kilonzo, 2016) and the most current one is Nzomo whose video circulated widely of Nzomo from Makueni County caught beating his wife Winfred Mwendu in public. These incidents are a tip of the iceberg as there are many more incidents that never catch public attention because GBV often occurs behind closed doors and in secret places. Women out of fear, loyalty, feelings of embarrassment and self-blame, often do not speak out and rarely tell anyone or seek legal redress. There is therefore an urgent need to understand factors that hinder

women from seeking legal services (Population Council, 2010). However, to address GBV there is need to research in order to identify the gap and expose the hidden barriers, to cater for women in Makueni County who are not exposed to legal rights awareness and suggest strategies to stop GBV and possible support.

There is relatively little empirical research that has been undertaken in Makueni Courts, in Kenya to examine the barriers that survivors of GBV experience in seeking legal interventions. There is a relative paucity of research literature and knowledge about the barriers women face in Kenya generally and in Makueni in particular when they seek legal redress. This study is designed to find out more about the nature and extent of violence against women by their male partners and the barriers survivors experience when seeking legal interventions. This study specifically answers the following three research questions:-

### **1.3 Research questions**

- 1) What are the most common types of GBV experienced by women in Makueni County?
- 2) Do women survivors of GBV seek legal interventions in Makueni County?
- 3) What barriers do women survivors of GBV experience when seeking legal services in Makueni County?

### **1.4 Objectives of the study**

#### **1.4.1 Overall objective**

The overall objective of this study is to investigate and highlight the barriers that women survivors of gender-based violence experience when seeking legal redress in Makueni County.

#### **1.4.2 Specific objectives**

- 1) To explore the various types of GBV experienced by women in Makueni County.
- 2) To find out the whether women survivors of GBV seek legal redress in Makueni County.
- 3) To establish the barriers that women survivors of GBV experience in seeking legal redress in Makueni County.



## **1.5 Justification of the study**

Gender-based violence against women has been identified as a human rights violation and an obstacle to the achievement of gender equality and development, as set out during the United Nations Women's Conference in Beijing - China. To end GBV against women, Kenya has ratified the Declaration on Elimination of All Forms of Violence against Women and enacted laws in order to protect, prevent and punish the perpetrators of violence against women. Despite enacting laws to deal with GBV the problem continues unabated and in the long-run might hinder Kenya from achieving Sustainable Development Goals (SDG's) (UN, 2015). A lot of effort and money is spent on taking care of GBV survivors' families which also places a burden on the public hospitals which treat and care for victims of GBV as well as victimized women suffer from a range of health and psychological complications which render them unable to perform their roles in society. GBV is an obstacle to development and the advancement of women towards equal participation in society like, in agriculture, women whose hands and legs are cut off cannot work in the farms. Violence or fear of violence often limits women's contribution to economic development. Women will achieve true equality of participation if they fight the stereotypes that hold them back. Women need to enhance their capacity to contribute to development. This will in turn benefit the whole country. Addressing GBV could be removing the obstacles to gender equality and sustainable development (Boserup, 1970).

The findings of this study will therefore help the national and county governments as well as other stakeholders to come up with strategies to fight GBV bearing in mind the barriers that hinder women from seeking legal services in Makueni County. The study will fill the gaps in literature and our understanding of seeking legal redress. This research has helped in identifying the barriers in addressing GBV to enable survivors to seek justice. It has also added knowledge to the academic bank for any future references for scholars interested in barriers experienced by women survivors of gender-based violence in seeking legal redress services.

These findings may also be of great use to civil society organizations and other stakeholders whose efforts are geared towards combating GBV especially in their efforts to promote legal awareness and accessibility to women survivors of GBV in Makueni County. It may also be used by the

national government to spur the fight against GBV by allocating enough resources in responding to GBV and the use of different interventions. It will also provide baseline information for programming, lobbying, awareness and action on the barriers found.

### **1.5 Scope and limitations of the study**

This study was limited to women survivors of gender-based violence who live in Kaiti, Makueni and Kibwezi West Sub-Counties of Makueni County and attempted to seek legal interventions. It specifically looked into the types of violence women experience; legal services sought by women survivors of gender-based violence with the purpose of assessing the barriers they experienced in seeking legal services. The study was guided by the Social Learning Theory by Bandura 1973. The purpose was to assess the experiences women survivors of gender-based violence face when seeking legal redress. This study will add knowledge on the barriers that women survivors of gender-based violence face in seeking legal services. Cultural practices in Makueni are unique and specific for that community, therefore, the study findings can only be generalized only specific for that community.

### **1.6 Operational definition of terms**

**Gender-based violence** Within the context of this study is any form of harm meted against Women, that includes physical abuse, sexual abuse, economic, cultural abuse, destruction of property and psychological / emotional abuse by men in their lives.

**Survivor:** Within the context of this study a survivor is defined as a woman who is in an intimate relationship or previously with the abuser and attempted to seek legal redress.

**Barrier:** Is a factor that becomes an obstacle to hinder women survivors of gender-based violence from seeking legal services in law enforcement institutions.

**Legal service:** Legal intervention for survivors that includes reporting to the police, recording of statements at the police station, filing a case in court among others.

## **2.0 LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

### **2.1 Introduction**

This section presents a review of the relevant literature on experiences of women survivors of GBV in seeking legal redress and the challenges they face in accessing legal services. The review is done along the lines of the specific objectives. The section also presents the theoretical framework adopted in the study.

### **2.2 The Extent of GBV in Kenya**

GBV is a common and widespread problem in Kenya. GBV affects many women with far reaching consequences on their rights and human development (HPN, 2014). The World Health Organization, (WHO, 2017) estimates that 35% of women in the world who have been in an intimate relationship have experienced at least one or more forms of violence. Kenya Demographic and Health Survey (KDHS, 2014) indicates that 45% of women aged between 15-49 years have experienced physical violence in Kenya. This study also indicates that 39% of married women in Kenya have experienced physical or sexual violence compared to 44% and 9% of men respectively (KDHS, 2014). According to a study carried out by (Musau et al, 2012) in Makueni County on socio-economic and cultural factors that contribute to violence against women indicates that 58.3% of men are leading in sexual abuse and physical violence against their female counterparts. Generally, gender-based violence affects millions of women with long-lasting consequences such as death, disabilities, emotional and psychological disorders like fear including heart problems like high blood pressure. Fear and intimidation reduces women's active participation in the society. GBV affects women differently as they are not a homogenous group (Natalia, & Dupout, 2005: Nancy & Pirlott, 2006). GBV affects women from all walks of life differently (Tricia, 2009).

Although GBV has long existed within homes, it is still a hidden problem in society today. Women have been socialized to accept, tolerate, and even to rationalize violence meted against them. In addition, GBV is deeply entrenched in cultural beliefs about gender roles; marriage and family privacy coupled with feelings of guilt and embarrassment, a situation that often

discourages women from coming out to openly speak about their experiences or to seek help including legal redress (Commonwealth Fund, 1992).

## **2.3 Types of gender-based violence**

This section reviews the literature on the different types of violence most commonly experienced by women and girls. The types of violence discussed include physical violence, cultural violence, economic violence and sexual violence

### **2.3.1 Physical violence**

Physical violence is defined as intentional use of physical force to harm/or cause injury to a person's body which may result into death, physical injuries, disabilities and may also cause psychological harm (UNFPA, 2016). Physical violence includes beating, biting, punching, kicking, burning, maiming and killing. Women have been physically abused for very minor mistakes. For example, if a woman is beaten for burning food she takes it as part of punishment for her mistakes (Mkandawire, 2009). According to Munyakho, 1990 study indicates that 44% of women in Kenya believe in men disciplining their wives. But 13% of women in the same study said they would report cases of physical violence to the police. The majority of the women interviewed said they would stay at home to discuss and reconcile or apologize to their husbands. Women also plead with men to forgive them because it is their right to discipline women and children (Munyakho, 1990).

The Kenya Police Report (2011) on domestic violence recorded 1,072 cases reported in all police stations around the country. Eastern had the highest number of cases reported at 300. A study carried out by Johnson (2002) on married women in Kenya indicates that 60% of women experience one or more episodes of domestic abuse while 54% reported domestic violence becoming frequent in their homes. Johnson noted that, in most of the abuses, women were dependent on men and had low level of education hence they could not make choices of leaving or pressing for charges of violence due to their status of economic dependency. In another study

carried out on ever married women in Kenya showed that 38% of women, aged between 15-49, had at least experienced physical violence committed by their husbands (KDHS, 2014).

Similarly, Nairobi Women's Gender Violence Recovery Centre treats an average of 15 cases of domestic violence in Kenya every day. Domestic violence takes place in the family set up and has been on the rise in Kenya due to out-dated cultural belief systems and patriarchal dominance among other reasons. Domestic violence has been used by men as a form of disciplining women in the family. Many cases go unreported and only a few find spaces in the print and social media (Omondi, 2015).

Wife beating is the most common form of physical violence in Kenya a study by Ondicho, 1993; Olungah, 2006; Ondicho, 2018 violence against women is associated with culturally defined gender roles and responsibilities of women in the household, which forces them to be submissive and loyal. Wife beating is viewed as a form of punishment to women for failing to do their duties. In many cases of physical violence, witnessed in public, men have been caught in broad daylight beating their wives and videos go viral on social media.

The media in Kenya helps in fighting against gender-based violence by highlighting cases in both print and electronic media. One of the GBV cases that shocked Kenyans was reported on Kenya Television and print media in 1998, on domestic violence, in which there was a public outcry to stop gender based violence. Ondicho, 2018 cited cases of Piah Njoki whose eyes were gouged out by her husband for giving birth to girls only in 1983, Betty Kavata who died at the Kenyatta National Hospital in 1999, while undergoing medical attention of severe injuries from the beating by her husband, Mary Akinyi who was slashed by her husband in 1999, Judith Muendi whose hands and leg were chopped off by her husband after a domestic quarrel in 2015, Fatuma Ibrahim from Wajir who was stabbed several times by her husband and a knife got stuck in her right cheek after a domestic quarrel in 2016 and Jackline Mwendu who was brutally attacked by her husband, who chopped off her hands and inflicted head and face injuries for not bearing children during their seven years of marriage. This shows the extent of physical violence against women that goes on in Kenya. Many cases of GBV against women do not get public attention because the concerned parties, who are women, do not know the channels for legal redress or are afraid to

speaking out. A few cases that capture media or public attention are often horrifying in nature and may at times involve high profile citizens (Ondicho, 2013).

Some women legitimize physical violence hence it becomes difficult to address violence against them. Domestic violence can come in form of physical, bodily harm, beatings, slapping, kicking, burning, stubbing, hitting, pushing, verbal insults that would generate into emotional/psychological abuse, sexual /marital rape and killing (UNFPA, 2015). The Kenya Protection against Domestic Violence Act (2015) defines a person involved in Domestic Violence as:

*“A person in a domestic relationship with another person, if the person is married to that other person, previously married, living in the same household, family member, engaged to get married, has a child with that other person, has a close relationship...”* (PDV Act, 2015).

This definition explains different kinds of relationships women find themselves in with the perpetrators that qualify to be in the category of domestic violence. Women survivors of GBV should be aware of this protection Act to help them seek protection from the government when violence occurs. They have a right to be protected from the perpetrator as they seek legal redress in Kenya (PDV Act, 2015). The bonds of family, economic and emotional dependence that accompany intimate partner violence makes prevention, protection and response particularly complex (KDHS, 2014). Domestic violence happens when there is use of force or threats by husband or boyfriend or a family member to coerce or intimidate a woman into submission. Women experience Domestic Violence in their homes but most communities are very silent as it is viewed as a private matter to the family and community. Women survivors of GBV do not get support from family members in seeking legal redress due to family pressure (Lutta, 2011; Ondicho, 2012).

### **2.3.2 Cultural violence**

Cultural violence emerges from traditional practices within the community and largely involves violation of people's health and economic rights. It involves performing cultural practices as rites of passage or performed to appease their gods. In some communities it involves cutting of body parts e.g. Female genital mutilation, breast ironing, honor killings, wife inheritance and denial of

girl child education by early child marriage. Cultural violence is practiced through social norms, roles and responsibilities within members of the family. Where the man is the head and controls all the resources in the family, women and children are subjects of control. Culture then sets up the punishment for those who do not conform to the norms. Cultural norms that are socially sanctioned rules of life in the society. The bearers of these heaviest cultural practices are performed on women and girls. Almost all societies considered women as their property and a tool for control and to exert their power (Lukale, 2014). These practices constitute various forms of gender-based violence like, female genital mutilation, wife inheritance, sex-selection, honour killings, child forced/early marriage, virginity testing, breast ironing/ breast flattening, widow cleansing which are initiated in ceremonies (Lukale, 2014). Women and girls suffer the harmful and life-threatening effects of traditional cultural practices that continue under the guise of cultural social conformism and beliefs (Mkandawire, 2009).

Female Genital Mutilation (FGM) is one of the harmful cultural practices that involve altering or injuring the female genitalia for non-medical reasons, it is internationally recognized as a human rights violation. Any woman who undergoes FGM attracts higher bride price and dowry practices in some Kenyan cultures. FGM has been a barrier to women empowerment as it cuts short women's education and future prospects. Women who are not empowered economically are sentenced to dependency syndrome, which is a recipe for gender based violence. Globally it is estimated that about 200 million women alive today have undergone some form of Female Genital Mutilation (UNFPA, 2013).

