

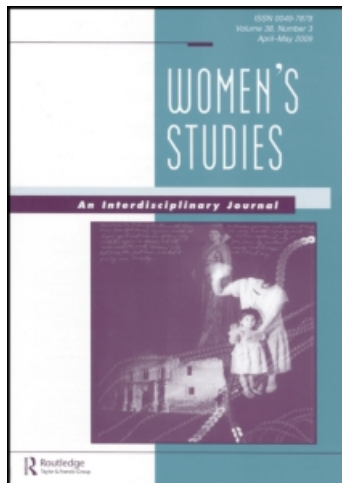
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## The Domestic Violence Epidemic in South Africa: Legal and Practical Remedies

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## **THE DOMESTIC VIOLENCE EPIDEMIC IN SOUTH AFRICA: LEGAL AND PRACTICAL REMEDIES**

**CHARLOTTE BENDALL**

Bristol University

### **Introduction**

Domestic violence is a serious problem which permeates every level of South African society. There are a number of mistaken ideas about it, such as that only poor women get beaten, or that battered women ask for it.<sup>1</sup> However, the fact of the matter is that violence within the home can happen to anybody.

Violence of this nature is often hidden from view and is not discussed openly. This can be for a number of reasons. For example, women are afraid to speak out about what they are undergoing due to fear of retaliation by their partner. Some also fear other people's reactions to them should they choose to disclose the abuse<sup>2</sup>; they therefore opt to remain silent in order to maintain the appearance of a happy family home. Furthermore, women in South Africa are predominantly still under the control of men and often simply accept their position as the victim. As a result, it is impossible to quantify the full extent of the problem, and statistics tend to underestimate its full extent. However, the Department of Justice has estimated that one in four women have been subjected to domestic violence.<sup>3</sup> Moreover, in a speech made at the 1995 National Conference on Women Abuse and Domestic

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The research assistance and supervision of Theodore Kamwimbi, the Projects Abroad Human Rights Office Manager, for this article is acknowledged and much appreciated.

<sup>1</sup>29 Oct. 2008. <<http://www.paralegaladvice.org.za/docs/chap07/09.html>>.

<sup>2</sup>"Violence Against Women In South Africa – A Resource For Journalists." Soul City. 1999. 29 Oct. 2008. <<http://www.soulcity.org.za/publications/publications/violence-against-women-in-south-africa-a-resource-for-journalists.pdf/download>>.

<sup>3</sup>"Domestic Violence: Submission to the South African Law Commission in the Light of International and Constitutional Human Rights Jurisprudence." Part 1. May 1997. 29 Oct. 2008. <[http://www.speakout.org.za/about/prevention/preventin\\_domestic\\_violence.html](http://www.speakout.org.za/about/prevention/preventin_domestic_violence.html)>.

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Violence, the then Deputy President Thabo Mbeki stated that it was estimated that roughly 30 percent of all the cases of violence reported to the South African Police Service are domestic in nature.<sup>4</sup> In fact, the 1995 Human Rights Watch Report suggested that South African women, living in one of the world's most violent countries, are disproportionately likely to be victims of such behavior.<sup>5</sup>

Domestic violence in South Africa has been treated, for the most part, as a private matter. Indeed, no figures exist which record the number of domestic violence cases which have been reported to the police, simply because "domestic violence," is not, in itself, technically defined as a crime.<sup>6</sup> Nevertheless, it is important to recognize that it is, in fact, a crime; for a man to hit his wife, for example, is an assault just like any other assault. Indeed, as Sachs J held in the case of *S v. Baloyi*,<sup>7</sup>

All crime has harsh effects on society. What distinguishes domestic violence is its hidden, repetitive character and its immeasurable ripple effects on our society and, in particular on family life.

The purpose of this article is to examine what assistance and protection is available to victims of domestic violence in South Africa, and what action is being taken in order to prevent it from occurring. This assessment shall be conducted by first considering what safeguards are offered by the law itself, before discussing how it is, *de facto*, applied both by the courts of law and by the police. It also intends to examine the measures adopted by the South African government, as well as the role played by state and non-state institutions in helping to raise public awareness and assist victims at a grass-roots level.