Early childhood/Forced marriages are some of the cultural practices carried out without the consent of women and girls. It constitutes a form of violence as it undermines freedom of choice of millions of young girls. One is carried by force and even beaten into submission for marrying someone they do not like and at young age. The constitution of Kenya 2010 in the Bill of rights Article 45 (2) says that, "*Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties*" Forced marriage leads to teenage pregnancy and exposes girls to HIV/AIDS and other sexually transmitted diseases. It is also associated with adverse health effects for their children, such as low birth weight. Most of these child marriages expose girls to sexual violence before their bodies develop properly, which causes fistula during birth. It affects girls'

education and their employment opportunities hence achieving vision 2030 and Sustainable Development Goals on Gender Equality might be a mirage if all players are not involved in the development arena (UN, 2015). In 1992, the Committee on the Elimination of Discrimination Against Women (CEDAW) adopted General Recommendation 19, in which it confirmed that violence against women constitutes a violation of human rights and emphasizes that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence against women, and for providing compensation” (UN, 2015)

### **2.3.3 Sexual violence**

Sexual violence entails abuse which can be in the form of an act, attempt or threatened behaviour that results in sexual harm. It might include penetrating parts of a body of a victim with a part of the body or with an object in which the act is cohesively done where consent is not given (UNFPA, 2015). Sexual violence is defined as *“any contact, gesture or act of exploitation of a sexual nature that is unwanted, or carried out without the consent of a person, which is imposed by physical force, threats, trickery, intimidation or duress”* (ACORD, 2010). Sexual Violence includes rape, gang rape, marital rape, sexual harassment, sexual abuse, sodomy, defilement, child pornography, child prostitution, forced prostitution, widow cleansing, virginity testing and incest.

Sexual violence against women in Africa is estimated to be high. WHO survey of 2013 estimates that 35% of women worldwide have experienced sexual violence by their intimate partner or non-intimate partner in their lifetime. At least 36% of women in Africa have also experienced sexual violence by their intimate partners (WHO, 2013). In Africa a woman is part of the man’s property hence there is no issue of sexual violence since a man is entitled to have sex any time he demands. This power relations and control has promoted the increase of sexual violence in Africa (WHO, 2013). Marital rape is any case where a husband or a wife uses the threat of violence to force a wife or husband to have sex. In Kenya among the married, 74.5% of women reported experiencing sexual abuse by their spouse (APHRC, 2010). Liverpool Voluntary, Counseling and Testing, (2014) data on supported health facilities in the country recorded 4,944 cases of sexual violence in 2014 and women and girls constituted 90.8% of the cases of all survivors. These figures of women



who were treated in these facilities do not amount to the actual number of cases filed in courts in 2014 in Kenya. Marital rape is something that women are not allowed to speak about in public. In some instances marital rape is organized in forced marriages where the in-laws force a woman to have sex without her consent, it is one way of proving your virginity.

Waki Commission, (2008) on post-election violence reported that 524 or 80% of women were raped during the post-election violence of 2007/2008 in Kenya; further evidence comes from the GBV Recovery Centre at the Nairobi women's hospital, Kenyatta National Hospital and Moi teaching and referral hospitals where most of the women who were sexually abused sought treatment (Waki, 2008).

Under sexual offences Act 2006 rape includes both forced and unlawful penetration of another person's genitals without their consent as well as fraudulent acquisition of consent under duress like beatings, at gun point among others. Rape happens when the survivor's resistance is overpowered. This use of force to obtain sex where more than one person is involved is called gang rape (Fiona, 2010). There has been no awareness creation to the Kenyan citizens to understand and be aware of the laws that protect and respond to sexual violence. Many atrocities are reported day and night despite the laws in place.

#### **2.3.4 Emotional/psychological violence**

Emotional violence is defined as: any act, including confinement, isolation, humiliation, verbal assault, intimidation, belittlement or any other treatment which may diminish the sense of identity, dignity, and self-worth (Wiley, 2008). Emotional abuse is variously termed as psychological violence. In addition, emotional abuse is any non-physical violence. It is behaviour or attitude that is designed to control, subdue, punish, or isolate another person by use of humiliation, intimidation or fear. It targets the emotional and psychological well-being of a person. Emotional abuse includes verbal assault, dominance, isolation, control and ridicule. In some cases women are not entitled to their own opinions or ideas (Coble, 2015). Emotional/psychological violence is a violation of women's rights to dignity, respect and the right to life (Human Rights, 2008).

Emotional / psychological violence causes mental health that affects the wellbeing of women survivors.

A study by Carney and Barner (2012) on the rate of emotional abuse indicates that 80% of women have experienced both physical and emotional violence in America alone. Black et al (2011) carried out a survey in the UK, Australia, Canada, and New Zealand on intimate partner and sexual violence and found that 48.4% of women had experienced emotional violence alone. In another study carried out by (Avdibegovic and Sinanovic 2006) in Bosnia on the consequences of domestic violence on women's mental health indicated that out of the 283 respondents, 75% were psychologically abused by their husbands. Women who suffer from emotional abuse tend to have very low self-esteem and personality changes. Emotional/ psychological violence leads to post-traumatic stress disorders (Saltzman, 2005). This is a mental and a very serious health problem to survivors of gender-based violence (Avdibegovic & Sinanovic, 2006). All these studies indicate that women survivors of GBV in other parts of the world go through emotional and psychological violence on top of other forms of violence that they face.

Emotional/psychological violence takes many forms that include: kicking a wall, showing a fist at the survivor, shaking a finger while pointing at the survivor, threatening to destroy items that the survivor values. Emotionally abused women are more lonely and despairing hence loss of self-esteem. A report by FIDA Kenya (2016) on survivors of emotional violence indicates that 80% of women survivors of GBV under their programme on legal aid showed signs of emotional abuse. These women were then enrolled into a group therapy programme to help them heal emotionally to enable them have strength to follow up on their cases and re-build their self-esteem. Kenya has a prevalence rate of 80% of women who reported coercive control and aggression from their intimate partner which amounts to emotional abuse (FIDA Kenya, 2016).

In Australia 88% of women were emotionally abused by their intimate partners (Valerie, 2000). Some of the emotional violence behaviours include withholding affection and subtle conveyance of the lack of importance of the spouse. This happens where the survivor does not have economic empowerment. The survivor is aware that if she leaves her partner, she may not have resources to take care of her children hence their leaving means facing poverty thereafter. Emotional violence may also happen when the perpetrator has signs of pathological expression of jealousy usually

accusing the woman of infidelity and sometimes he may even embarrass her in public (King, 2011).

In addition, the impact of emotional violence on women survivors' mental health leads to severe and fatal consequences. Also emotionally abused women have a high incidence of stress and stress-related illnesses such as post-traumatic stress syndrome, depression, Panic attacks, sleeping and eating disorders. Women survivors of emotional violence suffer from elevated blood pressure. Some women who are fatally depressed and demeaned commit suicide where they see no other way of escape from a violent relationship. Women who had resources flew out of the country to stay away from the perpetrator (WHO, 2013).

Finally, emotional violence diminishes women's ability to provide and care for their children. Stress can cause low productivity in employment and that could contribute to women's sacking. Some women survivors cope with the stress of sacking by abusing alcohol, suicide, some women end up with terminal illness and some run mad (Coble, 2015). Emotionally abused women do not seek legal redress due to their state of mind, as they experience low self-esteem and a sense of hopelessness and helplessness. In some relationships insults are used as a power struggle that is likely to cause mental harm (Nicolson, 2010).

### **2.3.5 Economic violence**

Economic violence is defined as discrimination, denial of opportunities such as access to basic commodities to a person on the basis of gender (World Bank, 2006). It might also involve denial of economic rights. Economic dependence contributes to high rate of gender-based violence. Economic dependency weakens women's ability to have influence in any relationships they find themselves in. Lack of resources hinders women in violent relationships from seeking legal services on GBV (Pollet, 2011). Cultures contribute to economic violence against women as some areas, like in employment and access to market, are considered as men's domain. Women are not allowed to sell property like cattle in the market. Land ownership is also an issue where the title deed is always in men's name. In the event a man dies family members fight to get back land from

women. GBV is deep-rooted in cultural beliefs on the gender roles that encourage the practice (Qaisrani et al, 2016).

Property damage is a form of economic abuse and is considered to cause symbolic violence that results in serious psychological, social, and economic costs to the survivor. It also happens when a perpetrator is giving out small amounts of money for food which would force the survivor to ask for more from the abuser. Controlling of resources and money is a form of power control (Valarie, 2000). Money is used by the abuser to control women survivors by ensuring dependency. This can also be done by shifting the responsibility of keeping a roof over the family's head into the victim like paying rent and other stuff which are meant to be shared between spouses. Women are prevented from activities that earn them money and this increases the chances of gender-based violence due to over reliance on one bread winner. Women who are in any meaningful employment do not stand violence from men hence men fear women who are educated and economically empowered (King, 2011).

#### **2.4 Legal framework and mechanisms that address GBV in Kenya**

GBV is illegal in Kenya and the perpetrators are liable to punishment by the government. In Kenya Legal process in the rural areas starts after the incident is reported to the sub-chief's /chief's office. The chief will then apprehend or summon the culprit for hearing at the chief's camp. The arbitration takes place at the chief's office. If the chief feels that the case needs to proceed further then, they either arrests or provide a referral letter to the police. Once a report is filed at the police station the culprit will be arrested, the police will take a statement and prepare a charge sheet then present the case to court (Commonwealth, 1999; FIDA 2015).

The police provide the first line in legal redress. Police record statement from women survivors of GBV. At the police station is where the Gender Based Violence cases are reported and entered in the Occurrence Book (OB) (Commonwealth, 1999). The Gender Desks that the government established as child and women protection units in police stations responsible for handling cases of GBV are child and women victim friendly. It is the duty of the police to investigate GBV cases reported at the police stations and ask parties to write statements. Police must provide P3 forms

duly filled as document evidence for use in legal proceedings. It is the duty of the police to liaise with the medical officer to get evidence referred to as exhibit in case of sexual violence or physical assault. When the investigations are through and evidence in place the police officers file the case in court (ACORD, 2010).

It is the duty of the police to arrest the perpetrator and arraign them in court. The evidence is kept in safe custody and produced in court when proceedings resume. In most cases you find evidence missing, files are not in order; many cases are lost due to lack of evidence or shoddy investigation done by improperly trained or ignorant police officers on response to GBV (ARCORD, 2010). Lack of police training on how to handle women seeking legal redress has been a matter of grave concern as a number of cases are lost, a factor which denies survivors justice (Green 1992). In some instances witnesses have recanted their statements due to long and tedious court processes which become a burden on individuals involved in giving evidence. Training and sensitization of police at all levels must be instituted, and guidelines must be developed to monitor police response. Police must be held accountable for their own behaviour towards survivors in order to prevent secondary victimization of women at their hands. The insensitivity of local administration (chiefs) and the manner in which they handle Gender Based Domestic Violence (GBDV) and Intimate Partner Violence (IPV) cases discourage women from reporting occurrences of violence. Lack of police training in GBV hinders them from handling GBV cases (FIDA Kenya 2015).

Attempted rape and sexual abuse have been very difficult to prove in court as women survivors are required to have evidence which women survivors are not aware of how to preserve (Kamere - Mbote, 2001). Sexual Offences Act (2006) is the most popular legislation for the protection against sexual violence in Kenya. The act provides for measures, control and remedy for offences of a sexual nature. The Sexual Offences Act was enacted in the spirit of domesticating the provisions of a number of conventions, including the United Nations Convention on the Elimination of Forms of Discrimination Against Women (CEDAW, 1979) and The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa so as to address SGBV in Kenya (Maputo Protocol, 2003).

The Sexual Offences Act review of (2014) and The Children's Act 2001 were enacted in response to curbing the escalating sexual violence against children and women. The primary purpose was to ensure that survivors of sexual offences get justice commensurate with the harm caused to them. These Acts make provisions for the sexual offences, their definition, prevention and protection of all persons from harm arising from unlawful sexual acts. Punishment for the offence committed goes with the age of the survivor. The amendment of these laws was meant to encourage women survivors and children to seek legal redress for the atrocities meted against them (Green, 1992).

Punishing of perpetrators of GBV discourages others from committing the same offences against women. The Law is there, but there is need for re-enforcement of the law and strengthening of the law enforcement institutions. To protect women from GBV the perpetrators should be punished (Human Rights Report, 2008). Kenya being a signatory to the international human rights instruments is expected to protect women from inhumane treatment. Every human being has a right to dignity and integrity hence they should be protected by the state as it is enshrined in the constitution of Kenya 2010. Kenya as a country does not take Gender-Based Violence seriously as it fails to penalize perpetrators hence acting against socially accepted structures. GBV is treated as a private matter where the state rarely interferes even if there is Law (CEDAW, 2016).

#### **2. 4. 1 Judicial process**

Legal redress through the court system is one of the avenues available for survivors of GBV to seek remedy. The court system sometimes makes it difficult for women survivors of GBV to access justice by the way cases are handled. A research carried out with (Ngugi, 2008) on GBV cases in court shows some of the barriers that hinder women survivors of GBV from getting justice in Kenya. Attempted rape and sexual harassment cases have been very difficult for women in court since it requires proof of evidence (Kameri-Mbote, 2001).

In most cases rape and most forms of GBV occur in the bedroom where it is not possible to have witnesses since these acts happen in closed doors (Fiona, 2010). The courts should ensure that cases are heard and determined at the shortest time possible. When cases are delayed witnesses back off due to time wasting or pressure from friends, family and the costs involved. Magistrates should accord fair hearing to survivors and where proper investigation is required they should give

advice for complete investigations to be conducted. The sentence provided to the perpetrator must be a stiff penalty to serve as a lesson and a warning to other offenders. Courts must ensure protection to the survivors and witnesses to prevent re-victimization (Population council, 2010).

#### **2.4.2 Institutional policy frameworks to mitigate on GBV**

The government of Kenya has initiated various institutions and policy frameworks that are contributing to improvement of women's legal capacity; economic empowerment and poverty eradication. The government has initiated a fund to empower women economically to reduce economic dependency and address violence against women. These funds are like UWEZO fund, Women Fund and Youth Fund and the policy on thirty percent of government tenders to women and youth. To end FGM there is a policy and a commission board on FGM (UNDP, 2017).

There is a Gender Commission and a National Gender Policy to promote women in all spheres and the End Early Child Marriage Policy of 2016, Education Policy to ensure girls who give birth are enrolled back in school and the empowerment policy to ensure gender equality in employment so that no woman should be sacked for going on maternity leave. All these policies are anchored in international instruments like CEDAW, Maputo Protocol, MDG's- SDG's, Vision 2030, The Constitution of Kenya 2010 in the Bill of Rights chapter four (4), National Gender Policy and Devolved Governments Act (GOK, 2015). Despite having legal and policy frameworks to address GBV against women there are a number of barriers that hinder women survivors of GBV from seeking legal redress.

### **2.5 Barriers that hinder women from seeking legal redress**

#### **2.5.1 Cultural barriers**

Gender-based violence in Africa is a complex issue with roots in structural inequalities between men and women that result in power differences. Women's subordinate status to men in the society is coupled with the general acceptance of violence as a means of solving conflict in the

family (Sultana, 2011). Women are rendered vulnerable to violence at all levels of society as it is an acceptable social norm to discipline them and therefore survivors are discouraged from seeking legal redress (Stephanie, 2015). Women fear violating social norms by social threats of punishment if they disclose to anyone about the offences meted against them. These threats leave one in fear and feeling guilty of the internalized consequences of their social norms. Different cultures have different traditional social norms under which men punish their women. Fear of further violence discourages women from seeking legal redress. This punishment makes women vulnerable to violence in the society (Morrison, 2007).

Women most of the time are dependent on men and therefore, legal redress becomes a challenge. However, ascertaining its prevalence has been a matter of assumption because victims are socialized to believe that violence is normal hence there is no need to report cases of domestic violence to the police. In some communities sexual violence was not discussed in public, so to report rape and marital rape cases was unheard of. This prevents women from reporting rape and marital rape to the police; to women it means bringing or discussing bedroom matters to the public court. The provision in the new constitution relating to consent in marriage may be misunderstood to mean that there is no such thing as marital rape since one consented to marriage. This perception leads to the linkage between masculinity and GBV (COVAW, 2013).

In some cultures violence is accepted and treats GBV as a private affair. It hinders outside intervention and prevents those affected from speaking out and gaining support including that of seeking legal redress in Kenya. Cultural norms are maintained and internalized in Makueni County such that GBV is addressed by clan elders who do not use any legal framework in addressing issues (Musau et al, 2012).

GBV victims fear reporting their husbands to the police because if their husbands are found guilty and end up in jail like any other criminal might stigmatize children and the whole family. They fear being labeled battered women or divorcees by society. This essentially causes stigma that comes along with the low self-esteem of being labeled as a divorcee or single woman who cannot keep her marriage (Saltzman, 2005). Sometimes women feel that it is not proper to report their husbands to the police because they would be judged harshly by the society if their husbands end



up in jail (World Bank, 2013). Many women feel that they are defending their marriage and securing returns by not reporting their husbands to the police when they run away from their homes due to violence. However, some women survivors might want to report cases to the police but having been warned and threatened of dire consequences by their husbands do not report or talk to anyone about the violence (Ondicho, 2000).

Socialization and enforcement of gender ascribed norms cause women survivors of GBV not to seek legal redress. Weak community sanctions against perpetrators of GBV are the major factors that hinder access to justice for women in Kenya. In some cases members of the family prevail upon women to drop the charges, or fail to give evidence in court or request to let the case to be solved informally by elders, clergy or family. Sometimes women who report their husbands are ridiculed, stigmatized and isolated, making it difficult to proceed with legal process of redress (Musau et al, 2012).

Culture and social norms that govern the society might be a barrier since women are socialized to believe that being disciplined is the way of life (Morrison, 2007) Green argues that at times it is difficult to punish perpetrators of violence in the society as women support and participate in violence against other women to sustain wife beating, rape and female circumcision, even when they themselves are subjected to the same violence (Green, 1999). In such situation it is difficult to report cases of violence against women since there is no support system in the society to support law enforcement at family level. Women are viewed as occupying the same social standing like children and domestic violence is considered as discipline to correct women (Wanyeki, 1996).

### **2.5.2 Economic barriers**

Denying women economic power and economic independence is a major cause of violence against women. The legal system has hidden costs such as legal fees, for filing a case, paying a lawyer, transport costs which make it difficult for survivors to take advantage of the existing legal mechanisms of redress. A study carried out in Kenya on domestic violence meted to women indicates that 68% of husbands/partners were working (Johnson 2002). Most women have taken it as their fate to remain dependent on men due to poverty. Economically disadvantaged women,

including refugees, women with physical disabilities experience sexual harassment, trafficking and sexual slavery. In this situation one cannot afford to pay for legal fees. Poor women in rural areas are economically dependent on their husbands, which reduce their ability to pay for the high costs of legal fees, transport costs and lawyer's fee (Johnson, 2002).

### **2.5.3 Poverty and illiteracy**

GBV is escalated by underlying social problems like poverty and social inequality which makes it difficult for women to afford legal costs. The cost of filing cases in court is very high while the mostly affected women are the poor in slums and the rural women with little or no income (Muyanga, 2011). A medical report is filled after the whole process of examination and treatment is complete. The cost of transport, purchasing P3 form and having it filled by a doctor hinders women from seeking legal redress (UNFPA, 2013). The cost of health services affects women survivors from access to legal justice. Many women mostly depend on their husbands economically and cannot afford to pay for medical services. The other costs that are contributed by direct and indirect costs like distance to courts and police stations prevent women survivors from utilizing legal services. At this point women survivors who depend on their husbands as bread winners may feel guilty of losing the support of their children, which weakens the confidence of seeking legal redress.

Some of the barriers include economic barriers, women not being able to afford legal fees, transport costs to the court and lawyers' fee and the fact that rural women, due to their status in the society, do not own property. High level of illiteracy is also a major barrier to women in rural areas who do not know court process as they were not given a change for education, having been socialized to believe that it is only boys who went to school and that a girl's place is in the kitchen. Women fear reporting to the police cases of GBV as they have been socialized to believe that bedroom and family matters are not shared in public and neither to strangers. Some women decide not to seek legal services due to corruption where family members bribe the police with impunity.

#### **2.5.4. Corruption**

Corruption is a major hindrance to women survivors of GBV seeking legal services. It has been noted that the police are bribed either to delay cases or conduct shoddy investigation on the matter before court. In some instances the police collude with the perpetrators to frustrate women survivors by sending them back and forth as a delaying tactic. Some of the evidence in police custody is tampered with to spoil the case. The Police have for some time been accused of asking bribes from women survivor of GBV both monetary and sexual advances so as to help in the prosecution process.

#### **2.5.5. Distance and accessibility**

Men fear being arrested by the police on patrol and legal consequences hence abuse of women is high in underdeveloped areas with poor infrastructure and mostly high in rural areas where there is no security and infrastructure. In some areas where roads are very poor in rainy season they are rendered impassible hence they hinder GBV survivors from seeking legal services. The courts are in major towns which make it impossible for rural women to access due to the distance and costs involved. Sometimes cases are transferred to different court which also confuses the survivors to move from one court to the other. The distance to the hospitals to obtain treatment that gives a medical report for evidence in court hinder women survivors from seeking legal services. This reduces the chances of reporting the matter to the police as lack of evidence in court will weaken the case, this is a basis of women not reporting GBV cases (IEA, 2008).

#### **2.5.6. Legal ignorance**

High level of illiteracy and legal ignorance on the laws contributes to the underreporting of cases of gender-based violence. Many women do not know what the law says about them and the procedure to addressing gender-based violence in court. Delays in processing reported cases and problems relating to presentation of evidence usually when violence occurs, in cases where there is no witness, collaborating evidence is key to the sustaining of a case in court. Poor investigations

by the police who prepare the charge sheets contribute to barriers women survivors experience in seeking legal services in court (Green 1992. 2008). The Police are sometimes reluctant in prosecuting cases of GBV nature to some is due to lack of understanding of the legal process.

## **2.6 Theoretical framework**

### **2.6.1 The social learning theory**

This study was guided by the Social learning theory which was propounded by American psychologist Albert Bandura in 1973. The basic tenet of the theory is that children learn violence through observation and victimization at the family level and accept this as the norm in their adult life. This theory explains that children (boys) born in the violence family grow up to be aggressive. It is the men from such childhood that beat their wives and women from such childhood who encounter violence stay in silence. Internalizing of such social norms leads to the situation that women accept violence as normal rather than the exception which explains women's reluctance to seek legal redress over generations.

This theory explains violence as part of learned behavior and women have been socialized to be subordinate in which the perpetrator tends to imitate experience in their childhood from adults and women who are affected by violence feel helpless to seek legal redress. Women have been socialized to conform to the social norms that discipline them whenever men feel like exercising their powers of control (Bandura, 1973). Social norms means rules and regulations prescribed to guide a certain society in their daily life as they observe attitude, values and behaviour. These social norms are learnt through observation and experience in the society by practicing them; hence they can be carried on from generation to generation. Men who are the architects of social rules, custodians and implementers presumably, by default, can only be the ones to change those rules that harm women.

In modern society there are conventions, treaties, protocols and the constitution to control the behaviour of society. It is also the men who are supposed to protect women from violence by implementing the laws and legislations. Therefore, if enforcement of law by ensuring punishment

is served to perpetrators of GBV is emphasized then this behaviour will stop since, when women see the offenders experiencing rewarding and punishing consequences, it is a gesture that can encourage women survivors to seek legal redress (Bandura, 1973). A state has a duty to punish perpetrators and compensate victims of violence. The state may be held responsible under international law for failure to provide reasonable and adequate measures to prevent or address women's rights violations. Women must be empowered economically and should be made aware of their rights to make choices in their lives to avoid violence from men (Meyersfeld, 2010).

Enforcement of the law is a powerful method for regulating behaviours that have already been learned (Bandura & McDonald, 1963). Behaviours are extensively controlled by their action consequences like, the sentence set for sexual offenders in Sexual Offences Act (SOA, 2006). Responses that cause punishment tend to be discarded. People regulate their behaviour based on observed consequences, if punishment is harsh people shy away and stop bad behaviour that might cause harm to others. Punishment provided to perpetrators relieves pain to survivors of GBV. There is this sense of feeling that justice is served and hence protection in the law. This gives the survivors some confidence in the law and restores confidence in women survivors of GBV (Bandura & McDonald, 1963).

The law as a form of punishment acts as a deterrent to perpetrators of GBV. When punishment is meted on the perpetrator then the behavior may not be repeated. The role of this theory on punishment is that the law can only serve this function if women report to the police and press for charges against the perpetrator of GBV from committing the offences and to give a warning to others. Women must be aware of the laws that protect their rights as human beings with dignity. That is why it is important for those women affected by GBV to seek legal redress. However, light sentences or none given to perpetrators of violence do not discourage people from practicing this vice against women. While the law can be a deterrent, there are many barriers that stand on the way thus leaving thousands of women suffering in the hands of men (CARE, 2013).

### **2.6.2 Relevance of the social learning theory to the study**

This theory explains violence is learned from childhood through observation and behaviour. It is through socialization that many forms/types gender-based violence against women is learned and

passed on from generation to generation. Women who come from this experience of abuse are less likely to take punitive actions. They are deterred by their own conscience to conformity of their social cultural norms to seek legal help. Socio-cultural norms hinder women survivors of gender-based violence from seeking legal redress. This theory explains how socio-cultural norms informs the type of legal intervention women sought in Makueni County based on the social structures learned from childhood. The theory explains how social learning could inform, on deciding on the type of legal intervention in the second objective of the study or even deciding on seeking legal services on violence in the family set up (a small social unit). The champion of this learning theory recognizes that there are socio-cultural barriers that act as the obstacle of preventing women survivors of GBV from seeking legal services. This section addresses the third objective of the study. It also addresses the major barriers like, cultural barriers, economic barriers, poverty, lack of awareness on legal process and illiteracy among others, that women survivors of GBV experience in seeking legal services.

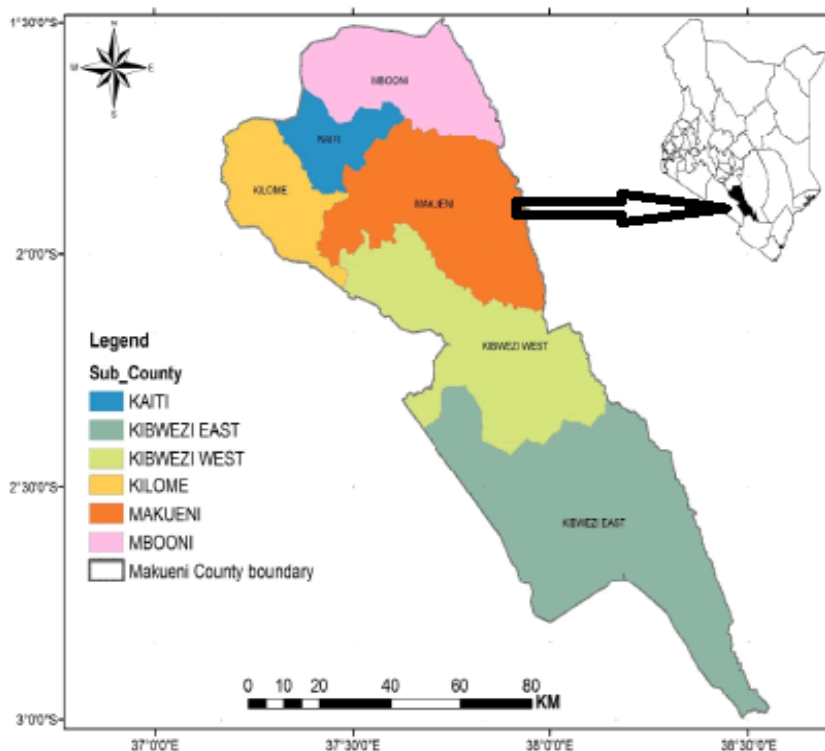
### 3.0 METHODOLOGY

#### 3.1 Introduction

This section describes the study site, design, population, sample size and sampling procedures, as well as methods of data collection and analysis. The section ends by discussing ethical issues into considerations in this study.