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<sup>4</sup>Speech by Deputy President Mbeki on 23 November 1995 at the National Conference on Women Abuse and Domestic violence, Cape Town. 29 Oct. 2008. <[http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1995%2F990623227p4006.htm%40SpeechesandStatements&q=\(+\(mbeki\)%3CIN%3E Title\)+%3CAND%3E\(+Category%3Cmatches%3Es+\)&t=MBEKI%3A+NATIONAL+CONFERENCE+ON+WOMEN+ABUSE+AND+DOMESTIC+VIOLENCE](http://www.search.gov.za/info/previewDocument.jsp?dk=%2Fdata%2Fstatic%2Finfo%2Fspeeches%2F1995%2F990623227p4006.htm%40SpeechesandStatements&q=(+(mbeki)%3CIN%3E Title)+%3CAND%3E(+Category%3Cmatches%3Es+)&t=MBEKI%3A+NATIONAL+CONFERENCE+ON+WOMEN+ABUSE+AND+DOMESTIC+VIOLENCE)>.

<sup>5</sup>*Violence Against Women in South Africa- State Response to Domestic Violence and Rape*. New York: Human Rights Watch, 1995. 44.

<sup>6</sup>Supra, n.i.

<sup>7</sup>*S v. Baloyi and others (CCT29/99) [1999] ZACC 19, 2000 (1) BCLR 86 (3 December 1999)*.

## Domestic Violence Under The South African Law

### *The Constitution*

The 1996 Constitution of the Republic of South Africa appears, *prima facie*, to have provided some protection for victims of domestic violence. For example, to the extent that domestic violence is predominantly gender-specific,<sup>8</sup> it both manifests and fortifies male domination. The Constitution attempts to address this matter by providing, under section 1, that the Republic of South Africa is based, amongst other values, on “non-sexism.”

However, perhaps of most importance for the purpose of the present discussion is the Bill of Rights contained therein. More specifically, section 12(c) provides that,

Everyone has the right to freedom and security of the person, which includes the right to be free from violence from either public or private sources.

The wording of the latter part of this section emphasizes that it guarantees the right to freedom from domestic violence. Moreover, section 7(2) of the Constitution specifies that the State is required to, “respect, protect, promote and fulfill the rights in the Bill of Rights,” The South African Law Commission has suggested that this section, when read together with section 12(c), imposes a positive duty on the State to provide safeguards against, and penalize acts of, domestic violence.<sup>9</sup>

In addition, section 7(1) provides that the Bill of Rights, “affirms the democratic values of human dignity, equality and freedom.” It has been argued on the basis of this provision, read alongside section 9(3) of the Constitution,<sup>10</sup> that the right to equality underpins all other rights enshrined by the Bill of Rights,

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<sup>8</sup>Thomas, Dorothy, and Michele Beasley. “Domestic Violence as a Human Rights Issue.” *Human Rights Quarterly* 36 (1993): 15.

<sup>9</sup>“Research Paper on Domestic Violence.” South African Law Commission. April 1999. para 4.9.2.

<sup>10</sup>Section 9 of the Constitution of the Republic of South Africa 1996 provides that the state may not unfairly discriminate directly or indirectly against someone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

including that of freedom from violence. Pursuant to this, the Law Commission has reasoned that, since the right to equality is substantively conceived, the right to freedom from violence must also be construed substantively.<sup>11</sup> A substantive construal of the right to freedom from violence necessitates both the deterrence of domestic violence and the eradication of the detrimental impact of such violence on victims. This article shall proceed to discuss below the extent to which this, and indeed the other aforementioned rights, have been adhered to in practice.

### *Statute Law*

Prior to entering into any discussion as to how the statute law protects victims of domestic violence, it is important to consider precisely what kind of behavior the phrase “domestic violence” was intended to refer to by the lawmakers. Section 1(viii) of the Domestic Violence Act 1998 (hereafter referred to as “the Act”) states that “domestic violence” means any of the following: physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entering into the complainant’s residence without consent where the parties do not share the same residence; and any other controlling or abusive behavior towards a complainant where such conduct harms, or may cause immediate harm to, the safety, health or wellbeing of the complainant.<sup>12</sup> While I might, for the purpose of this article, refer predominantly to the physical and sexual aspects of domestic violence, it is important to bear in mind that it is a term which can be construed widely. Moreover, as the Law Commission noted in its Research Paper, while women form the majority of domestic violence victims, it is important to recognize that it is by no means exclusively a female problem.<sup>13</sup> It has been reported that cases of domestic violence against men are rising in South Africa, but statistics on this are not available because many victims do not come forward and resources are lacking in order to assist them.<sup>14</sup>

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<sup>11</sup>Supra, n.viii, para 4.9.4.