#### 3.2 Research site

This study was carried out in Kaiti, Kibwezi West and Makueni Sub-Counties of Makueni County. Makueni County is located in the arid and semi-arid rangelands in the Eastern Region of Kenya. It borders Kajiado County to the West, Taita Taveta County to the South, Kitui County to the East and Machakos County to the North. Makueni County lies between Latitude 1° 35' and 30° 00' South and Longitude 37°10' and 38° 30' East (Map 3.1).



Map 3.1: Map of Makueni County (Source: IEBC, 2017)

Makueni County covers an area of 8,034.7 sq km and in 2009 had an estimated population of 922,183 people of which 449,036 men and 473,147 women (KNBS, 2009). Headquarters is situated in Wote town. Inhabitants are the Akamba who speak Kikamba language. It is divided into nine administrative areas namely: Makueni, Kilungu, Mukaa, Kibwezi, Kathonzweni, Makindu, Mbooni East, Mbooni West and Nzau.

### **3.2.1 Gender-based violence in Makueni County**

Gender-based violence is prevalent in Makueni County. It is linked to unequal gender relations and abuse of power. Violence against women in Makueni involves men and women where the females are usually the victims and arises from unequal power relations between men and women. GBV is embedded in prevailing societal norms and practices of clans. The acceptance of violence as a means of solving conflicts in families renders women disproportionately vulnerable to violence.

GBV in Makueni County is on the rise and each day it takes a new dimension. GBV is a common phenomenon which includes partner battering, rape and other harmful cultural practices. Women in Makueni are viewed as house wives, their sole responsibilities and roles as females having been determined at birth. As girls grow into womanhood, they are expected to take care of the house and, especially, the kitchen and perform domestic roles. Sex is viewed as a private affair and therefore never discussed in public. It develops to social stigma; victims blame themselves and fear that they will be ostracized from society once they admit to have been sexually abused. The community's acceptance of violence as a social norm makes women not seek legal services. Women fear the socio-economic consequences that result from reporting their husbands to the police.

Makueni County government has formed a ten member taskforce to deal with GBV cases. This task force was set up due to the rising number of sexual and gender-based violence cases in the county. The mandate of the task force includes working on modalities of setting up a Gender Recovery Violence Centre at the Makueni County Referral Hospital. It will also work on the programme to sensitize the community on GBV. The county government will provide the funds for the implementation of the task force report. The Centre will provide: forensic collection of



physical evidence and samples, legal counseling and support such as referral to police and court preparation; Create awareness on the physical, social, and legal implications of gender-based violence at the County level. This is in recognition that Gender-based violence is a menace in Makueni County (GOK, 2015).

According to Musau et al, (2012) poverty is more severe among women, a factor attributed to inequality and limited access to ownership of assets and essential economic services hence limiting women to take part in decision making. This shows lack of power relations. Culture is very much practiced through Kamba clans, which enforces the gender roles and norms. The Kenya Demographic Health Survey (2014) indicates that 39% of ever-married women between the ages of 15-49 in Eastern Kenya have experienced both physical and sexual violence from their spouse. It also indicates that 48.8% of women in Eastern Kenya have experienced physical violence (KDHS, 2014). According to Musau, (2012) the study he carried out in Makueni County on socio-economic and cultural factors that contribute to violence against women indicates that 58.3% of men are leading in sexual abuse and physical violence against their female counterparts. These statistics show the prevalence of gender-based violence in Makueni County. Majority of domestic and sexual violence cases in Makueni go unreported. Women and young girls shy away from reporting cases for fear of victimization by the law enforcement agencies and the family. Kenya Demographic Health Survey of 2014 indicated that 48.8% of women in Eastern have experienced physical violence and 19% of them have experienced sexual violence respectively. According to Musau et al, (2012) study on the demographic and social cultural factors influencing non-fertility in Makueni indicated that male friends were reported to be leading with 58.3% in both physical and sexual abuse of women and girls. Physical abuse was common in the rural areas affecting 75% compared to 25% in the peri-urban in Makueni.

### **3.3 Research design**

The study adopted a qualitative research design featuring in-depth interviews, key informants interviews, case narratives as the main methods of data collection. Additional data was obtained from secondary.

### **3.4 Study population and unit of analysis**

The study population consisted of all women survivors of GBV in Makueni County. The unit of analysis was the individual woman who had survived gender-based violence and was willing to participate in the study.

### **3.5 Sample and sampling procedure**

The study utilized snow-ball sampling procedure. The first participants in this study were recruited at Mobilization Agency for Paralegal Communities in Africa Organization (MAPACA), a local Non-Governmental Organizations working with survivors of GBV and in which the researcher had previously interviewed. This first group of participants was requested to introduce the researcher to other victims in the community who had not come forward to seek help. This was necessary in order to obtain a balanced view of the experiences of women who had sought and not sought any form of help in order to understand the barriers they faced.

### **3.6 Data collection**

#### **3.6.1 Primary data**

Several methods were used to collect information from the study participants. Tape recording was used to obtain data/information from participants who are not able to communicate in English or Kiswahili. These methods are detailed below.

#### **3.6.2 Key informant interviews**

Seven key informant interviews were conducted with people who include a police officer in charge of the Gender Desk at Makueni Police Station and her colleagues, a legal officer at the Director of Public Prosecutions office Makueni Law Courts, a News reporter with Mbaitu FM radio in Makueni, the area Chief of Unoa Location of Makueni Sub-County, a Programme Coordinator at the Women's Rights and Development Advocacy organization (WRDA) at Wote Town. Also a

Programme Coordinator at Mobilization Agency for Paralegal Communities in Africa organization (MAPACA) at Wote town and a Clinical Doctor at Makueni level five hospital. The KII participants were purposely selected on based of their expert knowledge, know-how and professional experience in the field of GBV in Makueni County. The KII's were basically conducted to gain in-depth understanding of GBV issues and provide the necessary backing knowledge to fill the gaps not adequately covered by data from the other methods. A guide was developed assist in the Key Informant Interviews (See Appendix 3).

### **3.6.3 In-depth interviews**

In-depth interviews were used to collect data on the survivor's experiences with violence and the challenges faced in their quest to obtain justice through the legal system. The interviews were done with 12 survivors drawn from the study sites in equal proportion. A semi-structured interview guide (Appendix 2) was used to gather information. The probing questions were adjusted in consecutive interviews to explore more detail in new and emerging themes from previous interviews. Each interview lasted for about 40-60 minutes. The IDIs were conducted in Kiswahili although some were conducted in the local Kamba language with the help of an interpreter. The researcher took notes during the interviews due to the technicalities in tape recording.

### **3.6.4 Case narratives**

Eight (8) case narrative interviews were conducted to give additional information on their individual experience to support the main in-depth interviews and get more information on barriers women survivors of GBV face in seeking legal services. Participants for case narrative were purposely selected based on the legal services sought on addressing GBV. They also gave their accounts on their experiences on GBV, where they reported their cases first, why the choice of legal intervention, what informed the choice and the barriers they experienced in seeking legal services (See Appendix 4).

### **3.6.5 Secondary data**

Secondary data and information was collected from various sources including project proposals, baseline surveys, progress academy reports, articles, Internet, journals, Training manuals, published and unpublished research report. Data was also collected from books on Gender-based violence in Kenya, surveys, from Kenya Demographic Health Survey (KDHS), Kenya National Bureau of Statistics (KNBS), United Nations Development Fund (UNFPA), United Nations (UN), World Health Organization (WHO), UN-Women, World Bank, Federation of Kenya Women Lawyers (FIDA-Kenya), United Nation Development Programme (UNDP), National Gender Recovery Centre (NGRC), MDG's-SDG's to get the statistics, prevalence and other studies carried out on gender-based violence. Secondary data collected on the laws of Kenya included The Constitution of Kenya, Gender policy, legislations on gender-based violence in Kenya. This information has been used to complement primary data in some cases compared with our primary.

### **3.7 Data processing and aanalysis**

The data generated from this study was mainly qualitative arising from in-depth interviews, case narratives and key informant interviews. Data was transcribed, translated, coded and then subjected to thematic analysis using NVivo software in line with the study objectives. The software helped to organize, analyze and find insights in unstructured or qualitative data interviews with open-ended responses in a short time. Verbatim quotes were used in the final text to support core arguments.

### **3.8 Ethical cconsiderations**

First the Institute of Anthropology, Gender and African Studies cleared the proposal through a defense session and a letter of introduction was issued (see appendix 5). A research permit was obtained from NACOSTI (see appendix 6) and served to the local administration together with an authorization letter for the research period before conducting the interviews (see appendix 7).

Every effort was made to inform the participants about the project's objectives and the study was undertaken for academic purposes only. Respondents were informed that their participation would be voluntary and informed consent was sought by reading the consent form to them before they signed it prior to the interviews (See appendix 1). They were informed of their right to disqualify themselves or withdraw at any stage of the study. Their privacy was guaranteed throughout the study and confidentiality/ anonymity was maintained throughout the data collection, analysis and dissemination stages of the study. Due to the nature of the study, participants were allowed to suggest a venue of their choice to protect their privacy and ensure their comfort.

### **3.9 Problems encountered**

Time constraints to move around the three sub-counties to interview respondents to cover the mapped areas in the wards so as to complete representative sample were experienced. There was lack of financial resources to cover the costs of transport to far areas and of suitable venues for the interviews. To counter this problem funds were raised a second time in order to complete the process of collecting data.

Safety of survivors was an issue. To counter this, one interview was conducted in a taxi because the survivor feared being seen with strangers, this was to avoid more victimization by the community or violence from her family members. Some failed to come for the interviews and others did not answer phone calls. However, other participants were identified later and interviewed. Women have been socialized to keep family matters private, a factor which limits intervention from an outsider.

Language barrier due to illiteracy as some of the survivors would not speak in Kiswahili, a translator had to be sought, since the researcher is married in Makueni and does not speak fluent Kikamba language. Some of the respondents' level of education was very low.

## **4.0 DATA ANALYSIS AND PRESENTATION**

### **4.1 Introduction**

This chapter presents the findings and observations of the study on barriers women survivors of Gender-Based Violence experience in seeking legal services in Makueni County. The chapter presents the findings on forms of GBV, which are rampant in Makueni County, that women survivors of GBV go through.

### **4.2. Types of gender-based violence women experience in Makueni County**

The first objective of this study was to explore various types of gender-based violence women experience in Makueni County. Each individual survivor was asked to describe types of GBV most common in their community and their own experience on GBV and where they reported first. This was necessary getting an understanding on types of GBV and where certain forms of GBV are likely to be reported for legal redress in Makueni County. To achieve this objective, women survivors of gender-based violence were asked to talk about their own experiences on violence. The forms of violence were categorized into the most common and their manifestations.

Virtually all the participants indicated that they had been physically, beaten with sticks, slapped, kicked, thrown on furniture, teeth knocked off, dragged on the floor, thrown out of the house and one of them had her hands and leg chopped off. They also mentioned that physical violence starts from one slap then to several in the intervals of months then escalates into serious beatings. Some of the participants had been sexually abused - were raped by their husbands during the fights and harmful liquid substances poured in their private parts. All the participants indicated that they had been emotionally abused through intimidation, threatened, labeled as trespassers, insulted and bad mouthed. Some of the participants indicated that they had been economically abused by denial of their succession rights, fought over property (estates) of the late parents or husband, denied financial resources, land/property disinherited or sold, houses demolished, evicted and forced to leave home by brothers in-law leading to staying in rental houses. Some participants indicated that they had been culturally harmed both physically and sexually. This was carried out by clan elders

as punishment using substances on their bodies; mostly tobacco powder, raw sisal liquid and raw grounded pepper on their private parts and on open wounds to cause more pain to them.

All the key informants and respondents confirmed that gender-based violence is rampant while the most common were physical violence, sexual violence, cultural violence, economic violence. Gender-based violence in Makueni is at an alarming rate as cases are reported on daily basis. They said that there were still a high number of cases of violence against women in the community that are not reported.

A legal officer from the office of the Director of Public Prosecutions noted that there were a considerable number of GBV cases that were not formally reported constituting a hidden burden of GBV. He gave me a list of the number of physical and sexual cases of violence that are ongoing. As at July 31, 2018 there were a total of 697 cases filed in courts: Kilungu Law court, Makindu Law court, Tawa Law court and Makueni Law court, as reported per Ward, in Makueni County courts (*see appendix 8*).

*“..Gender-based violence cases against women in Makueni County law courts are majorly based on succession matters. Physical abuse cases are instigated by succession issues in terms of land and property. The other forms of violence in Makueni courts include economic, physical, rape, defilement, domestic violence and cultural violence” (KII 5 Legal officer).*

The area chief said that he had handled many cases that women reported to him at the family level without involving the police. A female police officer responsible for gender desk gave an illustration of the extent of GBV that she deals with in the county:

*“We deal with Gender-Based Violence cases almost on a weekly basis. The most common here are physical violence, sexual violence like rape cases, inheritance, succession, child custody and maintenance, eviction and demolition. Some are reported first at the area chief and we are called in to arrest when an arrest warrant is issued” (KII 1- Police Officer).*

#### **4.2.1 Physical Violence**

All respondents indicated to have been physically abused in their homes. The most common type of violence takes the form of battering, resulting in aggravated bodily harm, while other forms of

physical violence include: chopping off body parts, pouring liquid substance in the private parts, kicking, dragging someone on the floor, knocking someone's teeth out, beatings and slapping. One female respondent who experienced physical violence resulting in grievous bodily harm reported that:

*“My husband started seeing other women and I asked him about it. From that day on our relationship was strained. He used to come home drunk and in bad mood and he would just quarrel over minor things. This went on for some time....one day my husband came home drunk and chopped my hands and leg off... I was hospitalized for months, treated and discharged [sobs] I had never thought my husband could do something like this ... [continues quite emotionally while sobbing] I decided to put everything behind me. But his relatives keep on bad mouthing me, saying they will only compensate me when I am dead” (IDI 1 35years business lady at Emali market)*



Plate 4.1: A close interview with a GBV survivor, whose hands and leg were chopped off by her husband, at her grocery store at Emali market along Mombasa road.

Another respondent who experienced intimate partner violence reported that physical violence precedes verbal violence which develops into slaps and culminates into serious physical violence. She said that it all started with small quarrels, followed by slaps here and there, then escalated into serious battering with time,

*“My husband and his family hated me so much. His parents were the source of our misunderstanding by interfering with our marriage. This escalated the violence between me and my husband. It started with daily slaps after any disagreement and use of abusive words but later developed into serious beatings. I separated from my husband due to*



*misunderstanding and violence by my husband and his family. I left with my children to my parents' home. His family hated me with passion.” Female victim of GBV (IDI 9 age 27)*



Plate 4.2: A survivor of physical violence with fresh scars in hospital and in the next picture is her husband beating her in public in Makueni County (edaily.co.ke, 2018)

Respondents of the study indicated that sometimes women are beaten for mistakes that are not theirs. This is due to gender relations and power that is bestowed upon men as leaders in the family; hence they practice that power by rewarding or punishing women. These social norms are learned through socialization where women learn to endure this kind of treatment as part of life. When I probed to find out how culture contributes to violence against women, she responded that, were it not for culture, his parents would have asked my husband to stop the violence. Later his father took her to the hospital, not to the police,

*“When my husband (a teacher) came back home from work he found the food I had kept for him had been eaten by the house cat and he was very furious. He asked for food but there was none. He went out of the house and cut a stick which he used to beat me. He had closed the door so no one could save me. He gagged my mouth but his parents heard the commotion and came to save me but he told them to go away. I was beaten thoroughly with a stick; he threw me on the bed. On hitting the bed my teeth were knocked out. I was in a*

*terrible pain. I lost my front teeth from the beatings. The whole of my body was in pain. When I went out of the house he continued beating me in front of his parents. My father in-law took me to the hospital, I was treated and discharged and he paid the bill” (Case narrative 3 aged 19)*

#### **4.2.2 Sexual violence**

All respondents argued that any married woman who tells you that she has never been forced to have sex with her husbands will be lying. This statement means that all ever-married women have one time been forced to have sex in their marriage life. They noted that sex is considered as a package in marriage especially in the formal marriage where Kamba traditional culture has been performed. All the respondents and key informants reported that rape and defilement cases are common types of GBV in Makueni County. Some of the respondents reported that they had been forced by their husbands to have sex after they had been beaten. One of the respondents said that many times she had been forced by her husband to have sex even after a fight or on a normal day when she did not feel like it,

*.... "My husband beats me all the time including forced sex. He is a very violent man. I have been going through violence since I got married. My husband has been very violent throughout our marriage life. He comes home late and drunk, and picks up fights. He beats me during the night even during day time so long as he is drunk. When I refuse to have sex he throws insults and abuses to me with all manner of words that I cannot mention to you now..." (Case narrative 6 age 40 housewife)*

Some of the respondents indicated that family privacy is part of socialization from childhood, it makes them become submissive and that they keep violence against them private. When I probed one of the respondents during the interview to know whether she had ever been forced to have sex during the time of physical violence she responded thus...

*“mmmm....eeeh.. (her eyes full of tears) one day my husband came home late at night drunk, he asked for food, when I served him he threw the food at me and started beating me. It was very dark outside and I could not go out. I cried but no one came to rescue me. When I went to sleep he forced me to have sex with him....I have never told anyone about it...it is a shame to talk about it,(Case narrative 6 age 40 housewife)*

One of the respondents indicated that her own brother physically beat her over his late mothers' estates. Physical violence can also be used to force women into submission by a brother in order to inherit property of late parents, where brothers beat up their sisters to force them to surrender

properties under their custody. Family relations including brothers/or sisters in-law and siblings were involved in physical violence related to disputes over property and inheritance of parental estates. Further, a woman who had been beaten by her brother indicated that:

*“There was a night when I was sleeping in my deceased mother’s house, my elder brother came and knocked open the door to the house. I woke up screaming thinking that it was a robbery... I was surprised to see my elder brother. Without hesitation he pulled me out of my bed and dropped me on the ground. In shock I was still screaming when he dragged me through the house and threw me outside... I was screaming asking him why he was beating me up [sobs]. He took my cow, which I always see him grazing it in his farm”* Female victim of GBV (IDI 10 age 30)

#### **4.2.3 Forceful evictions and destruction of property**

Three respondents in the study indicated that they had been beaten and forcefully evicted from their homes and their houses demolished. One of the respondents said that the eviction occurred after her husband died and the intention was to disinherit land which was rightly entitled to her. Several similar cases were on land narrated by other respondents. The most commonly affected are widows. There are also cases of conflicts among siblings following the death of parents. Harassment, threats and assaults, more often than not, occur during such evictions and wrangles regarding property. This is a case of power relations and control over resources by men. Any resistance is met with violence. A respondent said that:

*“I have experienced physical violence, death threats and attempts on my life... I was chased from my husband’s piece of land after his death. I have not been coping well as I have had to sleep outside and in the village streets.”* GBV victim (IDI 7 age 60 and standard 6 dropout house wife)



Plate 4.3: *The Researcher and a GBV survivor narrating her story - at Nziu Market.*

#### **4.2.4 Psychological / emotional abuse**

All the twenty women interviewed in the study indicated they were going through psychological trauma. Some women reported that they faced psychological /emotional abuse as they sought legal services. Psychological /emotional abuse was also reported to manifest as insults, hostilities and threats. In several cases women experiencing psychological / emotional abuse reported that such treatment affected their health,

*“They (in-laws) reported the matter to the DO who came with two askaris and picked me from my place of work (Posho mill). They talked to me so badly suggesting that I had entered into other peoples land, (the District Officer alinisomea sana). I developed high blood pressure from that day” (Case narrative 7 aged 57 retired teacher).*

Gender based violence severely affects women’s mental health. The respondents reported how it manifests. When asked what happened she said:

*“I was chased away by my husband’s elder brother who was wielding a panga at me. After this incident i developed High Blood Pressure due to all the atrocities they had (family members) caused on me”, (IDI 6 aged 66)*

### **4.3. Legal interventions sought by women survivors of GBV**

The second objective of the study was to find out whether women survivors seek legal intervention. The women survivors described the actions that they took in response to GBV and these included submission and avoidance, getting out of abusive relationships, exploring alternative dispute resolution mechanisms (clan elders) and reporting to law enforcement agencies (either police or chiefs). Civil societies and human rights agencies played a prominent role in promoting access to legal services among GBV survivors. Aside from these, women commonly reported that they pursued alternative dispute resolution channels like holding family meetings before embarking on legal processes, more so, on physical violence and property inheritance. Sexual abuse was always reported to the police.

#### **4.3.1 Reporting to clan elders and members of extended family**

Some of the women I interviewed said they sought help from clan elders to address the GBV they had experienced in the family including domestic violence. When asked why they reported to the clan elders first they noted that family members preferred reporting to clan elders than to the police. It all depended on the nature of violence one was experiencing that determined the type of legal services sought. Most of the women who faced violence over inheritance of property reported the matter to the clan elders but, at times, cases were not resolved fully hence other legal services were sought to address the GBV issues. One of the respondents said that,

*“When my brothers in-law started threatening and hauling insults at me, including being very violent to the extent of slapping me during the family meeting over my ownership of the land that I had inherited from my late husband, I reported the matter to the clan elders and they ruled in my favour. When they [brother s in-law] started issues of subdivision [of family property including the victim’s deceased husband’s estates] again I went to the area chief and he also ruled in my favour. But they went to the police and the case was filed in court.” GBV victim (case narrative 8 age 41 small business)*





Plate 4.4: *The researcher with a GBV survivor appending her signature on the consent form before the interview at Salama.*

#### **4.3.1 Cases reported to the chief**

Some respondents said that they first reported to their area chiefs before going to the police. The area chiefs would then assist them in getting their belongings from their husbands. The chiefs provide protection for women survivors to avoid further violence when the women decide to leave violent marriages. This action of getting out of violent relationships helps women to press charges of violence once they are out of their matrimonial homes. It also prevents the husband's family from persuading the women survivors into dropping the GBV cases. The first action women survivors took to minimize violence was by getting out of the relationship then reporting the matter to the area chief. Opting out of marriages and other abusive relationships was perceived as an avenue for dealing with GBV as shown in the response of one respondent:

*“I separated from my husband due to the beatings, insults and hostilities. He deserted me for some time. When he returned he was more violent than before. I decided to run away with my child. When I left I did not carry my belongings and my child's. I stay at my parents' house. ...my belongings are still there. The area chief helped me get my child's and some of my belongings from there.” Female victim of GBV (case narrative 2 age 30 standard 8)*



Plate 4.5: A research assistant with a GBV survivor seeking consent before settling down for the interview.

The chief reported to have handled cases of GBV on a daily basis and for those that are more serious to handle at his level he referred them to the police station. He even accompanied the victims to the police station to record statements and follow up to ensure the cases are filed in court. When asked where the survivors reported GBV cases first he said that,

*“Women have reported their cases first to this office. The most common form of redress or intervention to GBV is through the chief where i attempt to mediate in the situation before taking it to the police when it gets out of hand” (KII 4 The area chief)*

Some cases are reported first to the area chief, but sometimes the chiefs refer them to the clan elders for their intervention. One of the women respondents said that,

*“I first took the matter to the chief who then referred me to the clan elders. The Clan elders came to preside over the matter” (IDI 6 aged 66)*

### **4.3.3 Women reported GBV cases to the police**

Many of the respondents said that they reported the violence they experienced to the police. In cases of severe physical injuries police are called in by the medical doctors treating the women survivors and statements are recorded from the hospital for those who can barely move due to injuries obtained from beatings. A medical doctor is reported to have treated sexually abused women and reported the matter, on their behalf, to the police. A woman who had experienced physical violence and sexual abuse reported that,

*....”I could barely move. With both hands and one leg cut off. The police came and took my statement from my hospital bed (IDI 1 age 35 business lady)”.*

A medical doctor at Makueni Level Five Hospital reported that in cases of severe injuries police are called in and statements are recorded at the hospital. It is the only way to help women get justice from the violence they are experiencing, he said that,

*.... “Once a patient comes in with a rape case and physical injuries, we refer them to the police station to obtain an OB number before we start treating them to ensure it is recorded on the same date of the incident. In cases where patients are in serious condition from severe injuries we call the police to the hospital to record statements from the patients in the ward” (KII 3 a Clinical Doctor).*

The police officer incharge of the gender desk at Wote police station in Makueni, when asked about the common intervention for GBV survivors, responded that;

*... “the most common form of intervention when such atrocities happen to these ladies is through the police station, some are taken to the area chiefs [local government administrator] first who then later refer them here ... some women have once forgiven the perpetrators of such violence but then it persists and, after a short time, they decide to report here” (KII 1 Police Constable Catherine).*

### **4.3.4 Cases reported to the children’s office and human rights organizations**

Four respondents indicated to have reported their cases to the children’s office and human rights organizations. Women who run away from their violent partners file cases at the children’s offices to seek for child support and hence decide not to file the cases of violence. Many cases on child custody and maintenance were reported to the chiefs as a second option if the children’s officers



were not taking any action on the matter. Some were reported to the local and national human rights organizations for support in pursuing legal redress. One of the respondents noted that,

*..... "I left my husband in 2014. I separated from my husband due to cruelty, sexual abuse and beatings all the time. I went to the children's office at Wote town but the officer was bribed and did not want to help on child custody and maintenance case. I then went to a local human rights organization at Wote town, which then connected me to FIDA Kenya office in Nairobi. I was given a lawyer who filed the case at Machakos Law Courts and it was ruled in my favour (Case narrative 4 age 20 form 4 leaver).*

Civil society and human rights organizations play a prominent role in helping women access legal services but these organizations have not succeeded in laying out a clear and accessible referral system for victims of GBV. Women who accessed these organizations in most instances reported having done so by chance encounters with community members who were aware of the activities of these organizations and they reported pleasant experiences in dealing with the organizations. The beneficiaries, however, recommended that the organizations should increase their reach through developing well laid out programs for helping GBV survivors and recruiting of justice and human rights defenders to help GBV victims seeking legal redress. One of the respondent noted that,

*"Non-governmental organizations are really helping us. If it were not for the NGO's I would not be having a lawyer to represent me. I could not afford the services of the lawyer. It is expensive" (IDI 1 age 35).*

#### **4.4. Barriers in seeking legal services**

The third objective of the study was to establish the barriers that women survivors of GBV experience in seeking legal redress. These barriers are presented below:

##### **4.4.1 Economic barriers**

Economic barriers were very prominent in all the interviews with the women. Some of the respondents noted that they were housewives who solely depended on their husbands for upkeep. They said that economic barriers hindered them from seeking legal services. Poor women from rural areas lack resources to file cases in court, pay for lawyers' fees and other hidden costs like transport to the police, courts, and hospital. Respondents indicated that in cases of physical and sexual violence they are required to get treatment so as to obtain a Post Rape Care form or a P3 for

evidence in court but, sometimes they lack transport to get to the hospital. Poor women in rural Makueni County who depend on their farms and their husbands as bread winners lack resources to seek legal services due to poverty. One of the respondents who had been battered by her husband said that,

*“I have my personal challenges in seeking legal redress...I love my husband and I fear taking him to court, more so I am an orphan. If my husband is taken to jail I will have nowhere to go. I bought this land we live on with a loan I borrowed from a women group and I do not want to lose my property if I leave.... I did not go to the police station to report the incident because my husband is the sole bread winner of the family and I have kids to take care of.” Female victim of GBV (IDI 8 age 25)*

Some of the women I interviewed indicated that lack of financial resources hinders them from seeking legal services in addressing the gender-based violence they are experiencing. They said it was not possible to follow up with cases when you have no resources to facilitate your movement and other costs. The legal fee is quite high that they cannot afford to pay for the services of legal representation by advocates and cover costs of filing the suits. The civil societies and human rights organizations role in covering these costs and reducing the impact of these barriers in seeking redress was acknowledged,