<sup>12</sup>Domestic Violence Act. 1998, s.1 (viii).

<sup>13</sup>Supra, n.viii, para 1.2.

<sup>14</sup>Cole, Barbara, and Staff Reporter. “Battered, Bruised—and Male.” ed. 1, 2004, 28 Oct. 2008. <<http://www.thestar.co.za>>.

There are a number of routes by which the law can assist those suffering from domestic abuse. For example, they might lay a charge of assault, or one of trespass if they rent or own a property which the abuser keeps entering without permission. They might, alternatively, obtain an eviction order. If a victim asks for a Family Violence interdict, they can request that their abuser be evicted even if they are not the owner of the house and the lease is not in their name.<sup>15</sup> Otherwise, if they obtain a civil eviction order, a victim can only get an order to evict the abuser if they are the owner of it, or the lease is in their name. They can then evict anyone who does not have the right to live in the house. Other options include getting a divorce, or simply asking the police to come and stop their partner from hitting them. The role of the police in such cases will be examined later.

However, the most significant option for present purposes is the possibility of acquiring a Protection Order under the Act. This is an order from the court which specifically commands an abuser to stop abusing someone.<sup>16</sup> It is worth noting that such an order is available to people in a variety of different types of relationships; for example, they can be obtained by those married according to civil, customary or religious law, gay and lesbian couples, unmarried cohabitants, people who are engaged or dating<sup>17</sup> and even by family members of the abused.<sup>18</sup>

According to the Statute, the first step towards obtaining a protection order is attending the magistrate's court in order to make an application. A lawyer is not required in order to assist a victim in doing so. The magistrate will listen to their version of events and read any affidavits which they have brought with them in support of their application. Consequently, if he or she is satisfied that there is evidence that the alleged abuser is committing, or has committed, an act of domestic violence, and that undue hardship may be suffered by the complainant if a protection order is not issued immediately, the court will issue an interim protection

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<sup>15</sup>"Family Law and Violence Against Women." 29 Oct. 2008. <<http://www.paralegal-advice.org.za/docs/chap07/12.html#prob5>>.

<sup>16</sup>"Family Law and Violence Against Women." 29 Oct. 2008. <<http://www.paralegal-advice.org.za/docs/chap07/09.html#domestic2>>.

<sup>17</sup>Supra, n.xi, s.1 (vii).

<sup>18</sup>Ibid, s.4(3).

order.<sup>19</sup> The victim can ask for a number of elements to be included in the order, such as that a firearm should be confiscated from the abuser, that the police should come with the victim in order to collect their belongings from their home, that the abuser should be evicted from the home, or that they should pay the victim emergency monetary relief.<sup>20</sup>

After having been issued, the protection order is served on the abuser. It will inform them that they must attend a return date in order to put their case to the magistrate as to why the protection order should not be made final.<sup>21</sup> In the event of their non-attendance at the return date, the victim will automatically be awarded a protection order by the court.<sup>22</sup> If the abuser does appear, they will not be allowed to personally cross-examine the victim,<sup>23</sup> although their lawyer will be able to do so if they have one. Once the magistrate has heard all of the evidence, he or she will issue a protection order. This will be accompanied by a warrant of arrest. The clerk of the court will serve the final protection order on the abuser, and will also send a copy of the order and the warrant to a police station specified by the victim.

The protection order will last until the victim chooses to cancel or vary it. If the abuser breaches the order, the victim can approach a member of the South African Police Service with the warrant of arrest. He or she will then arrest the abuser if it appears that the victim may suffer immediate harm as a result of the breach.<sup>24</sup> If the abuser is arrested, he will be kept in jail until he goes to court, which will be within 48 hours of his arrest.<sup>25</sup> In addition to being charged with breaching the protection order under s.17(a) of the Act, he can also be charged with any other criminal offence which he has committed as part of the abuse, such as assault or the use of a firearm. If he is found guilty, he will either be fined or sent to prison.

It appears, from an objective point of view, that there are many merits to the Act. For example, under its provisions, the

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<sup>19</sup>Ibid, s.5(2).

<sup>20</sup>Ibid, s.7.

<sup>21</sup>Ibid, s.5(3)(a).

<sup>22</sup>Ibid, s.6(1).

<sup>23</sup>Ibid, s.6(3)(a).

<sup>24</sup>Ibid, s. 8(4).

<sup>25</sup>29. Oct. 2008. <<http://www.paralegaladvice.org.za/docs/chap07/12.html#prob6>>.

abuser is not actually charged with any crime, but is simply ordered to cease their abusive behavior.<sup>26</sup> This is advantageous because many people would feel disinclined to lay a charge which might result in a partner or family member ending up in prison. Notably, under the Act, an abuser will only face the possibility of imprisonment if he or she has breached the order. The process of obtaining an order is, at least in theory, also much quicker under the Act, since victims do not have to use the standard court procedures.

Indeed, the Act goes some way towards accommodating victims of domestic violence. For example, they should be able to obtain an order relatively cheaply, since it does not require them to instruct lawyers. Moreover, the legislation specifies that the court must make provision for financial assistance where they cannot afford to pay for service,<sup>27</sup> and allows for an order to be obtained, where necessary, at any time of day or night.

Nevertheless, the law can only protect victims of domestic violence to the extent that those who enforce it are willing to do so. I shall therefore proceed to consider whether the apparent virtues of the domestic violence laws correspond with reality.

### **Domestic Violence under the South African Jurisprudence**

In terms of the Constitution, a number of cases have arisen which have dealt with the obligations imposed by the Bill of Rights upon the South African Police Service and, indeed, the courts themselves. A detailed explanation of the former is provided below. For example, in the case of *S v. Baloyi*, it was held by the Constitutional Court that the Constitution directly compels the state to protect the right of everyone to be free from domestic violence.<sup>28</sup>

The High Court held in the case of *Carmichele v. Minister of Safety and Security* that the common law of delict needed to be developed so as to be in accordance with the duty on the state, and indeed on the police and prosecution, to protect the public against the invasion of their fundamental rights by perpetrators of

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<sup>26</sup>29. Oct. 2008. <<http://www.paralegaladvice.org.za/docs/chap07/09.html> # domestic 2>

<sup>27</sup>Supra, n.xi, s.13(2).

<sup>28</sup>Supra, n.vi.

violence.<sup>29</sup> The court, therefore, found that the test for unlawfulness must be reconsidered as a result of the Constitution, and that a duty was indeed owed to the Applicant by the police and prosecution, in the circumstances of the case, to protect her against the risk of sexual violence. Similarly, the Supreme Court of Appeal in the matter of *Van Eeden v. Minister of Safety and Security* held that the Appellant was owed a duty by the Respondent to take reasonable measures to stop an escaped serial rapist from harming her.<sup>30</sup>

However, the most significant case for the purpose of the present discussion is that of *S v. Engelbrecht*. Mrs. Engelbrecht was found guilty of the murder of her husband, despite the Judge having found that she had exhausted all of her options and done everything within her power to escape his relentless abuse and coercive control, because the two assessors sitting with him differed on certain conclusions of fact. They felt that Mrs. Engelbrecht had not exhausted her legal options at the time of the incident; therefore, they thought that she should have tried to get police help (which she had done unsuccessfully on each previous incident of assault) or tried to leave (which she had attempted seven times in the previous two years).

Despite the ultimate outcome of the case, it was groundbreaking in terms of steering the South African jurisprudence towards taking into account the reality of abused women's lives. It evinced a readiness to develop upon the 2004 Supreme Court of Appeal judgment in *Ferreira v. State*, where it was held that abuse of a wife by her husband constituted sufficiently "substantial and compelling" circumstances to warrant a departure from imposing a mandatory life sentence upon her for his murder.<sup>31</sup> The court in *Engelbrecht* went even further than this by recognizing that the criminal law which is applicable to abused women in South Africa is excessively influenced by the male perspective, and that the Constitution necessitated that it be altered in order to reflect women's experiences.

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<sup>29</sup>Vetten, Lisa. "Addressing Domestic Violence in South Africa: Reflections on Strategy and Practice." Available at: <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/vetten.vaw.pdf>

<sup>30</sup>*Van Eeden (formerly Nadel) v. Minister of Safety and Security* (176/01) [2002] ZASCA 132 (27 September 2002).