*“I had financial constraints. Going to court really involves a lot of money because we have not been receiving the money due to us [as indicated in the victim’s mother’s will]. We came to realize that our only brother has been taking the cash due to us from our late mother’s estate and he has not been giving any to us. We don’t even have food every day.” Female victim of GBV (IDI 10 age 30)*

The other respondent noted that economic barriers hindered them from seeking legal services as they lacked property to sell and pay for legal costs. One of the women who had a land case in court that family members have been fighting her over said that,

*“I sold all my cattle including my very big oxen that I used for farming to get a lawyer to represent me in court. My lawyer filed a case in court to stop the change of the title deed. I also sold part of the land to pay for the lawyer’s cost of filing the case. I have used a lot of money on this case. It is now 7 years and it is still dragging in court” (Case narrative 5 age 57).*

Many women survivors, after experiencing violence, decide to separate from their spouses to stop violence from occurring. As soon as they leave their matrimonial home with children their husbands stop supporting them, which leaves women survivors of GBV to file cases on child custody and maintenance. Once they leave their matrimonial home they decide to forget about

pressing charges of violence and focus on child support. This was evidenced by the number of women seeking child custody and maintenance in courts. When asked what they did to stop violence from happening, many of them noted that they decided to leave their matrimonial home to avoid more violence. One of the respondents noted that, at that point, the focus is on children's upkeep due to poverty as they depend on their husbands for support,

*.....We had misunderstandings in our marriage coupled with violence. My husband stopped coming to our house, and refused to neither pay rent nor support me and my child. I went back to my mom who gave me a room for me and my child. I sought legal intervention from the children's officer in Sultan Hamud. The matter went to court. This was in 2015. After the court proceedings I managed to acquire judgment in my favour....to keep custody of our child as my husband provides for the upkeep... (IDI 2 age 42 runs a small grocery)*

#### **4.4.2 Cultural barriers**

The researcher asked respondents how culture might be a barrier to seeking legal services. Respondents argued that they are rendered vulnerable to violence as it is an acceptable social norm for women to be disciplined by their husbands and therefore survivors are discouraged from seeking legal services. The respondents noted that they fear reporting cases of violence due to social threats of punishment which is internalized, the consequences of which is more violence. Most of the women I spoke to were all aware of the social norms and were more worried should they be known to have spoken to strangers. Women reported that they met resistance from family and kin when they attempted to seek legal redress. In most instances the society favoured settlement of family conflicts outside the legal system using traditional conflict resolution mechanisms and women who objected were sanctioned through isolation and stigmatization.

*“There was interference from my husband's family when I wanted to report the case...I decided to run away to avoid the violence I was being subjected to. I requested for a transfer from my work place and it was granted... both his [husband's] parents and my parents do not want the issue settled in court” GBV victim (IDI 4 age 35 teacher)*

One of the key informants whose professional role involves tracking and reporting GBV cases in the community clearly highlighted the role of culture and its impact on women seeking legal redress for GBV:

*“Culture plays a big role in hindering women from reporting GBV cases to the police or the chief. To some women they believe in clan elders solving their problems, some opt to*

*leave the issue to the family to resolve. Family members always side with the men as culture gives men the authority to head the family. Family members don't allow issues within family discussed in public or with strangers unless it is associated with severe injuries or death" (KII 6 Media personnel).*

There are instances where family members do not assist women survivors who seek legal redress instead they re-victimize them and blame them for causing the violence. Due to socialization and cultural beliefs men have the power of control and by so doing they exercise this power through violence. Patriarchal society accepts violence as a means of settling family conflicts. Some parents, however, believe in keeping it as a private matter, which hinders women survivors from seeking legal redress. One of the respondents said that,

*"I was beaten so thoroughly by my husband and I was badly hurt. I fell unconscious and my husband called his parents who then called the police to try to incriminate me instead of reporting my husband. When the police came they found me lying on the floor unconscious. The police, gauging from the situation, took me to hospital and also arrested my husband for physical abuse. The case is ongoing in court" (IDI 4 a teacher aged 35)*

Most of the women survivors of GBV experience revictimization and other consequences that follow after they have sought legal redress. Family members fight back whenever cases are ruled in favour of the GBV survivors. Culturally women are not supposed to go out of the family setup and report cases of violence to the law enforcement agencies or seek legal services. Women have been socialized to be submissive and obedient hence any violence meted on them is a form of punishment (Bandura, 1973). If it happens there is a lot of resistance even if the case is ruled in womens' favour. Some respondents noted having emotional and psychological impact on their health. Revictimization affects mental health on the survivors of GBV when seeking legal services. As they go through legal services there is a lot of intimidation and harassment that causes fear and stress on the survivors. One of the respondent noted that;

*..... "After my husband's death my in-laws said that they were going to subdivide the land that we had been given by my father in-law. I reported the matter to the clan elders and they ruled in my favour. When they started issues of subdivision again I went to the area chief and he also ruled in my favour. They reported the matter to the District Officer who came with two administration police officers (askaris) and picked me from my place of work (Posho mill). They talked to me so badly suggesting that I had entered into other peoples land - the District Officer (alinisomea sana). I developed high blood pressure from that day..." (Case narrative 5 Age 57 Retired teacher)*

### 4.4.3 Corruption

Despite the observation that most women survivors of GBV sought legal services, they were not satisfied with the way their cases were handled. There were reports of corruption which hindered women survivors of GBV from access to legal services hence they opted to use other means to get to address their GBV cases. Corruption occurred at different levels, most notably officers charged with helping GBV victims access legal services either demanded illegal and unofficial monetary payments, thus preventing access to justice. In other cases they colluded with the offenders of GBV (husbands, brothers or brother's in-law) after receiving financial inducement to frustrate the women's attempts to get legal redress. These issues were reported from the children's officer, police, courts, chiefs and clan elders with one victim reporting that clan elders asked for payments (Uji ya wazee) to preside over her case while another said that the area chief frustrated her because he was a friend to her husband,

*"I reported the matter first to the area chief but he was adamant. I went to the children's office ... but the officer was also bribed and did not want to help me... I then went to the human rights office from where I was connected to FIDA Kenya office, in Nairobi. I was given a lawyer who filed the case at Machakos Law Courts and it was ruled in my favour."*  
Female victim of GBV (case narrative 4 age 20 Form 4 leaver)



Plate 4.6: A research assistant with a GBV survivor during the interview at Kalamba town in Makeni.

Some of the women I interviewed confessed that they were not aware of the legal procedures and the laws hence they have been experiencing laxity. If they knew the process they would have complained to the relevant authorities. Most women reported to the area chiefs and in several cases said that their reports at this level were met by reluctance, inaction and in some cases there was outright antagonism. A woman who experienced such antagonism said that:

*“I reported this issue to the chief to stop the violence...the area chief did not support me. He instead told me to move on and find another place to stay. I was not treated well as I tried to report the matter because the chief was colluding with the other party as they took possession of my land. No legal proceedings have been instituted against the perpetrator of the violence” Female victim of GBV (IDI 5 age 43 - small business lady)*

Respondents reported that Police officers are sometimes bribed to interfere with cases in order to frustrate the women complainants. One respondent indicated that she was asked to pay for services that were not within her means. She said police asked her for some money then changed to sexual favours before she could be served – a very frustrating and discouraging scenario.

*“When I went to record the statement at the police station the officer asked me to leave KES 200 for airtime for him to call me back or I agree to his sexual advances”*  
(Case narrative 7 aged 41)

Another woman said that her case was delayed for a long time at the police station before being filed in court. She went to the police station five times and was almost giving up. It impacts negatively on the finances by making many trips to the police station. Every time she went to the police station she was taken back and forth. They employed delaying tactics. She noticed that the police had links with the family members and clan elders she was suing,

*“Police were bribed to frustrate me from following up with the case”. (IDI 12 age 45)*



*Plate 4.7: The researcher with a GBV survivor during the interview at Malivani and a paralegal research assistant.*

#### **4.4.6 Lack of legal awareness**

Some of the respondents I interviewed acknowledge that lack of awareness on legal processes work to their disadvantage while seeking legal services. It was apparent from the interviews that women are not aware of some of these laws as a cross-section of the survivors displayed lack of information regarding their rights. These survivors were particularly vulnerable, easily intimidated and influenced by inaccurate information received from informal sources. Such information then formed the basis for crucial decisions such as whether to pursue legal redress or not. For example, one woman stated that:

*“I [victim] was then asked [by police officer] to bring a witness and I brought one who had undergone the same treatment from the clan elders on the same day. The officer then asked me to leave money for airtime [to facilitate the officer] for him to call me back. He later advised me to solve the matter out of court since my case was not justifiable in court. He told me to seek for elders to pay my damages on the sexual violence case.”* GBV victim (case narrative 8 age 41 small business)

Apart, from misinformation regarding legal procedures there were instances in which victims were not aware of basic information such as channels to be followed in seeking legal redress for GBV. One of the respondents reported to have gone to the county government office to report a case of



inheritance but, she was not assisted. Her in-laws went to report to the District officer. She noted that,

*“I then went to the County Government Officer who deals with gender issues for help... but she told me she does not deal with land issues. They [brothers’ in-law] reported the matter to the District Officer (DO) who came with police officers, picked me up from my place of work and harassed me... the case is in court... I have paid a lawyer...but nothing has happened since the case was filed in court.”* GBV survivor (case narrative 7 age 57 Retired teacher)



Plate 4.8: *The researcher with a GBV survivor telling her story at Sultan Humud.*

Women face legal barriers during court processes where cases take longer to conclude. That has a cost effect on the GBV survivors, which hinders them from accessing justice. Justice delayed is justice denied. Legal systems delays in determining matters in court cause more harm than good to the GBV survivors. Many survivors cited their cases dragging in court for so long. Some are in court for several years and in some cases, the lawyers they hire do not often communicate what is going on. One of the respondents said that,

*“...My case has been in court for about 7 years. This problem started one year after the death of my husband. Family members said they wanted a share of my piece land. We went to the area chief and they said that the land belonged to their distant relative, but it was ruled in my favour. They claimed that, since I didn’t have a title deed, they could have their share of the land. Family members went to change the title deed in their names. I got a lawyer to stop the change. The case was filed in court. I had witnesses but they were all*



*bribed by the relatives and they refused to go to court” (Case narrative 5 Age 57 a Form two dropout housewife).*

#### **4.4.7 Law enforcement institutional barriers**

During an interview with the lawyer who deals with GBV cases in Makueni court, the lawyer indicated that one of the challenges in addressing GBV in courts is police transfers and other challenges emanating from police administration of justice which greatly impacts negatively on the ongoing cases, especially the handling of evidence required for cases of sexual nature. The police need training on how to handle evidence and carrying out of thorough investigations on GBV matters. The police keep changing station at times. One comes, out of transfer, to court without proper knowledge on the ongoing case. When police are asked some questions on the evidence they are not able to give proper answers. A lawyer in Makueni Law court noted that,

*“.....police transfers are a hindrance to the legal process because the incoming officer is not given a legal brief on the ongoing cases. The police ask for bribes or some form of remuneration before helping the survivors. Police lack proper training on how to handle the GBV cases. The government chemist is not well expounded to cover the whole country hence underfinancing of the government chemist. GBV perpetrators should be held in police stations until the case is completed...”(KII DPP Office Lawyer)*

A local doctor reported to have treated at least five sexually abused women on a weekly basis but this number does not translate to the number of P3 forms filled and court cases filed in courts. The doctor has always referred the patients to obtain OB numbers before they start treatment but do not receive sermons to go to court to give a medical report as required by law. There is need to involve medical doctors in legal redress for GBV survivors. He noted that it is the work of the police to ensure doctors’ reports and their evidence are produced in court and that the doctors are informed to personally appear in court to present the report by themselves,

*.....”Doctors who examine the survivors should be the ones to provide evidence in court..”*  
(KII Medical Officer)

#### **4.4.8 Illiteracy and poverty**

One respondent during the interview said that she was jailed for three months due to lack of awareness on the legal process. She was not educated and was also too poor to afford a lawyer to

represent her in court. She narrated her lack of knowledge on court procedures and processes which landed her in jail. She had reported the matter to the clan elders who ruled in her favour over inheritance of land. Her brother in-law filed a case in court and never served her with court sermons. She did not raise her hand to inform the court that she never received any sermons to appear in court. She just kept silent and was confused. She reported that,

*“My husband was given this land by his late father. When my husband died his brothers started claiming for the land. They came and chased me and my children from the land. There was a huge fight over this land which included physical violence, intimidation and threats. One day my brother in-law came and demolished my house and I was out in the cold with my children. The local community and human rights organizations pulled resources together and built for me another house. First I took the matter to the chief who then referred me to the clan elders. The Clan elders came to preside over the matter. They ruled in my favor but the accused (my brother in-law) wasn't satisfied with their verdict. He went to court seeking redress. He took the matter to court without my knowledge, which made the court issue a warrant of arrest because i never appeared in court as the defendant. I had never received any sermons to attend court with regard to the case. The magistrate read my charges but I was just silent and since I did not raise my hand to defend myself he ruled that I was rude and that I failed to respond to the charges. I was then locked up and sentenced in prison for three months for contempt of court. When i was in jail serving my three months sentence with my son, my house was demolished for the second time on the disputed land that i inherited from my husband and now I live in a rented house at the village market. The elder brother in-law used his economic status and knowledge on legal processes to sway the court into thinking that I just didn't want to appear in court”, (IDI 6 age 66).*

## **5.0 SUMMARY, DISCUSSION, CONCLUSION AND RECOMMEDATIONS**

### **5.1. Introduction**

This chapter presents a summary, discussion and key findings in relation to other studies on gender-based violence and barriers women survivors experience in seeking legal services in various law enforcement institutions as well as from society. A summary of these findings is based on the study objectives and recommendations on how best to address the barriers in accessing legal services for women survivors of gender-based violence.