<sup>31</sup>*Ferreira and others v. State*. 29 Oct. 2008. <[http://www.supremecourtofappeal.gov.za/judgments/sca\\_2004/2003\\_245.htm](http://www.supremecourtofappeal.gov.za/judgments/sca_2004/2003_245.htm)>.

## Dealing with Domestic Violence in Practice

### *Government*

The South African Government has, in recent years, adopted an interventionist approach towards the problem of domestic violence and has thereby responded to it in a number of ways, most notably through legislative reforms. Arguably the most significant of these was the aforementioned Domestic Violence Act 1998, which defined and reflected domestic violence in legislative form. Other such reforms included mandatory minimum sentences for specific types of rape (Criminal Law Amendment Act 1997) and the tightening of bail conditions for those charged with rape (Criminal Procedure Second Amendment Act 1997).<sup>32</sup> National Policy Guidelines for the Handling of Victims of Sexual Offences, which aimed to improve victims' experiences of the criminal justice system by providing protocols for officials in the police, health, welfare, and justice systems and prisons, were also finalized in 1998, as was the Police Framework and Strategy for Shelters for Victims of Domestic Violence in South Africa in 2003.

The Government went even further, in terms of providing guidance to workers handling domestic violence cases, by publishing the Integrated Domestic Violence Training Programme Manual in 2004. The purpose of this was to help police officers, prosecutors, magistrates, counselors, and victim assistant officers to deal adequately with domestic violence. Justice and Constitutional Development Minister Penuell Maduna said, when launching the manual, that it would complement to the 1998 Act by addressing the social challenges faced by victims of domestic violence.<sup>33</sup> In a similar vein, in June 2008, the Department of Justice and Constitutional Development launched a set of guidelines which were to be used to assist magistrates in dealing effectively with domestic violence cases. Justice Minister Brigitte Mabandla, said, of the guidelines, that they are, "Another step forward in ensuring that the rights of victims of domestic violence are affirmed and protected," and added that

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<sup>32</sup>Supra, n.xxviii, p.2.

<sup>33</sup>Mantu, Richard, "Domestic Violence Training Manual." 30 Mar. 2004. 29 Oct. 2008. <<http://www.southafrica.info/services/rights/manual-domesticviolence.htm>>.

they would improve services to the majority of people who have had their rights to dignity, freedom, and security stripped away by perpetrators.<sup>34</sup>

In addition, family court centers have been established in Cape Town, Durban, Port Elizabeth, Johannesburg, and Lebowa.<sup>35</sup> The motivation behind creating such courts was that they would bring under one roof all matters relating to the family to be dealt with by the judiciary. Significantly, these matters include both divorce and family violence. The re-structured divorce court was intended to lighten the burden and expense of divorce, and hence to prevent women from being trapped in abusive relationships by reason of the high costs of litigation.

Likewise, in terms of sexual abuse, specialist sexual offences courts and Thuthuzela care centers have been set up. The aims of the former were to reduce secondary victimization of domestic violence victims by improving the management of cases through the courts, and to allow for more effective prosecutions by specially trained prosecutors.<sup>36</sup> In fact, it is submitted by the present author that their benefits, in practice, stretch further than this, in that they allow victims of domestic violence to be heard in a way which is extremely empowering. The latter act as one-stop service centers where victims have access to a number of services including the police, counseling, doctors and prosecutors.<sup>37</sup> The result of structuring the centers in such a way is the reduction of case cycle times and an increase in the number of convictions.

The fact that the government has both recognized and taken action against domestic violence in this way is an extremely positive step. However, in order to establish how effectively victims of domestic violence are being protected, it is important to turn our attention to what is happening on the ground.

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<sup>34</sup>Ibid.

<sup>35</sup>Media release issued by the Ministry of Justice on the Official Launch of South Africa's first Family Court Centre in Cape Town, 27Jan. 1999. 29 Oct. 2009. <[http://www.info.gov.za/speeches/1999/99215\\_n67699\\_10136.htm](http://www.info.gov.za/speeches/1999/99215_n67699_10136.htm)>.

<sup>36</sup>Rasool, Shahana, Kerry Vermaak, Robyn Pharoah, Antoinette Louw, and Aki Stavrou. "Policy scan." in "Violence Against Women: A National Survey." ISS: Pretoria, December 2003. 149-155, 29 Oct. 2008. <<http://www.iss.co.za/Pubs/Books/VAW/Chap12.pdf>>.

<sup>37</sup>"Nqakula: Monitoring and Evaluation media briefing." Ministry of Safety and Security. 8 Sept. 2005. 29 Oct. 2008. <[http://www.polity.org.za/article.php?a\\_id=73738](http://www.polity.org.za/article.php?a_id=73738)>.

*South African Police Services (SAPS)*

The South African Police Service (SAPS) have a long history of neglect in matters concerning domestic violence. The Law Commission, in their 1999 Research Paper, identified a number of problems: police ignorance of the law was prevalent; their response to domestic violence was often insensitive and even hostile; there was a reluctance on the part of the police to accept a charge of assault against a male partner; and dedication to investigating such a charge was frequently lacking.<sup>38</sup>

It is my submission, though, that the SAPS's attitude towards such cases is changing, and that this change has been brought by the obligations imposed upon them by the Act. Briefly, they are required to explain to complainants that they are there to provide whatever assistance the circumstances require; this may include helping the complainant to find suitable shelter or to get medical treatment.<sup>39</sup> Furthermore, they should inform the complainant of their rights to apply for a protection order and to lay criminal charges. This information should be provided in the form of a notice wherever possible. The notice will also explain how to go about applying for a protection order and what the complainant should do in the event of its breach, and set out the types of relief or protection which the complainant can obtain from the court. Where complainants are not able to read the notice, police officers should read it to them in their chosen language. In addition, the police are obliged to arrest a perpetrator if they do not obey the protection order which has been taken out against them.

Police failure to uphold either the Act or its regulations amounts to misconduct and must be reported to the Independent Complaints Directorate (ICD), which primarily performs a monitoring and oversight function. The ICD is supposed to submit bi-annual reports to Parliament which records the statistics for, and nature of, complaints received against the police for neglecting to follow these statutory obligations, as well as the recommendations made in light of these. The National Commissioner of the SAPS should also submit a bi-annual report which sets out the disciplinary proceedings which have been instituted as a result of the

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<sup>38</sup>Supra, n.viii, para 5.8.1.

<sup>39</sup>Supra, n.xxviii, p.5.

complaints made, and the steps taken as a result of the recommendations made by the ICD.

It is notable that only one report has been submitted by the ICD to Parliament since the implementation of the Act<sup>40</sup>; further, the SAPS have not submitted any. However, despite this apparent lack of oversight, it seems that the obligations imposed upon the SAPS are still being taken seriously. Indeed, when the present author was given the opportunity to ask a Police Inspector for his opinion, he reported a dramatic change in the attitude of the police towards domestic violence cases as a result of their introduction. In particular, he emphasized that the SAPS now feel a sense of responsibility in such cases, and that they are mindful of the expectations which are being placed upon them.

The Inspector explained that, as a consequence of the Act, each police station signed a pledge which expressed their commitment to their newly imposed obligations. Moreover, in order to ensure this commitment, each officer is now sent on a five-day course on domestic violence, during which they are provided with a detailed overview of the Act and involved in various role-playing exercises. The course also sets out how to go about completing the relevant documentation, and how to prepare the complainant for court.

If what the Inspector said accurately reflects the SAPS's present approach towards domestic violence matters, it appears that it has indeed taken a u-turn as a result of the Act. Moreover, he informed me that the number of complainants coming forward to report incidents of domestic violence to the police has snowballed since the Act was introduced. Prior to its passage, the Inspector explained that his station had received very few reported incidents of domestic violence. This was for a number of reasons, not least that doing so would leave them exposed to homelessness, poverty and further abuse. However, he reported that, two years after the implementation of the Act, people started coming forward. He thought that the main reason behind this had been that, whereas people previously had to lay a criminal charge of assault against the perpetrator, they are not required to

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<sup>40</sup>"Domestic Violence Report to Parliament." Independent Complaints Directorate. March 2001.

do so under the Act. This confirms the present author's preliminary analysis of the benefits of the legislation.