### **5.2. Summary**

The study explored the various types of gender-based violence women experience in Makueni County. The study categorized the types of gender-based violence as: physical violence which included beatings, slapping, knocking of teeth off, cutting of body parts like limbs, dragging of one on the floor, throwing of one out of the house on to the ground; cultural violence included clans punishment of using objects and liquid on body parts to cause harm; sexual violence included rape and marital rape; Economic violence included denial of finances, destruction of property, denial of access to family estates, forced eviction and demolition of houses; emotional/psychological violence included use of excessive force by the police, re-victimization, verbal abuse, intimidation, bad mouthing, chasing one with a panga, threats and warnings of dire consequences.

The second objective of this study was to find out the various legal interventions that women sought. Legal redress involves a number of processes which start from reporting to the sub-chief, the chief and then culminate in a court of law. In some instances, due to lack of financial resources or lack of knowledge on the legal process or cultural reasons, some women sought alternative dispute resolution like reporting to the village elder who organize a meeting of clan elders to deliberate on the issue.

Women survivors of gender-based violence sought legal services from the chiefs, police stations, children's offices, filed cases in court directly through their lawyers with the help of legal human rights organizations who have the provision of (pro bono) free lawyers and lastly from clan elders under customary law which permits them on cases that touch on land, culture and traditions. The findings of the study show how the nature of GBV influenced the choice of legal services sought like; on land and property issue, women sought the intervention of clan elders and chiefs and later ended up in police station then court. As for cases of physical and sexual violence, women sought intervention from the chiefs, police and human rights organizations. In cases related to child neglect and demand for upkeep they sought legal services from children's offices, chiefs and human rights organizations, which ended up filed in courts.

The third objective of this study was to establish the barriers that women survivors of GBV experience in seeking legal services. The barriers identified were as follows: economic, cultural, corruption, poverty, illiteracy, distance to police, hospital and court and hidden legal costs, poor transport infrastructure (road network in rural area), law enforcement institutional barriers, lack of awareness on the laws and policies, lack of awareness on court procedures and poor referral systems. Lack of police training on how to address GBV is a barrier to women seeking legal services. Police must be trained on laws and legislation on responding to gender-based violence.

### **5.3. Discussion**

#### **5.3.1 Types of gender-based violence**

Gender-based violence is a serious human rights violation and a health issue. The finding of this study confirms the findings by (Ondicho, 2018) that GBV affects women with long lasting consequences such death, disabilities, emotional/psychological disorders that include heart problems like high blood pressure. The study finding indicates GBV is rampant and confirms the findings by (WHO, 2014; KDHS, 2014; KNBS and Macro, 2010) that there are several types of GBV that range from physical, sexual, economic, cultural and emotional/psychological. Evidence from the study indicates that half of women survivors of GBV in Makueni have experienced one or

more types of violence. It also shows women survivors have suffered physical disabilities, some with fresh scars, some having been affected emotionally and others developed high blood pressure. This study finding concurs with (UN, 2000; WHO, 2013; Musau et, al, 2012) who stated that gender-based violence is a serious and widespread problem that affects the lives of millions of men, children, and women, but women are mostly affected.

The findings of the study indicate that physical violence is the most common type of GBV in Makueni County. It also confirms the findings of the study by (WHO, 2014) which estimated that more than 1.3 million people in the world have been physically or sexually violated, a bigger number being women. The respondents of the study gave their accounts on the types of GBV they experienced and were categorized as follows: Physical, sexual, emotional, economic and cultural. These findings confirm the study findings by (Olungah, 2006) on socio-cultural context of maternal healthcare in Bondo District which indicated that physical violence and other types of violence are tolerated in the Luo community. He argued that physical violence is a common and culturally accepted practice among the Luo, hence women have lived in constant fear of their husbands. Additionally, this study confirms the description of prevalence and forms of GBV by (UNFPA, 2016; WHO, 2013) of physical violence as beatings, punching, stabbing, slapping, throwing of acid, setting of fire, and choking, verbal abuse, confinement, threats, coercion or arbitrary deprivation of liberty and deny women their freedoms; Psychological/ emotional abuse included: intimidation, verbal insults, isolation, desertion, children neglected by their fathers and left under the care of their mothers without any upkeep; Cultural practices like punishment by clan elders. This study confirms the definition of Gender-Based Violence by (UN, 1993) as violence against women, which is likely to result in physical, sexual, psychological harm or suffering.

GBV manifests in situations where women are economically dependent on men with a sense of helplessness and hopelessness which concurs with the study by (Maurice, 2013). In the study respondents argued that they experienced economic violence including: denial of financial resources, denial of land and property inheritance, destruction of property, demolition of houses hence destroying their livelihood, evictions - being forced to leave their homes. The findings of this study confirms the findings by (Johnson, 2002) who noted that most abused women have low level of education and are dependent on men. The findings of the study also concurs with the

findings with (UNICEF, 2000; Musau, et al, 2012) who gave accounts that women have, throughout history, been subjected to physical, psychological and sexual abuse due to the social norms of accepting men as being in control. Men are socialized to be in control of resources and families; hence women need to be led and controlled.

Respondents noted that cultural violence is practiced by clan elders whose victims are mostly women. The respondents argued that they were subjected to cultural practice by clan elders as a form of punishment. This statement is evidenced in the case of a woman who was punished by clan elders claiming that it was punishment for her behaviour according to their clan's socially sanctioned norms (Mkhandawire, 2009). This study finding confirms the findings by (Maurice, 2013) that GBV is often tolerated as part of normal behavior and is justified in the name of traditional culture. Social learning theory explains how socialization and learned behaviour of social norms that perpetrate gender-based violence is learned in childhood and carried on from generation to generation; reason women do not seek legal services (Bandura, 1973). The social roles and responsibilities that are bestowed on men, of control and power relations in the society, are exercised through violence (WHO, 2013&14; UNFPA, 2015) and the victims are women who are considered as subordinate to or property of men. Women have to be aware of their rights and seek for legal services whenever they are abused and justice must be served to change this behaviour of violence.

The socialization of gender roles encourages the perception of women as being objects or property of men, and has led to linkages between masculinity and violence. This study finding concurs with the findings by (Musau et, al, 2012) on socio-economic and cultural factors that contribute to GBV, which acknowledge the abuse of women physically and sexually in Makueni County. Men are providers and women are dependent on men hence power and control comes into play. For men to exert this power and control, it is exercised through violence on the women in order to enforce control. This study confirms the evidence that women rationalize violence meted on them by their husbands (Mkandawire, 2009; Muniyakh, 1990) that if a woman is beaten for burning food she takes it as part of punishment for her mistakes.

### **5.3.2. Legal intervention**

The study findings show that women survivors of GBV sought various legal interventions in Makueni County. The key informants argued that GBV is rampant in Makueni County as new cases are reported on a daily basis. As at 31 July, 2018 there was a total of 697 cases reported per Ward in Makueni County courts (Director of Public Prosecution Office Makueni County, 2018) (see appendix 8). This is contrary to (Munyakho,1990) findings, where women in Kenya believed in men beating their wives. The trend has changed and women are now seeking justice and demanding for women's rights and dignity. One of the respondents who was beaten and her teeth knocked out by her husband when he came home and found that the food that was kept for him had been eaten by a cat, separated from and pressed charges against him. This was a similar case contrary to the findings of (Mkandawire, 2009) whose findings indicated that, if a woman is beaten for burning food she takes it as part of punishment for her mistakes. These findings concur with (Olungah, 2006) that women are beaten and suffer injuries for the mistakes that are not theirs; hence they are not given the respect they deserve. This calls for women to seek legal intervention to prevent men from violating them at will.

To some extent women are aware of their rights and are willing to defend these rights in courts of justice. This was noted from the high number of cases reported at the police stations but a few are filed in court since complainants fail to show up or lack witnesses to record statements. It is also worth noting that women who are pressing charges against their husbands and spouses are educated and economically empowered.

The study indicates that women utilized a wide range of legal services in Makueni County. These legal services ranged from seeking services from the law courts by filing cases through their lawyers, reporting cases at the police stations, chiefs handling many cases, Non-Governmental Organizations (local and national human rights bodies) and clan elders getting involved, which is in accordance with Customary Law. The police at Wote Divisional Police Station confirmed to have received many cases of sexual and physical abuse against women at the Gender Desk but with no follow ups, however, some claimed to have forgiven the offenders (husbands) and moved

on with their lives. This is an indication that a number of women are willing to report cases to the police cases with serious consequences on their health.

The study findings confirm that respondents sought legal services from the area chiefs. Some of the GBV cases handled by the area chiefs were on; physical abuse, land, child custody and maintenance, property inheritance and succession. Women respondents preferred to report cases to the chiefs in order to avoid re-victimization, which essentially confirms the study by (MRC, 2013) and protect the privacy of the family even if they knew they would not be compensated. They believed that reporting the matter to the chief was a better option to minimize more conflict in the family. The chief's intervention is for dispute resolution in initial stages in initiating a legal tussle as per the constitution. This study confirms the findings by (MRC, 2013; FIDA, 2015) that the most abused women rarely seek formal legal redress. They prefer handling gender-based violence cases at the family and community level. In addition, the study findings concur with the (Commonwealth secretariat, 1992 ; UN Women, 2015) that it is very difficult to estimate the actual incidences of GBV in the domestic settings because there are some hidden and invisible problems.

### **5.3.3 Barriers in seeking legal services**

Most of the respondents argued that the family is a social unit that interferes with cases which, in most cases, often persuades women to withdraw cases. GBV cases are not pursued to the end due to lack of support from the family and fear of the consequences. Family members often bribe the chiefs and police to frustrate women survivors of GBV. Women survivors therefore have to keep GBV cases secret due to pressure from the family.

The respondents indicated that poverty hinders women from seeking legal services. Respondents shared how they spent their financial resources, with one selling her oxen in order to hire a lawyer to take care of her land inheritance case. They indicated that many women would like to pursue their cases in court but poverty is a hindrance. Many women victims would like to seek legal redress but when they think (Ngugi, 2008; Muyanga, 2011) of the court process that drags on for long and the cost that one incurs during the court process, they opt to remain silent to avoid all these painful experiences one goes through in accessing justice. The study findings concur with the



study by (Syombua, 2014; Population Council, 2010) that there are many factors hindering the realization of legal justice for women survivors of gender-based violence. The challenges come when GBV cases are filed in court where witnesses neither record statements at the police station nor appear in court during the hearings. One of the subjects in the study argued that she had spent a lot of money to hire a lawyer but her witness had been bribed and refused to appear in court (FIDA, 2015). The respondent also cited delays in the court process which dragged on for several years (ACORD, 2010; Ngugi, 2008).

Social learning theory assumes that culture and socialization is playing a major role in the barriers women experience while seeking legal services where women survivors have to report to clan elders (traditional courts handled by old men in the community) who are not sensitized on laws that address and respond to GBV. In these traditional courts no legal punishment is meted out on the perpetrators to deter others from their violent behaviour. When the case is ruled in favour of the women by clan elders there is no compensation to the survivor. Cases mentioned in the study findings show that only “*Uji ya Wazee*” is paid for services to clan elders. These findings concur with the study by (Syombua, W. 2014) that socio-culture is biased and frustrates women but, only favour men hence deterring women from seeking legal services.

The findings of this study confirm the study findings by (Sultana, 2011) that women who question and do not conform to the roles and responsibilities by demanding for independence are severely punished. This is a warning to others not to seek legal services. In some families women are to be seen only but not to be heard. The gender stereotype introduced in girl’s childhood is reinforced throughout women’s lives that become self-fulfilling prophecies. This is evident in the study findings where one survivor noted that, since she got married, she has experienced violence throughout her marriage (Bandura 1973). There is societal pressure for women to keep their marriage. This has encouraged women to uncomfortably stay in violent marriages and painfully choose not to speak about violence in the name of protecting their marriage. This encourages battered women to maintain the stay syndrome, where one feels solely dependent on a man and cannot leave an abusive marriage because the man provides for them as reported in the study by (Ondicho 2012, Lutta, 2011, Johnson, 2002, World Bank, 2013). One of the respondents argued that the fear of social sanctions is a barrier that women survivors of GBV experience in seeking

legal redress. For instance if a man is charged in court and sentenced to imprisonment like any other criminals, then the husband's family will blame the woman and, if the man is the sole bread winner, then the respondent puts blame onto herself for reporting the case to the police. There is also the fear of being labelled a divorcee and of making wrong choices, more so, the fear of being judged harshly by the community.

Law enforcement agencies are a barrier to women survivors of GBV. Some of the respondents argued that Law enforcement agencies cause emotional abuse by how they handle GBV cases and confirms the study by (Population, council 2010), of the health consequences like stress, depression and high blood pressure suffered by women victims. Women do not require a team of police officers in their compounds to settle land and property issues. This action is meant to intimidate women survivors through bribing the police and hence leading to the arrest of women survivors on the grounds of land grabbing on the land that is meant to be inheritance from their late husbands. The respondents wondered how one could be arrested on their own land – the land they had peacefully lived with their husbands and then falsely be accused of trespassing, yet it was inherited from their husbands. This has been a very serious issue where family members (in-laws) always want land to be subdivided after their husbands died. The Marriage and Matrimonial Property Act addresses all the issues in marriage and ownership of property. Without proper sensitization on these laws many cases of inheritance and succession will keep coming up. Mbote, (2001) argues that the government has the responsibility of sensitizing its citizens on the laws and regulations, yet it has left this to non-governmental organizations to conduct civic education to the citizens.

With respect to barriers women survivors of GBV experience in seeking legal services, respondents have faulted the law enforcement as a hindrance as they are reluctant, ignorant of the law, corrupt and mostly conduct shoddy investigations on cases. The respondents argued that women survivors of GBV seek legal redress but, many cases do not end up in court for lack of witnesses and poor police investigations on the matter. The finding of this study concurs with the evidence by (Ngugi, 2008; FIDA, 2015) that a few cases that end up in court drag on for years. This is exemplified by the land succession issue at Nziu location of Makueni County that has dragged on for seven years.