When considering the Inspector's evidence in isolation, the outlook appears rosy. Indeed, if one bears in mind, for instance, what has been occurring in Sydenham and its surrounding areas, the police seem to be playing an important part in providing information and support to the public concerning domestic violence. In light of the 342 cases of domestic violence which they dealt with in 2007, the local police there launched their own Victim Empowerment Centre.<sup>41</sup> The aim of doing so was to educate the community about ways in which to report domestic violence, how to go about protecting themselves, and where counseling is available. It is intended that the Centre will hold workshops at schools and women's circles which will explain, among other things, how to apply for a protection order, as well as self-defense classes for both women and children.

Moreover, when the present author visited a women's shelter in order to speak to the women about their experiences with the police, they were described in an equally positive light. One woman explained that the police had arrived at her house within ten minutes of her having telephoned them, and that they had offered to take her to the station for counseling straight away. When she had asked them whether they would send a counselor to her house instead, they agreed to do so and the counselor arrived within twenty minutes of this. Overall, the woman described the SAPS's behavior as being extremely helpful and accommodating towards her.

On the other hand, it must be borne in mind that not all members of the SAPS welcomed the Act. For example, National Police Commissioner Jackie Selebi was quoted to have said, in 2001, that the new domestic violence laws were "unimplementable," and that they were, "made for a country like Sweden, not South Africa."<sup>42</sup> He continued that, "like the smoking and the cellphone laws, they cannot be policed."

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<sup>41</sup>"Police Take Stand on Domestic Violence." *Tribune* 27 Jan. 2008: 6. 29 Oct. 2008. <[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=vn20080127113333618C188318](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20080127113333618C188318)>.

<sup>42</sup>Michaels, Jeremy. "Selebi Summoned for Domestic Violence. Remarks." *The Mercury* 22 Aug. 2001. 29 Oct. 2008. <[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=ct2001082220250528S410926](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=ct2001082220250528S410926)>.

It cannot be ignored that there is still unwillingness, amongst some members of the SAPS, to intervene in what they consider to be private matters. Moreover, many policemen are themselves perpetrators of domestic violence, or associate with people who are. Indeed, the present author has come across a case where a woman had managed to obtain a protection order against her partner but, when he breached it, the police were not interested in assisting her because he was known to, and friendly with, many of them. The police, in such circumstances, have been known to adopt negative attitudes towards complainants, and some abused women even suffer secondary victimization.<sup>43</sup>

Therefore, although it seems that the SAPS have come a long way in terms of confronting their prejudices since the implementation of the Act, there is still a great deal more work to be done.

### *State and Non-State Institutions*

A number of state and non-state institutions have performed an important role both in terms of raising awareness of domestic violence at all levels and providing assistance to those who have fallen victim to it. I shall briefly examine a few which have come to my attention during my time in South Africa.

Possibly the most significant institution for the purpose of this article is the South African Human Rights Commission (SAHRC), a constitutionally mandated body. The primary objective of this institution is to promote and protect human rights by doing the following: addressing human rights violations and seeking redress for them; monitoring and assessing the observance of human rights; raising awareness of human rights issues; and educating in human rights and providing training thereof.<sup>44</sup> In the context of domestic violence, the SAHRC's most noteworthy piece of work is its 1996 report, which was made as a submission to the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women and the equivalent for children,

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<sup>43</sup>Parenzee, Penny, Lillian Artz, and Kelley Moul. "Monitoring the Implementation of the Domestic Violence Act: First Research Report 2000:2001." 2001.

<sup>44</sup>South African Human Rights Commission Mission Statement. 29 Oct. 2008. <[http://www.sahrc.org.za/sahrc cms/publish/cat\\_index\\_33.shtml](http://www.sahrc.org.za/sahrc cms/publish/cat_index_33.shtml)>.

youth and disabled persons.<sup>45</sup> This report emphasized that the level of domestic violence in South Africa is excessively high and that, whilst this is the case, it cannot be maintained that the right to freedom and security of the person is being sufficiently protected. It also highlighted a number of actions which could be taken in order to address the problem. For example, it was suggested that there should be more education and awareness among Government officials and the general public, as well as proactive monitoring and evaluation by government departments of the way in which the Act is implemented and used. Moreover, the report confirmed that the SAHRC supports the call for banning all violence in the home, including the use of corporal punishment against children. This is because, it explains, only by bringing children up in violence-free environments will the tide on violence within the home begin to change.

Another key player in dealing with violence against women is the Saartjie Baartman centre, based in Cape Town. The center, which is a human-rights based, non-governmental organization, provides a number of services to victims of domestic violence, including the following: a 24-hour crisis response; specialized counseling; a residential shelter for abused women and children; free legal assistance; and job-skills training, encouraging economic empowerment.<sup>46</sup> By 2007, it was estimated that the center had thereby helped to prevent secondary trauma for approximately 1000 women.<sup>47</sup> It also works in partnership with organizations which advocate ending violence against women and children, and conducts research which is intended to inform intervention strategies and best practices in the gender-based violence sector.<sup>48</sup> In terms of campaigns which the center is involved in, it has recently launched a project named Clothesline, which involves women

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<sup>45</sup>South African Human Rights Commission. "The Impact of Legislation Passed Since 1994, in Particular the Domestic Violence Act 116/98 Within the Broad Context of Domestic Violence: Violence Against Children, Women, Older Persons, Persons with Disabilities and Farm Workers." 9 June 2006.

<sup>46</sup>29. Oct. 2008. <[http://www.saartjiebaartmancentre.org.za/index.php?option=com\\_content&task=view&id=33&Itemid=46](http://www.saartjiebaartmancentre.org.za/index.php?option=com_content&task=view&id=33&Itemid=46)>.

<sup>47</sup>29. Oct. 2008. <[www.genderlinks.org.za/attachment\\_view.php?pa\\_id=461](http://www.genderlinks.org.za/attachment_view.php?pa_id=461)>.

<sup>48</sup>29. Oct. 2008. <[http://www.myggsa.co.za/connect/receivers/the\\_saartjie\\_baartman\\_centre\\_for\\_women\\_and\\_children](http://www.myggsa.co.za/connect/receivers/the_saartjie_baartman_centre_for_women_and_children)>.

and children writing or painting onto t-shirts testimony of their experiences of violence and abuse, before hanging them on a line. The purposes of this exercise are two-fold: to assist in the healing process of those who make the shirts; and to educate those who come to view them in an “in your face” manner.<sup>49</sup>

Finally, a further organization which I consider worthy of a mention is the Projects Abroad Human Rights Office, where I am presently working as an intern. As part of the office’s mission to raise public awareness of human rights in South Africa, interns such as myself are sent to women’s shelters in order to listen to the women’s experiences of domestic violence and to educate them about the relevant laws. A typical session will involve an interactive discussion about matters such as what constitutes domestic violence, how to go about obtaining a protection order, and a strong emphasis upon the point that domestic violence is a crime and should be reported. It is hoped that, through explaining to the women their rights, and by equipping them with the essential knowledge in order to put a stop to domestic abuse, we might help to contribute towards a reduction in such behavior not only amongst their generation, but also among that of their offspring.

### Conclusion

The above discussion has established that a number of successful policies and strategies have been developed in order to respond to women’s needs after they have experienced violence. For example, government initiatives such as setting up separate sexual offence courts and Thuthuzela care centers, as well as the Act itself, are clearly significant both in terms of protecting victims who choose to pursue a criminal action and lessening the chance that they will experience secondary victimization while doing so. However, the reality is that, despite such measures having been implemented, many women still choose not to report domestic violence. Indeed, when the present author asked a social worker why she thought that this might be, she replied that many women simply do not want the police prying into what they consider to

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<sup>49</sup>29. Oct. 2008. <[http://www.saartjiebaartmancentre.org.za/index.php?option\\_com\\_content&task=view&id=60&Itemid=68](http://www.saartjiebaartmancentre.org.za/index.php?option_com_content&task=view&id=60&Itemid=68)>.

be their “private” family lives. She even went so far as to suggest that, if she were experiencing domestic violence herself, she would not turn to the law for help.

While it is heartening that the services provided by, for example, the SAPS have improved over recent years, more needs to be done in order to encourage victims of domestic abuse to use the criminal justice system and, further, to prevent such violence from occurring in the first place. It is submitted here that the most effective way of doing so would be through widespread social education and, indeed, a number of state and non-state institutions have already embarked upon such a mission. However, this education needs to focus not only on raising awareness of domestic violence itself and what victims can expect and demand from the legal process, but also on challenging the violence and gender inequality which is inherent within South African society. Ultimately, the law alone cannot cure the epidemic of domestic violence; the people themselves must be involved in helping to alleviate the problem which, directly or indirectly, impacts each and every one of their lives.

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