The findings of this study indicate that economic dependency and poverty are major barriers for women survivors of GBV seeking legal services. The findings of the study indicate that women who experience economic deprivation (World Bank, 2013) are mostly dependent on their spouses, which is a recipe for GBV. Many women are willing to address violence against them on the system of justice but, lack of resources with other barriers hinders them from doing so. The findings of this study confirm the study by (Muyanga, 2011) there are hidden costs of filing a case in court which is very high while those mostly affected women are the poor in rural areas whose income can barely afford them the services of a lawyer and filing of cases in the courts.

The police lack training on laws that address GBV, especially on sexual and gender-based violence and this is a major barrier on women survivors seeking legal services. The Sexual Offences Act responds to all forms of sexual abuse by stipulating the kind of punishment to be meted on the offenders. This study findings confirm the findings by (Syombua, 2014; FIDA, 2015) that operation of laws and policies that address gender-based violence in Kenya have been very slow. In some instances police sent a survivor of sexual abuse to seek compensation from clan elders who happened to be the perpetrators in the case. Government needs to train police officers on sexual abuse laws; especially those who man gender desks at the police stations and how to handle the survivors. This study confirms the study carried out by (Population Council, 2010; Commonwealth Fund, 1992) which indicated that to seek legal redress is an act of courage especially for the women who remain in a violent relationship. The police officer in the interview noted that GBV related marital issues were very common but once the issues are recorded, the victims disappear. Women who go through marital rape lack awareness on the laws and legislations that protect and respond to sexual offences like the sexual offences Act. In rural areas citizens are not aware of the legal processes and the channels for addressing gender-based violence. Lack of awareness on the legal processes is a barrier in seeking legal services as the cases are reported to the wrong offices then referred back and forth - a fact that wastes time and resources, leaving the victims traumatized in its wake.

The police officer argued that sensitive cases on GBV require the suspects to be held in cells until the case is complete and there is need to rethink about offering pay of bond to GBV perpetrators.

Sometimes cases do not go to completion due to harassment and intimidation from the suspects once they are released on bond. Some suspects disappear and run out of the county making it impossible to trace them due to Government budgets which are not enough to chase someone who is on the run. Doctors also lamented that they are not involved in court processes where they are required by the law to give medical reports as evidence on sexual offences.

#### **5.4. Conclusion**

Gender-based violence is a prevalent and a serious problem affecting women and needs to be addressed urgently. It affects women with long lasting consequences such as death, physical disabilities, emotional and psychological disorders like heart problems that include high blood pressure. Gender-based violence is an acute social problem, a grave health issue and a serious human rights violation of women.

There is need to fight GBV by all costs. We need to religiously protect women from violence. We have to start with the family and community so as to offer support to the women victims and help them to seek legal services. We have to unit the family, community, clan elders, chiefs, police, religion, county government, national government and courts of law in order to fight this glaring vice. There is an urgent need for the government to sensitize its citizens on the laws and legislation on GBV. Government needs to allocate adequate resources to train the police on human rights, prevention, protection from and response to gender-based violence.

#### **5.5. Recommendation**

- The national government needs to train police officers on the laws, policies and legislations that address gender-based violence and how to handle women survivors, improve on how they conduct investigations and preservation of evidence. The focus of this training should be on the police officers manning Gender Desks at stations.
- Sensitize the community on the laws and policies on gender-based violence in order to totally eradicate the legal barriers that women face in court processes as they seek legal services. The focus should be on Sexual Offences Act, Protection from Domestic Violence

Act, Matrimonial Property Act, Marriage Act and the Bill of Rights in the Constitution 2010 of Kenya.

- Involve men and let them take the lead in advocacy campaigns on addressing GBV, as they are the custodians of social norms, and to help in changing the social-cultural practices that perpetuate violence against women and ensure they protect women from harm.
- There is need to empower women economically in order to reduce poverty levels. Girl child education should be on the forefront.

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## APPENDICES

### APPENDIX 1: CONSENT FORM

My name is **Lennah Asami Kasyoka**. I am a Master of Arts student in Gender and Development Studies at the University of Nairobi. I am carrying out a study on barriers women survivors of GBV experience in seeking legal intervention/redress services in Makueni. You have been purposively selected as a member of this community and survivor of gender based violence who sought legal redress to participate in this study as an informant. The interview will take about 30 minutes or less.

I will ask you a few questions and in case you do not like answering any question you are free to do so. If you feel like the environment is not conducive we can move to another place where you feel comfortable. If you do not feel like proceeding with the interview at any stage you are free to do so.

I would like to request that you to allow me to take notes or record the conversation for my data collection. I assure you that all the answers will be kept strictly confidential. However, I will destroy the records as soon as I finish transcribing them. Any information you give will be used for the study purpose and this will help in response to GBV. Your participation is completely voluntary but the information will be very helpful to other GBV victims by improving access to legal services in Kenya.

#### **CONSENT FROM THE PARTICIPANT**

I, (**CODE-No Name please**) ....., have been explained the purpose of this study, risks involved and benefits for participating in the study and I hereby:

( ) Agree to participate in this study. ( ) Don't agree to participate in this study.

#### **SIGNATURES:**

**Participant:** .....

Date: .....

**Researcher:** .....

Date: .....

## **APPENDIX 2: IN-DEPTH INTERVIEW GUIDE**

### **SECTION ONE: Experience of women survivors of GBV in accessing legal service**

1. What type of GBV have you encountered?
2. What forms of GBV /VAW are common in your community?
  - a. Physical Violence, Sexual Violence, Rape/Marital Rape, inheritance, Defilement and Female Genital Mutilation.
3. What was your experience?
4. What was your relationship with the perpetrator?
5. Where did this violence take place?
6. What actions have you taken to end the violence?
7. What challenges did you face when reporting the case?
8. What was the reason?
9. How were you treated/ handled?
10. Was there any legal procedures instituted against the perpetrator?
11. Were you satisfied with the services you received?
12. What kind of barriers did you experience in addressing the GBV? (Probe on social, economic and cultural factors)
13. What is the community's perception on legal redress?
14. Kindly share your experience in the police station, court, family, community and non-governmental organization.
15. Please feel free to give your recommendation on how legal services at the police station, courts should be offered differently to enable survivor's access to justice.

## **Section TWO: Legal Process**

**I am going to discuss with you about the legal service you received from the police, chief, court, NGO and any other place.**

1. Where did you report first?
2. What service were you unable to get? And why?
3. Who assisted you in getting the service? Why?
4. Were you re-victimized as you were seeking legal service?
5. How did you overcome/ cope with the situation?
6. Any recommendations on how access to legal services could be improved for GBV survivors.

### APPENDIX 3: KEY INFORMANT INTERVIEW GUIDE

1. Is GBV a rampant problem in this area?
2. What are the most common prevalent GBV here?
3. What are common forms of GBV here?
4. What is the most common intervention?
5. What are the factors that influence the choice of avenue of intervention?
6. Do survivors seek legal redress?
7. What are the barriers they face in the process?
8. Who are the perpetrators?
9. How many cases have you handled?
10. Did you succeed? If not what barriers do they face in seeking legal redress?
11. (**Probe** on the causes and if possible, the cultural justifications for violence etc)
12. Do women seek legal redress when this happens to them?
13. If yes, where do they report first?
14. What makes them not to report the cases to the police when it happens?
15. How best could the problem be addressed? (**Probe** on their own thinking on the issue, attitudes towards the existing Laws on GBV etc).



#### **APPENDIX 4: CASE NARRATIVE**

1. What are common forms of GBV here?
2. What kind of GBV have you experienced?
3. What intervention did you use to address the case?
4. What barriers did you experience in seeking legal redress?
5. Please feel free to include any suggestions on how the legal services would have been offered differently for ease of access to the GBV victims.

## APPENDIX 5: PERMISSION LETTER



UNIVERSITY OF NAIROBI  
INSTITUTE OF ANTHROPOLOGY, GENDER & AFRICAN STUDIES  
P.O. Box 30197  
Nairobi, Kenya  
Telephone: 020-20802530/31/45  
Email: director-aags@uonbi.ac.ke

10/10/2017

Dear Sir/Madam,

**DATA COLLECTION: MRS. LENNAH ASAMI KASYOKA- N69/77358/2015**

This is to confirm that the above named is a Master of Arts in Development Anthropology student in the Institute of Anthropology, Gender & African Studies, University of Nairobi.

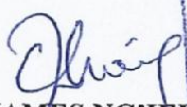
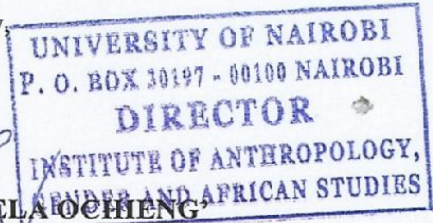
Having completed Part I of her course (lectures, coursework and examination), she is required to proceed to Part II which comprises data collection and thesis writing. She is in the process of collecting data for her project titled: **“Barriers that women survivors of Gender Based Violence experience when seeking legal services”**.

This is, therefore, to request you to accord her the necessary assistance.

Please note that the data she is collecting is only for academic purposes.

Your facilitation will be highly appreciated.

Yours faithfully,

  
  
JAMES NG'IELA OCHIENG  
ADMINISTRATIVE ASSISTANT  
INSTITUTE OF ANTHROPOLOGY, GENDER & AFRICAN STUDIES

Permission letter from the Institute of Anthropology, Gender and African Studies,  
University of Nairobi

## APPENDIX 6: PERMIT FROM NACOSTI

### CONDITIONS

1. The License is valid for the proposed research, research site specified period.
2. Both the Licence and any rights thereunder are non-transferable.
3. Upon request of the Commission, the Licensee shall submit a progress report.
4. The Licensee shall report to the County Director of Education and County Governor in the area of research before commencement of the research.
5. Excavation, filming and collection of specimens are subject to further permissions from relevant Government agencies.
6. This Licence does not give authority to transfer research materials.
7. The Licensee shall submit two (2) hard copies and upload a soft copy of their final report.
8. The Commission reserves the right to modify the conditions of this Licence including its cancellation without prior notice.



REPUBLIC OF KENYA



National Commission for Science,  
Technology and Innovation

RESEARCH CLEARANCE  
PERMIT

Serial No.A 17660

CONDITIONS: see back page

**THIS IS TO CERTIFY THAT:**  
**MS. LENNAH ASAMI KASYOKA**  
**of UNIVERSITY OF NAIROBI, 0-200**  
**Nairobi, has been permitted to conduct**  
**research in Makueni County**

on the topic: **BARRIERS WOMEN**  
**SURVIVORS OF GBV EXPERIENCE IN**  
**SEEKING LEGAL SERVICES IN MAKUENI**  
**COUNTY, KENYA**

for the period ending:  
**26th February, 2019**

  
.....  
Applicant's  
Signature

Permit No : NACOSTI/P/18/20580/20812  
Date Of Issue : 27th February, 2018  
Fee Received :Ksh 1000



.....  
**S.P. Kalotwa**  
Director General  
National Commission for Science,  
Technology & Innovation



## APPENDIX 7: AUTHORIZATION LETTER FROM NACOSTI



### NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

Telephone: +254-20-2213471,  
2241349, 3310571, 2219420  
Fax: +254-20-318245, 318249  
Email: dg@nacosti.go.ke  
Website: www.nacosti.go.ke  
When replying please quote

NACOSTI, Upper Kabete  
Off Waiyaki Way  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No. **NACOSTI/P/18/20580/20812**

Date: **27<sup>th</sup> February, 2018**

Lennah Asami Kasyoka  
University of Nairobi  
P.O. Box 30197-00100  
**NAIROBI.**

#### **RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on *“Barriers women survivors of GBV experience in seeking legal services in Makueni County, Kenya,”* I am pleased to inform you that you have been authorized to undertake research in **Makueni County** for the period ending **26<sup>th</sup> February, 2019.**

You are advised to report to **the County Commissioner and the County Director of Education, Makueni County** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit **a copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.

*G.P. Kalerwa*

**GODFREY P. KALERWA MSc., MBA, MKIM  
FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The County Commissioner  
Makueni County.

The County Director of Education  
Makueni County.

Letter of authorization from NACOSTI

**APPENDIX 8: NUMBER OF GBV CASES REPORTED PER WARD IN MAKUENI COURTS**

<b>SEXUAL AND GENDER BASED VIOLENCE CASES REPORTED PER WARD</b>		
<b>SUB COUNTY</b>	<b>WARD</b>	<b>TOTAL</b>
<b>KIBWEZI WEST</b>	Emali/Mulata Ward	20
	Nguumo Ward	1
	Makindu Ward	12
	Kikumbulyu North Ward	1
	Kikumbulyu South Ward	0
	Nguu/Masumba Ward	5
<b>KAITI WARD</b>	Ilima ward	72
	Kilungu ward	19
	Kee ward	4
	Ukia ward	5
<b>KIBWEZI EAST</b>	Ivingoni/Nzambani Ward	7
	Masongaleni Ward	79
	Thange Ward	62
	Mtito Andei Ward	46
<b>MBOONI</b>	Kalawa/ Kathulumbi Ward	146
	Kiteta-Kisau Ward	3
	Kithungo/Kitundu Ward	11
	Mbooni Ward	34
	Waia/Kako Ward	4
	Tulimani Ward	1
<b>KILOME</b>	Kasikeu Ward	22
	Kiima Kiu/Kalanzoni Ward	1
	Mukaa Ward	1
<b>MAKUENI</b>	Kathonzweni Ward	3
	Wote Ward	40
	Kitise/Kithuki Ward	11
	Mavindini Ward	13
	Mbitini Ward	8
	Nzau/Kilili/Kalamba Ward	31
	Muvau/Kikumini Ward	35
<b>TOTAL</b>		<b>697</b>

Number of gender-based violence cases reported as per the ward in Makueni courts as at 31<sup>st</sup> July 2018. (Makueni Courts)